No welcome here?

Asylum seekers and refugees in Ireland and Britain

Edited by
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dialogue

Democratic Dialogue
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Preface

This is the 14th report from the think tank Democratic Dialogue. DD gratefully acknowledges the financial assistance for this project from the NIVT Social Justice Fund, the Equality Commission and the Allen Lane Foundation.

The report is based on a round table discussion, hosted by DD in Belfast on February 17th 2001, which sought to bring together individuals and representatives from the many organisations in Ireland and in Britain involved in ensuring that asylum seekers and refugees are treated with the respect for their human rights that should be accorded to all people. The round table took place at an important period in the debate on future provision for asylum seekers and refugees, in both an Irish and a UK context. While the Irish government had introduced a Refugee Act intended to lay down the rights of refugees and the responsibilities of government towards them, considerable disquiet had been expressed that some aspects of that legislation were punitive and contrary to the spirit of international refugee conventions. In the UK, the subject of asylum seekers was proving to be a key issue in the run-up to the Westminster elections. The system of direct provision and dispersal introduced by the Labour government in Britain has been shown to be flawed and in need of serious rethinking and this debate continues. New arrangements for the care of asylum seekers have been introduced into Northern Ireland, under the remit of the Home Office, through the work of Asylum

Seekers Advice Northern Ireland, and the Northern Ireland Council for Ethnic Minorities. The round-table provided the first opportunity for many different agencies, both statutory and voluntary, in Northern Ireland, to discuss the current and future situation regarding the welfare needs of asylum seekers.

We know that members of different minority ethnic groups are experiencing racially motivated attacks, not only in Belfast but in other towns in the north. At the heart of the discussions at the round-table was a recognition that the challenge of providing welcoming homes for newcomers to our society will form a foundation stone in the creation of an integrated multi-cultural society. Local government and statutory bodies can do a great deal to ensure that multi-cultural diversity is embedded within all service provision. Political leadership is required to ensure that the message heard by all is that asylum seekers and refugees are welcome throughout Irish society.

Despite provision for asylum seekers remaining a reserved matter we cannot abdicate responsibility for the way in which those in great need are treated when they arrive. The polarisation of our society into 'two traditions' obscures the fact that we have many cultures in our midst. We remain, however, a long way from being a truly multi-cultural society. A small advance in acknowledging that we have to take ownership of the issue was made in the week of the round table, when the Assembly condemned the detention of asylum seekers and gave public support to the Law Centre report, *Sanctuary in a Cell*. One member of the Assembly attended the round table and we welcomed the presence of two members of the Cultural Diversity sub-committee of Belfast City Council. Regrettably, the office of the OFM/DFM felt that as the issue was a reserved matter, it would not have been appropriate for officials to attend. The Northern Ireland Office also declined to attend on the grounds that responsibility for asylum seekers remains the responsibility of the Home Office. While it had seemed that a representative of the Home Office would attend, we were informed that as the government 'would make no distinction between the way in which we treated

asylum seekers wherever they were placed', the conclusion was that they would not have 'anything useful to say on that topic.' We were, however, grateful for the contribution of Lord Avebury and his critique of current government policy. We also had an opportunity to forge links with the Republic and to learn how the Scottish Parliament organised, despite being subject to similar restraints to our own assembly in its ability to determine policy. These comparisons provided useful indicators for future progress.

DD invited participation from agencies involved with asylum seekers and refugees in the Republic of Ireland and Northern Ireland, from the Office of the United Nations High Commission for Refugees, the Northern Ireland Human Rights Commission, the Equality Commission, the Law Centre (NI), representatives from minority ethnic groups, politicians, academics working in the field of human rights and equality, and other concerned individuals. There were five sessions, focusing upon international and European legislative protection for refugees; the experience of devolution; the situation in the Republic; efforts to develop a multi-agency approach in Northern Ireland and a discussion on the existence of racial prejudice and the efficacy of anti-discrimination legislation in helping to change attitudes. Paul Connolly, from the University of Ulster, provided an excellent paper detailing on-going research into attitudes towards race. While other commitments meant he was unable to provide a paper for this report his research is referred to in the contribution by Joan Harbison.

Interest in attending the round table was so great that we were unable to accommodate all those who wished to participate. DD would like to express its appreciation of the contributions of all the participants, excerpts from which are distributed throughout the report. For those who were not present, we hope that this report is both illuminating and a useful source for everyone concerned with the issues raised.

he treatment of refugees and asylum seekers is not often discussed in Northern Ireland. There are many reasons for this. One is that immigration and asylum law are not transferred matters. Immigration and asylum law remain determined at Westminster. In addition, and as is frequently stated, the 'both communities' narrative tends to dominate discussion. For understandable and good reasons people get wrapped up in the traditional problems of Northern Ireland and neglect the troubles of other societies. The fact that there are asylum seekers in Northern Ireland would no doubt surprise some. The challenge of dealing fairly with refugees and asylum seekers is one which transcends localised disagreements within and between these islands. It is an issue of public polic8 Tements w ithin

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intense disagreement continues over issues of belonging. The refugee and asylum seeker challenges us to develop legal and policy responses which recognise that rights are not owned by those who are deemed to 'belong'. Everyone has rights by virtue of their personhood. Making the human rights ideal count in practice can prove difficult. Again, while the rhetoric of human rights is everywhere in public debate, there is less intense consideration of what the concept means. The asylum seeker presents the challenge of recognising personhood as a basis for entitlement in law and practice.

The debate is not confined to human rights. The importance of mainstreaming equality is sometimes neglected in this area. The fair treatment of refugees and asylum seekers also depends on a pro-active approach to the promotion of equality, combined with a resolute anti-racism policy. The 'equality agenda' in Northern Ireland has clear implications for the protection of refugees and asylum seekers. Again, it is essential that everyone recognises this fact.

As noted, one argument which does surface in this debate is that asylum is not a transferred matter, therefore it is best left to

the Home Office. Legally this is of course correct. However, criminal justice is also not devolved, a fact which has not prevented extensive engagement with the issue in Northern Ireland. The constitutional legal position does not in fact rule out work on the issue. The Scottish Parliament has, for example, engaged in consideration of the treatment of asylum seekers. It is notable also that the Northern Ireland Assembly debated the detention of asylum seekers this year. Although formally outside the remit of the devolved administration it remains possible to encourage discussion of the issues. As the contributions to this report show, a dialogue can usefully take place as an 'inter-isles' discussion about the future of refugee and asylum policy.

The debate on asylum in the UK and Ireland often pivots on the narrow issue of who is and who is not a refugee. The argument thus revolves around the legal conception of refugee status. When an official refers to a 'genuine refugee' he/she means someone who comes within the definition contained in the 1951 Convention relating to the Status of Refugees (as this is reflected in domestic law and practice). National law and practice can differ, as in the Irish context, but generally it is to the 1951 Convention that people look for guidance. A person is a refugee if he/she has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion and membership of a particular social group. The Convention definition is limited and does not include all human rights abuses. On this the European Convention on Human Rights 1950 offers some further protection. A basic point is that the legal construction of the debate masks the more complicated reality of human migration. The use of terms such as 'bogus asylum seeker' is simply a crude device which disguises a restrictive attitude towards immigration more generally.

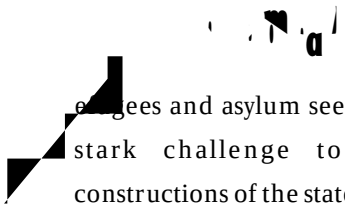
Many of the issues which arise in Northern Ireland are common to the UK and Ireland generally. The detention of asylum seekers on an arbitrary basis is a problem, wherever it occurs. In Northern Ireland detention has been particularly problematic. The land-border with the Republic of Ireland also raises its own issues. Asylum seekers can unwittingly travel to Northern Ireland without realising that they have entered a distinct legal jurisdiction with its own rules on asylum. A problem can then arise when contact has to come through Croydon in London. The

obvious answer to this is to encourage North/South co-operation in the Irish context.

To conclude, it is worth repeating one message that came from the discussions: asylum seekers are not criminals. This may seem an obvious point. Those who seek asylum are making use of an accepted way to seek to enter other societies. It is not always evident from the public debate that this is fully understood. No one who participated in this round table under-estimated the challenges presented by the demand that human migration be managed fairly. Several constructive suggestions for ways forward were made. With political will and genuine commitment improvements on the current situation are clearly possible. The question is whether the political will exists to construct a fair and effective policy response.

Refugees and asylum seekers flee terrible human conditions and this fact must inform legal and policy development. Many European governments have sought to close down this route of entry into their societies. The 'tough talk' of 'abuse' neglects the human stories which underpin the complex process of human migration. In the long term the answer will lie in developing comprehensive policies which address human migration in all its complexity. A starting point is to accept and celebrate all the advantages which migration brings to our society. A diverse, multi-cultural society is something to be desired and welcomed. There is a particular responsibility on politicians to reflect carefully on the language they use and the approach they take. However, on these islands we all have responsibility for creating the climate for the fair treatment of refugees and asylum seekers.

Introduction



Refugees and asylum seekers present a stark challenge to traditional constructions of the state. They are the concrete expression of the reality of people stripped of everything except their status as human beings. What we discover in practice is that the open language of human rights confronts the cold logic of borders and state sovereignty. Despite the rhetoric of human rights, national status and belonging remain the primary considerations in the calculations of states. Given the current international political and legal order this is a reality which is hard to avoid. Although the autonomy of states has been weakened by both internal fragmentation and processes of internationalisation, the state remains the principal agent in the international community. It is to the state that we still look to offer effective protection to the refugee and asylum seeker. However, the state now functions within the context of international standards which govern its treatment of all individuals on its territory.

The 'nation-state' has always functioned with rules which structure membership and belonging. These are the rules which define inclusion in national contexts. The rise of the 'nation-state' as a closed and delimited political community had necessary implications for those outside this community. Inclusion in this context brought with it exclusions. With the development of the administrative state in the twentieth century European governments built enhanced legal régimes for the regulation of migration. As the distribution of resources was on the agenda, so states wished to ensure that they knew who belonged. The problems which can emerge

in the context of closed political communities are well known. However hard 'nation-state builders' tried they could not entirely erase one basic fact: heterogeneity is the norm in human history. The attempt to divide the world into neat packages of 'nation-states' confronted the ever-present desire of people to express their autonomy through migration (where possible), as well as the continuing reality of conflict and human rights abuse. People have remained stubbornly resistant to the idea of remaining within designated and pre-defined contexts.

The human rights movement gave voice to the desire to recognise that personhood should be of central importance in the treatment of individuals. The many international standards which have emerged since 1945 reflect this political commitment. The message was sent out that nationality alone was not the key factor in determining the entitlements of individuals. In addition, the principle was established that states would be held to account for the treatment of all individuals on their territory.

The adoption of the 1951 Convention relating to the Status of Refugees, and the establishment of the United Nations High Commissioner for Refugees (UNHCR), signalled the centrality of refugee protection to this new international order. At the heart of the model of refugee protection adopted by the international community is the citizen-state bond. Refugee protection is that form of 'international protection' which applies when the citizen-state bond has broken down. The régime is effectively constructed as a surrogate form of protection. The bond may have collapsed permanently, or it may be re-established with a change of government or a new human rights situation in the state of origin. Refugee law exists to provide surrogate protection for those who fear sufficiently serious human rights violations if returned to their state of origin. The international régime of refugee protection is increasingly supplemented by the expanding body of international and regional human rights norms. These international guarantees are essential in the effective assessment of state practice.

The regional picture has also altered. The European Union (EU) context is particularly significant. The EU is in the process of constructing a common immigration and asylum policy. These areas have been moved from the 'third' to the 'first' pillar of the EU. Although the UK and

Ireland have secured opt-outs, EU law and policy will set the terms of the debate in the coming years. At present the preference is for setting down minimum standards at the EU level in the form of Directives. These minimum standards will apply both to the procedure and substance of refugee status determination. There is much debate over what sort of entity the EU really is. The fear, which the 'Fortress Europe' metaphor captures, is that it will seek to adopt the closed and restricted position of the 'nation-state'. The danger here is that the EU will mean freedom and justice for some, but increased restriction for others both inside and outside of the territory. Both the UK and Ireland have acknowledged the fundamental importance of EU co-operation on asylum matters. It is essential that we get the right kind of co-operation, in other words, that the results reflect best practice.

In the national contexts the UK and Ireland have adopted a co-operative approach because of a collective desire to retain the Common Travel Area (CTA). The CTA functions to ease free movement for some between these islands. In both states there has been increased legislative activity on asylum in the last decade. In Ireland the Refugee Act 1996 (as amended) is now in force and thus the refugee protection régime is on a proper legal footing. In a series of legislative enactments in the 1990s the UK also responded to the increase in the number of asylum seekers. In both states the importance of the protection of refugees and asylum seekers has been recognised through the development of relatively autonomous legal régimes. In the UK, policy development suggests a desire to deter asylum seekers. The combination of carrier sanctions with visa controls can make it difficult for asylum seekers to leave. If they make it to the UK they face possible detention, dispersal and living on vouchers. The process remains an extended one with the majority not being granted refugee status. Despite the rhetoric which surrounds asylum it remains the case that asylum seekers who come to the UK and Ireland flee from states with poor human rights records. This renders the use of the term 'bogus' particularly problematic. To put it crudely and simply, the message being sent by both states is a negative one.

The treatment of refugees and asylum seekers in Northern Ireland fits within the

bigger picture of refugee protection. On these islands the issue is often presented as a problem, with communities being asked to shoulder the burden of protecting refugees and asylum seekers. What we forget is the contribution which migration makes to enriching communities. An open, pluralist and multi-cultural society is something to be desired. These islands already benefit greatly from the contributions of refugees and asylum seekers. The challenge for the coming years is to construct policy responses which see human migration as an opportunity and not as a threat. On this there is much work to be done.

The UNHCR's Views on UK Asylum Policy

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The speech by Jack Straw (the former Home Secretary) in February this year was both thoughtful and reflective. It puts the real issues that need to be discussed up for debate. We welcome the recognition running throughout that this problem - this very real problem of numbers and of a growth in irregular migration is not one in or for Europe alone. The Minister talked of getting together to understand each other's perspectives and moving on from there – 'Asylum is an international issue which requires an international response' - we agree and hence UNHCR's Global Consultations forum.

Also very valuable in the speech was the recognition of the enduring importance of the 1951 Convention and the need for states to meet their obligations under that Convention. We agree with the concerns expressed about the growth in people smuggling, about misuse of the asylum process by a number and about the need to focus on how to accelerate procedures to deal with abusive claims and return those

[illegible]

found through proper procedures not to have a claim.

Possibly the three central issues in the speech which we would welcome further exchanges on are: first the conceptual starting point, that somehow it is the operation of the Convention – due to something inherent in the Convention itself - which is contributing significantly to the current problems; secondly the suggestion, which is really quite problematic for us, that a new approach to handling claims be built around the notion of safe country - or lists of so-called safe countries of origin; and thirdly the proposal that the EU set up a joint resettlement programme.

As regards the Convention somehow being at fault, we would only observe that the Convention can't be held responsible for a failure in dealing with situations it wasn't designed to address and shouldn't be asked to address. The global migration environment has changed. It is absolutely correct to observe that rapid, long distance migration is a realistic option and that smugglers have made it even easier, if much more perilous. But the Convention is not a migration control instrument. The problem of migration has to be addressed in tandem with the refugee problem but using different tools better crafted to allow states to respond to migration pressures. It would be seriously to the detriment of refugee protection to try and force the Convention into this role by changing its operation and scope; just as it would be if the Convention were to be discarded because this proves impossible.

The Global Consultation that UNHCR has embarked on until 2002 will put on the table what each state is currently doing, to analyse it, to inject into it the views of academics, governments, NGOs, experts with what will be termed an agenda for protection. It is a very important step because it is the first recognition publicly that yes, there is a big problem surrounding the 1951 Convention.

We need to respond to migration challenges with migration tools and refugee needs with refugee protection tools. Where the two intersect, as they do through abuse of the system by would-be migrants, the challenge is to devise procedures or processes to disentangle the two. Not one to deal with both simultaneously. As regards the safe country proposal, our concern is two-fold: first there is the practical concern.

What are the parameters for declaring a country safe? Are there really parameters, which would attract international agreement and which would serve as a guarantee of safety? It is a very relative concept in our experience, and subject to the vagaries of the international environment and domestic politics. Our second concern is a legal one. The idea that persons should not have their claims considered - that these should not even be admitted into any procedure - is not in our assessment reconcilable with the terms of the 1951 Convention. The definition in the Convention says nothing about rejecting status because of national or ethnic origin. In fact, the Convention prohibits discriminatory treatment of refugees on such grounds. So there is a real question as to whether such an approach would be compatible with Convention responsibilities.

I would like the EU to measure upwards to best international standards and for there to be some kind of authoritative monitoring mechanism at international level so we don't get the lowest common denominator approach at EU level.

Of course, the objective conditions of safety in a country of origin has a lot to tell about whether a claim is really well-founded. We would have far less difficulty in allowing this notion of safety, assuming it can be much more clearly defined, being one basis for channelling claims into accelerated procedures. This, of course, is not the same thing as allowing the notion to be a bar to admissibility to any process.

As regards the resettlement idea, it is certainly a suggestion that one could explore further. It is hard to comment at this point because crucial for UNHCR would be the criteria which would be used to determine eligibility for resettlement. For us, resettlement is an urgent protection mechanism for persons who are in particular danger. Which means that if 'integration potential' narrowly defined or other kinds of regular migration criteria were to be employed, we would lose the necessary flexibility to place urgent cases somewhere.

