

The Researcher

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Welcome to the fifth issue of *The Researcher*.

The Researcher is now a year old. In this issue we continue our two aims of promoting the services of the Refugee Documentation Centre and reflecting on issues of concern to the agencies we serve. The Researcher is a publication which combines academic papers, summaries of caselaw, guides to new legislation, reports of conferences, articles on RDC services and items of country of origin information. The common thread is that the writing should be of interest to those engaged in refugee and protection status determination. Given the RDC's independence and objectivity, we try to include writing from as many sources as possible. This issue is no exception.

The Law Society hosted a one day public conference on 27 January on the Immigration, Residence and Protection Bill 2007. We include summaries of speeches by the Tánaiste and by Brian Ingoldsby from the Department of Justice, Equality and Law Reform as well as a paper by Grainne Brophy, RLS and some excerpts from IHRC's Observations on the Scheme.

In this issue Michael Begley, Director of Spirasi, writes comprehensively about the important issue of 'Rehabilitation of Torture Survivors in Ireland'. Eugene Quinn provides an insight into the work of the Jesuit Refugee Service both here and abroad. We also publish an article by Ali Selim, Resident Theologian of the Islamic Cultural Centre of Ireland, which has been specially written for The Researcher: 'A new introduction to Islam'

RDC provide the following articles: 'Running to Standstill: Honour killings and the position of women in Pakistan' by Patrick Dowling; 'Summaries of recent High Court Judgments' by John Stanley BL; 'Resurgence of the Taliban' by David Goggins; and 'Refugee Documentation Serials Collection' by Isabel Duggan.

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

Paul Daly, Refugee Documentation Centre

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Articles and summaries contained in The Researcher do not necessarily reflect the views of the Management of the RDC or the Legal Aid Board

Rehabilitation of Torture Survivors in Ireland



Michael Begley,
Director of SPIRASI

1. Introduction

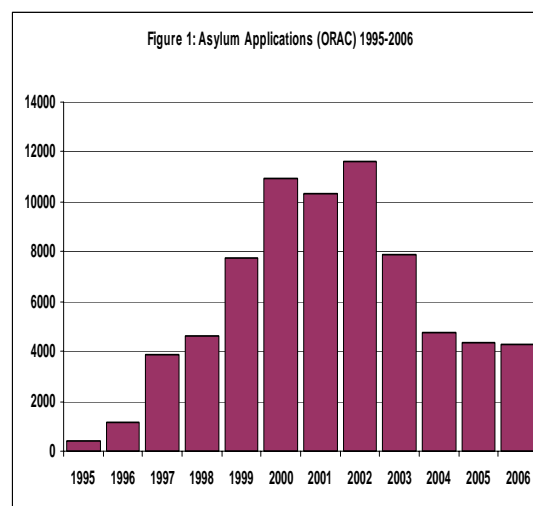
"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." (Article, 5, Universal Declaration of Human Rights)

Since the adoption of the United Nations *Declaration of Human Rights*¹ on December 10th 1948, torture, in all its forms, and in all contexts, has been universally proscribed. It cannot be justified by any circumstances whatsoever. Every subsequent general human rights treaty² has included this absolute prohibition of torture and related ill-treatment. Despite these prohibitions, State sanctioned atrocities which cause severe mental or physical suffering have been documented by human rights organizations in more than 150 countries worldwide between 1997 and 2002³. In 2003, Amnesty International registered torture in 106 countries.⁴ The figure for 2005 was 150 countries.

The persistence and widespread prevalence of torture into the 21st century is a terrifying testimony to the moral disregard which international treaties hold for the perpetrators. The abhorrent abuse of detainees at the Abu Ghraib prison in Iraq and likewise, at the Guantanamo Bay detention facility in the Caribbean, are stark examples of the continuing practice of torture, particularly the systematic use of less visible psychological methods of torture.⁵ For victims, the right for protective sanctuary and restorative remedies, including as full a rehabilitation as possible, is only 'officially' acknowledged when a claim is tested and proven against a legally adopted definition of torture. From a therapeutic standpoint, this should be done as early as possible in the determination process.

