

The Researcher

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Welcome to the seventh issue of *The Researcher*.

Our April edition featured a summary of a speech by Michael McDowell, TD, the then Tánaiste on the proposed Immigration, Residence and Protection Bill as well as other articles on the same subject by Brian Ingoldsby, a Principal Officer from Justice, and Grainne Brophy, a solicitor from the RLS. In this issue we are happy to publish UNHCR's Comments on the Bill which are introduced by *Manuel Jordão*, UNHCR Representative in Ireland.

Also in this issue *Fiona Morley*, Manager of the RDC writes about the new COI Document Management System and E-Library which has been developed under the Asylum & Immigration Strategic Integration Programme (AISIP).

Patrick Dowling, explores the complex conflicts in the Democratic Republic of the Congo.

David Goggins writes about the use of violence against the opposition in Zimbabwe

John Stanley BL summarises recent and significant Irish High Court judgments.

Rupert Colville of UNHCR reflects on the situation of thousands of people in island states who face being made stateless when climate change drives the islands beneath the waves.

Aoife McDonnell, a student from DCU, who worked in the RDC during June and July, reviews Andrew Meldrum's *Where We Have Hope – A Memoir of Zimbabwe*.

As always we invite contributions from our readers whether in the form of articles, letters or news items.

Paul Daly
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Disclaimer

Articles and summaries contained in the Researcher do not necessarily reflect the views of the RDC or of the Legal Aid Board. Some articles contain information relating to the human rights situation and the political, social, cultural and economic background of countries of origin. These are provided for information purposes only and do not purport to be RDC COI query responses.



Introductory remarks to UNHCR's Comments on the Immigration, Residence and Protection Bill 2007



*Manuel Jordão, UNHCR
Representative in Ireland*

I would like to thank "The Researcher" for its interest in publishing UNHCR's comments on the 2007 Bill on Immigration, Residence and Protection. We distributed our comments to contribute to the public debate on the proposed revision of the Irish asylum system, which the authorities initiated clearly and transparently in the second half of 2006.

The new Government has retained a strong interest in the asylum area and in particular in introducing as soon as possible new legislation on immigration and asylum. If so, UNHCR expects a Bill may be ready for submission to Parliament sometime before the end of the year. Once completed, Ireland will have defined an entirely new immigration and asylum system, the main features of which will be here to stay largely unchanged possibly for the next few years.

UNHCR has welcomed the decision to adopt new legislation as an opportunity to strengthen the quality of asylum in Ireland. Of course, we also hope that the legislator will give due consideration to the views and concerns that are expressed with some detail in our comments.

In my view, we will be all working in an environment that should help the authorities to secure the future of the asylum institution in this country. There is a solid starting point in the revision of the system. During the last five years, Ireland managed to put in place a fair and efficient asylum procedure as well as a reception structure that generally meets international and EU protection standards.

The relatively low number of newly arriving asylum-seekers to Ireland has facilitated the consolidation of the current asylum procedure that now functions well. Two solid gains over the last few years are in the area of staffing, and equally in the area of policy and practice. There are a significant number of experienced professionals working in the current system with extensive practice in refugee status determination and there has been a parallel development of policy and jurisprudence. These elements are core to the asylum system, and will remain central even with amendments to the legislation.

As UNHCR stresses in its comments on the 2007 Immigration, Residence and Protection Bill, there are a number of positive proposals which will quickly meet with consensus among many concerned with asylum matters. First and foremost, the Bill proposes to introduce a single asylum procedure, by which, among other things, one's application for asylum will be assessed in a sequence starting with the 1951 Refugee Convention first, followed by other international treaty obligations, and thirdly by humanitarian or compassionate grounds.

Our main expectation is that subsidiary forms of protection will be applied to non-Convention refugees only, as we must

ensure that the 1951 Convention will remain the cornerstone of the international protection regime.

We further expect that the implementation of a single consolidated procedure will speed up the asylum procedure and enhance the quality of decision taking. Asylum-seekers will be submitted to one integrated interview, thus reducing the stress experienced while giving a comprehensive and detailed summary of the reasons for fleeing persecution, especially if this involves traumatic experiences.

Finally, by centralizing the assessment of all grounds for the need of international protection in one consolidated procedure carried out by one competent authority, such procedure cannot but contribute to reducing the risk of "gaps" within the assessment of the various needs for protection. It further avoids the need for several or parallel procedures as is the case today when it comes to procedures that deal with applications for subsidiary protection and temporary leave to remain. The keywords in the context of the proposed *Single Procedure* are *fairness and efficiency*, from which asylum-seekers as well as the State will benefit.

Among others, UNHCR further hopes that the new asylum legislation will make provisions to improve the treatment of unaccompanied minors/separated children, particularly on the key issues of child-specific persecution, use of best interests of the child notion, guardianship and legal representation, accommodation, tracing, family reunification, guarantees and care arrangements in case of return.

The new Bill could also give further consideration to the principle of family unity and provide for the streamlining of existing procedures. The establishment of an effective and humane mechanism for the return of failed cases will be also essential to safeguard the credibility of the asylum procedure.

As regards other aspects of the Bill which UNHCR believes need consideration, these relate mainly to the fact that asylum is placed within the overall objective of the State's aim to manage immigration effectively. UNHCR, needless to say, recognizes the challenges States have in preserving an effective asylum space to guarantee access to protection in the face of the growing complexities in managing global migration. The difficulty as seen from UNHCR's perspective lies in the fact that the 1951 UN Convention for Refugees is an instrument that was designed to give refugees access to a territory to have their claims of persecution heard. The idea behind the Convention is one that does not fit easily into a scheme for immigration regulation, which is essentially the legitimate tool that States use to control or deny entry.

As a result, UNHCR's comments do stress our current concerns with the way the Bill deals with such issues as the *non-refoulement* and non-discrimination principles; access to the territory and the procedure; *burden of proof*; *benefit of the doubt*; use of third country of asylum notions as well as of State/public security grounds; and withdrawal of status, among others.

Some of these concerns arise in part due to the style and structure of the legislation. In general the Bill is a piece of legislation not easy to read and many of its provisions (e.g. the ones dealing with access to the procedure) lack the clarity (from an asylum point of view) that was characterized in the 1996 Refugee Act (as amended). Another key point of concern to UNHCR is the non-defined number of subjects

that this Bill leaves aside for future regulation through *Ministerial policy statements*.

Finally, UNHCR is also aware that once adopted, the new legislation will aim to complete the transposition process of EU asylum directives and that there is a real risk that the authorities and legislators may decide to lower standards in areas where Ireland already meets or goes beyond minimum European standards.

For UNHCR, it is vital that any new law adopted be consistent with Ireland's international legal obligations to refugees and other persons in need of protection. For that purpose, we hope to be able to engage in further discussions with the Department of Justice, Equality & Law Reform and the Irish legislators who will look closely at the law during the forthcoming debates that will lead to the adoption of the new Act.

Dublin, 9 August 2007

UNHCR's Comments on the Immigration, Residence and Protection Bill 2007

Introduction

1. UNHCR has a direct interest in the national legislation of signatory countries that regulates the application of the 1951 Convention, in line with a supervisory responsibility which the UN General Assembly has entrusted to UNHCR for providing international protection to refugees worldwide and for seeking permanent solutions for them¹. UNHCR therefore takes this opportunity to provide comments on the Immigration, Residence and Protection Bill.

2. UNHCR is pleased to share its comments on this Bill, by virtue of which the asylum institution is proposed to be regulated in the context of a broader set of statutory provisions that generally rule on the arrival, presence in, and departure of foreigners in Ireland.

3. In order to facilitate the reading of UNHCR's suggestions, this document contains an outline of our general comments followed by more specific comments on each of the areas relating to UNHCR's Mandate, outlining the main concerns as well as reference to some specific sections of the Bill. Where possible and appropriate suggested alternative wording has been made.

General Comments

4. UNHCR takes note that the Bill *inter alia* is intended to transpose relevant EU Directives, including the Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (hereinafter referred to as the Qualifications Directive).

¹ Statute of the Office of the United Nations High Commissioner for Refugees, United Nations General Assembly Resolution 428(V), 14 December 1950. Article 35 of the 1951 Convention relating to the Status of Refugees ("the 1951 Convention") contains a corresponding obligation for States Parties, which undertake to: "*co-operate with the Office of the United Nations High Commissioner for Refugees in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention.*"

5. In this respect, UNHCR welcomes the introduction of a single procedure for determining refugee status as well as other forms of protection. Expectedly, a single procedure will increase administrative efficiency and, in principle, should be more cost-effective and speedier, as it is likely that similar fact-finding and consideration of protection needs for refugee status as well as for subsidiary protection will be undertaken by the same decision maker (*i.e.* the Minister for Justice, Equality and Law Reform). This will avoid duplication of labour.

6. It also takes note that the proposal foresees an all-inclusive single procedure where protection as well as non-protection grounds would be considered by the same protection status officer. UNHCR recommends and would welcome that subsidiary protection grounds be considered only if it is found that there is no nexus to 1951 Convention grounds. As well, humanitarian and other grounds should be considered only if the criteria for subsidiary protection cannot be met.

7. UNHCR would further welcome if explicit reference was made *inter alia* to the 1951 Convention in the legislation. This would be in line with the objective as outlined in the preamble of the Qualifications Directive to determine refugee status in line with the 1951 Convention.

8. The Qualification Directive specifies that the standards laid down in the Directive are minimum standards and by virtue of this national legislation can adopt more favourable standards (Article 3). UNHCR strongly encourages Ireland not to use the transposition process as an opportunity to lower standards in areas where it already meets or goes beyond minimum standards specified. It welcomes that the Bill has taken this approach in relation to certain aspects of provisions in the Directive. Specifically, UNHCR welcomes the rule of Section 38 (Protection Residence Permit), which offers the same rights as Convention Refugees to those granted protection on subsidiary grounds, including the right to a Travel Document and the right to Family Reunification as per Section 49 (Member of family of a holder of a protection residence permit).

9. UNHCR notes that the Bill introduces certain residence permits in relation to foreigners in the State such as the Temporary Protection Residence Permit and the Protection Residence Permit. To the extent this will assist in ensuring the protection and rights of the persons in need of international protection UNHCR finds such measures appropriate for immigration control purposes, however, UNHCR is concerned that the Bill appears to link the individual's needs for protection in the State with the conditions of the permit. While in UNHCR's view the issuance of a permit can be linked to the outcome of a protection decision, the reverse should not be the case and as such breach of conditions placed on the holder of the residence permit should not lead to *de facto* revocation of the protection status of the holder. (See for instance Section 59). In this respect, UNHCR would like to highlight the declaratory nature of refugee status. The 1951 Convention deals exhaustively with the issue of when a person ceases to be a refugee or can be excluded from refugee protection.

10. The comments on the Bill made below address issues of concern to UNHCR under the following themes:

- access to the territory for all protection applicants, which means allowing protection applicants to enter the State and temporarily stay in the country to make an asylum claim;
- interpretation and implementation in the State of the non-refoulement principle in accordance with International obligations and interpretations;
- access to a fair and efficient protection determination procedure, which means a procedure suited to enable a correct decision about an individual's refugee or other protection needs in accordance with International obligations and best practices and with due consideration to the individual needs of children and other vulnerable groups;
- full enjoyment of refugee rights in accordance with the 1951 Refugee Convention and its interpretation by ExCom including in relation to the use of detention, penalties for unlawful entry and non-discrimination;
- facilitation of integration and naturalization of refugees in accordance with Article 34 of the 1951 Refugee Convention, and
- special consideration for vulnerable individuals, including children.