Also it is important that such 'off shore' processing for resettlement is not used to deter 'on shore' applications. It is important to clarify that determining the status of a claimant who has arrived at the border and processing a person for resettlement are not

one and the same thing. While making distinctions, it is also important not to confuse the Humanitarian Evacuation Programme with a resettlement programme.

There are a number of general points to make. A person rejected for refugee status is not always an 'abuser' of the system, just as a smuggled asylum seeker is not always someone without a valid claim. There is a need to avoid confusions of this sort as they only serve to fuel the negative emotions at the public level. Some rejected claimants are people who genuinely view themselves as refugees. They believe that their claims are rejected not because of an absence of fear or even threat, but because the refugee definition is applied in a restrictive or other way to reject the claim. Sometimes people in grave danger have no choice except to resort to smugglers. To conclude, there is a need to recognise the perspective of the refugee and asylum seeker in this process.

The International and European Contexts for the Protection of Refugees and Asylum Seekers

hank you for giving me the opportunity to provide an elementary introduction to the European and other international human rights documents which impact upon refugees and asylum seekers in Northern Ireland. Despite holding the post that I do, I feel unqualified to speak in detail about this specialist area but I can certainly pledge the Northern Ireland Human Rights Commission's support for improvements to the current law and practice.

The starting point for any discussion of the international context for the protection of refugees and asylum seekers has to be the Universal Declaration of Human Rights, which was drawn together in the aftermath of the Second World War and signed on 10 December 1948. It was the dislocation of peoples occasioned by that war, and in particular the atrocities perpetrated against minorities living within the borders of the Axis powers, that prompted the development of such a Declaration. Articles 13 to 15 are of particular relevance and are worth citing in full:

Article 13:

(1) Everyone has the right to freedom of movement and residence within the borders of each State.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14:

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising

from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15:

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

A number of points can be made about these provisions. First, these rights apply to 'everyone' in the state - they are not limited to persons who are nationals of those states. Secondly, the right to seek asylum exists only whenever the alternative is persecution - although persecution is undefined - and it is not to be granted to 'ordinary' criminals. Thirdly, nothing is said about the nature of the rights to be conferred on someone who enjoys asylum - it is not clear, for example, whether the rights are to be any less than those conferred on other persons in the same state. Fourthly, there is no indication of how asylum is to affect a person's nationality.

The Declaration is an unenforceable legal instrument, although some international lawyers would argue that it has acquired such a high status that it should be taken as representing 'customary' international law, which is binding.

Shortly after the signing of the Universal Declaration a number of European nations got together to sign the European Convention for the Protection of Human Rights and Fundamental Freedoms. This occurred in Rome in November 1950. The first state to ratify the ECHR - *i.e.* to indicate that it wanted to be bound by it at the international level - was the United Kingdom, on 8 March 1951. The Convention received sufficient ratifications to come into force on 3 September 1953. It applied from that date not only to the UK but also to 42 British colonies. It was in the early 1960s that Britain began to harbour doubts about its current immigration polices. In 1962 Parliament enacted the Commonwealth Immigrants Act in an attempt to limit the numbers entering from the colonies. On 14 January 1966 the UK government eventually recognised the right of individuals to apply for a remedy for a breach of their human rights to the

European Commission of Human Rights. The first person to bring an application was a man whose 13-year-old son had been refused admission to the UK (*Mohammed Alam v UK*; *The Times* 12 October 1967). There then followed the Commonwealth Immigrants Act 1968 and the Immigration Appeals Act 1969, both of which further restricted the right of entry into the UK. East African Asians were initially refused entry and had to make an application to the European Commission in order to provoke the British government into settling their case (see *East African Asians v UK* (1973) 3 EHRR 76). There have been a number of other important cases dealing with immigration issues taken to Strasbourg by people living in Britain - e.g. *Abdulaziz, Cabales and Balkandali v UK* (1985) 7 EHRR 471 and *Chahal v UK* (1996) 23 EHRR 413. Unfortunately, Article 6 of the European Convention (the right to fair trial) has been held not to apply to immigration issues such as entry, asylum and deportation, but Article 3 (the right to be free from torture and inhuman or degrading treatment) has.

The European Convention was at long last incorporated into UK law by the Human Rights Act 1998, which came fully into effect on 2 October 2000. All laws and policies throughout the UK must now conform with the European Convention. If they do not, judges can declare them to be incompatible with the Convention or, in some instances, invalidate the law completely.

It was in 1951 that the United Nations first put more flesh on the bones of the Universal Declaration as far as refugees are concerned. They did so by agreeing the Convention Relating to the Status of Refugees, which has since been amended by a Protocol Relating to the Status of Refugees signed in 1967. Articles 1 and 12 of the 1951 Convention deserve to be cited in full:

Article 1:

A refugee is a person who, owing to well-founded fear of being persecuted for reasons of race, religion, 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 who, not having a nationality and being outside

the country of his former habitual residence is unable, or owing to such fear, is unwilling to return to it.

Article 12(1):

The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

In Article 1 we see that the term 'persecution' has been defined and that the right to seek asylum is limited to persons whose fear of persecution is 'well-founded'. Moreover, only persons who are outside the country of their nationality can claim asylum.

It is enlightening to contrast with this the wording of the OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa 1969 which defines a refugee as any person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin or nationality. This provision recognises that persons can be refugees in the country of their nationality. It also abandons the concept of 'persecution'.

This asylum debate is an area where people who are pushing the human rights debate should bring that up, in discussion with the NIHRC and the southern Human Rights Commission, because the Belfast Agreement does talk about everyone on this island and that seems to me in the asylum context very important.

In a recent case before the House of Lords it was decided that women who were suspected of having committed adultery could form a 'particular social group' for the purpose of Article 1 of the 1951 Convention, because if they were to be returned to their country of nationality, Pakistan, they would run the risk of persecution (see *R v Immigration Appeal Tribunal, ex parte Shah (United Nations High Commissioner for Refugees Intervening)* [1999] 2 All ER 545).

To date EU law has not done much to protect the rights of asylum seekers and refugees. Indeed if anything the emphasis

has been on strengthening the borders of the Union so as to preserve a 'Fortress Europe'. The so-called Dublin Convention, which requires states in which an application for asylum is made to return the person to the European country through which he or she first entered the EU, has the merit of deterring further penetration of Europe by asylum seekers but it has added to the administrative burdens involved in processing asylum applications, with all the consequential delays that entails. The Dublin Convention has done little to bring about a harmonisation of asylum policies in the various Member States of the Union.

Northern Ireland is the only part of the UK (to date) which has a Human Rights Commission. Called for by the Belfast (Good Friday) Agreement, and since established by statute (the Northern Ireland Act 1998), the NIHRC has the duty to promote an understanding and awareness of the importance of human rights and to advise the government (both in Belfast and in London) on what measures should be taken here to enhance the protection of human rights. The Commission also has the power to investigate alleged abuses of human rights and to take cases to court (either on behalf of individuals or in its own name). But when it investigates matters it cannot - unfortunately - compel the production of evidence.

The Commission has committed itself to visiting all places of detention in Northern Ireland. It has not yet visited HMP Magilligan but intends to do so in the near future. We have participated in the panel of persons interested in the asylum process in Northern Ireland and we gave our full endorsement to the recently published Law Centre research report entitled *Sanctuary in a Cell*. We would welcome applications from refugees who feel that their rights under the ECHR or the 1951 Convention have been violated. When the Asylum and Immigration Act was going through Parliament in 1999 we lobbied for significant changes and did manage to secure from the government a commitment to review the way in which asylum seekers are held in custody in Northern Ireland. No doubt further recommendations for change will emerge

from these discussions. The Human Rights Commission stands ready to do what it can to get those recommendations accepted by the powers that be.

Global Solidarity and Refugee Rights in Europe

The basic premise of this contribution is that the link to global solidarity is important. We are often asked to be realistic when it comes to asylum policy, but on international refugee protection I worry about how realistic our realists are. Despite the rhetoric from many Western governments, refugee protection remains a global responsibility, and when we look at the evidence, many governments who complain loudest are not carrying an excessive responsibility when judged in international terms.

When I worked in Northern Ireland, as an academic, I was told on more than one occasion that asylum was not an issue here. No one was, I was told, really interested in it. With the debate in the Northern Ireland Assembly earlier this year, and this important event organised by Democratic Dialogue, hopefully we are sending out the message now that the treatment of asylum seekers is very much an issue for all of us. As this session is intended to make clear, the refugee debate in Northern Ireland cannot be considered in isolation. The refugee reminds us that there is a troubled world beyond these shores, and that we must play our part in support of the principle of global or international solidarity. By way of illustration, UNHCR figures reveal that the majority of the world's refugees reside in Asia, followed by Africa and then Europe. Figures show that the main countries of origin of asylum seekers in Western Europe are those with significant human rights problems. While no country is completely safe for everyone within its borders, the evidence demonstrates that those seeking asylum in Western Europe still come from

states with poor human rights records. This renders the tough talk of 'bogus applicants' offensive, both for its reductionism and for the idea that people with complicated stories and lives can be written off in this way.

The injustice and oppression which fuel refugee flows continue. Injustice takes many forms, and only some are recognised in law as giving rise to a valid claim to refugee status. The 1951 Convention relating to the Status of Refugees remains the cornerstone of international refugee protection. In this the 50th anniversary of the Convention it is worth restating the fundamental importance of its basic principles. What stands out is that the Convention guarantees to the refugee a defined status with entitlements attached. The role of the Convention, as a status-granting mechanism, is particularly important and sometimes neglected. Many of those seeking protection in Europe at present are forced to exist in a form of legal limbo. A status which has clearly defined rights and entitlements attached to it would assist in bringing this to an end. At present people are literally dying to enter Europe, as is evident from the 58 people who died seeking entry at Dover. But this is only one harsh example of what has become a growing trend. In response to the asylum issue states have come together in a number of international fora to try to produce collective responses. The developments in the EU are only one example of this.

As others have noted, the asylum debate in the EU must be located within its human rights context. There are international and regional standards which are applicable to the refugee and asylum seeker, as with any other person. These are standards against which EU and national practice can be measured. The EU Charter of Fundamental Rights, with its rather weak reference to asylum in Article 18, at least demonstrates that the EU is increasingly thinking in human rights terms. Article 19 is also

relevant, it provides:

'No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment'.

This commitment to human rights is evident also in Article 6 of the TEU which states that the Union is based on a set of principles which include human rights. The provision commits the EU to respect fundamental human rights as guaranteed in the European Convention on Human Rights. The development of European law on equality will also need to be monitored closely for its impact on the asylum debate. Refugee law takes its place within a growing number of human rights standards. The challenge, and one that remains particularly difficult in this area, is to ensure that the standards mean something in practice. In the EU this has become a real challenge.

EU asylum policy has emerged incrementally. Before the mid 1980s it was not possible to talk about a European response. The imperative of creating an internal market with the free movement of persons directed attention towards external borders and migration control. The construction of an asylum policy thus became part of the agenda of the EC. The process of building a common approach has been painfully slow. As a result of frustration at developments the Schengen states decided to go their own way. The dominant mode of policy development has been intergovernmentalism and this is one reason for the problems encountered in trying to develop a common approach. Instruments did emerge, such as the Dublin Convention 1990 and a variety of other soft law measures, including in 1996 a Joint Position on a harmonised approach to the refugee definition.

One difficulty at present, and as the European Commission has recently noted, is ensuring equivalence in relation to the application of the 1951 Convention within the EU. Asylum and immigration, following the entry into force of the Treaty of Amsterdam have now moved from the 'third' to the 'first' pillar of the EU, and we are beginning to see community legal instruments being proposed and adopted in this area. There are several documents which set out the developing policy: the Vienna Action Plan December 1998; the

Conclusions from the Tampere meeting in October 1999, where reference is made to the importance of a full and inclusive interpretation of the 1951 Convention; the Commission Scoreboard, published in March 2000, related to deadlines and responsibilities; and in November 2000 the Commission published a communication entitled 'Towards a Common Asylum Procedure and a Uniform Status, Valid Throughout the Union for Persons Granted Asylum'. At the same time it published a second communication on community immigration policy. Since May 1999 the Commission has laid several initiatives before the Council and Parliament: the EURODAC regulation on fingerprinting asylum seekers has been adopted; a Directive on family reunion has been proposed; a decision on a European Refugee Fund (adopted by the Council in September 2000); a proposal for a Directive on temporary protection; and a proposal for a Directive on the granting and withdrawing of refugee status. By the end of 2001 the Commission intends to add to this package of measures: standards on the reception of asylum seekers; an instrument on the criteria and mechanisms for determining the state responsible for determining an asylum request (a community instrument to succeed the Dublin Convention); and rules on the recognition and content of refugee status and subsidiary forms of protection offering an appropriate status. In terms of status, options on the table at present include: transposing 1951 Convention status into community law; creating one or more subsidiary statuses; or creating a single status that might go beyond the 1951 Convention to include other instruments. The future of asylum policy would appear to be European and on this front things are moving along.

What I am suggesting is that the asylum debate in Northern Ireland must not be seen in isolation from the debates in Britain or Ireland, the EU or within the international community. Asylum, of all areas, allows us to make a connection with suffering in other parts of the world. It is sometimes argued in Northern Ireland that we should see ourselves as part of the bigger European picture, and that our problems will dissolve in the haze of postnational thinking. While this is attractive, we must remain alive to the very real problems with EU policy in the area of asylum. It would be ironic if policies of deterrence and restriction, developed at the

national level, were simply mapped onto the EU. More likely, is that the law will set down minimum standards, and it will be interesting to see how low these get. The problem we all face in Northern Ireland and in the EU relates to one question: are we really prepared for what a commitment to human rights means in practice? In other words, do we really believe in human rights for all, or do rights belong primarily to EU and national citizens only? The tension within the EU on this issue may in fact be one we are familiar with. And, finally, can human rights law follow abuse? If states such as Ireland and the UK operate pre-emptive exclusion policies (which may take the form of tough talk on human trafficking for example) which rely on the private sector to do the dirty work, then how can we ensure that human rights standards are made to count effectively in this context? This and other difficult issues will need to be resolved if fairness is to play a part in our asylum law and practice.

The Reality of Asylum Provision

I am conscious of the fact that I can only address the topic from the perspective of NICEM's role. My views are those of an organisation delivering advice and support to asylum seekers and refugees, and not as someone who is experiencing the harsh realities of surviving on vouchers, the rates of which are set at 70% of income support rates, and at the same time grappling with an unfamiliar environment. These are subjects which would be better addressed at first hand, by the refugee community and I will leave this for another time and another place.

By way of brief background to the current support arrangements, the Immigration and Asylum Act 1999 removed entitlement to social security benefits and social services support from asylum seekers, except for unaccompanied minors. The Act introduced a system of support, consisting of vouchers and a one-off, no choice offer of accommodation. In terms of NICEM's role, since the beginning of October 2000 we have been operating the 'reception assistant' function, which involves the

In NI I don't see the devolved government wanting to touch the issue of the asylum seeker. Why they are not here to respond today is part of that. If we don't have that kind of coordination then they have more legitimacy in passing the burden, saying it is a Home Office issue. This has an enormous impact in NI in terms of service provision, health, housing, and other departments. If there is no coordination even within the government here I don't see how the system can work.

provision of advice and assistance to newly arrived destitute asylum seekers, in accessing emergency accommodation and applying to the National Asylum Support Services (NASS), the Home Office Department (set up under the 1999 Act), for support and follow-on accommodation. The project is funded by the Refugee Council, who are in turn contracted by NASS to deliver the reception assistant function.

What this has meant for NICEM, in reality, is funding for one full time project worker whose responsibility it is to advise, assist and guide people through the system. This includes explaining the details of accommodation provision, and the fact that the financial support they will receive will be in the form of vouchers and sign-post them to other agencies. These other agencies pick up other issues, such as health, education and legal advice and assistance. The service operates on a 9-5 basis, 5 days a week. Referrals are made from a whole host of sources, including advice agencies, Law Centre, Immigration Services, the police and our member groups.

We are under-resourced in terms of interpreting facilities. We are limited to the use of an interpreter for 2 hours at a maximum rate of £15 an hour and this is solely for the reception assistance functions. And it is a major difficulty, especially when you need to take full details from a client and you need to get that information because it is vital to their situation.

It is the project worker's responsibility to meet clients, many of whom present in a distressed state. The project worker arranges interpreting facilities, briefs clients on NASS provision, completes the application form for support, arranges emergency accommodation and any medical appointments. She arranges emergency accommodation, completes client reports and statistics and advises clients when they have been accepted for NASS support and are being moved into follow-on accommodation. These are the specific functions of the 'reception assistant' as defined by the Home Office. However, the reality is not as straightforward,

The project was extended at the beginning of April 2001, with the addition of a second project worker and a full-time administrator. The Home Office has

indicated that it would consider the project to be a 'One Stop Shop,' a comprehensive service which will not only provide the 'reception assistant' function but will also assist people with issues which arise when they are in the follow-on accommodation and post the granting of refugee or exceptional leave status. While NICEM, together with Law Centre (NI), have campaigned and lobbied for such provision, we are concerned that the proposed model will not be equipped to address all the issues and difficulties faced by asylum seekers and refugees. It is essential that the service is properly and adequately resourced, in order to ensure that immediate needs are met. A crucial part of the process is the involvement of local government and administrative structures in Northern Ireland. Whilst immigration and asylum remain reserved matters, asylum seekers, who are resident in Northern Ireland, will interact with local services in terms of a whole range of matters, in particular with regard to health and education.