From a legal perspective, the most important formulation remains that found in article 1 of UNCAT. Here torture is defined⁶ as: "...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third party information or a confession, punishing him for an act he or a third party has committed or intimidating or coercing him or a third person, or for any reasons based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions".

Notably, this definition was incorporated into Irish law through the Criminal Justice (United Nations Convention Against Torture) Act 2000 and ratified on April 11th 2002. Apart from the prohibition of expulsion and non-refoulement, Article 4(2) also states⁷: *"For the purposes of determining whether there are such grounds, the Minister shall take into account all relevant considerations including, where applicable, the existence of a consistent pattern of gross, flagrant or mass violations of human rights"*. Clearly medical documentation may be a decisive part of the 'other relevant considerations'.



In parallel with the general rise of asylum applications in the later part of the 1990's (see figure 1), Irish decision makers at the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal as well as legal representatives found that an important aspect of their new workload related to protection requests based on a claim of torture.

Even if the minimum estimate of 10% of asylum applicants had previous exposure to Convention protected forms of ill-treatment, then the scope of the identification, redress and rehabilitative challenges must be considered significant.

Development of the Centre for the Care of Survivors of Torture

Against this background, the 'Refugee Law Comparative Study' was commissioned by the Department of Justice, Equality & Law Reform. The findings were published in September 1999. One recommendation specifically remarked: *"It is advised that the State examine the possibility of assisting in the provision of funding centres to be set up in Ireland for the rehabilitation of such victims. The existence of such a specialized service would be an advantage to the State in the long run, in terms of long term integration into the community"*.⁸

Research work undertaken by Begley during 1997 and 1998 was reported in *'Back to the Road: A Needs Assessment Study of Asylum Seekers in Ireland'*.⁹ In collaboration with public health colleagues, a complementary study entitled *'Asylum in Ireland: A Public Health Perspective'*¹⁰ was subsequently published in 1999. These studies had drawn attention to the multiple unmet educational, psychosocial and healthcare needs facing newly arrived asylum seekers, an unspecified proportion of whom presented with a specific claim of torture. They also highlighted torture survivors as a particularly vulnerable and new population of immigrants into Ireland.

After the establishment of SPIRASI in early 1999, a multi-disciplinary 'think-tank' group¹¹ of interested individuals convened a series of consultative meetings between May 1999 and June 2000. The focus of these meetings was on refining the dimensions of the needs already indicated. Conscious that valuable experience had been gained elsewhere in other European circumscriptions, contact was established with the new Office of United Nations High Commissioner for Refugees (UNHCR) in Ireland, the International Rehabilitation Centre for Torture Victims (IRCT) in Denmark and the Medical Foundation for the Care

of Victims of Torture (MFCVT) in the United Kingdom. Consultations were also held with torture survivors themselves and representatives from a number of migrant organizations active at the time in Ireland. The resulting insights offered a series of orientations which guided the birth of the Centre for the Care of Survivors of Torture.

At that time, existing statutory health services in Ireland were not in a position to adequately respond to the complex medical, medico-legal and therapeutic needs of torture survivors. As in other countries, there was room for the creation of an independent NGO as disclosure of torture related abuse as well as delivery of primary psychotherapeutic support typically requires a safe and supportive environment independent of statutory services. The reason for this is that a majority of torture victims will have endured their traumatic torment at the hands of 'agents of the State'. The consultations also showed that an experienced multidisciplinary team of healthcare professionals would be needed and it was predicted that there would almost be no specialty that would not be required in the future.

Aware that torture survivors are often reluctant to talk about their experience, or may have suppressed it, a premium would need to be placed on quality 'therapeutic time'. A credible service would need to go beyond the short interaction which a family doctor could typically offer. Equally, and especially in a forensic setting, professional discrimination would be important as some individuals may claim torture, even when that has not been their experience. There was a sense from the very beginning that a new specialist service with a defined target population should seek to compliment rather than duplicate statutory provisions. Advice given also pointed out that trained interpreters should be considered an essential aspect of anything offered.