11. UNHCR welcomes the many positive provisions in the Bill in meeting Ireland's obligations under each of the themes mentioned above, but is concerned, however, that certain provisions particularly in relation to ensuring access to the territory, interpretation of non-refoulement obligations, assessment of the claims, fall short of meeting international standards.

12. UNHCR notes that the mixing of asylum and protection issues together with general aliens provisions in one bill risks creating in some areas legal ambiguity in an already complex legal system for asylum. Failure to comply with an immigration condition should not bar access to the refugee determination procedure without fair procedures to give the applicant the opportunity to explain alleged non-compliance.

13. UNHCR notes that the preamble suggested in the scheme for the Bill has been omitted from the proposed Act. It is UNHCR's view that the absence of a preamble clearly specifying the objectives of the Act is likely to lead to difficulty in the implementation of different parts of the Act when the weighing of different objectives may be inevitable. In this respect UNHCR recommends that a section outlining the main objectives of the Bill is introduced and that this section clearly spells out those objectives as they relate to Ireland's protection responsibilities, the principle of family unity and best interest of the child, as found in numerous International instruments to which Ireland is party. Considering the longer term effects of immigration and asylum matters to be regulated in this Bill, reference to integration objectives may also serve a valuable purpose in guiding and clarifying expectations and rights for both decision makers and those benefiting from the permits foreseen in this Bill.

14. The comments below outline UNHCR's recommendations and concerns in six areas covered by the Bill.

Themed comments

Comments in relation to access to the territory for all protection applicants, which means allowing protection applicants to enter the State and temporarily stay in the country to make an asylum claim;

15. Access to the territory of the State and temporary stay to make a protection application is one of the key principles of refugee protection to ensure the State complies with the non-refoulement principle of Article 33 of the 1951 Refugee Convention. In the Bill this is ensured in Section 24(2), however without further clarification in other parts of the Bill or in the overall objectives for the interpretation of the Bill this principle may collide with other powers for Immigration Officers to deny leave to land or to remove a person from the State. In this respect, UNHCR recommends that specific references are made to Section 24(2) in those sections dealing with powers of Immigration Officers to refuse leave to enter or to remove a person from the State. This would include sections 21, 22, 23, 25 and Part 6.

16. UNHCR also retains its concerns made in previous comments in relation to carrier sanctions (Section 26) and the exception to Section 24 (2) in subsection (3).

17. In relation to procedures for initiating an application for protection, UNHCR notes that an application can be initiated at the border (Section 22) or by a foreign national already in the State; whether lawfully or unlawfully (Section 58). However, the procedures outlined in the two sections are not similar and lack in UNHCR's view clarity. Section 22 seems to replace the current Section 8(1) of the Refugee Act in which an Immigration Officer shall interview a foreign national at the border if s/he expresses a need for protection, an unwillingness to leave because of fear of persecution or a request not to be removed or returned to a country. During the interview, the Immigration Officer shall inform such a person of the possibility of making a protection application and interview the person for this purpose, as well as to establish some basic information, which is then forwarded to the Minister.

18. However, Section 22 reverses the sequence of events and fails to ensure that the State complies with its non-refoulement obligations in cases where a foreign national is unwilling to be returned due to protection related concerns but is unaware of the possibility of his or her making a protection application. The formulation of Section 22 should in UNHCR's view be redrafted to create the necessary clarity in terms of rights, obligations and procedures applicable to persons seeking protection at the border of the State.

19. Section 58 deals with applications made in the State. In UNHCR's view this section has similar unclear and ambiguous formulations and seems to cover both situations where an applicant presents directly with the authority designated to make protection decisions and where an application is made to an Immigration Officer anywhere in the State. In UNHCR's view two distinct procedures may be more appropriate i.e. one for applications initiated with an Immigration Officer and one for applications initiated directly with the decision making body in the State, considering the nature of and powers of these two state authorities. In UNHCR's view Immigration Officers should only investigate applications in relation to establishing the very basic information about the person and forward the

application to the authority designated to make decisions, more in line with the current Section 8 of the Refugee Act.

Comments in relation to interpretation and implementation in the State of the non-refoulement principle

20. UNHCR notes the definition of non-refoulement provided under Section 50 and would like to voice its serious concerns with its provisions.

21. *Refoulement* of a person to a risk of persecution or other serious harm is prohibited under international refugee law, international and regional human rights law as well as customary international law.

22. The principle of *non-refoulement* under international refugee law, as enshrined in Article 33 of the 1951 Convention relating to the Status of Refugees (hereafter: “1951 Convention”), is often referred to as the cornerstone of international refugee protection.

23. Article 33(1) provides: “No Contracting State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.”

24. The prohibition of return to a danger of persecution under international refugee law is applicable to expulsion as well as any other form of forcible removal, including deportation, extradition, informal transfer or “renditions”. This is evident from the wording of Article 33(1) of the 1951 Convention, which refers to expulsion of return “in any manner whatsoever”.

25. The principle of *non-refoulement* also applies to measures which amount to rejection or non-admittance at the frontier. The *travaux préparatoires* show that the drafters of the 1951 Convention clearly intended the *non-refoulement* provision to provide for protection against forcible removal to a risk of persecution, including through rejection at the border.

26. The principle of *non-refoulement* applies to any person who is a refugee under the terms of the 1951 Convention, that is, anyone who meets the inclusion criteria of Article 1A(2) of the 1951 Convention and does not come within the scope of one of its exclusion provisions. It applies irrespective of whether or not the refugee is lawfully in the country, and provides protection not only against return to the country of origin but also with regard to forcible removal to any other country where a person has reason to fear persecution related to one or more of the grounds set out in the 1951 Convention, or from where he or she risks being sent to his or her country of origin.

27. Given the declaratory nature of refugee status, the principle of *non-refoulement* also applies to those who meet the criteria of Article 1 of the 1951 Convention but have not had their status formally recognized, including, in particular, asylum-seekers. As such persons may be refugees, it is an established principle of international refugee law that they should not be returned or expelled pending a final determination of their status.

28. International refugee law permits the return of a refugee to a country where he or she would be at risk of persecution under certain, limited circumstances which are

exhaustively provided for in Article 33(2) of the 1951 Convention.

29. UNHCR is concerned that the wording of Section 50 differs considerably from the wording of the 1951 Convention in a manner, which could lead to misunderstandings as to the scope of, and therefore result in, breaches of, the *non-refoulement* obligation under international refugee law. UNHCR therefore suggests that the wording of the 1951 Convention be relied upon.

30. UNHCR is concerned that the current formulation pursuant to Section 50 appears to indicate limitations to the principle of *non-refoulement*, which would not accord with international and regional human rights law. In this regard, it is noted that a number of different instruments contain explicit or implicit non-refoulement provisions. This is the case not only for the Convention against Torture – the only international instrument included in Section 50, but also the International Covenant on Civil and Political Rights, where both the right to life and the right to be free from torture and other cruel, inhuman or degrading treatment or punishment have been interpreted to include a right not to be refouled (reference is made to General Comment No. 31 of the Human Rights Committee), and, not least, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). There are no exceptions to these provisions, and they are not limited to acts by or at the instigation of a public official. Moreover, the principle of *non-refoulement* is evolving in human rights law, and the formulation chosen should not preclude relevant developments from being taken into account.

31. Further, while the principle of *non-refoulement* does not, as such, entail a right to asylum, it does mean that where States are not prepared to grant asylum to persons who have a well-founded fear of persecution, they must adopt a course that does not amount to a breach of the principle of *non-refoulement*. This could include, for example, removal to a safe third country or some other solution such as temporary protection or refuge. Reliance on the “safe third country” concept does not, however, take away the responsibility for *indirect refoulement*, that is, *refoulement* from the third country. Whether a third country is safe would need to be assessed in an individual examination and could not be determined in a general fashion. As a general rule, whenever a State engages in forcible removal to another State, it retains responsibility to ensure that the principle of *non-refoulement* is not breached. This obligation applies regardless of whether concerns were raised formally or not, or whether the person appeared to acquiesce in the removal or not.

32. Apart from these concerns about the definition of the non-refoulement obligation of the State in Section 50, a number of other Sections of the Bill also have an impact on the non-refoulement obligation and should be reviewed and redrafted to ensure that Ireland complies with its international obligations. These include: Section 36 (6) (b) in which a person in detention may leave the State if s/he withdraws his or her application for protection; Section 38 concerning Protection Residence Permits and related Sections 40, 42 and 43; Section 40 formulating exclusion clauses where our previous comments in relation to Section 44 on expulsion are still valid as well as previous comments made on Section 65 on withdrawal of an application, and Section 58 on breaches of conditions for a Temporary Protection Residence Permit.

33. In relation to expulsion, UNHCR recommends that a decision to make an expulsion order is taken without prejudicing the possibility to submit a new asylum application.

34. In relation to withdrawal UNHCR has raised strong concerns about linking the breach of Permit conditions to the possibility for an applicant to have his or her claim examined. In UNHCR's view, considering that the applicant may have a valid need for protection, there is a real risk of breach of the non-refoulement principle and UNHCR therefore recommends that a withdrawal should result in a discontinuation of the procedure only and the closing of the file. A reopening of the application should be possible without time limits.

35. The Bill also lacks some clarity in relation to the protection connected to the Long Term Residence Permit, where such a permit replaces a previously issued Protection Residence Permit after the initial 3 years. This is particularly relevant in relation to absence from the State, but also in relation to certain rights, such as right to family reunification.

36. Non-refoulement should also be considered in relation to Section 66 with respect to burden of proof and other fair procedures related sections of the Bill, which can lead to breaches of the non-refoulement principle. It has been acknowledged that while a protection applicant has a duty to co-operate in establishing all the relevant facts concerning his or her claim, the applicant cannot be expected to be familiar with the legal standards of the refugee definition and the burden of proof for protection applications must therefore be shared between the applicant and the decision maker. With reference to the above it is the State's responsibility to ensure that they do not breach the non-refoulement principle.

37. Furthermore, UNHCR is concerned with the extensive use made by the legislator of the notions of *security of the State, public security, public policy ("ordre public") or public health* also in key provisions dealing with asylum-seekers/refugees rights. Such notions risk broad interpretation and in some instances could limit refugee protection in a way that would be in breach of international standards (e.g. Section 38 and 40 in relation to renewal of residence permits, *inter alia* Section 71 dealing with exceptions to sharing of information as well as Section 96 concerning exclusion orders).

38. Finally, it should be mentioned that certain provisions in Section 26 concerning duties of carriers may serve as preventing persons with protection applications from ever reaching the State and our comments made on the draft scheme remain valid.

Comments in relation to access to a fair and efficient protection determination procedure

39. Procedural issues in relation to applications for refugee status are not dealt with directly in the 1951 Convention. However, it has long been acknowledged by States parties to the Convention that fair and efficient procedures are an essential element in the full and inclusive application of the Convention. What constitutes a fair and efficient procedure has been subject to several ExCom conclusions and is further elaborated in EC/GC/01/12. Some of the concerns UNHCR has with the proposed Act are based on the findings found in this document.

40. It has thus been recognized that fair and efficient procedures are an essential element in the full and inclusive application of the Convention. They enable a State to identify those who should benefit from international protection under the Convention, and those who should not. States have acknowledged their importance by recognizing the need for all asylum-seekers to have access to them. Some of the core elements identified as necessary for fair and efficient decision-making in keeping with international refugee protection principles are also included in EC/GC/01/12.

41. Some of the issues raised, and for which UNHCR is concerned in relation to the Bill are: procedures and understanding of what constitute manifestly unfounded claims; use of safe third country and safe country of origin concepts; special procedures and penalties for persons with false documents; withdrawal of application; access to legal representation and interpretation, as well as well trained staff and the introduction of strict time limits and other requirements not directly related to a person's protection needs.