It is important that the local administration is aware that once people have been recognised as refugees, or granted exceptional leave to remain, that they will make Northern Ireland their home. I can confirm that this has already been the case for a significant number of people and thus from this point of view, it is essential that a proper infrastructure is put in place, to ensure that agencies are familiar with asylum and refugee issues and understand their duties and responsibilities, in respect of this group. In achieving this level of involvement, it is crucial that the Home Office and the local administration in Northern Ireland develop closer communication and pursue a more joined-up approach.

… I absolutely agree this has to be brought down to a grass-roots level and that it is a matter of empowering people. The process we would envisage for that to take place involves getting more funding to groups through capacity building. We are currently awaiting a decision at the Home Office on EU integration funding which will deal with that very aspect and develop the existing refugee community in NI who don't have a voice for themselves.

Detention of Asylum Seekers in Northern Ireland

here are no official figures for the number of asylum seekers based in Northern Ireland. Correspondence from the Chief Immigration Officer suggests that around 400 asylum cases arise in Northern Ireland each year. In the past 12 months the Law Centre has dealt with asylum seekers from over 19 different countries, including people from Algeria, Iraq, Sierra Leone, Kosovo, China, Iran, Romania, Sudan, Somalia and Azerbaijan.

Despite the fact that asylum seekers have not been charged with any criminal offence, and are not sentenced prisoners, if detained in Northern Ireland it will be in a prison. Men are detained in HMP Magilligan, which is situated 70 miles outside of Belfast in an inaccessible area of the North West of Northern Ireland. Women are detained in HMP Maghaberry.

When in prison detainees can be held in accommodation alongside other prisoners. Law Centre (NI) recommends that this practice is brought to an end as a matter of urgency. Although the UN has drafted detention rules which apply to all immigration detainees the UK has unfortunately failed to translate these into clear rules for detention in the UK. As things stand, immigration detainees are dealt with under the prison rules. Whilst the Prison Service has attempted to adapt facilities and services to the needs of asylum seekers where possible, there are issues which clearly compound the very experience of incarceration itself. Some of the main issues are:

- an absence of a policy on race relations within the Northern Ireland Prison Service asserting a commitment to

racial equality;

- an absence of an amendment to the Northern Ireland Prison Rules to bring them into line with England and Wales prohibiting racially aggravated assault or damage to property, insulting racist behaviour;
- inappropriate cultural diet options;
- a sense of isolation from family, friends, legal advice and essential community support;
- lack of access to appropriate religious representatives;
- written materials only being available in English.

The decision to detain an asylum seeker is a discretionary one taken by immigration officers, acting on behalf of the Home Office. The power to detain is contained in the Immigration Act 1971 and the Asylum and Immigration Appeals Act 1993. These Acts permit the detention of anyone who is awaiting a decision on an application for leave to enter, or who is awaiting deportation or removal from the UK. The power to detain is extremely wide and there is no limit on the length of time for which an individual may be held.

Under international human rights and refugee law there are limits on the power to detain. Article 5 of the European Convention on Human Rights 1950 has been given effect in domestic law in the UK by the Human Rights Act 1998. This article enshrines the right to liberty but does authorise the use of detention in certain circumstances:

- where it is used to prevent unauthorised entry; or
- where action is being taken with a view to deportation or removal.

Specific guidance in relation to detention is contained in the UNHCR's Ex Com Conclusion No. 44 which provides: '*in view of the hardship which is involved, detention should normally be avoided*'. This document refers to certain instances in which detention may be used:

- to verify identify;
- to determine the factual basis of the claim for asylum;
- where the asylum seeker has attempted to mislead the immigration authorities by destroying his / her travel or identity documents or using fraudulent documents;

- to protect national security or public order.

It stresses the need for judicial review of the decision to detain and emphasises that detention should not be unduly prolonged. Furthermore, the UNHCR's Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers provide guidance on the use of detention. This document is not legally binding, it sets out that:

- detention should only be resorted to in cases of necessity;
- as a general principle asylum seekers should not be detained;
- the guidelines emphasise the need to consider all available alternatives before detaining and in consideration of whether detention is necessary, account should be taken of whether detention is reasonable and proportional to the objectives to be achieved.

Despite these authoritative recommendations the 1971 Act provides an immigration officer with extremely wide powers to detain. Once detained asylum seekers have the right to apply for bail to an independent immigration adjudicator, but in Northern Ireland, unlike Scotland, England and Wales, there is no access to legal aid for representation of bail hearings. However, since April 2000 Law Centre (NI) has received Home Office funding under Section 23 of the Immigration Act 1971 and Section 55 of the Immigration and Asylum Act 1999 to provide free representation at appeal and bail hearings. The Law Centre has estimated that it can only provide representation in approximately two-thirds of asylum and non-asylum cases and eighty percent of bail hearings, leaving a number of individuals without access to free legal assistance.

Unfortunately the Home Office does not publish overall figures for the number of immigration detainees in any given year. However, while carrying out research for her report on the use of detention in Northern Ireland, *Sanctuary in a Cell*, Victoria Tennant found that in 1997, 49 people were detained in Northern Ireland under the Immigration Act 1971 approximately 30 of whom were asylum seekers, and that the figure for 1998 was 85 of whom around 50% had sought asylum (Tennant, 2000). From 1st January 1999 until 30th June 2000, the period focused on, 75 people were detained in prison - 62 men held in Magilligan and 13 women held

in Maghaberry. The average period of detention was 35.8 days. More recent figures show that between 1st November 2000 and 8th February 2001, 19 people were detained in prison and at the date of this paper an additional 8 people are currently in detention.

The research found that the majority of those held in detention were first detained whilst travelling to Northern Ireland from other parts of the UK. This raises two serious issues:

- there appears to be an operation of an internal form of immigration control between Scotland and Northern Ireland;
- what criteria is being applied in identifying who will be stopped and questioned.

The main reasons given for the use of detention in Northern Ireland are as follows:

- that by travelling to Northern Ireland the asylum seeker has breached his/her condition attached to a previous grant of temporary admission which specifies that he/she must reside at a specific address. However, within Britain those granted temporary admission are free to change address, provided that the Immigration Service is notified immediately after the move. In those circumstances, the conditions of temporary admission will be varied as a matter of course. It is therefore anomalous that those changing address within Britain may do so freely but those who move to Northern Ireland are treated as having breached their conditions of temporary admission and are detained;
- that the application for asylum has been refused with all appeal rights exhausted;
- on occasions people have been detained upon presenting themselves voluntarily to immigration. However, this is contrary to the Immigration Service's own guidelines, as a person should not be detained having voluntarily presented themselves to an Immigration Officer;
- that the detainee applied for asylum after being questioned or detained as an illegal entrant;
- that the matter falls to be considered under the Dublin Convention.

The UK is a signatory to the Dublin Convention, which is an agreement between EU member states whereby responsibility is allocated for consideration of an asylum application on set criteria, including which

was the first EU state entered. Because of Northern Ireland's land border with the South the Dublin Convention has a very specific impact on asylum seekers in Northern Ireland. Individuals may apply for asylum in the South of Ireland then cross the border into Northern Ireland without fully realising the consequences of doing so. The majority of these asylum seekers do not want to submit asylum applications to the Home Office in London but want to return to the South of Ireland as soon as possible. However, if they are detected they are detained in prison in Northern Ireland while applications for their transfer to the South under the Dublin Convention are processed. This procedure is a bureaucratic and lengthy one. The Belfast Immigration Office is not empowered to deal directly with its counterparts in the Department of Justice but must instead forward the case to the Third Country Unit at the Home Office in London which will at that point make a formal request to the Department of Justice.

There is a large backlog of such cases waiting to be processed in London during which time the asylum seeker remains in detention. The research found that in two Dublin Convention cases it took 26 days before the actual request was even forwarded to the Department of Justice by the Home Office in Croydon. Further delays in arranging the necessary transfers meant that the individuals each spent a total of 38 days in detention in the North. During this time family members are separated and in two cases studied the separation resulted in the children in the South of Ireland being taken into care.

The Belfast Agreement enshrined the principle of improving communication North and the South. Effective liaison between the two immigration authorities in Ireland would obviate the need for direct involvement of the Home Office in London. In such cases there is very often consent by the asylum seeker to removal to the South and all that is required is a straightforward administrative transfer. If the Immigration Office in Belfast was empowered to negotiate directly with the Department of Justice on these cases and these matters dealt with urgently then delays and unnecessarily prolonged detention would be avoided.

The Belfast Agreement enshrined the human rights agenda as one of the cornerstones of a democratic future for Northern Ireland. The Agreement details a

conception of equality with a positive duty to promote equality of opportunity in relation to aspects of human identity, including race. Section 75 of the Northern Ireland Act 1998 imposes a statutory duty upon public authorities to promote equality of opportunity between, *inter alia*, persons of different racial groups. As a public authority, the Northern Ireland Office, along with its executive agency the Northern Ireland Prison Service, is legally bound to have due regard to the duty to promote equality of opportunity. As such, it has produced a draft equality scheme setting out how it proposes to implement this obligation. However, the draft document in relation to the section on the Prison Service makes no reference whatsoever to its duty to assess its functions in respect of the promotion for racial equality. It refers only to women, young offenders and the disabled in concluding that a full impact assessment is conducted in respect of all Prison Service functions.

However, the duty to promote equality of opportunity stresses a positive obligation to develop for ethnic minority prisoners the same access to the entire range of facilities within the prison as other prisoners, and to facilitate enjoyment of their own cultural environment. The statutory obligation is crucial to the development of appropriate detention facilities for asylum seekers and a comprehensive equality impact assessment must be conducted in respect of all Prison Service functions to promote equality of opportunity between persons of different racial groups. Furthermore, the Home Office should be designated as a public authority for the purposes of Section 75 of the 1998 Act whereby it would become subject to the equality duties imposed by this Act.

The Northern Ireland Prison Service acknowledges that prison facilities are not appropriate for the accommodation of asylum seekers and that they are unable to

Surely there could be some mechanism for dealing between the immigration people in NI and the Justice Department in the Republic…What happens to detention cases in the Republic where a Dublin Convention case from the north has crossed into the Republic? If they don't find it necessary to detain, why do they have to detain in the north?

effectively and comprehensively meet their needs. The local Assembly unanimously passed a motion on Tuesday 13th February 2001 that asylum seekers should not be detained in prison in Northern Ireland, that any form of detention must be humane and endorsed the recommendations made in *Sanctuary in a Cell*. The Home Office has recently completed a review into immigration detention in Northern Ireland. The Law Centre anticipates that the Home Office review will accept that prison is not an appropriate place either in practice or in principal for the detention of asylum seekers.

In cases where supervision is considered essential non-custodial alternatives to detention should be developed. These would permit closer supervision of asylum seekers where necessary through, for example, the use of residence conditions and reporting requirements. The possibility of developing a dedicated accommodation facility in Belfast would enable the development of appropriate welfare and community support services and would in itself increase the likelihood that asylum seekers would remain there. This is not a secure detention facility but rather somewhere asylum seekers would be free to come and go as they wish, a sort of bail hostel. In those rare cases where asylum seekers are thought to be at a particular risk of failing to maintain contact they can be required to reside in accommodation which is in accordance with guidelines issued by the UNHCR, for the shortest possible period in such an accommodation centre.

However, a recent suggestion being considered by the Home Office is that rather than make such appropriate non-custodial facility available in Northern Ireland the report to Barbara Roche will instead recommend transferring those detained to facilities in Scotland. A purpose built facility for immigration detainees will be ready later this year. This will clearly make monitoring the extent and impact of detention much more difficult and leave asylum seekers isolated from family and essential community support. A particular objection to this proposal is the effect it will have on those who are detained under the Dublin Convention. Any move to detain asylum seekers in Scotland will result in family members being further apart while their case is under consideration.

Law Centre(NI) is opposed to this idea and is calling upon the Home Office to listen

to the ethnic minority organisations in Northern Ireland, the Equality and Human Rights Commissions, members of the Northern Ireland Assembly, legal representatives and all other interested parties as we request that a humane alternative to prison detention is established and that it is established here in Northern Ireland.

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Implications for Local Authorities

The issue of asylum seekers and refugees has gained in profile in Northern Ireland recently. On one very visible level we see greater numbers of Eastern European refugees around the city centre and Botanic Avenue selling the *Big Issue*. It is this heightened visibility of people that has brought the issue into the political spotlight.

To date, there has been broad cross-party consensus in identifying asylum seekers and refugees as members of minority ethnic groups. As yet, the issue has not been treated by the press in a 'racist' manner in Northern Ireland. The issue, because it is a matter still determined by Westminster, has not become a political consideration over here. I think that this point is important. Asylum seekers are unfortunately the latest target in a long history of negative and racist press attention towards immigration issues.

So where does this leave asylum seekers and refugees in Northern Ireland and the scope for local authorities? On one level there is no direct or obvious responsibility. District Councils in Northern Ireland do not have anywhere near the same level of responsibility as local authorities in Britain. We do not have responsibility for housing, education or social services. These are some of the primary agencies that asylum seekers will need to be in contact with. On a legislative level there is no direct duty on local authorities with regard to asylum seekers and refugees in Northern Ireland.

However, on another level, we do as local authorities have responsibility for all the citizens of our district. Asylum seekers are very marginalised within our society. It is for this reason that I feel it would be helpful to view them as members of minority ethnic

groups. In this way the asylum seeker or refugee can be brought under the Section 75 duty. Section 75 obliges designated public authorities to have due regard to the need to promote equality of opportunity between 'people of different religious belief, political opinion, racial group, age, marital status, sexuality, gender, disability and dependents'. Section 75 also requires public authorities to have regard to promoting good relations between 'people of different religious belief, political opinion or racial group'. Section 75 offers the best framework for trying to address the needs of asylum seekers.

It is important at the same time to emphasise that asylum seekers and refugees are as diverse in terms of age, ethnicity, gender, dependents, marital status, religious belief, political opinion, sexual orientation or disability as any other group. I do not think that we should make the mistake of boxing people into just one category. The statutory duty therefore offers a framework for public authorities, to address and target the needs of asylum seekers and refugees. We, as local authorities, have a duty to encourage good relations between all our citizens. We can only take on this responsibility if we are aware of the

As a community development person myself, visiting detainees amongst other things, what concerns me is how do we empower refugee communities to do things for themselves and to integrate with the wider community?

composition of our cities and districts. We as local authorities are in a good position to raise public awareness of the reasons why refugees flee persecution and require protection in Northern Ireland. Local authorities can help develop good community relations between the host population and refugees.

However, I do not think that the interests of asylum seekers are actively part of the broader spectrum of minority ethnic groups. In this vacuum that exists, the broader needs of asylum seekers and refugees are not being brought to light. Key to this process, particularly for this constituency, will be the ability of public authorities for joined-up working. I think this is critical for ensuring a coordinated response to asylum seekers. One simple example could be between social services and use of leisure centres. Or offering community centres as meeting

spaces for individuals wishing to access other groups for support. Accessing parent and toddler groups may be another form of support. There may be childcare needs in terms of access to pre-school education. What may deter some local authorities in terms of becoming pro-actively involved in this area, may be a lack of certainty about the 'legal status' of asylum seekers and refugees and this may affect the scope of services that it is felt that this group should have access to.

What I do not think should happen, is that even though this area is one of 'reserved status' it should not be used as an excuse for inaction and lack of creativity. Belfast, as Northern Ireland's largest city, will be a place that people will feel attracted to, and we as a District Council have a responsibility to meet the needs of all our citizens – however new or old to the city they may be. One thing that I am pleased has not occurred yet, is that there is not an immediate negative gut reaction when one mentions asylum seekers and refugees. We are fortunate in this because this is clearly not the case in the Republic of Ireland or in Britain.

Race equality is not just a good policy we put on paper, it has to be embedded in every department. So consult black and ethnic minorities within the city. It is a two way process. It is for me to learn and for you to learn. Without us sitting around the table and discussing issues we will not learn.

There are essentially four elements of good practice that should be followed in terms of asylum seekers and refugees:

- establishing comprehensive communication strategies - such as interpreters;
- developing outreach work to inform people about services;
- strategies to consult and involve refugee / asylum communities;
- adopting a multi-disciplinary approach, and using combined services where appropriate.

This largely reflects the broader needs of minority ethnic groups. However, there is an added consideration in that asylum seekers and refugees are at greater risk of social exclusion and marginalisation. The trick will be, as with other equality considerations, to mainstream the needs of the asylum seeker or refugee. It will only be in this way that their needs are then truly met.

Developing a Multi-Agency Approach

As at April 2002

The matters under examination in this report are important to the development of society here. Our ability to make the right response to the questions raised by the plight of asylum seekers and refugees will provide a significant indication of how far we can manage to go in creating a truly multi-cultural society. Last April, having spent all my working life in the voluntary sector, I was seconded to National Asylum Support Service. The prospect of developing services for asylum seekers in Northern Ireland struck me as challenging in a number of ways. First, I was curious about the way in which a service, borne out of reserved power legislation, might be delivered in a society that is getting to grips with devolved responsibilities. Secondly, I wondered how a society that is grappling with the development of adequate forms of political expression and trying to relinquish violence that is politically motivated, might deal with the 'outsider' when it finally, and formally, lifts its eye to consider the matter. In the time I have been working on this project I have seen some positive indications of what the future might look like under our complicated arrangements, on and between these islands. I also know that much remains to be done before we can truly speak of a multi-cultural society. I am convinced that it will never be achieved without a multi-agency approach to the developmental challenge.