After reflecting on these and many other early insights, it was eventually agreed that the provision of medico-legal reports in the context of the asylum determination process should be an initial priority. Other interventions would be incrementally introduced. After a pilot period of operational preparation, the first referrals were received into the then known 'SPIRASI Medical Program' during the month of June 2000. The initial experience gained in the preparatory period was translated into the acronym: 'AT HOME' (see Table 1).

Table 1: AT HOME

- Accessible
- Timely
- Holistic
- Orientated towards Need
- Multidisciplinary & Multilingual
- Enabling

A vision statement was formulated and it remains: *"The Centre for the Care of Survivors of Torture is a non-profit, humanitarian organization that works with survivors of torture to engage in a healing process to achieve their full potential, whatever their ethnic, gender, religious or political background, in the common goal of the prevention of torture worldwide"*.

3. Statistical and Demographic Overview

Unlike the annual publication of asylum and refugee statistics by governments and the UNHCR, there are no accurate

figures published annually on the number of victims of torture. International estimates vary considerably and often lack comparative value. Where information is provided, it is often incomplete. Amnesty International publishes a list of countries where torture is known to have occurred. Nevertheless, it is known that the 200 rehabilitation centres (see: www.irc.org) registered by International Rehabilitation Council for Torture Victims (IRCT), including the Centre for the Care of Survivors of Torture at SPIRASI, provide medical and psychosocial care to approximately 100,000 survivors annually. However, the true scale of torture is not known.

Likewise, studies on the prevalence of torture in asylum seeking and refugee populations are relatively rare. An important historical investigation by Jespen¹² of a random sample of 3,000 refugees from the 10,000 asylum seekers who arrived in Denmark in 1980 showed a 20% prevalence rate. In contrast, prevalence studies of torture in refugee populations¹³ typically vary from 3% to 35%. These variations can be much higher depending on the composition of the sample in terms of size, age, gender, and particularly, the country of origin. A Swiss study published in 1999 found that 10% of newly arrived asylum seekers screened at entry point level had endured torture.¹⁴ Based on available evidence from these and many other prevalence studies, it can be reasonably assumed that approximately 10% of new asylum seekers will have had a pre-migratory history of Convention covered torture and ill-treatment.

What then has been the experience of the CCST? In the period between 2001 and 2006, nearly two thousand (n=1,962) new registrations were recorded. Figure 2 compares new CCST admissions to 10% of ORAC received Applications for Asylum in Ireland between 2001 and 2006. It can be observed that the line depicting '10% of asylum applications' exhibits a downward slope over the six year period. In contrast, the line indicating 'new CCST registrations' (see table 2) shows an upward slope. It reached a 10% capture rate for the first time in 2005 while a slight dip was observed in 2006.