Time lines and formal requirements preventing or curtailing access to all aspects of the procedure:

42. One fundamental safeguard is the recognition that an asylum-seeker's failure to submit a request within a certain time limit or the non-fulfilment of other formal requirements should not in itself lead to an asylum request being excluded from consideration, although under certain circumstances a late application can affect its credibility. The automatic and mechanical application of time limits for submitting applications has been found to be at variance with international protection principles.

43. The proposed Act introduces a number of time limits and other formal requirements, breaches of which bar the applicant from getting the protection claim assessed on its merits. Some of these time limits relate to the extension or discontinuation of residence permits, but Section 65 (2) excludes a person from having his or her claim heard if s/he fails to attend the scheduled interview and does not provide good reasons within 3 days. While other parts of this section also introduce time limits, these are operated only after a notice is issued and provide the person an opportunity to continue the process. It is recommended that in all situations where the authorities are required to consider the withdrawal of a protection application, the applicant is given notice and an opportunity to respond.

44. Other formal requirements may also prevent a protection applicant from having his or her claim heard. These relate to sections outlining when an application shall be considered withdrawn such as Section 65 with reference to Section 35 when a protection applicant changes address without informing the Minister. UNHCR would recommend that such time limits and other formal restrictions are reviewed and changes made to ensure that all applicants have access to the protection procedures and failure to comply with requirements allows for proper explanation and consideration.

45. This is further made relevant by the wording of Section 59 which has exchanged the "Protection decision to be made by the Minister" with a decision on whether or not a person shall be granted a protection residence permit. This reformulation is in UNHCR's view not purely semantic, but may lead to a conceptual change in how protection is viewed

not as a basis for the grant of a protection residence permit, but as a condition for a protection residence permit.

46. The lack of clarity in the wording of Section 22, 23 and 58, all of which are related to how an application for protection is initiated, are also of concern and UNHCR would recommend redrafting of these sections to clearly reflect the rights and obligations of both applicants and immigration or authorities' officers, as well as the procedures to be followed. In particular, UNHCR takes note that the current Refugee Act Section 8(1), which places an obligation on the immigration officer to inform an individual of the right to make an application where protection issues arise, has been replaced by a much less proactive wording in the above mentioned sections. This may not only lead to breaches of the State's non-refoulement obligations, but may also prevent a person with protection needs from accessing the protection procedures.

47. *Use of the 1951 Convention and determination procedures:*

48. Apart from these concerns with sections which may prevent an applicant from having his or her claim heard on the merits, certain sections involving the actual assessment of protection needs such as establishing of facts and legal definitions are also of concern. This includes sections introducing definitions, which on the whole limit the scope of the 1951 Convention, such as definitions of "Acts of Persecution" (61), "State Protection" (56 and 64), "Membership of a particular social group" (62) and the exclusion of nationals from EU Member States from having their case heard.

49. A concern for most States engaged in protection status determination is the issue of abusive claims or claims which are manifestly unfounded. Document EC/GC/01/12 refers to Conclusion No. 30 in this respect. This describes "clearly abusive" and "manifestly unfounded" applications as "those, which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 Convention ... nor to any other criteria justifying the granting of asylum". In other words, applications which are not made in good faith by the applicant.

50. Whether a case is deemed "manifestly unfounded" or not will depend upon the degree of linkage between the stated reasons for departure and the refugee definition. One potential problem in applying this notion is that not all asylum-seekers have the capacity without assistance to articulate clearly and comprehensively why they left, and certainly not where there is an element of fear or distrust involved, or where other factors are at play, including the quality of the interpreters. There is also the issue of credibility: an asylum-seeker's description of events prompting flight may appear to relate to the refugee definition, but may still lack objective credibility, while falling short of being "fraudulent". In other words, an applicant may make an application in good faith, but still not meet the legal standards of the refugee definition or be believed on all aspects of his or her claim. Similarly, certain information not found relevant to the claim, may be withheld for reasons not relating to bad faith, but to reasons to do with more subtle human and psychological factors.

51. In UNHCR's view the legal framework regulating how to assess protection claims should make a clear distinction between the notion of claims which are clearly abusive and/or

manifestly unfounded and those which may otherwise lack in credibility or not meet the standard of proof for a refugee claim of "well founded fear". While the former may merit some procedural consequences, the latter should not. Furthermore, such a framework should acknowledge that while an applicant has an obligation to co-operate, the burden of proof is shared and the process best suited to establish facts should be inquisitorial in nature. The current Bill does not clearly make such a distinction. UNHCR also finds that the formulations used in the Bill in relation to these notions are unclear and repetitious and may jeopardize the correct assessment of a person's protection needs. The sections referred to include: Section 60 (Assessment of facts and circumstances), 66 (Burden of Proof), 67(Credibility), 68 (Duty to co-operate), and 70 (Determination of an application) and their links to Section 65 (withdrawal of applications); 69 (prioritization of applications) and 71 (appeal procedures). Furthermore, UNHCR takes note that the Bill does not seem to include reference to the use of benefit of doubt, which was included both in the draft scheme and in the current Refugee Act.

52. In relation to the assessment of other protection needs, UNHCR is concerned that the definition of serious harm could result in a number of persons in need of international protection not being recognized. Therefore, UNHCR would like to strongly suggest that the definition be amended to include: "serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order."

Comments in relation to full enjoyment of refugee rights in accordance with the 1951 Refugee Convention

53. As mentioned above, UNHCR takes note and welcomes that the Bill foresees the same standards of rights for all persons issued a Protection Residence Permit as outlined in Section 38. These rights include: the right to reside in the State, to travel, to enter into gainful employment, access education, health and social welfare benefits subject to the same terms and conditions as applies to Irish Nationals. UNHCR also notes that these rights seem to cover obligations for the State laid down in Article 17 to 24 of the 1951 Convention related specifically to rights of refugees.

54. The areas of concern to UNHCR in relation to the Bill are the issues of non-discrimination as per Article 3 of the 1951 Convention and of penalties for unlawful entry and restriction of movement further to Article 31 of the 1951 Convention, including their interpretations through ExCom conclusions.

55. The Bill foresees the possibility for the Minister to introduce different treatment for different classes of applications. In Section 59 (10) for instance the Minister can introduce different procedures for the investigation of a protection application for different classes of applications. It is not clear what such procedures or classes may mean, but if based on race, religion or country of origin considerations, Article 3 of the 1951 Convention may apply.

56. In relation to imposing penalties for illegal entry into the State for protection applicants, the Bill is in UNHCR's view not sufficiently clear in its formulation as to ensure that the principle of Article 31(1) of the 1951 Convention is respected. This is *inter alia* relevant in relation to Section 5, 7, 21, 22 and 8. Section 5 deals with who is to be considered

lawful and unlawful in the State but does not make any specific reference as to how to regard protection applications. A reference in Section 5(8) would indicate that protection applicants might be considered unlawfully in the State. Although it seems clear that a protection applicant will be given permission to enter the State and stay while the application is processed, a reading of the Bill does not provide a clear answer to whether a protection applicant can still be considered technically unlawful in the State. This is particularly relevant as no entitlements have been listed in relation to holders of a Temporary Protection Residence Permit and since Section 8 dealing with entitlements of persons considered unlawful in the State would not be entirely suitable for protection applicants a clarification on this would be welcome.

57. Section 7 specifies that all foreign nationals shall possess sufficient identity documents and that not possessing this shall constitute an offence (7(4)). Likewise Section 21 stipulates that all foreign nationals shall enter the State through an approved port and that failing to do so constitutes an offence and Section 22 stipulates that a person shall present to an immigration officer immediately at the border and that not doing so is an offence. The definition of what it means to present is related to having certain documentations, which may not be appropriate to expect from protection applicants. There are no clear exceptions for protection applicants in line with the principles of Article 31 of the 1951 Convention. UNHCR is concerned that persons seeking protection in the State, either not possessing the mentioned documents or presenting directly with the status determining authority, may be considered to have breached these sections and be charged with an offence. This may be done irrespective of the principle of Article 31 and without regard to the fact that information about the procedures, duties and obligations, as well as access to legal representation, will only be available after they have made an application for protection.

58. Finally, UNHCR would like to raise concern with the suggested and potential extensive use of detention of protection applicants under *inter alia* Section 36 and 52 and in certain cases leaves it to an immigration policy statement to outline the classes of persons to whom detention provisions will apply. In the view of UNHCR, detention should be in line with Article 31 of the 1951 Convention, the relevant Conclusions of UNHCR's Executive Committee, e.g. the Executive Committee Conclusion No. 44 (XXXVII) of 1986, as well as international and regional human rights law. Consistent with international and regional human rights law, detention of asylum-seekers is exceptional and should only be resorted to where provided for by law and where necessary to achieve a legitimate purpose; proportionate to the objectives to be achieved; and applied in a nondiscriminatory manner for a minimal period. The necessity of detention should be established in each individual case, following consideration of alternative options, such as reporting requirements. No single heading in the Bill deals with detention. UNHCR suggests that States provide for an exhaustive enumeration of the grounds for detention of asylum-seekers in national legislation.

59. Furthermore, UNHCR recommends that the requirements developed by the ECHR for the lawfulness of a detention order be incorporated into national law. Apart from prompt and regular detention reviewing and access to judicial

review, these requirements include: unimpeded access to the asylum procedure, legal and social assistance, interpretation facilities and information. Additionally, implementing legislation should explicitly clarify that such provisions apply also to asylum-seekers whose claims were found to be inadmissible because another State was considered to be responsible for determining the claim, pursuant to arrangements on the transfer of responsibilities, such as the Dublin II Regulation, or in application of the 'safe third country' concept. The international and regional provisions on detention outlined above would also apply.

60. UNHCR welcomes the explicit exceptions to detention of children in Section 36 (4) and would recommend similar explicit exceptions to detention measures in relation to survivors of torture or sexual violence and traumatized persons.

61. Considering the above, UNHCR is particularly concerned with the power to detain outlined in Section 24 (7) reference (6), where an immigration officer can detain a protection applicant if it is not practical to issue a Temporary Protection Residence Permit. Keeping in mind the overriding human rights principles involved, a failure by the State to implement its own administrative legislation should not lead to the infringement on the right to liberty for persons seeking protection.

62. UNHCR also notes that a large number of both procedural and substantive aspects of the Bill will remain subject to the Minister's discretion, including through specifications introduced by way of *Ministerial statements and orders* including *Immigration Policy Statements* as outlined in Section 9 and 10 and including areas such as refusal to give permission to enter (Section 25) and right to marriage (Section 94), both of which could influence protection applicants. UNHCR suggests that to the extent possible, substantive provisions relating to asylum be set out in law.

Comments in relation to facilitation of integration and naturalization of refugees in accordance with Article 34 of the 1951 Refugee Convention.

63. UNHCR has recently published a Note on the Integration of Refugees in the European Union as part of the discussions initiated by the German EU Presidency. This note stresses that the 1951 Convention places considerable emphasis on the integration of refugees. The 1951 Convention enumerates social and economic rights designed to assist integration, and in its Article 34 calls on States to facilitate the "assimilation and naturalization" of refugees. UNHCR's Executive Committee has recognized that integration into their host societies is the principal durable solution for refugees in the industrialized world. The note also highlights some existing gaps in the integration of refugees in the European Union (EU), and formulates a number of policy recommendations in order to strengthen policy and practice in this area. The comments made on the Bill under this heading are based on some of the recommendations made in this note.