Underpinning the development of a multi-agency response to the needs of those seeking asylum should be a realisation that while the story for us starts when they arrive on our shores, for them it started somewhere else, in other circumstances.

Those who work with asylum seekers need some appreciation of those circumstances if they are to understand the wider picture (Harding, 2000).

NASS was established under the Immigration and Asylum Act 1999 and began work here in April 2000. Prior to that, the Health and Social Services Trusts met the needs of asylum seekers, who sought help from the state (Social Services still carry responsibilities for asylum seekers who have needs not met under the legislation that established NASS). The purpose of NASS was to introduce a new system of welfare support for destitute asylum seekers through the provision of accommodation and a non-cash (voucher based) essential living support package. The service was also designed to achieve a more even distribution of asylum seekers across Britain by dispersing applicants away from the South East of England and London. Northern Ireland was not selected as an area for dispersal. The arrangements described below relate to the population of asylum seekers applying for support in Northern Ireland. The population is made up of port entries and in-country applicants. The numbers of such asylum seekers requesting state support by reason of destitution are relatively small compared to the overall numbers dealt with by NASS (since April 2000 the scheme here has dealt with just over 100 applications).

I agree we should have one single body accountable rather than two masters. The difference in NI is that - unlike all other regions in the UK where all the support services for asylum seekers devolves on a local single authority with the power for housing, education, health services - we have direct rule as a background and also now we have devolved government. So there is no coordination in the sense of that type of arrangement and there is no one single head of department or board that can coordinate with the voluntary sector.

The early development of NASS services in Northern Ireland did not follow the same path as that in Scotland, England and Wales. Expressions of interest in providing services contracted by NASS were slow in coming and none of the government departments approached were keen to take a lead role in the co-ordination of the work here. For

this reason (and because it was willing to take the task on at short notice) NASS funded the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) to provide three main services for asylum seekers:

- First, an emergency/reception assistant function to provide access to emergency accommodation until mainstream services are decided by NASS, and to assist with access to NASS support as authorised, by helping applicants examine their options and submit necessary applications.
- Secondly, to provide support and advice to asylum seekers who are either in emergency accommodation provided by NASS support, are otherwise pursuing an application for NASS support, are receiving NASS support, or have recently received a decision and need support to move on.
- Thirdly, to provide a housing support service to enable asylum seekers to access the range of services available to them in NASS accommodation. (To fulfil this obligation, NIACRO established informal agreements with two accommodation providers, in the voluntary sector, SHAC and SIMON).

Anxious not to stigmatise asylum seekers (because they would be receiving services via an organisation which deals with offenders) NIACRO established a project called Asylum Seeker Advice Northern Ireland (ASANI) and it ran the operation from an independent office. In addition to organising the temporary delivery of services on behalf of NASS, NIACRO facilitated the temporary employment of a Regional Manager for NASS in Northern Ireland. The role of the Regional Manager has been to support the temporary arrangements; work to develop the longer term contracts with service providers; and establish and maintain the multi-agency groupings which are taking forward the development and co-ordination of services in Northern Ireland. The service has, since April 2000, moved in stages away from the temporary arrangements, to contracts for service, which more closely resemble those in Scotland, Wales and England.

Since October 2000, NICEM has provided the reception assistant role, including provision of any necessary emergency accommodation and support, under sub-contract to the Refugee Council. The

A Home Office leaflet claims to be a strategy for the integration of refugees into the UK. It is actually a document about England… London has got to realise the limit of their responsibility and I think Stormont has got to realise the extent of their responsibility.

following services are provided:

- advice and information on the NASS support scheme;
- telephone access to immediate contacts in UK;
- guidance on completion of a NASS support application;
- forwarding of NASS applications to NASS;
- access to short-term emergency accommodation and/or support including meals and essential needs until further arrangements are made by NASS or until the application for support is refused;
- advice and access to help with immediate special needs such as referral to medical services;
- access to emergency clothing (which may be second-hand);
- information on other agencies and services relevant to the needs identified.

The contract for provision of follow-on accommodation (after the emergency period of typically 7-10 days) has been let to the Northern Ireland Housing Executive (NIHE). NIHE has been providing this service, on behalf of NASS, since January 2001. The final piece of the jigsaw, the One-Stop-Shop, was provided by ASANI until April 2001 when NICEM (under sub-contract to the Refugee Council) took up responsibility for this part of the service. In so doing it will meet the needs of all asylum seekers receiving NASS support in the following ways:

- provision of information, in the asylum seeker's own language (where possible) on relevant, specialist agencies, statutory, voluntary, and religious. And referral when appropriate;
- assistance to register with GP, health clinics, education and other specialist services;
- independent advocacy;
- a voluntary befriending scheme;
- information and access to legal services.

The development of a multi-agency approach to the delivery of services to

asylum seekers has been a key part of the process from the outset. The service providers (NICEM, NIHE and, until recently, ASANI/NIACRO) meet formally once a fortnight, and they are in contact with each other on a case-by-case basis. Relationships are good at this stage and since service user numbers are relatively small the service has a personal feel to it. At the establishment of the service in April 2000 a Core Group was created to oversee the development of the service. The membership of this group includes (amongst others) representation from the service providers, independent advocacy groups, independent housing providers, the Equality Commission, the Human Rights Commission, Health and Social Service Boards, DHSS, DENI, Immigration Service and the Department of Social Development. This group meets as necessary and no less than bi-monthly. It receives reports from service providers, comments on local arrangements, identifies issues and actions to be taken, clarifies questions of roles and responsibilities and provides feedback to NASS and others on the impact of policy and practice developments. The group also oversees the establishment and implementation of the development plan for the service in Northern Ireland.

In addition to the Core Group we have made provision for a Stakeholder Group made up of a larger membership, less concerned with the day-to-day operations but interested in the wider issues involved in this area of social welfare provision. The group will probably only meet once or twice a year and amongst other things it will be a vehicle for training and development and for information provision in the field. Finally, in respect of the multi-agency character of this work, there are a number of single theme sub-groups, facilitated by a lead agency in the relevant field, dealing with housing, justice and advocacy, education, and health. These groups are there to ensure that good policy and practice is developed with regard to the needs of asylum seekers in each of the identified fields.

In the development of a multi-cultural society there is no doubt that asylum seekers and refugees have a role to play. Within that experience, those that seek state support are only a percentage of the full picture. In the case of Northern Ireland we are not, at this stage, able to quantify the full picture. For this reason it is important to remember that, while it has an undoubted contribution

to make to the overall debate, NASS (and agencies like it elsewhere) are not responsible for all developments in this field of social provision. This seems like an obvious point to make but the issue comes up frequently in both the voluntary and statutory sectors. It is probably not surprising that this is an area of social provision with relatively scarce resources. A rounded appreciation of the full picture of service need and provision is essential. The roles and responsibilities of those providing services under devolved powers in the Northern Ireland Assembly needs to be taken into account. In particular, these agencies will be supporting those asylum seekers who receive positive immigration decisions and whose refugee status is recognised. These people will go on to make up the multi-cultural fabric of our society. The intervention of NASS (in some cases) at the early part of this experience is important in setting the scene. However, all aspects and agents of our society will carry on the real, long-term work of building a positive multi-cultural environment in Northern Ireland. For this reason the issues raised in this report need to be taken on board by everyone.

A multi-agency approach is more than just a matter of getting a good range of agencies around a table. It requires a multi-agency planning and resource allocation process. It is one thing to meet as a multi-agency grouping to run a project, quite another to try to align your corporate planning and resource allocation processes with those of a range of other agencies. In Northern Ireland the situation is further complicated with reserve powers services sitting side by side with devolved structures and services. Such discussions suggest invidious competition for scarce resources between the indigenous population and those from elsewhere in need of help. We are fortunate that the numbers of those seeking asylum are relatively small, we have an opportunity to get this process right without the extreme pressures on resources that some places have faced. The cross-cutting nature of the work needs more than one sponsoring government department and it needs strong progressive local leadership.

Although we have had fewer problems in Northern Ireland than those experienced elsewhere, in general, the flow of information between agencies in this process

has been one of the most intractable and troubled aspects of the development of services for asylum seekers. NASS has struggled to achieve an accurate picture of dispersal throughout England, Scotland and Wales and this problem is reflected in the experience of many of the service providers. Keeping up with the whereabouts of asylum seekers is a resource-planning nightmare, but so are the issues to be examined in the transfer of information between agencies. Confidentiality, data protection, rights and alignment of information retrieval systems all crop up in the discussions. I have no answer here to many of the questions these issues raise, but I believe a comprehensive and transparent discussion on information issues is essential in a multi-agency approach and in the development of a multi-cultural society.

The history of this place and the role that violence has played in it puts a very particular slant on discussions about how asylum seekers are interacting with local communities. The skills and experience of agencies familiar with community development work have been essential in the development of safe services in Northern Ireland. Knowledge of community responses (formal and informal) to disputes is essential to the development of a safe and responsible service. The development of a multi-agency approach to the work has so far ensured the delivery of a sensitive, informed service able to respond quickly and appropriately to situations that could otherwise escalate.

The land-border has ensured a special set of immigration and asylum seeker issues for this island, some of which remain to be resolved. The development of close working relationships with colleagues from the South of Ireland to ensure good quality services here reflects the complex connections on and between these islands and the movements of some asylum seekers.

Building a multi-cultural society and encouraging cultural diversity requires a contribution from everyone. The issues which asylum seekers and refugees face when they come here provide a useful lens through which to view the extent to which we are achieving this aim. Newspaper coverage is testament to the worst and best of this debate. A multi-agency approach, though complex and often frustrating, offers

the best hope of changing the consciousness of our society and of creating communities where the opportunity of expressing identity, and the means of developing wealth and of benefiting from it, is available to all who live on these islands.

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Anti-Discrimination Policy and Practice

iversity in Northern Ireland is a fact of life, although the composition of minority ethnic groups in Northern Ireland has been very hard to estimate and we will not have an accurate picture until after the 2001 Census. We know that the Chinese group is the largest, there is an Indian community of long standing and a Pakistani community established in the 1970s. There are other smaller groupings whose members have come here for many different reasons over the years. People of 32 different ethnic origins sought advice in 1998-1999 from the Commission. As the mosaic that is a multi-cultural society develops here we must recognise that for those from minority ethnic groups life is not always easy.

The international picture portrayed of Northern Ireland is one of conflict and discrimination between the two main religious communities. But members of minority ethnic groups experience discrimination and unequal treatment which, because their numbers are small, have received very little attention. Little time, effort or resources have been devoted to their needs, either in terms of employment or the provision of goods, facilities and services. To a large extent they have been invisible victims of ignorance and neglect as government has been obsessed with an equality dimension defined by the Catholic and Protestant division here.

There are signs some things are changing, not least because the political climate has changed. There was a recognition in the Belfast Agreement that equality was for all and that it extended beyond the traditional definition of

community. The Programme for Government has recognised this by including within it reference to the needs of minority ethnic groups. Encouragingly, too, this reflects the growing awareness of the contribution made by minority ethnic communities here and an acknowledgement, even an acceptance, of their rightful place in Northern Ireland society. Members of minority ethnic groups themselves have also become better organised and more articulate about their contribution to Northern Ireland and more confident in defining their needs. Their rights to be heard and their needs provided for have been greatly enhanced by recent legislation

In tackling racial harassment, one very simple matter for the Westminster government would be to extend the Crime and Disorder Act – the Race Hate Act – to NI and as a result of that, the statistics for racial harassment would have to be reported by the Home Office when reporting to Europe and that might make the government take racial harassment a little more seriously.

The implementation of the Race Relations (NI) Order in August 1997 provided protection against discrimination to those of different ethnic origin or racial group in employment and in the provision of goods, facilities and services. These protections are also available to refugees and asylum seekers.

More recently, the passing of the Northern Ireland Act 1998 and the implementation of the statutory duties contained in section 75 have provided new ways of influencing policy. The emphasis on consultation in fulfilling these duties has signalled a sea change in the way in which public bodies decide their policies and provide services to those from black and minority ethnic backgrounds. It also gives an opportunity to look at policies relevant to refugees and asylum seekers and to make representations on those policies.

Both of these pieces of legislation can provide a means by which those who live here, or who come among us from different ethnic backgrounds and cultures, can have both their knowledge needs and their right of access to employment and to services not only recognised but acted upon. Thus the opportunity to gain a rightful place as full

members of the economic, social, political and civic life of Northern Ireland is greatly enhanced.

A major area of concern has to be how those for whom English is not their first language access statutory services and appropriate information in an unfamiliar administration without any system to manage such provision. If you don't know what is available it is difficult to know if how you are being treated is fair and equal to how everyone else is treated.

There is still no Northern Ireland based centralised interpreting and translation service, an issue which must surely be addressed urgently. The Equality Commission believes that there must be a way in which the various statutory bodies can come together to provide such a service in order to ensure appropriate access for everyone in Northern Ireland. This is not just a resource question but an organisational one. However it would have a significant impact on the effective delivery of services for people for whom English is not their first language. It would certainly have a significant impact on making the system more accessible to refugees and asylum seekers and those who try to support them.

In the field of education the Commission remains concerned about the level of support offered in schools to children for whom the language of the home is not English and thus they cannot have the same level of support at home as children for whom English is their first language.

We are also concerned that pupils are being subjected to less equal treatment because of racist bullying. We believe that the isolation of children from minority ethnic backgrounds can have adverse effects on their performance at school and this can be exacerbated by a lack of cultural awareness and sensitivity to individual needs.

Positive attempts are being made to respond to language needs in schools but much remains to be done to improve understanding and acceptance of the differing cultural requirements of children and young people with different ethnic backgrounds. There is little that the Commission can do at present in relation to the curriculum, because of the limitations of the legislation, but we are active in the areas of bullying and cultural awareness. We also are working on the discriminatory aspects of our educational provision,

We have a very mysterious structure in NI with direct rule, devolved power and reserved powers which all complicates the whole situation. We don't get any support from the political parties, but these are the basic laws to protect ethnic minorities in a civil society. If we don't get these on the ground I don't think that we can have an integrated approach to NI in terms of multi-culturalism.

whether as a consequence of language difficulties or the delivery of the system.

As an increasingly multi-cultural society Northern Ireland is going to have to come to grips with the problem of racial harassment and physical abuse which is too often a feature of the lives of people from other backgrounds. It happens on the street and in the workplace, at sporting events and in the pub. Dr Paul Connolly's research concluded that 'racist harassment appears to be a common feature for many people from minority ethnic communities living in Northern Ireland'. For example, almost two out of three of all Chinese people reported experiences of verbal abuse. This is a form of discrimination and totally unacceptable; it reflects an intolerance, perhaps even a fear, of difference and is something which must be tackled if black and minority ethnic communities are ever to be able to live life to the full in Northern Ireland.

Apart from in the workplace there is little that the Commission can do in terms of its enforcement powers under the legislation but we are trying to utilise one of our other duties as a mechanism for addressing this and other problems here. This is our duty to promote good relations. It is a responsibility we take very seriously. It goes beyond the elimination of discrimination and promoting equality of opportunity. We are keen to encourage or assist initiatives which will foster a better understanding of different cultures and traditions.

We are also committed to encouraging capacity building within marginalised communities so that they can begin to play a full role in Northern Ireland society. In his research on *Racial Attitudes and Prejudice in Northern Ireland* Dr Connolly recommended that the Commission 'should take responsibility for facilitating, co-ordinating and monitoring a broader

educational strategy aimed at reducing racial prejudice and promoting good race relations'. In response we have planned an awareness raising campaign for the upcoming financial year which will, I hope, go some way to fulfilling this recommendation.

In addition the Commission wants to ensure that we provide our services in the most appropriate way. Our own research has told us that there is much to be done to make us accessible to individuals from minority ethnic communities here. To that end we are currently looking at the possibility of providing advocacy services at community level to complement and enhance our existing work. This will mean that we will be working more in places where members of minority ethnic groups are likely to be. Hopefully this would mean as this develops we can provide a service closer to the needs of refugees and asylum seekers.

There is plenty of evidence around now about the problems which members of black and minority ethnic communities face as they try to go about their daily lives in Northern Ireland. It has not been easy for those who have lived in Northern Ireland over the past years. It will not be easy for those who are now joining us here, hoping to make a new life for themselves away from the hardship and difficulties many have suffered in their homelands. If Northern Ireland is ever to be able to celebrate true diversity and embrace multi-culturalism, then those of us who have a responsibility to tackle exclusion and discrimination must be vigilant to the needs of people who, not only have to try and carve out a new life in a new country, but also have to contend with hostility and prejudice.

I have concentrated on some of the things which the Commission believes will make a difference to the lives of those who have different backgrounds and cultures. However, we are also using all the legislation at our disposal to demonstrate that discrimination in any form, in any place, is not acceptable and will not be tolerated in our society. We do not believe that we have yet managed to convey that message broadly enough, but we are working hard to do that.

We have made recommendations for change to the race relations legislation which have been consulted upon and which will go to the Office of the First and Deputy First Minister very soon. We are also very aware of the amendments to the race relations

legislation in Britain and are considering the best way to ensure that these new provisions are extended to Northern Ireland as soon as possible. There will also be a significant opportunity to enhance all the anti-discrimination legislation including the Race Relations Order in the proposed new Single Equality Act.

The challenge is to have the strongest and most effective race relations in the world.