64. As mentioned above, UNHCR welcomes the approach taken by Ireland to give all persons granted protection in the State the same rights and also welcomes that integration of protection applicants is included in national integration strategies, such as the Integration: a two-way process and the National Action Plan against Racism.

65. The concerns of UNHCR with the Bill in relation to integration are around three main areas. Entitlements for protection applicants, Part 5 regulating issues around the length and renewal of residence permits and Section 49 concerning family members of protection applicants, including the absence of sections dealing with the procedures for applying for family reunification.

66. In relation to entitlements for protection applicants it is worth mentioning that reception conditions can impact on the well being of protection applicants and in the longer term their successful assimilation and integration into society or their ability to return and reintegrate in case of an unsuccessful application. This includes the time spent in the asylum process, the access to community activities, employment or vocational skills acquired during the process and special care arrangements for separated children and victims and survivors of torture. UNHCR recommends that Ireland consider these in relation to the Bill and can refer to best practices developing in relation to the implementation of the Reception Directive.

67. In relation to residence rights, UNHCR welcomes that all persons granted protection will be given a three year Protection Residence Permit and can subsequently apply for a long term residence permit as per Section 38 (2) (b). However, Section 38 refers to Section 34 (2) conditions for being given such a long term permit and these conditions include: that the person has been in the country lawfully for at least 5 out of the last 6 years; speaks sufficient level of English or Irish and has shown that he or she has made reasonable efforts to integrate as well as being of good character. It is specifically mentioned that the period spent as an asylum-seeker shall not be considered when calculating the 5 years. This seems to indicate that, despite Section 38, persons holding a Protection Residence Permit will have to have at least one subsequent extension before they can apply for long-term residency. UNHCR would recommend that permanent residence should be granted to persons holding a protection residence permit at the latest at the end of the three-year residence period. UNHCR is also concerned with residency rights of refugees being linked to language or integration obligations in general, especially without clearly defined standards in this regard and appropriate integration schemes in place to facilitate refugees fulfilling such standards.

68. Finally, UNHCR has some comments in relation to Section 49 concerning family rights in the country as well as to the lack of clear specifications of how to initiate a family reunification procedure. UNHCR suggests that it is understood that an investigation under 49(4)(a) which requires that the Minister is satisfied that the person is a family member, shall benefit from the benefit of the doubt in accordance with the proposed Head 49 (4).

69. In relation to Section 49, UNHCR welcomes that the Bill gives the same entitlements to a family member as to the holder of the Protection Residence Permit. In relation to the definition of family member, UNHCR encourages the use of a definition of the term "family member" which includes close relatives and unmarried children who lived together as a family unit and who are wholly or mainly dependent on the applicant. This is in line with the right to family unity, as outlined in the UNHCR *Handbook* which stipulates that other dependants living in the same household normally should benefit from the principle of family unity. Furthermore, in

UNHCR's view, respect for family unity should not be made conditional on whether the family was established before flight from the country of origin. Families, which have been founded during flight or upon arrival in the Asylum State also need to be taken into account. With reference to the UNHCR Executive Committee Conclusion No. 24 (XXXII) paragraph 5 and No. 88 (L) paragraph (b)(ii), UNHCR recommends the application of liberal criteria in identifying those family members who can be admitted, with a view to promoting the unity of the family.

70. While welcoming that the Bill seems to include family established en route to the State as long as established before the protection application is made, UNHCR notes that the Bill does not include partnerships in accordance with the law of the country of origin or marriage which took place in the State. UNHCR recommends that both such categories of family members are included in Section 49.

71. UNHCR takes note that no specific mention has been made in the Bill in relation to procedures for initiating a family reunification process. UNHCR therefore presumes that it is foreseen that family reunification will continue to be initiated through the visa application process. Considering the current difficulties with this process, UNHCR recommends the following procedural changes: a specific application, other than a visa application, to apply for family reunification; special consideration in relation to issuance of travel documents facilitating the travel to the State for family members who may not be able to obtain a national passport and the possibility to appeal or have a review of a decision not to grant family reunification.

72. Considering the current backlog of family reunification cases pending and the resources required, UNHCR suggests that family members in as much as they are present in Ireland should be granted derivative status. In UNHCR's view, members of the same family should be given the same status as the principal applicant (derivative status). The principle of family unity derives from the Final Act of the 1951 United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons and from human rights law. Most EU Member States provide for a derivative status for family members of refugees. This is also, in UNHCR's experience, generally the most practical way to proceed. However, there are situations where this principle of derivative status is not to be followed, *i.e.* where family members wish to apply for asylum in their own right, or where the grant of derivative status would be incompatible with their personal status, *e.g.* because they are nationals of the host country, or because their nationality entitles them to a better standard.

73. Finally, we would like to note that refugees require a secure status to be able to achieve self-reliance and to integrate more easily into the society of the host country, including into the labor market. UNHCR therefore suggests that they be granted permanent residency either immediately or, at the latest, following expiry of the initial permit. Similar rights to long-term residence should also be accorded to family members.

74. Specific consideration in relation to family reunification for separated children has been mentioned below in part VI.

Children issues and concerns in relation to other vulnerable persons

75. The 1951 Convention does not make any special provisions for protection of refugee children, who therefore have the same rights as adult refugees, however special considerations for children are outlined in the Convention on the Rights of the Child and good practices in relation to treatment of Separated Children seeking asylum have been developed in various documents, including through the Separated Children in Europe Program (SCEP).

76. UNHCR would like to welcome some of the special considerations for children outlined in the Bill including the exception to detention Section 36 (4), the notification of the HSE specified *inter alia* in Section 23 (4) and 36 (4) (c), 53 (3), the consideration of age in assessment of facts Section 60 (1) (c) and the special procedures for obtaining biometric information for persons below 14 years of age.

77. Similarly, UNHCR would like to welcome the mentioning of special considerations in relation to vulnerable persons such as children and victims of torture in Section 38 (4) in relation to giving rights to a person issued with a Protection Residence Permit.

78. However, UNHCR remains concerned with a number of sections of the Bill, which in our view do not comply with best practices as regards unaccompanied or separated children. These practices are built around the following principles: 1) That the best interest of the child is a primary consideration 2) The child should not be refused entry or returned at the point of entry, or be subjected to detailed interviews by immigration authorities at the point of entry 3) As soon as a separated child is identified, a suitably qualified guardian or adviser should be appointed to assist him/her at all stages 4) Interviews should be carried out by specially trained personnel and 5) Separated children should not be detained for immigration reasons.

79. In relation to implementing the best interest of the child, UNHCR takes note that this is mentioned in Section 58 (4) (c) (ii), but with the lack of an introduction section (or a preamble) outlining the overall objectives of the Bill, it is not clear that this principle is guiding all parts of the Bill. It also seems that the Bill lacks child appropriate alternatives for persons under the age of 18 years where it may not be in the child's best interest to make a protection application.

80. Concerning the entry to the State and interview at the border by Immigration Officers, Section 21, 22, 23 and 58 could be amended to take into consideration that a child should not be refused entry or returned at the point of entry, or be subjected to detailed interviews by immigration authorities at the point of entry. It would also be of particular importance that in case of doubt around the age of the person this doubt will be in favor of the child and only if the person is without reasonable doubt above 18 years s/he is treated as an adult. This would imply changes to Section 23 (7), 36 (4) (b) and 53 (2).

81. Point three above raises two important issues: firstly, who should be identified as a separated child, and secondly, that such a child should be appointed a suitable guardian or adviser. UNHCR has specific concerns in relation to the definition of children identified as separated children and for whom contact with the HSE is established.

82. Section 23(1) defines such children as "a foreign national under the age of 18 years who has arrived at a frontier of the State (if) (a) s/he is not accompanied by a

person of or over that age who is taking responsibility for the foreign national, the officer shall, as soon as practicable, notify the Health Service Executive of that fact, (b) is accompanied by such a person, the officer may require that person to verify that he or she is taking that responsibility". UNHCR would recommend that the definition in line with SCEP best practices is adopted in which "Separated children are persons under 18 years of age who are outside their country of origin and separated from both parents, or their legal/customary primary caregiver."

83. The Section 23 (1) definition does not have sufficient safeguards to ensure that children are not trafficked into the country or that they get the care, registration and assistance required for their full protection as a person. Furthermore UNHCR recommends the appointment of a guardian *ad litem* who can get legal advice on whether or not it is appropriate to make an application for protection on behalf of the child and assist the child in all aspects of the process.

84. The appointment of a guardian other than a HSE social worker seems particularly relevant also in light of the introduction of Section 92, which places an obligation on information holders to share information they may have about a foreign nationals with the Minister.

85. As mentioned above UNHCR, welcomes the specific exception to detention of persons below 18 years in Section 52, but finds the formulation of Section 53 unclear in relation to the detention of persons below the age of 18 years in relation to removal from the State.

86. In relation to family reunification Section 49 (4) (b) (ii) UNHCR has some concern with the limitations to this section, which do not take into consideration that a separated child seeking protection may have lost his or her parents but be emotionally dependent on other family members such as siblings or customary primary caregivers.

87. Finally, the Bill has no reference to child specific forms of persecution as envisaged for instance in the Qualification Directive preamble and Article 4.

88. In relation to other groups of vulnerable persons applying for protection, including victims of torture, UNHCR would welcome considerations in relation to all aspects of the Bill.

UNHCR Dublin

July 2007



Rollout of COI Document Management System- E-Library and Digital Library



*Fiona Morley
Manager RDC*

A new comprehensive Country of Origin Information Document Management System has been developed under the Asylum & Immigration Strategic Integration Programme (AISIP). This system will be available to the Refugee Legal Service and Legal Aid Board and to INIS (Irish Naturalisation and Immigration Service) agencies. INIS includes the Office of the Refugee Applications

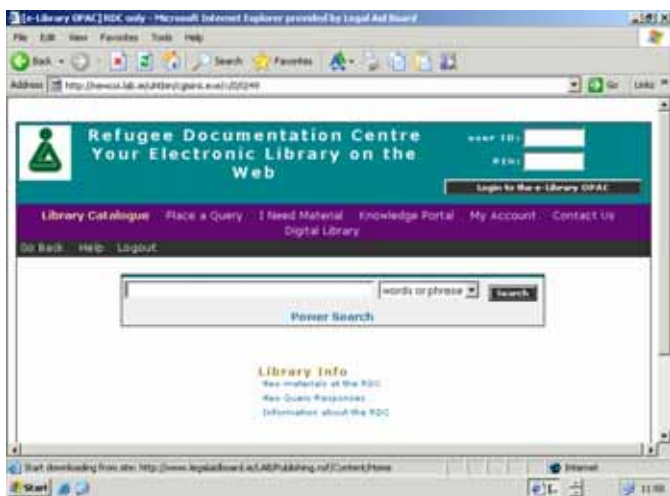
Commissioner, Refugee Appeals Tribunal, Repatriation and Ministerial Decision Units and other areas of the Department of Justice, Equality and Law Reform involved in the asylum and immigration process. **The go-live date for this new system is Monday 24th September 2007.**

About the COI DM (Document Management) System

The development of the COI document management system under AISIP has involved the creation of a centralised electronic resource for Country of Origin and related information. The new system allows access to the Library catalogue of the Refugee Documentation Centre which currently provides a COI research service for key asylum organisations. The new centralised system will allow the INIS agencies and RLS to access a broad range of country specific information from their desktops including the following:

- COI reports and other relevant reports both governmental and NGO
- Anonymised Refugee Documentation Query responses
- Refugee Documentation Centre Library catalogue of books, reports and other physical materials
- COI training materials
- RDC Query form for submitting requests

The new system has two main components, the E-Library (also known as Unicorn) and the Digital Library (also known as Hyperion). The E-Library is the home page of the system and the gateway for searching the overall library catalogue (OPAC- Online Public Access Catalogue). Although users may browse the catalogue without logging in, they will need to log on to the system using a username and password in order to request material or submit queries. An online RDC Query form can be accessed under 'Place a Query' and submitted via the system. Previous users of the LMS will reuse the usernames and passwords they already have. New users will be issued a username and password on request from the RDC. The new system will be available at the following web address: <http://newcoi.lab.ie/>. The home page of E-Library will look like this:

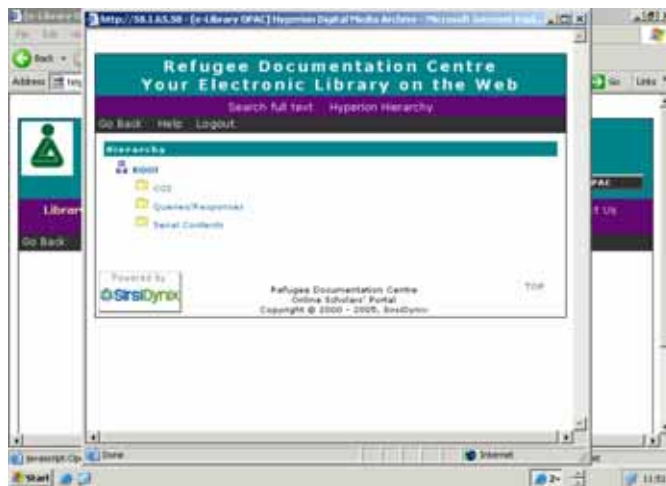


It is also possible to separately browse the Digital Library collection of COI documents, query responses and serial contents. The Digital Library is the collection of electronic documents located within the system. When users conduct a search on E-Library, the Digital Library is also searched. Users will see a link to Digital Library at the top of the E-Library home page. Clicking Digital Library will open the

home page for the electronic collection in a separate window (see below). There are 3 main collections:

- COI - electronic COI documents and reports
- Queries/Responses- anonymised query responses prepared by the RDC
- Serial Contents - the contents pages of Serials/Journals contained in the RDC

Clicking into each collection will open the hierarchical subdivisions applying to that collection eg year, country, subject. The actual document or documents are located at the bottom of the hierarchy.



The main benefit of this new system for users will be the ease of accessibility to a centralised store of COI and related information maintained and constantly updated by the RDC. Users will no longer need to search two different systems as was the case previously. When a user retrieves results from a search of E-Library, the catalogue record (description) for any item will contain a hyperlink to any electronic document that may be associated with that item and the user can click on this to open the document. Most documents will be in pdf format. **The new system will completely replace the RDC COI database and the RDC Library Management System currently in existence.**

End-User Training on the new COI DM system

The RDC will be in contact with the RLS and INIS agencies regarding scheduling and format of end user training on the new system. It is anticipated that this training will commence on the week of 24th September and continue over the following weeks. Training on this system will be a permanent feature of RDC training programmes in the future. It is vital that users avail of training offered in order to gain the most benefit from the new system.

The end user training to be provided will cover three main areas:

- General Introduction to the new COI DM system
- Initial Familiarisation- Browsing E-Library and Digital Library
- Searching, Retrieving and Requesting information via the new system- the core of the training.

Training will not exceed half a day at most. An end user manual providing instruction on navigating the new system has been prepared and will be supplied to all trainees and made available to agencies generally.

A special word of thanks is due to RDC staff and to LAB IT staff for the considerable amount of time, effort and commitment invested in this project throughout 2007 in order to bring it to its conclusion within the timeframe of the overall AISIP project. Thanks to staff in the INIS agencies, RLS and Legal Aid Board who provided valuable assistance with user testing. Our thanks also to the AISIP Project Office for their support throughout.

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“Please note that alliances change frequently”¹ - A tangle into the complex Congo conflicts



Patrick Dowling, RDC

Geography

The Democratic Republic of the Congo (DRC) is the third largest country in Africa, “...much of which is covered by impenetrable rainforest, and crisscrossed by huge rivers such as the Congo, Kasai, and Oubangui, which flow into the Atlantic ocean”.² It has a “...a 2,345,000 square kilometre surface area...Its size is four times that of France...The legendary Congo River born in the Katanga plateau runs east to west, bisecting the country along a 4,700 km course that feeds the Atlantic Ocean. Its basin is a 3,800,000 km² of navigable waterway, which connects various parts of the land that are otherwise inaccessible”.³ It is a thinly populated country where “...the average density of population is low (estimated by the UN to be 24.5 per sq km at mid-2005), and the population is unevenly distributed”.⁴

It is a country whose “...natural resources[s]...are immense: its climate is favourable to profitable agriculture; the forests, if rationally exploited, could yield excellent results; the abundance of water should eventually be useful to industry and agriculture; and finally, there is considerable mineral wealth. The network of waterways is naturally navigable. The Congo carries the second largest volume of water of any river in the world. With the average flow to the mouth being 40,000 cu m per second, there are enormous possibilities for power generation, some of which are being realized at Inga. Indeed, the potential hydroelectric resources are considerable in the whole of the Congo basin”.⁵

Introduction

The Democratic Republic of the Congo “...is bordered by the Republic of the Congo on the West; the Central African Republic and Sudan on the north; Uganda, Rwanda, Burundi and Tanzania to the east; and Zambia and Angola to the south”.⁶ Most of these neighbouring countries invaded or involved themselves in a series of complicated and protracted wars in the DRC particularly between 1998 and 2003; where some of the belligerents sought to take advantage of the Congo’s vulnerability and plunder its wealth. This paper highlights some of the players and rationale behind what some commentators would call ‘Africa’s first world war.’

Moreover it will conclude noting what effect these complex Congo conflicts had on the country and its people.

Neighbours

“...Congo’s neighbours see the country’s mineral resources as there - and theirs - for the taking. This is a weak state, vast in size and virtually ungovernable. It has no transport infrastructure worth talking about, and 10,000 phone lines for 60 million people. To its better-equipped neighbours, it is a large, ungainly but very plump sitting duck...”.⁷ Conflict that enveloped the DRC from 1998 on left it prey to its rapacious neighbours.

“The readiness of the Congo’s neighbours to intervene was heavily influenced by the country’s vast store of mineral wealth and it soon became clear that they had some of these resources in mind at least as much in providing assistance to one or other side in the conflict. Angola was interested in oil, Zimbabwe acquired stakes in the country’s cobalt and copper, Namibia obtained access to diamonds, Uganda to gold”.⁸ At “...the end of 1998 the war had developed into a complex, all-Africa conflict with six of Congo’s neighbours involved to a greater or lesser degree on one or other side. Rwanda and Uganda, and to a lesser extent Burundi, supported the rebels. Angola...supported Kabila. Zimbabwe...sent...troops to support Kabila...Namibia also sent troops to support Kabila...whatever the original reasons for intervention by its neighbours, the huge mineral wealth of the DRC made it one of the richest prizes on the continent. It began increasingly to look like a war of warlords whose principal aims were to acquire control of segments of the country’s mineral wealth”.⁹

War

In 1999 the International Crisis Group summarised the conflict by noting that there “...are five foreign civil wars and one interstate war being waged on DRC territory in addition to its own internal conflict, which is therefore complicated by many different agendas. Uganda, Angola, Burundi, Sudan and Rwanda, all of which are fighting civil wars, have intervened as the result of threats, real or imaginary, posed by various rebel groups based in Congo. The civil war in Congo-Brazzaville has also spilled across the DRC’s border”.¹⁰

Amnesty International in 2000 note the conflict’s history and increasing elaboration: “The current war pits several armed opposition groups and foreign government forces against the DRC Government which is itself supported by several foreign governments. The main backers of President Laurent-Désiré Kabila’s government and his foreign and Congolese armed opponents were all on the same side when they ousted former President Mobutu Sese Seko in May 1997. They fell into opposing camps as President Kabila sought to eliminate the influence of Rwandese and other foreign forces suspected of supporting his opponents inside and outside the DRC security forces and government, and seeking his removal from power. The governments of Burundi, Rwanda and Uganda on their part accused President Kabila of supporting their armed opponents based in the DRC. Both sides, and more so the armed opposition, include political and military leaders who previously supported former President Mobutu and who were opposed to, but are now allies of, countries which helped to overthrow Mobutu”.¹¹

After three years of conflict “... the government [in 2001], with the aid of Angola and Zimbabwe, controlled the west of

the country, about a third altogether, while the north, east and south-east were in the hands of rebels supported by Rwanda, Uganda and Burundi".¹² This meant that establishment of "...separate administrations have been put in place by the government, the rebel movements and foreign armies".¹³ A commentator in *The Irish Times* attempts a description of the conflict thus: "It is a complex conflict, involving a dizzying number of rebel groups and private armies...".¹⁴ And by 2001 after three years of chaos and conflict "...seven African nations and more than a dozen guerrilla and rebel forces have been fighting...in a conflict so messy, so broad, and so resistant to any comprehensive resolution that it is sometimes spoken of as Africa's First World War".¹⁵

Efforts at ending the conflict are noted by the International Crisis Group as early as 1999, where issues over identification are pronounced: "The Lusaka initiative has been stalled for some time over the question of exactly who qualifies as a belligerent as the various players cannot agree on a definition applicable to this context".¹⁶ Both the DRC government and its various supporters and the rebel forces and its allies have "...deliberately maintained confusion about who belongs to the core and who should be considered a peripheral belligerent; neither side is willing to concede to the other. The list of participants in the conflict has been expanding since the war began...".¹⁷

Participants

After three years of fighting the UN General Assembly in 2001 provides the following list of conflicts, armies and paramilitary forces raged in the DRC:

"Armed conflicts taking place in the territory of the Democratic Republic of the Congo"

Government of the Democratic Republic of the Congo/Rassemblement congolais pour la démocratie/Goma, Rwanda, Burundi.

Government of the Democratic Republic of the Congo/Front de libération du Congo, Uganda.

Government of Rwanda/former Rwandan Armed Forces and Interahamwe.

Government of Uganda/various armed opposition groups.

Government of Burundi/Front pour la défense de la démocratie.

Government of Angola/União Nacional para a Independência Total de Angola.

Government of the Republic of the Congo/various armed opposition groups.

Government of Rwanda/Government of Uganda.

Tribal conflict between the Bahema and the Balendu.

National armies

Democratic Republic of the Congo

Invited armies: Angola, Namibia, Zimbabwe

Armies belonging to countries that have violated the sovereignty and territorial integrity of the Democratic Republic of the Congo: Uganda, Rwanda, Burundi.