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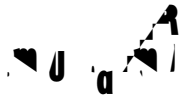
Towards a Fair Asylum Policy in Britain



I was delighted that, when you invited a Home Office Minister to make a contribution, Ms Roche was otherwise engaged, giving me the unusual but agreeable role of her understudy. I hope you will forgive me if I depart a little from the New Labour script.

First, let's get the numbers out of the way. When politicians talk about asylum in terms of the numbers of people arriving in the UK, they often imply that somehow the government ought to be able to control the number of people suffering prejudice, persecution, displacement through conflict and the fear of conflict, extreme poverty and starvation. As the UNHCR states in its 50th anniversary survey there has been an enormous growth in the number of people displaced by conflict, in Kosovo, East Timor, Chechnya in the last year alone; and to the list should be added Afghanistan, Sierra Leone, Guinea, and Eritrea. These are not situations under our immediate control.

Looking at our own figures, the originating states are all the scenes of internal conflict or severe repression. Iraq consistently heads the list month after month, a country ruled by a vicious dictator who executes people without trial, keeps the majority Shi'a in perpetual subjection, and ethnically cleansed the marsh Arabs, and the Kurdish population of the Kirkuk area. In the 12 months to June 2000 by far the largest number of applicants were from Kosovo, as would be expected. The total applications for asylum in the 12 months to June 2000 was 77, 690, while the figure for calendar 2000 was 76,040, so it is not true that we are looking at an inexorable rise in the numbers. Since conditions are being restored to

normal in Kosovo, fewer are coming from FRY; less than a third of the rate for the year to June 2000.

It certainly cannot be said that we are making it so attractive for people coming here that Britain is a magnet for asylum seekers from all over the world. First, the would-be migrants would have to receive information from their compatriots already here. They may do if there are family links, as with some Kosovans or Tamils, but there is no evidence to show that it is a major pull factor. Secondly, if accurate information does get back to the sending countries, they would be more aware of the possibility of spending months in detention at this end, and of having to live at basic subsistence level for months while their cases were being determined. The Home Affairs Select Committee, which reported on border controls at the end of January, commented that 'people both within and outside the UK seem to have exaggerated impressions of the generosity of the UK's social security benefits for asylum seekers'. They quoted a recent TV programme in which some Romanians said they believed the figure was £800 a month, compared with the actual of £36 a week in cash and vouchers for an asylum-seeker over 25. The Committee thought family and cultural links, and the English language, were probably factors in attracting people to the UK rather than somewhere else. Yet in fact we are nowhere near the top of the European league table of numbers of asylum seekers per head of the population.

Undoubtedly there are problems to be addressed, if we are to achieve the aims of the White Paper to have an asylum policy that is firmer, fairer and faster. The former Home Secretary outlined some of those problems on February 6, 2001 when he spoke about an effective protection régime for the 21st century. He said that the Convention was no longer working as its framers had intended in 1951, because the Convention was designed for an era in which international travel was rare, difficult and expensive, and at the same time there had been a rise in the number of people affected by civil war and repression, leading to massive displacements of people.

Against this background, Mr Straw (the former Home Secretary) reaffirmed that we, in common with other states, had to meet our obligations under the Convention, which means giving sanctuary to Convention refugees arriving in the UK. At the same time,

he said that a larger proportion of refugees should be dealt with in their regions of origin. He said that developed countries are spending $10 billion a year evaluating asylum claims, but they only give $1 billion to UNHCR, which is trying to protect refugees in the neighbourhood of their home countries. It would be great if UNHCR could rely on the general budget of the UN for its funding, rather than having to rely on voluntary contributions from member states, but the vast majority of the world's refugees already stay near home.

The former Home Secretary talked about the need to implement the agreement reached by the EU at Tampere in 1999, to build a common European asylum system. The ingredients of this are:

- a redraft of the Dublin Convention, which is supposed to allow the return of asylum seekers to the first country of the EU in which they set foot, but actually doesn't work because it is hedged about with too many bureaucratic restrictions, some of them artificial ones of our own making like the requirement that exchanges between Northern Ireland and the Republic have to be dealt with through Croydon;
- common systems for asylum procedures, reception conditions and appeal mechanisms;
- agreement on the interpretation of the Convention, and particularly on the recognition of non-state agents of persecution by countries such as France.

He also reiterated that claims must be dealt with promptly and fairly, with refugees being integrated into our society, and those who make unfounded claims being removed equally rapidly. As you will have seen, that objective may be more difficult to achieve because of the disaster of the Siemens IT system. They ought to have learned from the fiasco of the prison IT system, where in the end the Quantum project was suspended

after £8 million had been spent, and then divided up into a number of smaller self-contained units. Once again, the Home Office was mesmerised by the idea of being able to make staff cuts, when the reality is that any casework system dealing with the unique circumstances of individual refugees is bound to be labour intensive.

Jack Straw said we had to help make conditions better in the regions of origin, though he didn't go into any detail on how this should be done. We were at the forefront of moves in the UN Security Council to impose new sanctions on Afghanistan, and we shall see the consequences in terms of increased numbers coming here from that part of the world in 2001. In January alone, 90,000 new refugees from Afghanistan poured into Pakistan, which is hosting 1.2 million Afghans already, and some of them may well end up here in Belfast. Similarly, we should be doing everything possible to help end the conflict in Sri Lanka, by stopping the collection of money by the LTTE and their front organisations in Britain, which are used to finance their terrorist operations. The Sri Lanka High Commission say that the LTTE has a sophisticated operation smuggling its supporters into the UK and taxing them to raise money. In West Timor there are still between 70,000 and 120,000 refugees from East Timor. More pressure should be applied to Jakarta to guarantee the safety of aid workers, so that they can move back into the camps and screen those who want to go back.

The former Home Secretary suggested that more refugees who do need shelter in Europe should be processed in their own regions and brought to the EU for resettlement. There are parts of the world where this is already happening on an *ad hoc* basis; for instance people escaping from Iraq apply to come here from Amman or Damascus, and there is an elaborate procedure for the UNHCR to submit names to the British consulates, where there are good family reasons for them to come to the UK. The occasional Algerian comes here via Tunisia, and we have had Iraqis coming via Bangkok and Kuala Lumpur. What is needed here is not a formal arrangement for putting these people in camps while their applications are being processed, as with the Kosovo Humanitarian Evacuation Programme, cited by Jack Straw as a model, but agreement by EU states to accept

refugees from third countries, where family unity considerations arise. Examples are adult children who are left behind when the rest of a family has already been accepted here; siblings, and nephews and nieces. Generally the Home Office agrees to admit people in these categories in the end, but it takes a great deal of argument, and the refugees may suffer a great deal of additional hardship and trauma while the paperwork is being sorted out.

I must say that I was nervous when Jack Straw talked about the Convention being out of date. One of the great advantages of the Convention is that it has proved robust and flexible in the face of changing world conditions, and I think if there were to be formal discussions on amending the text, the result would be to erect even more barriers that would stop the qualified refugee as well as those fleeing destitution, starvation and conflict. The UNHCR Global Consultations now being undertaken, presuppose that states reaffirm their lawful commitments as signatories of the Convention, while attempting to reach agreement on new phenomena which have developed since 1951, such as the militarisation of refugee camps. But to pretend that refugees don't exist, by keeping them out of Europe and making conditions as harsh as possible for those who do get here, is not honourable or humane.

We have been constantly assured by Ministers that they would hit the target of making first decisions on average within two months by April 2001, and dealing with appeals in less than two months after that. There is no way this commitment is going to be honoured. At the end of December there were 66,000 applications outstanding. Assuming that new applicants continue to arrive at the average rate they did in 2000, there would be another 20,000 added to the queue by the end of April. The number of initial decisions last year was three times the 1999 figure, on which the IND should be congratulated, but at this rate they would have dealt with 37,000 cases to the end of April, reducing the queue to 49,000. That is an improvement, but nowhere near the target. The average time to first decision would still be over six months, during which half the applicants have no means of support at all. If the flow of information was as good as is frequently claimed, how is that since 1993 the proportion of applications made at the port of entry has only risen from just

under a third to just over a third?

Looking at the decisions made in the latest 12 months for which the figures are available, 30% were either recognised as refugees or granted exceptional leave to remain. A further 15% succeed on appealing to the adjudicator, so that almost half of all asylum applicants are given leave to remain in the end. Let's have a moratorium on the use of the word 'bogus'; many of those turned down had very good reasons for wanting to leave their country, but they may not have been within the strict definition of the refugee Convention. An accurate description of those people would be 'not qualified', and on the 2000 figures, there are still some 35,000 people a year applying for asylum who are not qualified, and I agree with the Prime Minister that we should take steps to see that fewer of them get here in the first place. Putting immigration officers on Eurostar may keep some applicants in their country of first asylum, so that we don't have to invoke the Dublin Convention so often. Amendments to the Convention may also be desirable, though first, EU countries will have to agree on common rules, for instance on the admissibility of non-state agents of persecution. Better still, we should put greater efforts into dealing with the complex emergencies which cause the flow of refugees, and in deciding policies on the countries they come from, we should avoid doing anything that will increase the exodus.

It might be worth considering as part of the harmonisation of EU procedure to have a totally independent country assessment unit which would be referred to by all the appellant authorities in the 15 countries of the EU, which would help to create a more uniform assessment by the judges in the appeal tribunals of what the situation actually is in the country of origin.

Not all of the people arriving from conflict states are Convention refugees. We should also be looking at new problems such as the trafficking of women, many of them under the guise of refugees, into the European sex industry. According to the UN, trafficking in human beings is now as big a criminal business as drug trafficking. There are no statistics on the number of women being trafficked into prostitution in

the UK, but one study by Dr Liz Kelly and Linda Regan published by the Home Office estimates that up to 1,400 women could have arrived in the UK in1998 alone. They made a number of recommendations and I would be grateful if the Minister could say whether these have been implemented. Could I make two more: the Home Office Key Performance Indicators for Chief Constables should mention trafficking and enforced prostitution, as there is a tendency not to look for them and even to scale down vice squads on the mistaken assumption that pimping is a victimless crime. Secondly, we should have a look at the sentences awarded by the courts to those who exploit women, and particularly the limit of a two year prison sentence in the absence of proof of coercion, arising from the *R v Ferrugia* case. The Home Affairs Committee made some useful recommendations on people trafficking in general, although they didn't look specifically at prostitution.

The off-street sex market is huge, and offers tempting opportunities to criminals. The chance of being caught is low, the penalties are light, the profits are as good as in drugs, and so far, in the UK, turf is still available. Once the market becomes saturated, as I am told it is in Germany, the players start shooting. Let us take more vigorous action against the villains before it gets to that point.

There has been almost universal condemnation of the voucher system, and nobody thinks it has acted as a deterrent to people in Kosovo, Fujien or Jaffna, who were imagined as being drawn to Britain by the attraction of our generous support for asylum seekers. There was no dip in the rate of arrivals after the vouchers came into force, but they limit the recipients' choice of spending; stereotype them in the shops, and are inflexible because change cannot be given. These criticisms are being looked at by a Home Office review, which very conveniently allows them to say they cannot make any comment because to do so would prejudge the outcome of the review.

There are some effective local authority-led consortiums, as in the North East of England, providing housing and educational opportunities. A new project, Genesis 2000, is researching the needs of professionally qualified refugees, an excellent idea which might usefully be extended to the whole country. There are plenty of skills among the refugee population, but they cannot always

be used because their qualifications are not recognised. We should be targeting those people and helping them to re-qualify.

But finally, I am concerned about the decision by the government to cram another 500 asylum-seekers into prisons which are finding it difficult to cope with the numbers they are dealing with already. The Minister, Barbara Roche, explained that this was a necessary short-term measure, only until October 2001 when additional capacity will become available in purpose-built detention centres at Yarl's Wood, Harmondsworth and Dungavel in Scotland for almost 1,500 detainees. At the end of last year there were 1,195 Immigration Act detainees in prisons and detention centres, and the number had risen steadily from less than 1,000 up to March last year. The reason given by the Minister for the increase, and the further rise planned, is to enable us to speed up removals from 8000 in 1999/2000 to 12,000 this financial year, and 30,000 in the year 2000-2001. Assuming that no one at all is detained prior to removal now, and that each person deported spends two weeks in custody prior to departure, the extra places needed would be 690, whereas by October, there will be more than twice that number. In a debate we had on asylum in the Lords recently, I asked the Minister to say whether, after the new premises are fully operational, the IND would cease using prisons to detain asylum seekers except in emergencies for no more than 72 hours, and if not, how does the government reconcile this with their acceptance of the Chief Inspector's repeated criticism of the practice?

In Northern Ireland, we have a situation where every detained asylum seeker is held in prison. It was generally agreed that alternative accommodation should be provided in the few cases where detention was necessary, and that was put to the Minister, Barbara Roche. She has yet to make a formal statement on the review of detention in Northern Ireland, but she has given me a clear indication of the Government's thinking on the matter. At the end of January there were three men in Magilligan and no women in Maghaberry, and on current evidence it wouldn't be cost effective to build a purpose-built unit to house them. The only alternative would be to move detainees to the mainland, probably to the new centre at Dungavel when it becomes available in the early summer. It will have 140 beds and could easily cope with the

demand from Northern Ireland. Ms Roche doesn't mention the possibility of using existing accommodation in Belfast, for instance as I suggested in the Knockbracken Health Care Park estate, under the control of South and East Belfast Trust, where doctors, nurses and social workers would be easily accessible, but I gather that the idea has been dismissed because of security considerations.

The low numbers at present being detained in Northern Ireland might be expected to increase because of the government's intention to speed up removals of those who exhaust their rights of appeal, and that was the IND's thinking at first. They have decided, however, that because they are not increasing the staff here, there would be very little if any increase. They have noted that many of the unqualified people are detected as they cross on the ferry from Stranraer, and if it is decided to detain any of those passengers, Dungavel would be the logical place for them because presumably at that point they wouldn't have relatives in Northern Ireland who would need to visit them.

Democratic Dialogue are to be congratulated on holding this round table, at a time when the asylum system is under physical and political pressure. The discussion provides an important opportunity to say that in spite of some problems, in Northern Ireland and in these islands, there is a commitment to the existing international framework, and a determination that Europe will play its full part in looking after the victims of persecution in the rest of the world.

The Role of the Scottish Parliament in Shaping Asylum Policy in Scotland

In recent times there has been a more concerted cry for Scotland to have independence from Westminster, if not total independence then at least some semblance of it. There were many reasons for this resurgence in recent support for a form of devolution from Westminster. We can divide this support into two main periods. The first period was in the second half of the 1970s. According to Professor Lindsay Paterson the growth in support was fanned by a number of issues including 'the responses to the Kilbrandon report, by the electoral success of the SNP – winning eleven seats and 30 per cent of the vote in the second general election of 1974 - and by the precarious position of the Labour government between 1974 and 1979' (Paterson, 1998). Support for some form of independence continued to grow in the 1980s. As David McCrone has outlined, Thatcherism was synonymous with 'the attack on state institutions … (which was) perceived as an attack on 'Scotland' itself, particularly as this attack (was) dressed up in the rhetoric of Tory England' (McCrone, 1989). During this time Scotland did not vote for a Conservative government, at its best the Conservatives held just 22 of Scotland's 72 constituencies (Craig, 1984; Rallings and Thrasher, 1999). By the end of the 1980s there was widespread support for Scottish self-government, not only from the general public but also from the left-of-centre political parties. The key event in facilitating this was the election victory of the Labour Party in May 1997. To allow for Scotland to have a devolved Parliament while remaining in the Union, Westminster

legislation was needed. The Scotland Act was published as a Bill in December 1997 and less than a year later received Royal Assent. In May 1999 the people in Scotland elected the members of their first Parliament since 1707. The people elected this Parliament knowing that its powers were limited, although perhaps not as limited as Westminster may have liked. In the referendum on a Scottish Parliament the people were asked if the Scottish Parliament should have tax-varying powers and they voted overwhelmingly in favour of this. Under the legislation immigration and asylum are reserved matters.

As is well known, the Immigration and Asylum Act 1999 provided for dispersal. The Act also amended five pieces of devolved legislation. For example, the Act removes the right of Scottish local authorities to come to the aid of asylum seekers through the use of emergency grants. The Act also denies Scottish local authorities the right to provide financial assistance to asylum seekers suffering from mental health difficulties, as well as removing the ability of Scottish local authorities to help house asylum seekers. The Act also removes the power to provide services to aid the children of asylum seekers when accompanied by a parent or guardian from Scottish local authorities. The provisions have resulted in dramatic changes to the way asylum seekers in Scotland are treated. Asylum seekers arriving in Scotland under the provisions within the 1999 Act must now survive on vouchers issued from London. Previously they would have been given cash by local authorities to meet their needs. Local authorities initially had no discretion over where asylum seekers were housed in their area. NASS, based in London, dictated exactly where asylum seekers were to reside in Scotland. However, after much lobbying and following endless problems in this specific area it now appears that local authorities will be granted some discretion to re-house asylum seekers if problems occur. In addition to the other changes brought about by the 1999 Act, the level of financial support provided to asylum seekers has been severely curtailed. Today asylum seekers are expected to survive on just 70% of the basic income support rates.

While there can be no question that the arrival of this number of asylum seekers and refugees to Scotland will impact on Scottish education, health, housing, legal aid and interpretation and translation services, our

concern is with the inadequate infrastructure that is failing to meet the needs of asylum seekers. I am in no way saying asylum seekers should not be coming to Scotland. However, we do want some control over what happens to asylum seekers and how they are treated in Scotland, but Westminster's claim that asylum is a reserved matter is proving itself to be difficult to challenge. It is not to Westminster that asylum seekers and those organisations working with asylum seekers on a daily basis are turning to as they seek help to alleviate the pressure they are under. It is Ministers and Members of the Scottish Parliament who are being asked to help (despite the fact that they were not even consulted on the design of the new system). Moreover, Scottish Ministers have said in unequivocal terms that the Scottish Parliament cannot amend the legislation or alter the conditions and treatment asylum seekers are now forced to endure. This remains to be seen.

Despite this dogmatic and uncompromising stance, many people in Scotland, including MSPs from all parties represented in the Parliament, question whether Westminster really has that level of control over what is undoubtedly a devolved matter. Can we change the situation in Scotland? For example, could we do away with vouchers and restore cash payments to asylum seekers? This is a question that has been asked many times. The honest answer is that we simply do not know. As yet there is no precedent; the issue will have to be tested in the Parliament. But surely, where there is a political will there is a way. Unfortunately at this point in time there does not appear to be quite enough political will and support to mount a direct challenge. However, a number of MSPs are willing to pursue an indirect route, pushing the boundaries to see how far the Scottish Parliament will go. The initial response to asylum being raised in the Scottish Parliament was that asylum was clearly a reserved matter and should not even be debated. Yet in response to overwhelming support for a motion put down by Cathy Jamieson (now the Deputy Leader of the Scottish Labour Party) relating to the implementation of the Immigration and Asylum Act 1999 and the effect this would have on asylum policy, a debate was held on February 9, 2000. This motion attracted support from 50 of the 107 non-executive MSPs, with every party in the Parliament represented amongst the

signatories. The debate in February had more Members wanting to participate than time would allow. The motion raised concerns that the Immigration and Asylum Act would be amending Scottish legislation pertaining to social work, the health service, mental health, children's rights and housing and significantly this was done with no consultation with members of the Scottish Parliament. It went on to suggest that the Scottish Parliament should consider supplementing financial resources provided to local authorities. The desire for the Scottish Parliament to intervene on behalf of asylum seekers was reiterated by practically every MSP participating in the debate. However, Iain Gray, the then minister responsible for asylum matters in Scotland, stated in response to the debate that while he had 'heard the concerns that have been expressed during the debate' he concluded that 'given that support for asylum seekers is a reserved matter, I repeat that the scope for action is limited'. While in many ways Iain Gray's response was disappointing albeit predictable, he did suggest that there was some capacity for the Scottish Parliament to act on the matter when he said the scope for action was

limited.

This was not the first time that he had hinted that the Scottish Parliament might be able to play some role in determining asylum policy, even if action would be limited to the operational aspects of it. In November 1999 in response to an oral parliamentary question Iain Gray stated that he would 'review the operation of these measures [i.e. changes brought about by the Immigrations and Asylum Act 1999] some 18 months from their inception'. Less than two months later the First Minister expanded on this reply

outlining the areas to be reviewed. By agreeing to review the operation of the Act in Scotland, the Executive has encouraged hope that the Scottish Parliament may be able to shape to some degree, what is currently cited as United Kingdom policy, at least in so far as asylum seekers in Scotland are affected by it.

Perhaps as both a consequence of this glimmer of hope and a reaction to the limited role the Scottish Parliament had in shaping the 1999 Act, a group of concerned MSPs and community based organisations working with asylum seekers on a daily basis have joined together and formed the Scottish Parliamentary Cross-Party Group on Refugees and Asylum Seekers. It is through this forum that the role of the Scottish Parliament in shaping asylum policy in Scotland will be examined. Today the cross party group has a degree of legitimacy in the eyes of the Scottish Parliament and tends to be the first point for taking action on asylum issues within the parliament. Potentially, because cross party groups have a quasi-parliamentary status, they have, or may be perceived to have, considerable influence. This is recognised in the 'Rules on Cross-Party Groups in the Scottish Parliament', which state that membership must remain parliamentary in nature by including at least 5 MSPs and that there must be at least one MSP from each of the parties or groups represented in the Parliamentary Bureau. The Cross-Party Group on Refugees and Asylum Seekers (CPG) was registered as a CPG in June 2000, although it had been meeting informally for many months before this. The membership of the group currently consists of 12 MSPs and 14 organisations.

The stated purpose of the CPG is 'to provide a forum for the discussion of issues relating to refugees and asylum seekers both in Scotland and abroad; and to promote the welfare of refugees and asylum seekers'. To achieve this purpose the members of the CPG meet together on average once a month. The CPG has a number of roles but perhaps its greatest role is that of information disseminator. The CPG enables the sharing of information between the various participating organisations and individual MSPs from all of the political parties in the parliament. It also enables the channelling of information into and out of the parliament, the effect of sharing information and the interaction with parliamentarians can be seen in a number

of areas. Another important role the CPG has is in raising awareness of the issues surrounding refugees and asylum seekers. Clearly awareness has been raised in the parliament and with the increasing media coverage of asylum issues there is a growing awareness in the community.

There have been two opportunities to debate the asylum issue in the Parliament. The first was in response to a Member's Motion, while the second was as part of the debate on Local Government Finance. Much of the information used for these debates came from the organisations that had been meeting with MSPs, either informally or as part of the CPG.

Since the CPG has become active many questions on the issues surrounding refugees and asylum seekers have been asked in the Parliament. At times, issues raised at the CPG meetings have triggered these questions. Over 50 written and oral questions have been answered and more have been asked. There has also been a number of letters sent to Executive Ministers requesting clarification, information and/or action. All of which have met with a varied response. Initially most letters and questions received a fairly standard reply stating either that the Executive was in regular contact with the UK government on the matter or simply that the matter was a reserved one and therefore not something that the Scottish Parliament had legislative competence over. However, in more recent times the response to questions and letters has been eliciting fuller answers. In an analysis of answers to parliamentary questions on asylum it was found that in the first 6 months of the parliament the vast majority of questions met with a response that asylum was a reserved matter, or that the executive was in regular contact with Westminster. There were only 4 substantive responses out of 17 questions answered. From July 2000 until January 2001 the vast majority of questions received a substantive response. Only 3 met with the reply that asylum was reserved or the Executive were in regular contact with Westminster. The fuller answers to questions often provide important and useful information as well as hinting at changing attitudes to the asylum issue (Nicholl, 2001).

Individual members of the CPG have been assigned responsibility for monitoring the work of the Scottish Parliament's Committees. By monitoring Committees on a regular basis the CPG is able to identify

and exploit opportunities for raising the issue of asylum wherever possible. It is also able to provide timely advice and suggest possible questions and directions for the Committee. An example of how effective this strategy can be is seen in the Social Justice Committee (formerly named the Social Inclusion, Housing and Voluntary Sector Committee). In June 2000 a petition calling on the Scottish Parliament to give asylum seekers rights of access to various support services and to amend legislation to restore the entitlement of asylum seekers to accommodation and cash based support was received. The petition was co-ordinated by Action of Churches Together in Scotland, Scottish Refugee Council and Amnesty International, all active members of the CPG. The petition was forwarded to the Social Justice Committee. On learning of this the CPG became active in lobbying members of the Committee. It ensured that the petitioning parties were aware when the petition was being heard and that asylum seekers would be giving evidence. Members of the CPG put together a brief relating to the petition and sent it to every member of the Social Justice Committee. The brief included possible questions to be asked and potential directions for the Committee to take. The Social Justice Committee was very receptive to the petition. It took evidence at a meeting and made an on-site visit to NASS accommodation and the Scottish Refugee Council's 'One-Stop-Shop' in Glasgow.

There is some movement in the Scottish Parliament now and Ministers in the Scottish Parliament have been dragged kicking and screaming into the debate about asylum because of the problems…it's only now we're beginning to get them to take ownership of the problems in relation to the services provided. I think it is very important that politicians locally here do start to take ownership but I think they might need a bit of persuasion to do that.

In the Committee's response to the petition it noted that the issues were complex and that it had only limited time to examine them. However, it did identify a number of issues that led to the social exclusion of asylum seekers including the housing situation, the inadequate access to legal advice, the voucher system and the lack

of access to language skills training. It went on to conclude 'that it should share its finding with agencies / committees who have the power to take further action on the issues identified' and consequently it forwarded its findings to the Scottish Executive, the Scottish Affairs Select Committee, the Westminster Parliament's Home Affairs Committee and the Scottish Parliament's Local Government Committee' (Social Justice Committee, 2001).

While the Social Justice Committee did not make direct recommendations itself, there is movement on one of the issues it was asked to consider. The allocation of housing on a 'no choice' basis had created several problems. With NASS being so far away in Croydon it was left up to local authorities to try and address the issues although they had no power to do anything. Since the Committee considered the issue endorsing the view 'that it would be helpful if NASS was more flexible in its approach to allowing the local authority to determine where asylum seekers should be accommodated within their area and have increased powers over the allocation of such accommodation', there is a proposal for Glasgow to pilot such a scheme.

At the start of 2001 the CPG was successful in getting all six of the parliamentary party leaders to sign the All-Party Declaration on the Principles of Good Practice for the Dispersal of Asylum Seekers. The Declaration, while recognising the need to have open debate on the issues surrounding asylum, called upon party leaders not to resort to inciting and exploiting prejudice against asylum seekers in the pursuit of political advantages.

A visit to the Parliament by a group of more than 30 asylum seekers aged between 12 and 16 took place at the beginning of February 2001. During this visit the young people met with MSPs and had the opportunity to ask questions of Malcolm Chisholm - the Deputy Minister for Health and Community Care - who is responsible for asylum issues. The meeting was very productive, with the Minister listening to what was being said, taking notes and promising to see what he could do to address the issues the young people had raised.

As mentioned earlier, the Scottish Parliament is already committed to reviewing the operation of the Immigration and Asylum Act 1999. As Donald Dewar as First Minister outlined in a response to an oral

parliamentary question this review will have regard specifically to the devolved matters of housing, health and education. Since getting this response the CPG has been instrumental in having further Parliamentary Questions asked in an attempt to determine the scope and shape of the review. With each response we learn a bit more. Already we know that the review will include the devolved areas of health, housing, social work and education as well as policing and legal advice. We have also heard that community organisations will be consulted and that the CPG will have input into the review process. We are currently trying to ascertain how the information for the review will be gathered, while at the same time attempting to ensure that the most appropriate methodology is used. The review and the issues likely to be raised have been discussed at the regular meetings and all members have been made aware of the need to gather accurate information now, so that when the review takes place in 9 months time we will be able to provide an informed and well developed response. The CPG is currently looking at ways of collecting and collating information in a method similar to other participating organisations to enable a more in-depth analysis to take place.

There has been considerable activity relating to asylum policy. There appears to be increased support both in terms of numbers and in the depth of commitment amongst MSPs, and this support has now transcended the boundaries of the Scottish Executive. However, has any of this translated into changing asylum policy in Scotland? The simple answer to this is no, although perhaps the proposed pilot project in Glasgow where the local authority has some discretion in housing could be viewed as a shift away from the non-negotiable 'no choice' policy. What appears to have changed is the ethos. Less and less do we get the answer that the Scottish Parliament cannot do anything. Instead we are starting to see a move towards finding ways that the Scottish Parliament can act within the confines of being a devolved parliament. Members of the Scottish Parliament, including Ministers, are actively seeking ways to overcome the limitations inherent in the Immigration and Asylum Act 1999.

While the will of the Scottish Parliament to act appears to be strengthening, the debate on asylum has shifted onto another

level. If this is a long-term shift the Scottish Parliament's ability to influence asylum policy could be seriously diminished. When the 1999 Act was first introduced an explicit aim was to prevent asylum seekers coming to Britain. In recent months the Home Secretary has been calling for the development of an agreed list of safe countries or groups from which asylum applications would be ruled inadmissible. This proposal has raised serious concern from organisations involved with asylum issues. Ruud Lubbers expressed his concerns regarding what would effectively be the reform of the 50 year-old United Nations Convention on Refugees. This Convention has as its premise that every person could potentially have a well-founded fear of persecution. Yet the 'safe list' is based on the premise that people coming from certain countries or regions could not have such a fear. It also blatantly discriminates against people from certain countries or areas. It is crucial that all of us with an interest in the welfare of asylum seekers and refugees resist these attempts to undermine the fundamental principle of the United Nations Convention on the Status of Refugees.

In conclusion, the Scottish Parliament has been making some progress, albeit slow, but I suspect that if it is to have a dramatic influence a bold step needs to be taken. A direct challenge to Westminster by way of the Scottish Parliament abolishing vouchers in Scotland would certainly test the powers of the Scottish Parliament. However, ultimately Scotland must have independence to determine its own asylum policy along with all other policies. Devolution is not sufficient, as Paton so accurately said 'What Scotland wants and needs is genuine, and not bogus, autonomy' (Paton, 1968: 20).

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Managing Asylum in the Republic of Ireland

t is worth beginning with some figures. These indicate the trends in overall applications and the source countries for 1999 and 2000.

Trends (applications)

1995	424
1996	1179
1997	3883
1998	4626
1999	7724
2000	10938

Source Countries

1999

Romania	2226	- 28.8%
Nigeria	1895	- 24.5%
Poland	600	- 7.8%
Moldova	275	- 3.6%

2000

Nigeria	3404	- 31.1%
Romania	2384	- 21.8%
Czech Republic	403	- 3.7%
Moldova	388	- 3.5%

The key challenge is to meet the state's obligations under the 1951 Geneva Convention, both by more quickly identifying and protecting genuine refugees, and by dealing with those applications which are clearly not from genuine asylum seekers. There are several ways to process claims quickly and fairly, but a starting point must be to put in place staff and resources. This must be part of a broader strategy related to both anti-racism and integration initiatives.

From 1985 to 1997 the UNHCR assessed all claims for refugee status made in Ireland

under the Von Arnim procedural arrangement. Due to increasing numbers of applications, it was obvious that the arrangements for processing claims for refugee status and the resources available for that purpose were not adequate. It was recognised that the UNHCR did not have the resources needed to continue assessing asylum applications. 1996 saw the enactment of the Refugee Act which, by the time it was put in place, was technically inadequate to cater for the number of asylum applications being made. The purpose of the Act was to place our procedures for dealing with asylum applications on a statutory footing. It was developed against a background of 300 - 400 applications *per annum*. There were several problems with the original 1996 Act. For example,it did not empower the Commissioner to delegate the recommendation-making function at first instance and it was impossible for one Appeals Board to deal with large volumes of appeals.

Fair and effective administrative procedures for processing asylum applications were introduced in December 1997 and further revised in March 1998 following consultations with the UNHCR and NGOs. These procedures were in line with our international obligations and followed closely the procedural provisions of the Refugee Act 1996. These procedures existed until commencement in full of the amended Refugee Act, 1996 on November 20, 2000. They included first instance decision by the Asylum Division and an appeal to the independent Appeals Authorities. The 'One-Stop-Shop' concept - the Refugee Applications Centre - in Mount Street, Dublin with all the facilities and services required by asylum seekers located at one centrally located premises was also established.

In 1999 the government enacted amendments to the Refugee Act 1996 in the form of the Immigration Act 1999. The aim was to make the 1996 Act workable. The main amendments were:

- Refugee Applications Commissioner (RAC), (first instancerecommendations)with power to delegate. An open competition for the appointment of the Commissioner was held by the Civil Service Commission as required by the amended Act.
- Refugee Appeals Tribunal (appeals from RAC) consisting of individual independent members who conduct

hearings alone. A competition for the appointment of a Chairperson for the Tribunal was conducted by the Civil Service Commission. The Chairperson's role is to allocate work and develop a system of quality control, as well as hearing appeals. Intention to appoint 20 members. There are 19 members at present.

- Refugee Advisory Board comprising a Chairperson and 14 ordinary members, the Refugee Applications Commissioner, representatives of 7 government Departments (Justice, Equality and Law Reform; Foreign Affairs; Social Community and Family Affairs; Education and Science; Health and Children; Environment and Local Government; Enterprise, Trade and Employment) and 6 others. The UNHCR has 'observer status' only, at their own request. The role of the Board is to advise the Minister on all aspects of policy in this area and it must produce a report at least every 2 years beginning in 2001.
- Fingerprinting of asylum applicants over 14 years of age. The purpose is to exchange information with other EU member states in order to establish whether, in accordance with the Dublin Convention, another member state is responsible for processing the application. The fingerprinting is expected to assist in eliminating multiple applications and speed up the process for the genuine asylum seeker.

The Illegal Immigrants (Trafficking) Act 2000 included technical amendments to the 1996 Act, including the reduction in practice requirement for membership of Refugee Appeals Tribunal from 10 to 5 years.

The Directorate for Asylum Support Services was established in November 1999. Its role is to source and provide accommodation throughout the state to cater for the needs of the increasing number of asylum seekers entering the country in the light of the lack of available accommodation in the Dublin area where most had been accommodated until then. The Directorate has sourced 4000 spaces in the commercial sector (*i.e.* hotels, hostels, guesthouses etc.) and is embarked on the second phase of an accommodation procurement strategy which is for 4000 places in system built accommodation and 4000 places in permanent built

accommodation.

Since April 10, 2000 asylum seekers presenting themselves to the Refugee Applications Centre are being assigned by the Directorate for Asylum Support Services to accommodation at reception centres in Dublin. They stay at these reception centres for a period of 1-2 weeks before being allocated temporary accommodation around the country while their applications for asylum are being processed. The use of reception centres facilitates assessment of need, the provision of information concerning services and locations to which asylum seekers are to be transferred and assistance with the initial stages of the asylum application process.