Irregular armed groups directly or indirectly involved in the armed conflict in the Democratic Republic of the Congo

Rassemblement congolais pour la démocratie (RCD)

Former Rwandan Armed Forces (ex-FAR)

Interahamwe

Mouvement de libération du Congo (MLC)

União Nacional para a Independência Total de Angola (UNITA)

Mai-Mai of South Kivu

Mai-Mai of North Kivu

Front pour la défense de la démocratie (FDD)

Lord's Resistance Army

Sudan People's Liberation Army (SPLA)

Simba Brigade

Union des nationalistes républicains pour la libération (UNAREL)

Mouvement pour la sécurité, la paix et le développement (MSPD)

Former Ugandan National Army (FUNA)

West Nile Bank Front (WNBF)

National Army for the Liberation of Uganda (NALU)

Allied Democratic Forces (ADF)

Front de libération du Congo (FLC)

Rassemblement congolais pour la démocratie/Mouvement de libération (RCD/ML),

also known as RCD/Kisangani and RCD/Bunia

Mongols (Hutu militia operating in the Masisi)

Local Defence Unit (paramilitary group organized by RCD/Goma)".¹⁸

A researcher for the UNHCR in 2001 notes that the conflict in the DRC "...is probably the most complex war that Africa has had to grapple with since its post-colonial battles".¹⁹

Rwandan catalyst

Much of the trouble resulted from the neighbouring Rwandan genocide earlier in 1994. "The first event to transform an impoverished, yet comparatively non-violent Congolese society into an arena of conflict and war was the genocide of the Rwandan Tutsi in 1994".²⁰ After the later Tutsi defeat of the bellicose Hutu "...approximately 1 million Hutu, amongst them many of the *genocidaires* had moved in to the Kivus, in eastern Congo [formed into refugee camps]...these camps were subsequently used as staging grounds from which...offensives... [were launched] against the new Tutsi-dominated government in Rwanda".²¹ The Hutu sought dominance in the Kivus and "...they proceeded to isolate and attack the Congolese Tutsi...".²² The new Tutsi government in Rwanda and the "...Tutsi in Zaire [a former name of the DRC] found common cause to launch a war on the government of former President Mobutu and Hutu in Zaire, and were joined by Zairian government opponents, including leaders of the current government of President Kabila".²³ This intervention made Kabila president. But conflict didn't cease and nor did Rwandan involvement in the DRC end. "...[T]he new ruler of the Congo soon turned against his former benefactors, and even made use of the same Interahamwe and ex-FAR responsible for the 1994 genocide. These opponents of the Kigali regime found sanctuary in the vast, virtually ungoverned Kivus from where they waged a campaign to destabilize the country and topple the dominant Tutsi regime in Kigali. Faced with a growing insurgency in their own Northwest at the beginning of 1998, and the apparent support of the Kabila regime for their long time enemies, Rwanda decided to attempt a second invasion of its giant neighbour in the summer of 1998".²⁴ This led to Rwanda "...occupying a territory many times its own size, inhabited by an increasingly rebellious population".²⁵ And from 1998 many of the DRC's neighbours joined the combat and the Country became engulfed within a maelstrom of conflict and confusion. Complexities of the conflict in the DRC can be highlighted by focusing on the following provinces.

independent state. In more than 40 years of war, civil war, and rebellion, refugees have become life's norm, as death, murder, disease, hunger and famine prowl the countryside."

⁴³ The country which "...is a bubbling cauldron of untamed wilderness carpeted by swathes of rainforest and punctuated by gushing rivers and smoking volcanoes"⁴⁴ has witnessed horror and ruination in equal measure to its mesmeric wilderness. Or to put it another way: "Truly, the Four Horsemen of the Apocalypse arrived in the Congo some time ago and settled in for a long stay...For all practical purposes, this is a place that has hardly known a day of normal existence; and normality does not appear to be in the offing".⁴⁵

¹Title derives from page 16 of HRW,(8 July 2003), *Ituri: "Covered In Blood", Ethnically Targeted Violence In Northeastern DR Congo*, <http://hrw.org/reports/2003/ituri0703/DRC0703.pdf>

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⁵Pierre Gourou, (2007), *Physical Features, Physical and Social Geography, The Democratic Republic of the Congo, Africa South of the Sahara, Regional Surveys of the World*, Europa World, London: Routledge, p.295

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⁷Paul Cullen, (19 July 1995), "A complex exercise in democracy for war-torn Congo", *Irish Times* www.ireland.com/newspaper/world/2005/0719/1121682593289.htm

⁸Guy Arnold, (2006), *Africa, A modern history*, London: Atlantic Books, p.891

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¹⁰International Crisis Group, (21 May 1999), *Africa's Seven-Nation War* http://www.crisisgroup.org/library/documents/report_archive/A400038_21051999.pdf

¹¹Amnesty International, (31 May 2000), *Democratic Republic Of Congo: Killing Human Decency*, <http://web.amnesty.org/library/Index/ENGAFR620072000?open&of=ENG-COD>

¹²Guy Arnold *op.cit*, p.894

¹³Accord *op.cit* <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=402d00964>

¹⁴Paul Cullen *op.cit*

¹⁵Peter Schwab, (2001), *Africa, a continent self-destructs*, New York: Palgrave, p.58

¹⁶International Crisis Group, *op.cit*

¹⁷*ibid*

¹⁸UN General Assembly, (31 August 2001), *Situation of human rights in the Democratic Republic*, [http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/e666c0b1368deb3fc1256ad9004fc87a/\\$FILE/N0152741.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/e666c0b1368deb3fc1256ad9004fc87a/$FILE/N0152741.pdf)

¹⁹Claude Kabemba, (1 June 2001) *The Democratic Republic of the Congo: From Independence to Africa's First World War*, UNHCR WriteNet <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=3bc5a95e8>

²⁰Jane Boulden editor, (2003), *Dealing with conflict in Africa*, New York: Palgrave Macmillan, p.255

²¹*Ibid*, p.257

²²*Ibid*, p.258

²³Amnesty International, (3 September 1998), *Democratic Republic Of Congo, A long-standing crisis spinning out of control*, <http://web.amnesty.org/library/Index/ENGAFR620331998?open&of=ENG-COD>

²⁴International Crisis Group, (20 December 2000), *Scramble for the Congo: Anatomy of an Ugly War* http://www.crisisgroup.org/library/documents/report_archive/A400130_20122000.pdf

²⁵*ibid*

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²⁷*ibid*

²⁸International Crisis Group, (9 January 2006), *Katanga: The Congo's Forgotten Crisis*, http://www.crisisgroup.org/library/documents/africa/central_africa/103_katanga_the_congos_forgotten_crisis.pdf

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³⁰*ibid*

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³⁷Europa World, (2007), *Births and Deaths, Area and Population, Country Statistics, The Democratic Republic of the Congo, Africa South of the Sahara, Regional Surveys of the World*, London: Routledge, p.370

³⁸Dr. Ben Coghlan et al, (2004), *Mortality in the Democratic Republic of Congo: Results from a Nationwide Survey* International Rescue Committee, http://globalpolicy.igc.org/security/issues/congo/2004/1208mortality_survey.pdf

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⁴⁰UN Security Council, (20 March 2007), *Twenty-third report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo* <http://daccessdds.un.org/doc/UNDOC/GEN/N07/274/45/PDF/N0727445.pdf?OpenElement>

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⁴²Guy Arnold *op. cit*, p.885

⁴³Peter Schwab *op. cit*, p.59

⁴⁴Gemma Pitcher et al *op. cit*, p.559.

⁴⁵Peter Schwab *op. cit*, p.59

Beating the Opposition – State Violence in Zimbabwe



*David Goggins Investigates.
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Background

For the past seven years Zimbabwe has been in a state of crisis due to an economic decline which the World Bank has described as unprecedented for a country in time of peace. This crisis has been attributed to policies implemented by the ZANU-PF government led by Robert Mugabe, including a mismanaged land reform programme which has resulted in a 60% reduction in food production. The situation has been exacerbated by a campaign of mass evictions in 2005 which led to 700,000 people losing their homes and livelihood. Amnesty International has described the effects of these policies as follows:

“The Zimbabwe government’s policies on land reform and mass evictions have resulted in a significant reduction in the capacity of many households to access the rights to adequate food, education, healthcare and housing. The fast-track land reform programme, which began in 2000, and the 2005 programme of mass forced evictions known as Operation Murambatsvina (Restore Order), literally wiped out the ability of poor households to meet their basic needs”²

At present Zimbabwe has an unemployment rate of 80% and inflation is estimated to be over 4,000% and rising. Life expectancy for men is 37 years and for women 34 years³. The country is also regarded as having the highest incidence of HIV/AIDS in the world, with some 20% of the adult population infected.⁴ An estimated three million Zimbabweans, including most of the country’s skilled workers, have fled across the border into South Africa.

As the crisis has worsened the government has become increasingly intolerant of any group which it perceives as critics or opponents of its policies, and has resorted to violent tactics and draconian laws. Human Rights Watch has commented on the use of legislation by the Zimbabwean authorities to interfere with the citizen’s right to freedom of association and assembly as follows:

“Zimbabwean citizens are routinely arrested for peacefully and publicly expressing their opinions. The police in Zimbabwe have often used key provisions of legislation such as the Public Order and Security Act (POSA), Miscellaneous Offences ACT (MOA), and more recently the Criminal Law (Codification and Reform) Act to justify arrests that violate

basic rights. The police have used provisions in POSA to strictly monitor public meetings or violently disrupt peaceful demonstrations.”⁵

Treatment of anti-government activists

Included among groups considered to be opponents of the government is the main political opposition party the Movement for Democratic Change (MDC), as well as human rights defenders, lawyers, journalists, trade unionists, students, women’s groups and other civil society organisations. Human rights organisations such as Amnesty International and Human Rights Watch (HRW) have reported numerous instances when members of such groups have been on the receiving end of extreme violence perpetrated by the police and other government agents such as the Central Intelligence Organisation (CIO) and the ZANU-PF youth militia

In May 2007 Human Rights Watch published a detailed report alleging state repression in Zimbabwe which describes the treatment of anti-government protesters as follows:

“Since the beginning of the year, the police have arbitrarily arrested hundreds of civil society activists and opposition members and supporters during routine meetings or peaceful protests, often with excessive force, and in some cases subjected those in custody to severe beatings that amounted to torture, and other mistreatment. The government has taken no clear action to halt the rising incidence of torture and ill-treatment of activists while in the custody of the police or the intelligence services.”⁶

Human Rights Watch also says:

“In the past few months, the state has intensified its efforts to violently suppress dissenting views or opinions, and ordinary citizens and ordinary citizens have been caught up in the violence, with scores subjected to brutal beatings and arrest by the police and other state agents because they are perceived or actual supporters of the opposition. The volatile high-density neighbourhoods of Harare’s southern suburbs – traditionally viewed as opposition MDC strongholds – have seen the largest number of government abuses.”⁷

Zimbabwe Congress of Trade Unions

The Zimbabwe Congress of Trade Unions (ZCTU) is the major trade union organisation in Zimbabwe and is allied to the Movement for Democratic Change (MDC), the major political opposition to ZANU-PF. According to Amnesty International, there has been systematic harassment of ZCTU members for years, with many of them arbitrarily detained and some of them been tortured while in custody. A widely publicised incident occurred in Harare on 13 September 2006 following an attempt by the ZCTU to stage a series of mass protests throughout the country. This protest was to consist of

² Amnesty International (25 July 2007) *Zimbabwe: Between a rock and a hard place – women human rights defenders at risk*

³ BBC News (25 July 2007) *Zimbabwe’s women ‘face brutality’*

⁴ BBC News (3 May 2006) *Zimbabwe faces Aids drug shortage*. See also: AVERT (30 July 2007) *HIV and AIDS in Zimbabwe*

⁵ Human Rights Watch (August 2007) *A Call to Action: The Crisis in Zimbabwe*, p.5

⁶ Human Rights Watch (17 May 2007) *Oral Submission to the 41st Ordinary Session of the African Commission on Human and Peoples’ Rights on the Human Rights Situation in Zimbabwe*

⁷ Human Rights Watch (May 2007) *Bashing Dissent – Escalating Violence and State Repression in Zimbabwe*, p.9

a series of peaceful marches, ostensibly highlighting issues such as low wages, high unemployment, food and fuel shortages, the lack of access to ARV drugs and the general low standard of living resulting from government policies. The mass protests that the organisers had hoped for never materialised due to a combination of bad planning, a lack of support from the MDC and the action of the police, who arrested about 130 people including ZCTU president Lovemore Matombo, secretary general Wellington Chibebe, Lucia Matibenga and 12 other ZCTU members. ZCTU eyewitnesses later claimed that Matombo and Chibebe were beaten with batons while being transported to Matapi police station in Harare, where they were there received a much more severe beating. Doctors who examined the ZCTU members injuries confirmed that they were consistent with being beaten with heavy blunt objects.⁸