Acknowledgement has to be made of the efforts of providers of accommodation in rural communities. This has greatly contributed to local acceptance of asylum seekers who may ultimately be accorded refugee status and has been of great practical assistance to them in an unfamiliar environment. Local communities too have risen to the challenge of the arrival of asylum seekers in their area. For example, asylum seekers have been welcomed into local sporting and social groups, such as football clubs and amateur dramatic and musical societies. Free English lessons have been arranged by local volunteers in a number of centres. Such evidence of a healthy respect for cultural diversity is heartening and augurs well for the future both in terms of reception of asylum seekers and integration of refugees.

Direct provision has been in place for asylum seekers since April 2000 and is a means of meeting basic needs (food and shelter) directly rather than through full cash benefits. Personal allowances under the Supplementary Welfare Allowances (SWA) Scheme are paid at a special rate to take account of the full board accommodation provided. The basic payments are £15 per adult and £7.50 per child. Once-off payments can also be made under the SWA Scheme to provide for exceptional needs such as clothing.

The Refugee Legal Service was established in 1999 to provide advice to asylum seekers at all stages in the process. It is undergoing significant expansion at present including opening of offices outside Dublin. The aim is to increase take up particularly at first stage. The Private Practitioners Scheme is also being

expanded.

The Minister for Justice, Equality and Law Reform established the Interdepartmental Working Group on Integration in December 1998. Its terms of reference were 'to review the arrangements for integrating persons granted refugee status or permission to remain in Ireland, including the appropriate institutional structures for the delivery of these services and to make recommendations'. The Group's report was formally launched by the Minister on February 10, 2000 and its recommendations have been approved by the government. The report is now the blueprint or framework for implementation of integration policy in Ireland. Work towards integrating refugees is a significant priority of the government. Representatives of the Departments of Environment and Local Government, Social Community and Family Affairs, Education and Science, Enterprise, Trade and Employment, Health and Children, Justice, Equality and Law Reform and Foreign Affairs came together to formulate a framework for integration policy in Ireland. The Working Group consulted with the UNHCR and a range of state and non-governmental bodies and their views are reflected in the framework for integration policy. Key recommendations included: identify an organisational structure for co-ordinating and implementing integration policy; raise public awareness on anti-racism issues and respect for cultural diversity; make mainstream services more accessible; conduct research in order to obtain information on the specific needs of refugees having regard to their differing backgrounds

Progress has already been made in the implementation of these recommendations. The introduction of a single organisational structure for co-ordinating and implementing integration policy is one of the key recommendations of the Working Group and the government approved

I'm wondering what input can we have north and south into this discussion at EU level and particularly how we in the Republic cannot continue to use the argument of the Dublin Convention as the justification sometimes for apparently excluding asylum seekers from making applications for asylum.

proposals for an appropriate organisation structure. The Interdepartmental Committee also recommended conducting research to obtain information on the specific needs of refugees. In this regard, a research project will be commissioned with a view to the development of a comprehensive strategy for integration. This strategy will identify in further detail the scope to maximise existing resources in both the state and voluntary sectors to facilitate integration.

In relation to raising public awareness the government agreed to the development of a national anti-racism / inter-culturalism awareness programme to be implemented over a three year period with core funding of £1.5m per annum. A High Level Steering Group, with an independent chairperson, has been established to implement the programme in partnership with the Equality Division of the Department of Justice, Equality and Law Reform which will have overall responsibility for co-ordinating the programme and its budget. The programme will be based on an outline framework developed by the National Consultative Committee on Racism and Interculturalism, following a process of consultation with interested parties and will aim to produce sustainable long term outcomes. Initiatives are proposed in the area of media and communications, the role of statutory authorities, public education and community and local development.

The government decided on March 28, 2000 to establish a Statutory Agency to be called the Reception and Integration Agency, under the aegis of the Department of Justice, Equality and Law Reform. The Agency which will replace the Directorate

for Asylum Support Services, will incorporate the Refugee Agency, will operate on a non-statutory basis with an interim board pending the enactment of legislation. The Minister's intention is to put the Reception and Integration Agency on a statutory footing at an early date having regard to his other legislative priorities. Pending the enactment of legislation, it will operate on a non-statutory basis with the Interim Board acting in an advisory capacity. The Reception and Integration Agency will have the following functions:

- planning and co-ordinating the provision of services to both asylum seekers and refugees;
- co-ordinating and implementing integration policy for all refugees and persons who, though not refugees, are granted leave to remain in the state, and responding to crisis situations which result in relatively large numbers of refugees arriving in the State within a short period of time;

An Interim Advisory Board for the Agency has been recently appointed to advise the Director of the Reception and Integration Agency in relation to:

- the discharge of its functions in relation to meeting the reception needs of asylum seekers through direct provision and dispersal;
- the discharge of its functions in relation to the co-ordination and implementation of integration policy for refugees and those granted leave to remain in the State and the preparation of draft legislation to establish the Agency on a statutory basis.

The development of equality law and practice should not be neglected. Ireland has over 25 years of experience of equal rights for men and women in the area of employment. In 1999 legal protection was extended to new grounds by the Employment Equality Act 1998 which came into operation in full in October 1999. The Act provides legal protection against harassment and discrimination in the workplace on nine grounds, including religion, race and membership of the Traveller community. It contains a broad definition of race which covers race, colour, nationality or ethnic or national origins. The scope of the Act is comprehensive and covers discrimination in relation to access to employment, conditions of employment, equal pay for work of equal value,

promotion, training and work experience. These kinds of discrimination are outlawed whether by an employer, an employment agency, a trade union, a professional body, a vocational training body or a newspaper advertising jobs on its careers and appointments pages. Harassment, on any of the nine grounds covered by the Act, is prohibited both in the workplace, or in the course of employment, whether by an employer, another employee or by clients, customers or business contacts of an employer.

The Employment Equality Act, 1998 is complemented by the Equal Status Act 2000 which came into full operation on October 25, 2000. The Equal Status Act protects against discrimination outside of the workplace on the same grounds. It also contains provisions aimed at outlawing harassment in places where goods, services and accommodation facilities are offered to the public.

The establishment of new equality infrastructure has also taken place, consisting of the Equality Authority and the Office of the Director of Equality Investigations, which provide the state with one of the most comprehensive and progressive anti-discrimination legislation codes in Europe. The completion of the legislation also means that Ireland has been in a position to ratify the 1965 United Nations Convention on the Elimination of All Forms of Racial Discrimination. The 1965 Convention is the major multilateral Treaty embodying obligations on UN Member States to ban racial discrimination. In July 1998, the Minister for Justice, Equality and Law Reform established a National Consultative Committee on Racism and Interculturalism. The Committee is a partnership of non-governmental organisations, state agencies, social partners and government departments. The overall aim of the Committee is to provide an ongoing structure to develop programmes and actions aimed at developing an integrated approach against racism and to encourage integrated action towards the promotion of a more participative and intercultural society which is more inclusive of persons such as refugees, Travellers and minority ethnic groups in Ireland.

As mentioned previously, the government has agreed to proposals for a framework for a comprehensive Public Awareness Campaign, with a core budget of £1.5 million

per annum over a three-year period, to address racism and promote a more inclusive, intercultural society. The framework for the Campaign was drawn up by the National Consultative Committee on Racism and Interculturalism which completed a full evaluation of how public opinion could be better informed. The proposed Public Awareness programme is ambitious and comprehensive – no programme like it has been undertaken in Ireland previously. The primary objectives of the campaign are:

- to act as a catalyst to stimulate public awareness and understanding of cultural diversity in Ireland;
- to help create the conditions that make it more difficult for racism to exist;
- to contribute to the range of policies that promote an inclusive approach to minority ethnic groups, including refugees and asylum seekers.

There are several challenges ahead. The government wishes to increase processing capacity, including appeals, to deliver more speedy decisions in relation to applications for refugee status leading, in due course, to the completion to finality of the processing of all new asylum applications within a six month period. This will ensure that those who qualify clearly as refugees will receive decisions on their applications much more speedily and that applications where there is clearly no basis for qualification will also be dealt with on a faster basis. The government is also committed to the development of a common EU asylum policy. For now there are many practical issues to address within the context of the government's overall asylum strategy.

Judicial Review in the Republic of Ireland

On July 27 and 28, 2000 the Supreme Court listened to hours of legal argument about the constitutionality of the Illegal Immigrants (Trafficking) Act 2000 ('the Act'). Under the powers vested in her as President, Mary McAleese referred two sections of the Act to the Supreme Court ('the Court') to test its constitutionality before she signed it into law. The impugned sections were 5 and 10. Section 5 of the Act reduces the time allowed for asylum seekers to challenge judicially decisions affecting them. Section 10 prescribes increased powers to detain unsuccessful asylum seekers, prior to their deportation. It is Section 5 and the current situation regarding judicial review in light of this judgment that is the subject of this contribution.

The Illegal Immigrants (Trafficking) Act is a misleading title insofar as the Act covers many aspects of the asylum process. Ostensibly an Act to prohibit and criminalise human trafficking, it became a washing line on which to peg random amendments to the pre-existing Refugee Act 1996 and the Immigration Act of 1999.

Section 5 of the Act precludes a person from questioning the validity of specific decisions or orders applicable to them otherwise than by way of judicial review. In summary, these are:

- a proposal or decision to make a deportation order;
- an actual deportation order;
- a refusal of leave to land to a person entering the state;
- a recommendation to refuse refugee status by the Refugee Applications Commissioner, the Refugee Appeals

Tribunal or a refusal to so grant by the Minister for Justice, Equality and Law Reform (the Minister);

- a recommendation that a person is refused refugee status on the basis that a claim is deemed manifestly unfounded;
- a determination of the Commissioner or a decision of the Appeals Tribunal to transfer an applicant for refugee status under the Dublin Convention;
- a determination that someone should be transferred under the Dublin Convention and a decision confirming this;
- a decision by the Minister to revoke refugee status.

Therefore, asylum seekers and limited categories of non-nationals are affected by this legislation.

The application for judicial review must be made within fourteen days (not working days) commencing from the date on which a person is notified of the decision / order unless the High Court considers that there is 'good and sufficient reason' for extending the period. The normal period within which an application for leave for judicial review must be sought is 3-6 months. In the past, there were a series of Irish cases concerning the curtailment of the period of time within which judicial review applications had to be made. In assessing whether or not this time-limit was constitutional, the Supreme Court held that a balance had to be struck between the constitutional rights of access to the courts and the importance of legal certainty and speedy decision-making for public policy. With regard to illegal immigrants challenging deportation orders, the Court was of the view that they should not be given the opportunity to become further enmeshed in Irish society and thereafter forced to leave.

As to whether this objective could be attained by a longer period, the Court vested confidence in the legislature to choose the appropriate limitation period, noting that the legislature was not mandated to choose the longest one that is consistent with its policy. The Court concluded that the fourteen-day time limit did not infringe any constitutional rights, particularly in light of the fact that the High Court is entitled, under the Act, to extend this period of time. The main contention raised in this case was that the time limit of fourteen days effectively

denied access to the courts. The Court stated that the constitutional right of all persons to access the courts is not absolute and can be limited as long as the litigant is provided, first, with an adequate opportunity to ascertain whether he/she has a right of action and, secondly, with an adequate opportunity to institute proceedings.

Counsel implored the court to look at the factors surrounding this contention:

- the nature of the decisions referred to in Section 5 of the Act;
- the category of persons to whom they apply;
- the possibilities to have the implications of decisions and procedures followed in their own language;
- the dispersal policy;
- the extent to which legal aid is available, either as a matter of law or practice;
- the possibility of accessing all documents on which a decision was made in order to formulate grounds of appeal;
- accessing a solicitor and briefing counsel.

The Supreme Court was satisfied that the High Court, when considering an extension of time, would take these factors into account and therefore, the measures were constitutional.

Free legal aid is available to all asylum seekers from the initial application to judicial review proceedings. As a matter of practice, however, there are often difficulties accessing legal aid. This is due to shortages of staff and the newly implemented state policy of dispersal whereby asylum seekers are allocated housing throughout the country to places where legal aid is not readily available.

The Court found that although there is some disagreement about the efficacy of the free legal aid service, these are matters that arise from practices and procedures adopted by the state and were not governed or required by Section 5 of the Act. The Court did not address the alleged shortcomings as Section 5 did not restrict any right to legal aid in so far as that right exists.

The threshold of proof in order to be granted leave to apply for judicial review in Section 5 matters is 'substantial grounds'. This means, according to the Supreme Court, that the grounds relied on cannot be unreasonable, trivial or tenuous. Normally, a plaintiff must show that he/she has an arguable case to obtain leave to apply for judicial review. The Court did not consider

this an unduly onerous requirement. It held that the objective grounds for the decision by the state could be assumed by the High Court and so it is up to the applicant to produce the extra ingredient to show their challenge is not trivial or vexatious. In reality, this higher onus has had the effect of full hearings of the substantive issues taking place at the application stage, which presumably was not the intention of the legislature.

Note was taken of Section 10(c) of the Illegal Immigrants (Trafficking) Act where a notice served under the Immigration Act 1999 (*e.g.* a deportation order) by recorded delivery is deemed automatically effected, whether the person in fact received it or not. It was pointed out that the fourteen-day period could easily be reduced or have expired before a person *actually* receives notification of a particular decision. For example, he/she may have moved address or the letter may go missing in the post.

In response to these concerns, the Court noted that the asylum applicant is 'not a passive participant' in the process and that it is not unreasonable for the state to assume that an address given by the applicant as an address for service should be one at which service by a form of recorded delivery could be deemed as good service.

There is no minimum period which must elapse between a notice to deport and the hour of deportation. However, the Supreme Court was satisfied that this period of time is, on average, eleven weeks. In reality, this is a matter of speculation and the average period is very likely to reduce itself in the future when the state accelerates its deportation policy. In this context, however, the Court did make the valid assertion that the asylum procedure is a lengthy one and the applicant is personally involved throughout the entire process. News that he/she has been rejected or that a deportation order is imminent is unlikely to come like a bolt from the blue.

Unfortunately, the question of whether a person is entitled to remain in the state for a minimum period of time in order to exercise the constitutional right to bring judicial review proceedings was not definitively addressed.

The question of unequal treatment between citizens and non-citizens arose. In a mildly sympathetic tone, the Court acknowledged that asylum seekers and non-nationals are faced with difficulties peculiar

to them insofar as they are strangers to our culture, language and legal and political systems. Importantly, it was acknowledged by both sides that non-nationals (including asylum seekers) are not without rights while they are within the jurisdiction. However, the Court reaffirmed the long recognised principle of state sovereignty over its territory and that every country has wide powers in the interest of the common good to control the entry and departure of non-nationals, plus their activities while in the state. Non-nationals, according to the Court, constitute 'a discrete category of persons' to whom certain laws and regulations may apply that could not pertain to citizens**:**

"*The rights, including fundamental rights, to which non-nationals may be entitled under the Constitution do not always coincide with the rights protected as regards citizens of the State, the right not to be deported from the State being an obvious and relevant example.*"

The Court then addressed the rights that non-nationals do have:

- if detained, to apply for *habeas corpus* in order to challenge the legality of the detention (Article 40.4.2 of the Constitution);
- a right of access to the courts to enforce legal and constitutional rights;
- a right to fair procedures and to the application of constitutional and natural justice in the context of asylum claims;
- a right to require that any measures taken by the state against a non-national are exercised in a constitutionally valid manner;
- unspecified personal rights guaranteed by Article 40.3.2 of the Constitution;
- a right of reasonable access to legal advisors;
- a right of access to the courts.

It was argued that any difference in treatment meted out to non-nationals must be justified by a legitimate objective. The Court held that the matters referred to in Section 5, (*e.g.* deportation orders and decisions concerning asylum application) are only capable of affecting non-citizens. Section 5 does not cover non-nationals who are otherwise in the State for limited or unlimited periods. According to the Court:-

"*The fact that this legislation applies to certain non-nationals and not to all citizens is not an exercise of discretion on the part of the legislature, but is the result of other factors*".

The Court was satisfied that even though the conditions and limitations which section

5 introduces only apply to a category of non-nationals they are justified by an objective legitimate purpose independent of the personal classification of the persons affected by them.

The number of judicial review cases being brought before the High Court has increased remarkably in the last year or so. The manifestly unfounded, or accelerated, procedure has been the subject of many of them. In particular, rulings have been sought on the adequacy of the reasons given to asylum applicants by the Department of Justice, allegations of irrelevant considerations being taken into account in the decision-making process and that not all relevant considerations have been factored in. Other problems highlighted by these cases are that decisions have been unreasonable, irrational or have otherwise breached constitutional or natural justice.

Integration of Refugees in Ireland: Experience with Programme Refugees 1994-2000

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This contribution is concerned with the work of the Irish government's Refugee Agency in the reception and integration of 'programme refugees' between 1994 and 2000. Ireland is changing and is in the process of becoming a more multi-ethnic and multi-cultural society. Inward migration into Ireland is now running at about 45,000 per year. With emigration reduced to less than 30,000 per year, there is now net inward migration of more than 15,000 per year compared to the general pattern of high emigration and general net outward migration until 1996. Of the 47,500 who entered Ireland in 1999, around 10,000 were refugees and asylum seekers. It is acknowledged that the majority of inward migrants are Irish people returning, but many are not, they are immigrants coming here to work, migrant workers from within the EU, and many of the Irish returning are bringing spouses and partners of different nationalities, cultures and religions. In considering the changes to Irish society and the delivery of public services required for refugee integration, it should therefore be realised that refugees are but a sub-set of a wider and growing number of people in Ireland who are ethnic minorities and who often, particularly in the case of refugees, do not have English as a first language. Also, as refugees settle in Ireland, they have on-going special needs as ethnic minorities rather than as refugees.

The relative historic absence of ethnic minority groups in Ireland, apart from the Travellers, means services specifically taking account of the needs of ethnic minorities have not generally been developed. Also, this relative absence of established ethnic

minority communities means that there are no significant 'host communities' to facilitate refugee integration. These factors mean that the situation in Ireland is significantly different from the UK and most other EU countries involved in refugee integration. It is also clear that refugee integration does not happen in a vacuum. Emphasis in public discourse on refugee costs and the negative perceptions of refugees as 'a problem' and 'a burden on the state' does not create an environment conducive to refugee integration. Thus, while recognising that many changes are required and are underway in Irish society to deal with this increasing diversity, including the work of the new Equality Authority in promoting equality and combating racism and discrimination, the focus here is on the particular needs of refugees.

It is important that the issue of refugees, who do have special needs as refugees, (*e.g.* psychological services, voluntary repatriation schemes) should be disaggregated from the wider issues of building a multi-cultural society. Refugees have special needs over and above those of ethnic minorities generally for many reasons:

- they are involuntary migrants;
- they suffer from insecurity and loss of identity because of the experiences that have been through;
- they have worries about family/friends left behind in the home country;
- they fear the 'long arm' of their home government;
- they may have particular medical/psychological problems on account of their experiences including in some cases experience of torture and rape;
- their return to the homeland is not usually possible;
- lengthy reception periods particularly for asylum seekers can effect integration potential particularly if the experience is negative.

The Refugee Agency was a government agency under the Department of Foreign Affairs, established in 1991 to co-ordinate the arrangements for the admission, reception and resettlement/integration of 'programme refugees' (those refugees admitted to Ireland under government decisions in response to humanitarian requests from bodies such as the UNHCR). It had a Board appointed by the Minister for Foreign Affairs comprised of representatives

of those (7) Departments most involved in refugee issues and the delivery of services to refugees; representatives of NGOs including UNHCR, the Irish Refugee Council and the Irish Red Cross; and a number of individuals. In February 2001 the Refugee Agency was merged into a new Refugee Integration Agency under the Department of Justice.

In recent years the work of the Agency had been mainly concerned with Bosnian refugees of whom approximately 1,300 have entered Ireland since September 1992. The Agency also had ongoing dealings, mainly in relation to family reunification, with the Vietnamese refugees of whom there are now about 800 - the first 212 came in 1979 and the community has grown due to family reunification and the birth of a new generation in Ireland. Approximately 350 Bosnian and 200 Vietnamese relatives entered Ireland during 1999 and early 2000 to complete the special family reunification programme for those communities. Generally programme refugees have all of the rights of Irish nationals from the moment they arrive in Ireland.

Since June 1999 the Agency co-ordinated an emergency programme which involved bringing some 1,000 Kosovars into Ireland over a period of months and establishing 10 reception centres around the country to accommodate them. The work of the Refugee Agency that existed until February 2001 was essentially twofold:

- to provide support to individuals and families. This involved providing support to newly arrived refugees, including assistance in accessing entitlements by way of health, social welfare, housing and other services. Follow-up support was provided in accessing education, training and employment and around the particular issues including family reunification (whereby close family members may be admitted to Ireland) and voluntary repatriation; and
- to seek to ensure the development of public policy and services which enable refugees to build an independent life in Ireland and which take due account of their distinctive culture and identity.

It is the latter which poses the greatest challenge to Irish society. In this process the Agency did not seek to build separate services for refugees but rather to ensure that mainstream services were adapted to take particular account of the needs of

refugees, (both as refugees and as ethnic minorities), and that, where necessary, special services were developed.

The 1999 report 'Integration - A Two Way Process' by the Department of Justice provided a useful definition of integration (based on a definition proposed in a research report by the Refugee Agency and the Eastern Health Board in 1998):

"Integration means the ability to participate in Irish society to the extent that a person needs and wishes in all the major components of society without having to relinquish his or her own cultural identity."

The key features of an integration process are:

- it is not assimilation - refugees should not be expected to give up their distinctive cultures and identities to integrate into the new society;
- it is a two way process - the refugees must adapt to their new society but the new society must also adapt;
- it involves all of society - while government should lead, integration involves public bodies, community and religious leaders, the education system, voluntary organisations, employers and trade unions and all sectors of society;
- it requires the active participation of refugees in articulating their needs and in the development and delivery of services;
- it should take place within a rights framework (citizenship, family reunification, equality legislation and policies);
- it should recognise special needs;
- the reception phase (for asylum seekers) should be recognised as part of the integration process.

Before considering the experience of the Refugee Agency over recent years in developing an embryonic integration programme it is necessary to consider the issue of the correct balance between the provision of mainstream and specialist services for refugees. The mainstream should be seen as reflecting the diversity of society and all mainstream services should be organised in such a way as to enable access to all. However, even in this context, there will still be some need for specialist services given special needs:

- all mainstream service provision should take account of diversity / needs of refugees (staff training, staff recruitment, translation of material etc.);

- where there are the same needs there should be the same (mainstream) services;
- where there are different needs there should be different (specialist) services *e.g.* language training and psychological services);
- where mainstream services are not always accessible to refugees, there should be 'bridging services' to enable access (*e.g.* special pre-vocational training services, outreach health services);
- need for support for refugee associations to build confidence, and self-sufficiency within refugee communities to articulate and help meet refugee needs.

From the perspective of promoting refugee self-sufficiency, taking due account of the distinctive identity and culture of the refugee communities and seeking to ensure the necessary adaptation of mainstream services and development of new services, the Refugee Agency worked on a partnership basis with Departments, public bodies, NGOs and refugee associations in building and developing reception and integration services.

It is worth considering in some detail the main elements of a comprehensive integration programme. While there are clear differences in organising reception facilities for programme refugees, who have all the rights of Irish nationals from the moment they step off the plane, and asylum seekers whose rights are more restricted, it is now widely accepted that the reception phase for asylum seekers does have a bearing on subsequent integration of those given permission to remain. Proper reception services are a critical element of integration and facilitate effective initial health screening, registration for health, social welfare and other purposes; help identify more vulnerable individuals and families; provide initial orientation to a new society in a secure environment; and provide a focus for local community support. One of the findings of the research carried out by the Refugee Agency and the Eastern Health Board in 1998 was that the Bosnians who went through the Cherry Orchard Reception Centre found this to be a generally positive experience which contributed to their integration. Based on Refugee Agency experience and in particular experience with the Bosnians in

Dublin and more recently in establishing 10 reception centres for Kosovars around the country, the following would be proposed as key elements of a reception policy:

- groups should be sustainable (in numbers and composition), and a proper infrastructure of support services (health, social welfare, schooling, training /employment) should be in place;
- clusters of ethnic groups in certain areas thus maximising group social and cultural support and minimising isolation;
- orientation and social programmes should be organised;
- local community should be involved at the earliest stage in building a local support network;
- as a proportion of asylum seekers will acquire the right to stay, the asylum phase be considered as part of the integration process and should be such as to best prepare persons for the integration phase;
- specific provision should be made for interpreter services;
- the duration of stay in a centre should be less than 6 months to avoid institutionalisation and dependence.

Such a policy should both aid subsequent local integration and prevent a drift to the main city (as happened with the Vietnamese programme refugees who came to Ireland in 1979 and were distributed in small groups throughout Ireland, most moved to Dublin within a short period).

In considering integration services after the initial reception phase, the focus will be on the basic framework of an integration programme which has been established over recent years through partnership arrangements between the Refugee Agency, the Department of Education, FAS and refugee organisations. This work was initially carried out primarily through 'Interact Ireland' but has since been largely mainstreamed through the establishment by the Department of Education of the 'Refugee Language Support Unit' under the aegis of Trinity College Dublin.

The basic premise underlying the model developed was that, for most refugees, language training was the key to integration and self-sufficiency and that the type and nature of the language training needed to be relevant to their needs and aspirations and, in particular, needed to be specifically

related to entry to the job market. Largely on the basis of the report commissioned by the Refugee Agency 'Meeting the Language Needs of Refugees' a three stage model was developed which involved:

- Stage 1 - the reorganisation of the English language training services to provide greater co-ordination, develop an appropriate system of benchmarks, systems and materials, and link the training to individual need and progression to training, employment and self-sufficiency.
- Stage 2 - the provision of special 'bridging courses' in a training centre (FAS Baldoyle) combining English language training, basic computer skills and job search skills and career guidance. These courses initially run by Interact Ireland have been highly successful and are now being extended by FAS to other centres in the greater Dublin region as well as Cork and Kerry.
- Stage 3 - progression to mainstream training and employment. At present this is based primarily on the careers guidance system within FAS and on progression within FAS. This is to be further complemented by work currently underway through Interact Ireland in building links with employers and trade unions and in looking at the development of specific initiatives including a mentoring scheme.

While not all refugees will require language training they will still in most cases benefit from participating in this process as the bridging courses include social and cultural orientation to the Irish labour market, careers guidance and progression to mainstream training and progression.

The development of the model outlined above indicates the multi-dimensional nature of refugee integration. There are many other elements in the process, including access to appropriate housing, health, social welfare and other services as well as other needs very specifically related to being a refugee - including family reunification; and building refugee social, cultural and community groups.

While developed initially with the focus on programme refugees these services were more recently available to all refugees who had been given the right to stay and work in Ireland. Assistance and support in helping refugees access these services and to make their way through any such integration

process should be a major focus in the development of government policy on integration. Such support is essential given the many pressures and obstacles faced by refugees in making their way through this process. On the basis of experience it is suggested that without support many refugees will be too distracted with trying to make their way in their new society and with worries about family reunification and psychological problems to make most effective use of any such system.

One method of providing such support in a focused and systematic way is the 'Contract Model', which has been developed in recent years in the Scandinavian countries and the Netherlands. This involves a contract between the refugee and the government whereby the refugee is provided with a tailored package of language and vocational training and is supported through that process within a fixed time frame (in the region of 18 months) in return for the refugee agreeing to participate. The Department of Justice's report on integration recognised the benefit of such a system and stated that it should be considered for Ireland. The Refugee Agency advocated that this approach be adopted here.

The work undertaken by the Refugee Agency working closely with Departments, public bodies, voluntary organisations and the refugee communities in recent years has laid a firm foundation on which a more extensive and comprehensive programme can be built. As the 1998 research report by the Refugee Agency and the Eastern Health Board concluded:

"The benefits of successful integration will be evident through the increased contribution of refugees in all aspects of this society. Afforded the appropriate support and opportunities, refugees will demonstrate their huge wealth of talent, skills and enthusiasm, culture and energy and will continue to contribute to the social fabric of Ireland - our shared society".

Refugees and Asylum Seekers in the Republic of Ireland

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The Republic of Ireland has a relatively short history of involvement in the refugee/ asylum issue though groups such as Bahá'ís, Hungarians, Vietnamese, Chileans and Bosnians were welcomed at different stages over the last 50 years. Ireland's response to the arrival of 1,000 Kosovar refugees in 1999 was rightly lauded and credit is due to all who made that programme such a success. Less than two years later, however, our reputation as a welcoming nation is fragile, as the response to the arrival of a large but manageable number of people seeking asylum in Ireland from persecution in their own countries has been, at best, inadequate and has often been deplorable.

On the positive side significant efforts have, indeed, been made by the Department of Justice, Equality and Law Reform to ensure that asylum seekers are not obliged to sleep in the street. Extra resources have been made available by that Department in particular and the state now has a much more developed infrastructure including, for example, a Refugee Applications Centre, Refugee Legal Service, Refugee Appeals Tribunal and a Refugee Applications Commissioner.

Many ordinary Irish individuals and small communities have risen wonderfully to the challenge of having, for the first time, asylum seekers and refugees in their midst. Examples come to mind of the many employers who would willingly employ suitable refugees to fill the work vacancies which they have, the many offers of voluntary help from students, English language teachers and other professionals, those who asked to become paid-up

members of our organisation and the many who want advice on how they can show their solidarity in their home communities. Valiant efforts have been made by communities to show their support to their newest neighbours and solidarity groups have sprung up nation-wide. The Irish Refugee Council is currently involved with other organisations in the development of a national network linking all such support groups.

However, Ireland's asylum system is clearly still not able to cope with the numbers arriving which, though large, have been more or less stable - c.1,000 per month - since late 1999 and, despite a government intention to process applications within a 6-month period, asylum seekers often face inordinate delays in having their claims fully processed. An eminent judge recently referred to what he called 'a lamentable record' in related matters and many hundreds of those who had lodged their applications in 1998 or before remain in a limbo awaiting a final decision on their applications.

Misleading and emotive language such as 'illegal' and 'bogus' has gained currency, in part because of populist politicians and some irresponsible elements in the media. A large part of the Irish population lacks access to the basic information to understand the complex asylum issue. Racist abuse has become all too prevalent and many are treated with suspicion purely because they are foreigners. Asylum seekers, unless they arrived in Ireland by late July 1999, are debarred from working regardless of their qualifications or of the accepted need for tens of thousands of immigrant workers over the coming 5-6 years, a need that has seen Ireland investing heavily in overseas recruitment and which saw some 18,000 work permits issued last year alone to non -EU nationals.

Asylum seekers, uniquely, though not suspected of criminal activity can now be fingerprinted and a provision in legislation which took effect last November gave the Minister for Justice, Equality and Law Reform the effective power to prevent an asylum seeker from speaking freely to the media. (On foot of a campaign led by the NUJ the relevant part of the legislation is now to be amended.) Detention in a range of circumstances for non-criminal acts is permitted and detention will in some cases be followed by deportation, apparently even

in situations where the deportee had lived in Ireland for a substantial period of time.

Mandatory 'dispersal' of asylum seekers often to small towns with poor infrastructure operates in a way that has little in common with the successful system that applied to our recent Kosovar guests. The system of 'direct provision' means that most newly arrived asylum seekers are now housed in shared hostel-type accommodation and, while their basic needs for food and shelter are met, their only guaranteed access to cash is to an amount of £15 per adult (£7.50 per child) per week. Some of the accommodation bases such as Mosney are doomed to be little better than government-approved ghettos, particularly unsuitable for vulnerable groups such as asylum seeking children, some of the 500+ of whom find themselves in such accommodation. In general, integration into Irish society is heavily discouraged until one's refugee status has been recognised. Fast-tracking of applications using the 'manifestly unfounded' option, which does not allow an unsuccessful applicant the opportunity to have an oral appeal, has increased at an alarming level. Despite the existence of the Refugee Legal Service, free legal advice to the many now resident outside of Dublin is extremely limited.

Only early action will alleviate the hardship experienced by many asylum-seekers and refugees. The government should now exercise the option of offering 'leave to remain' to those who applied for asylum more than 2 full years ago and who still await a final decision on their applications. The needless hardship, caused by 'direct provision' will only be alleviated when the system is completely overhauled and the absurdity of depriving the majority of asylum seekers of the right to work while simultaneously recruiting many thousands of non-EU immigrant workers annually must be addressed.

Racist abuse has to be tackled and the commitment to a substantial public awareness programme delivered on without further delay. The many support groups, struggling to assist asylum-seekers in their midst, are themselves in need of support including State funding. Refugees have to be given the chance of meeting with Irish people – the possibility of which is heavily curtailed by the paltry cash allowance paid and by virtue of their exclusion from the workplace.

History will not be kind to us if, at a time

of unprecedented prosperity, we are seen to be unwelcoming and ungenerous. To those in Northern Ireland who look across the border, or indeed to the model in Britain, there is much to be learned from the experience. Sadly much of it should not be repeated. I would, respectfully, encourage you to study what has happened across the border and I wish you well as you develop your own response to what is both a challenge and an opportunity.

Contributors

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Joan Harbison has been Chief Commissioner of the Equality Commission since its establishment in 1999. She was Chair of the Commission for Racial Equality for Northern Ireland, 1997-1999. Formerly member and Deputy Chair of both the Eastern Health and Social Services Board and the Standing Advisory Commission on Human Rights; from 1989-1996 a member of the Executive Committee of the NI Association of Citizens' Advice Bureaux and its Chair in 1994-5.

Colin Harvey is Professor of Constitutional and Human Rights Law, University of Leeds. He was Refugee Co-ordinator for Amnesty International (Irish Section) from 1998-2000 and a

member of the Executive of the Committee on the Administration of Justice 1999-2000. His publications include *Seeking Asylum in the UK: Problems and Prospects* (2000, Butterworths) and *Human Rights, Equality and Democratic Renewal in Northern Ireland* (2001, Hart Publishing).

Jacqueline Irwin is the manager of NASS, the regional programme of the Home Office-directed National Asylum Support Service. Previously she worked for the Northern Ireland Association for the Care and Resettlement of Offenders. She was Chair of the Northern Ireland Council for Voluntary Action from 1996-8.

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Peter O'Mahony returned to Ireland in 1997 after a 2 year career in overseas development work in Africa and Asia. He became Chief Executive of the Irish Refugee Council just over a year ago. Founded in 1992, the Irish Refugee Council concentrates on influencing policy, seeking to ensure that all aspects of Ireland's asylum and refugee policy and practice fully respect international law and the human rights of asylum-seekers and refugees.

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* Currently out of print: photocopies can be supplied or the text downloaded from the DD web site.