Zimbabwe President Robert Mugabe later justified the police beating the ZCTU members had received by saying that:

“We cannot have a situation where people decide to sit in places not allowed and when the police remove them they say no. We can’t have that. That is a revolt to the system. Some are crying that they were beaten. Yes, you will be thoroughly beaten. When the police say move you move. If you don’t move, you invite the police to use force.”⁹

The Save Zimbabwe Campaign

The most widely publicised instance of violence by agents of the state occurred on 11 March 2007, when the police used extreme force to prevent a meeting in Harare organised by the Save Zimbabwe Campaign, a broad coalition which included church groups, civil society organisations and the MDC. This meeting had been designated as a “prayer meeting” in an attempt to circumvent a ban on political gatherings which the police had imposed in February 2007. However, when supporters of the campaign arrived at the ground in Highfield, Harare where the meeting was due to take place they found large groups of heavily armed police waiting for them. Human Rights Watch has described the actions of the police as follows:

“Almost immediately after the activists arrived, and before the meeting could take place, security forces launched a brutal and unprovoked attack, and started beating the activists with batons and rifle butts, injuring dozens. One MDC supporter told Human Rights Watch, ‘Before getting to the ground we found riot police, military police and militia. Before we could do anything we were attacked by the military police. They came at us with batons, rifle butts, everything.’ Police and other security forces beat scores of MDC supporters and civil society activists. Many opposition supporters and activists sustained serious injuries, according

⁸ Amnesty International (May 2007) *Zimbabwe: Systematic repression of trade unionists*

⁹ President Robert Mugabe, addressing delegates at the Zimbabwe embassy in Cairo, Egypt, on the arrest, torture and mistreatment of 15 trade union activists in Zimbabwe, September 23, 2006

to doctors from the Zimbabwe Association of Doctors for Human Rights (ZADHR)”¹⁰

Some of the worst treatment meted out to any opposition activist was that inflicted on MDC leader Morgan Tsvangirai. Tsvangirai and other leading activists were arrested after they went to Machipisa police station to enquire about more than fifty colleagues who had been arrested on their way to the meeting. According to Human Rights Watch:

“Some of the worst beatings took place at Machipisa police station where several MDC members and civil society activists including Tsvangirai, Madhuku, Chamisa, Holland and Kwinjeh were held. Police forced the activists to lie facing down and beat them on the backs and buttocks with batons. Senior members of the MDC such as Tsvangirai and civil society activists such as Madhuku were singled out for particularly vicious beatings by the police who kicked the activists and beat them all over their bodies including around the head with batons and metal rods. One activist who was also held at Machipisa police station told Human Rights Watch, ‘We were forced to lie down on our stomachs and we were beaten for two to three hours. Then Morgan Tsvangirai came and he was beaten as well. Then some of us were taken to Highlands police station. I was very sick from the beatings and was eventually admitted at the Avenues clinic. I was discharged on March 15.’”¹¹

Robert Mugabe once again justified the use of extreme violence by the police. Referring to the beating of Morgan Tsvangirai he said:

“Of course he was bashed. He deserved it...I told the police ‘beat him a lot’. He and his MDC must stop their terrorist activities. We are saying to him, ‘Stop it now or you will regret it.’”¹²

For two weeks following the events of 11 March the police patrolled those areas of south Harare which were regarded as opposition strongholds, indiscriminately beating people on the streets regardless of whether or not they were opposition supporters. There were also reports of the police forcing entry into homes and beating the occupants. Many members of the MDC went into hiding to avoid being arrested and tortured.

On 18 March MDC Member of Parliament Nelson Chamisa sustained serious head injuries after a group of men armed with iron bars attacked him in the departure lounge of Harare International Airport in full view of the police. Chamisa later attributed this attack to CIO agents.

Treatment of Women Human Rights Defenders

The women of Zimbabwe have a strong tradition of involvement in human rights activism from the gaining of independence in 1980 to the present. A major report on the treatment of women human rights defenders published by Amnesty International says:

Since 2005, hundreds of human rights defenders, the majority of them women, have been arbitrarily arrested and detained

¹⁰ Human Rights Watch (May 2007) *Bashing Dissent – Escalating Violence and State Repression in Zimbabwe*

¹¹ *ibid*

¹² *ibid*

for engaging or attempting to engage in peaceful protest marches or meetings. Most women interviewed by Amnesty International have reported being subjected to beatings and ill-treatment while in custody. The beatings, in some instances, amounted to torture.”

Treatment of Lawyers and Other Groups

Not only are opposition activists detained by the police at risk of serious violence, but so also are those lawyers who represent them. Lawyers who represented persons arrested at the 11 March prayer meeting were said to have been threatened and in some cases beaten by the police and CIO agents.

On 4 May 2007 two lawyers, Alec Muchadehama and Andrew Makoni, were arrested outside the High Court of Zimbabwe after submitting papers on behalf of a detained MDC activist. A demonstration held by the Law Society of Zimbabwe on 8 May 2007 to protest against these arrests was violently stopped by the police, who detained and then assaulted a number of lawyers before letting them go.¹³

The authorities have also suppressed demonstrations by students, hampered the work of journalists and photographers, and constantly harassed members of the MDC. In August 2007 fifteen church leaders were arrested for attending a prayer meeting without police permission.

Outlook for the future

The beating of Tsvangirai and other opposition leaders drew widespread condemnation from western governments and the UN. The response from African governments was much quieter, partly due to their perception of Robert Mugabe as a hero of the anti-colonial struggle but also because many of these governments are reluctant to condemn Zimbabwe as their own record on human rights is not much better.

Many commentators consider that the best hope for an improvement in the political situation in Zimbabwe is that Robert Mugabe should step down as leader of ZANU-PF and be replaced by a more moderate leader who will seek reconciliation with opposition groups and introduce sufficient reforms to bring about a resumption of western aid to Zimbabwe. It has been said that Mugabe, who is 83, is holding on to power due to a fear that he will be called to account by a new government, and that he will only step down if given guarantees that he will retain his wealth and be immune from prosecution.¹⁴

Recent Developments in Refugee and Immigration Law

Agbonlahor and Ors v The Minister for Justice, Equality and Law Reform and Anor, Unreported, High Court, Feeney J., 18th April 2007

JUDICIAL REVIEW - CERTIORARI - DEPORTATION - ARTICLE 8 ECHR - ECHR ACT 2003 - CHILD WITH ADHD - MEDICAL CONDITION - PRIVATE LIFE - NIGERIA

Facts

The Applicants, Nigerian nationals, had been issued with deportation orders. The second-named Applicant, the first-named Applicant's son, was diagnosed with Attention Hyperactivity Disorder (ADHD). The Applicants wrote to the Minister requesting that he exercise his power under s. 3(11) Immigration Act 1999 and amend or revoke the deportation orders. The Minister refused. The Applicants sought to challenge the Minister's refusal on the principal ground that the removal of the second-named Applicant would interfere with his right to respect for his private life, as guaranteed by Article 8 of the European Convention on Human Rights.

Held by Feeney J in refusing the reliefs sought, that while the concept of private life embraces an individual's mental condition and stability, and while on the facts of the case the proposed removal of the second-named Applicant has the clear potential to be an interference with that Applicant's private life, the Applicant had not established exceptional circumstances entitling him to protection. (*N, D*, cited with approval, and *L&O* followed). That aliens who are subject to expulsion cannot claim entitlement to remain in a contracting state in order to benefit from medical, social or other forms of assistance provided by the expelling state, and that for an exception to be made where expulsion is resisted on medical grounds, the circumstance must be exceptional (*N* followed, the Court noting that *N* concerned article 3 and stating that its statements equally applied to article 8). That the relief sought would enlarge the scope of the Convention beyond its expressed terms, and in a manner which could not be said to have been such that the contracting parties would have accepted and agreed to be bound by.

Case cited

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Bensaid v UK [2001] 33 EHRR 10/205
Abdulaziz and Ors v UK [1985] 7 EHRR 471
R (Mahmood) v Secretary of State for the Home Department [2001] 1 WLR 840
AO & DL v Minister for Justice [2003] 1 IR 1
R (Razgar) v Home Secretary [2004] 2 AC 368
Costello-Roberts v UK (1993) 19 EHRR 112
N v Home Secretary (2005) 2 AC 296
D v UK (1997) 24 EHRR 423

¹³ Amnesty International (9 May 2007) *Zimbabwe: Repression of political opponents continues, with new incidents of police brutality*

¹⁴ For a detailed analysis of the ZANU-PF leadership succession process see: International Crisis Group (5 March 2007) *Zimbabwe: An End to the Stalemate*

Tamreen v The Minister for Justice, Equality and Ors, High Court, Herbert J., 23rd January 2007

JUDICIAL REVIEW – LEAVE – REFUGEE STATUS DETERMINATION
 APPEAL - FAIR PROCEDURES – ERROR OF FACT – FAILURE TO
 CONSIDER RELEVANT MATTERS – CONSIDERATION OF
 IRRELEVANT MATTERS - FREEDOM OF RELIGIOUS EXPRESSION -
 CONVENTION GROUND OF RELIGION – SELECTED USE OF
 CONTRY OF ORIGIN INFORMATION – IRAN

Facts

The Applicant, a national of Iran, and a Christian, had sought asylum in the State, but was unsuccessful before the Refugee Applications Commissioner, and the Refugee Appeals Tribunal dismissed his appeal. The Applicant sought judicial review of the Tribunal's decision, contending (a) that the Tribunal's decision was not full, balanced and unbiased, (b) that the Tribunal had regard to an irrelevant consideration, i.e., that the Applicant had not been discriminated against economically, (c) that the Tribunal failed to take relevant matters into account with regard to the position of those perceived as apostates, (d) that the tribunal selectively cited from the British Home Office country information, and (e) that the Tribunal's decision was wrongly premised on an acceptance that the Applicant should practise his Christianity exclusively in private, and that this was a denial of his fundamental human right to freedom of religious expression.

Held by Herbert J., in granting leave to seek judicial review, that the first, general and vague, complaint was not sufficient to satisfy the onus of the 2000 Act, that neither was there a reasonable, arguable or weighty ground in the Applicant's contention that the Tribunal had regard to an irrelevant matter, as the Tribunal's observation that the Applicant lived in an affluent area was accurate and pertinent, though not necessarily conclusive, but that the Tribunal appeared to have disregarded the evidence before it that the Applicant had come to the attention of the Iranian authorities and that there were reasonable, weighty and arguable grounds for contending that the decision ought to be quashed for failure to consider the country information sufficiently or at all in light of the actual evidence before it. That there were also substantial grounds for contending that it was not properly open to the Tribunal to conclude that it was not realistic to state that the Applicant's activities could not be regarded as proselytising, at least without a fully comprehensive review of the country information. That the Tribunal inadvertently but nonetheless erroneously substituted its own view of the applicant's religious activities for what should have been a consideration of the view of those activities likely to be taken by the Iranian authorities in light of the evidence. That there were substantial grounds for contending that the Tribunal had attached too much weight to certain country information and did not give sufficient weight to the remainder of the country information. That as there was no evidence before the Tribunal that the Applicant had ever asserted a right to freedom of religious expression, there were not substantial grounds to argue the final point, however interesting the issue might be.

Case cited

Illegal Immigrants (Trafficking) Bill [2000] 2 IR 360

UL and Ors v The Minister for Justice, Equality and Law Reform, Unreported, High Court, MacMenamin J., 28th February 2007

JUDICIAL REVIEW - LEAVE – S. 3 IMMIGRATION AT 1999 –
 DEPORTATION – HUMANITARIAN MATTERS – PSYCHIATRIC
 CONDITION - NON-REFOULEMENT – PLURALITY OF PURPOSE -
 FETTERED DISCRETION – FAILURE TO CONSIDER - CROATIA

Facts

The Applicants, Croatian nationals, whom the Minister proposed to deport, asked the Minister to consider fresh psychiatric evidence. The Minister's memorandum on the matter stated that refoulement did not arise in the case as Croatia was a safe country of origin, and acknowledged that while the first-named Applicant may have had need of medical attention, but also stated that the Minister was not aware that the first-named Applicant would be unable to be maintained on medication for his condition in his country of origin. The Applicants contended that the Minister had regard only to matters re non-refoulement, had ignored his discretion, and failed to consider the relevant psychiatric evidence in the context of his discretion under s. 3 Immigration Act 1999.

Held by MacMenamin J., in refusing the reliefs sought, that while it was true that the question of refoulement was set out in the departmental memorandum, it had not been established that this was the basis of the determination made by the Minister, that as a matter of fact no plurality of purpose arises (*Cassidy* distinguished and deemed not apposite), and that while the departmental memo contained extraneous material, it had not been demonstrated that such material was part of the decision. That analysis of the memorandum showed that the Applicant's psychiatric condition was considered and that, by any reasonable inference, was the basis of the determination and exercise of the Minister's discretion. That there was no evidential basis to show that the Minister only had regard to refoulement, or event hat he had any regard to that matter. That the weighing of the various matters which might legitimately be taken into account under s. 3 of the 1999 Act is a matter entirely for the Minister, and that once it has been established that the Minister has considered the matters submitted to him, as is the case here, a court should be slow to interfere.

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C v The Minister for Justice, Equality and Law Reform, Unreported, High Court, Hanna J., 5th November 2004

Cassidy v Minister for Industry and Commerce [1978] IR 297

G v DPP [1994] 1 IR 374

K v The Minister for Justice, Equality and Law Reform, Unreported, High Court, Clarke J., 9th November 2005

John Stanley BL



New Twist to a Sad Tale

What will happen to the thousands of people made legally -- and physically -- stateless when climate change drives the first island states beneath the waves?



Rupert Colville
UNHCR, Geneva

There are strong fears that some small island states will soon start disappearing altogether as a result of climate change. Among those considered particularly vulnerable are Kiribati, Vanuatu, the Marshall Islands, Tuvalu, the Maldives and the Bahamas.

High tides are already destroying homes, gardens and fresh water supplies on Papua New Guinea's Carteret Islands, which may vanish completely beneath the waves as early as 2015. An evacuation of the Carterets' 2,000 inhabitants to another part of Papua New Guinea has begun.

If low-lying island states such as Kiribati (population 93,000) and Tuvalu (population 10,000) follow suit, their problems will be much more complex than simply packing up and moving somewhere else. All the institutions of a modern nation state -- parliaments, police, law courts, state education and healthcare -- will have disappeared along with the coral atolls, sandy beaches and palm trees.

The islanders will either have to find a way to reconstitute their vanished state elsewhere, or they will have to find another state to adopt them as citizens, give them a passport and provide them with all the other forms of protection and assistance that a state exists to give its people. Alternatively they will become stateless -- about as stateless as you can possibly be.

A 2005 working paper submitted to the UN Commission on Human Rights framed the dilemma succinctly: "Whilst States [...] are used to addressing issues of State succession, it would appear that the extinction of a State, without there being a successor, is unprecedented..." The paper then outlined a long list of awkward questions that would arise in such a scenario, most of them concerning the rights of the affected population, and who would be responsible for ensuring those rights were observed.

It will be scant consolation -- but, in the event of a state sinking, its inhabitants will not be alone. UNHCR (which has a mandate for stateless people as well as for refugees) currently has an official figure of 5.8 million stateless people spread across 49 countries. However, the agency believes the true total may be closer to 15 million.

Some people end up stateless because of legislative or bureaucratic accidents -- not necessarily because someone has deliberately deprived them of their national identity. Even if no state has sunk yet, millions have become stateless because the state in which they or their ancestors were born has changed shape in some abstract way: been created or divided or dissolved, decolonized, conquered or freed.

Whenever a state is modified in some such fundamental way, the issue of who is -- and who is not -- a citizen comes to the fore. Those who fall through the cracks during this process often have nowhere else to go. Powerless to alter their situation, they are often pushed by the bureaucratic tide to the margins of society, where they stay vulnerable, impoverished and all too easy to ignore.

Others become stateless as an unforeseen consequence of a change in domestic legislation, or because of an incompatibility between the laws of two different states. And a sizeable minority are the victims of a more pernicious form of statelessness: the deliberate exclusion of entire groups because of some political, religious or ethnic discrimination.

But there are some currents of fresh air blowing through the strange, sad world of the stateless. There have been recent political and legislative breakthroughs for large groups of stateless people in Sri Lanka, Thailand, Nepal, and some Gulf States. Gradually more governments are realizing that burying their heads in the sand when it comes to groups of stateless people on their territory is no solution.

If this trend continues, it may just be that by the time the first island state is submerged, its erstwhile inhabitants will find a world more inclined to take the necessary steps to prevent them from being forced into the shadowy global ghetto of the stateless. Arresting climate change will be a Herculean task. But preventing this particular side effect should not be beyond the collective capability of the international community.



Book Review

Andrew Meldrum -- *Where We Have Hope -- A Memoir of Zimbabwe*

by Aoife McDonnell

Journalist Andrew Meldrum's "Where We Have Hope -- A Memoir of Zimbabwe" documents his story from his arrival in newly independent Zimbabwe in 1980 until his deportation in 2004. Intending to stay just 3 years, Meldrum was arrested and deported after 24 years for writing "bad things" and "untruths" about the Zimbabwe Government.

US-born Andrew Meldrum's memoirs provide a powerful, vivid portrayal of the people, politics and struggle for power during his time in Zimbabwe. "Where We Have Hope" documents the slow transition from the beginnings of a multi-racial democracy to a country now said to be in economic chaos. The International Monetary Fund forecasts that inflation could rise to 100,000% by the end of 2007.

Andrew Meldrum moved to the country in 1980 because he was "inspired by how a multi-racial, majority-rule democracy had emerged from the bloody fourteen-year war against white-minority-rules Rhodesia". Idealistic Meldrum held great hope for Zimbabwe. He was impressed by Robert Mugabe who had transformed from a Marxist guerrilla leader into a "respectable" statesman. His descriptions of Mugabe are succinct, insightful and surprising.

The Rhodesian media had succeeded in vilifying Mugabe as a blood thirsty Marxist, but that image was shattered by his careful, considerate actions when he became Prime minister. Everybody speculated about him, his motivations, his Catholic faith, why he was a teetotaler, what he was really like? His painfully proper speech, with its carefully rounded vowels ...was very different from the rough-hewn English spoken by most Zimbabweans.

Meldrum describes him as “bookish”, “excruciatingly formal” and we are told that he earned three degrees whilst imprisoned by the Rhodesians. It was said that Mugabe thought Bob Marley was “too scruffy” to perform at his swearing in as Prime Minister and suggested Cliff Richard would be a more appropriate act.

However, after a few years, as the so-called “honeymoon” phase in Zimbabwe came to an end, Meldrum reports that violence descended on Matabeleland. It was not unexpected, as it went back to the ZAPU/ZANU rivalry of the 1960s, but the widespread, horrific killings outraged Meldrum. His bravery in uncovering the truth outweighs his concern for his own safety on many occasions. He conducted many “illegal” interviews of surviving relatives who were hiding in a church basement and informed the world of these atrocities. The world, however, took little notice as Mugabe was still held in high esteem by other leaders and most citizens of Zimbabwe. These prolonged periods of violence claimed up to 20,000 lives in the 1980s. Meldrum’s opinion of Mugabe turned from admiration to abhorrence.

“I firmly believe that Robert Mugabe carried out the Matabeleland massacres in order to crush any opposition to his ambitions to establish a one-party state by Joshua Nkomo, Zapu and the Ndebele people in general.”

Meldrum deals with the three major issues that led to the decline of Zimbabwe, corruption, intolerance and a collapsing economy.

By the 1990s, corruption was rife. Meldrum states that it started at the very top and eventually seeped to the very bottom. Ordinary citizens could not attain a driving licence without a bribe and Meldrum, going against his own ideology, was forced to pay a bribe for a telephone installation, a necessity for any journalist. Corruption permeated every level of society.

The author refers to many violations of minority rights. Mugabe himself set a precedent with his homophobic comment that homosexuals were “worse than pigs”. The author notes that this was the turning point in the international community’s perception of Mugabe, despite the Matabeleland massacres.

Mugabe was doing more than attacking gays; he was attacking the growth of civic groups and the culture of inclusive community rights that was so influential in South Africa. He was stating that rights would be determined from the top, not by the community.

The economy was facing collapse in the late 1990s. “The immediate cause was Mugabe’s decision to award a multi-million dollar package of benefits to the war veterans association, which has threatened a coup if he didn’t comply.” This unbudgeted expenditure caused the collapse

of the Zimbabwean Dollar but it further secured Mugabe’s position. Mugabe himself blamed the IMF for the collapsing economy.

He deals with these three issues separately but creates a complete picture of what life was like for himself and for ordinary Zimbabweans by documenting his friend Mavis’ struggle to survive. Because press freedom was so restrictive, this was a difficult task. Detailed descriptions of events are not only informative but engrossing.

Despite Zimbabwe’s growing problems, Meldrum was struck by the spirit and “determined optimism” he encountered “from executive offices to corner new-stands”.

Zimbabwe refused to sink into despair about the fate of their country, and they were infused with a new surge of enthusiasm and hope when both a promising new political party [Movement for Democratic Change] formed and a separate campaign was launched to persuade the government to create a new constitution.

This is the theme that dominates the second part of the book and the hopeful tone is continued until the final chapters, even when dealing with terrible abuses against human rights. It is this thread of hope, woven through out the book, which makes this story so enthralling. The optimism that Meldrum had in the very beginning never dwindles.

“In my concentration during the drive I had failed to take in the full beauty of the Nyanga Mountains... I had not imagined a landscape could be both mountainous and tropical... The air was clear, fresh and invigorating. Everything seemed new and possible.”

While the book’s main focus is on the political tensions and the oppressive government in Zimbabwe, Meldrum manages to give the reader a real sense of the country, a feel, an affection for Zimbabwe. Descriptions of the “champagne air” (dry and sparkling) and landscape portrays Meldrum’s fondness for the country where he struggled to survive.

“Where We Have Hope” is a remarkable insight into Zimbabwe, the place, the people and the politics. This is the story of a brave journalist, who risks his life to report truth. This enjoyable story will enrich any reader’s understanding of Zimbabwe during this time in history.

Aoife McDonnell, a student in journalism at DCU, worked in the RDC during June and July 2007.

A copy of this book signed by the author is available from the RDC library.



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The opening hours of the RDC library are from 10.00am to 12.30pm and 14.00pm to 17.00pm. It may be possible to accommodate visitors prior to 10.00am and between 13.00pm and 14.00pm if you contact us in advance.

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You may contact the RDC in the following ways: tel: 01 477 6250 fax: 01 661 3113 email:

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You may also email in a query form as you would for a COI query.