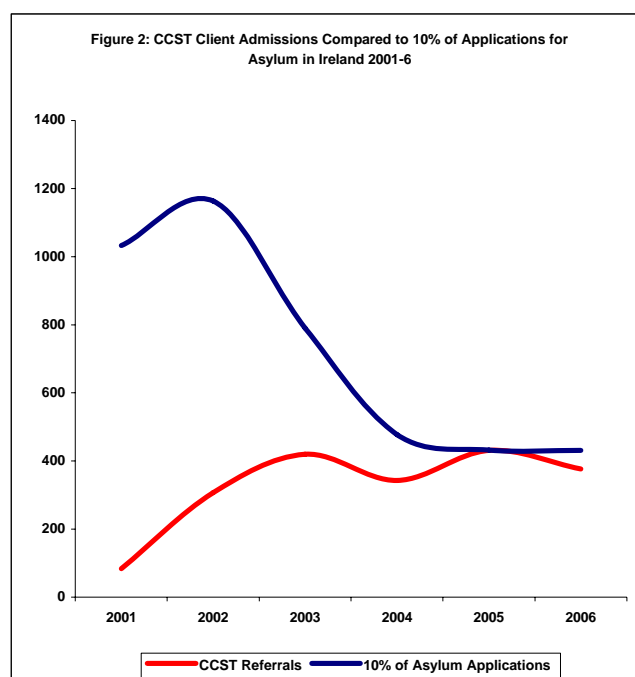
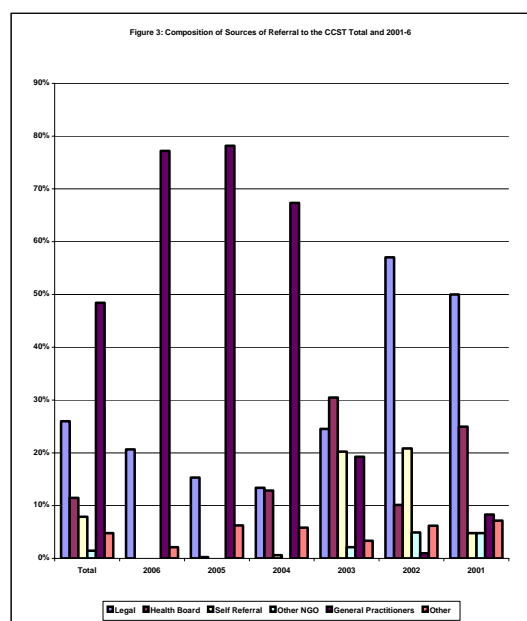


Table 2: CCST Registration 2001-2006

Year	Number
2001	84
2002	307
2003	420
2004	343
2005	431
2006	377

Figure 3 provides a breakdown of the major sources of referral to the CCST for the same period. Nearly half (48%) of all referrals were made by general practitioners (GP's) while a further 11% were accounted for by Health Board referrals, principally from Area Medical Officers. Approximately a quarter of referrals were received from legal representatives, mainly from the Refugee Legal services for medico-legal reports, almost exclusively at appeals stage. In 2006, 113 MLR's were prepared by the CCST, accounting for one-fifth of referrals. UNHCR guidelines are that in ordinary circumstances, an MLR is not necessary. They are of most benefit in disputed cases.¹⁵



In view of the well documented physical, psychiatric, and psychosocial effects of torture,^{16 17 18} and of the many post-migratory problems survivors face during the determination period, it is not surprising that the majority of referrals received are for medical assessments and therapeutic interventions. For torture survivors, the determination period is particularly stressful as it invokes previous feelings of helplessness, powerlessness and uncertainty. Increasingly, clients initially present themselves 'in crisis' and so, the required first order therapeutic response is one of holding and addressing the precipitating dynamics. Sometimes, these are accentuated by the curtailing circumstances of direct provision. Very often, the security of a determination outcome is necessary before the substantive and predisposing factors can be processed. In short, the therapeutic aspect of our work delivered through our team of ten examining physicians, nine counsellors, and psychosocial workers constitute the primary work of staff at the Centre. Guided by a holistic care philosophy, the services offered are outlined in

Table 3.

Table 3: Services Profile

- Medical Assessments
- Medico-legal Assessments
- Counselling and Psychotherapy
- Group Therapy
- Group Social Support
- Art Therapy
- Complementary Therapy
- Psychosocial Support
- Legal Information
- Vocational Guidance
- Language, IT and Lifeskills Training
- Access to Employment Assistance

There has been a relatively constant gender split since 2001 as shown in figure 4 with an overall gender ratio of three male to one female (3M:1F). This finding is broadly consistent with international figures for torture care rehabilitation facilities in Europe. Gender sensitivity is particularly important for females who have survived degrading assaults such as rape in detention centres. For such reasons, it is our policy to offer female clients a female physician, interpreter and psychotherapist.

A comparison of the top 5 CCST and ORAC countries of origin for 2006 is presented in table 4. The country of origin profile of CCST clients is somewhat different to the general asylum seeking population. While nearly a quarter (24%) of all asylum applications lodged with ORAC were made by Nigerian nationals, less than 6% of new CCST registrations were from Nigeria. As important as the top five countries is the fact that half of our clients are accounted for in the 50% 'other category'.

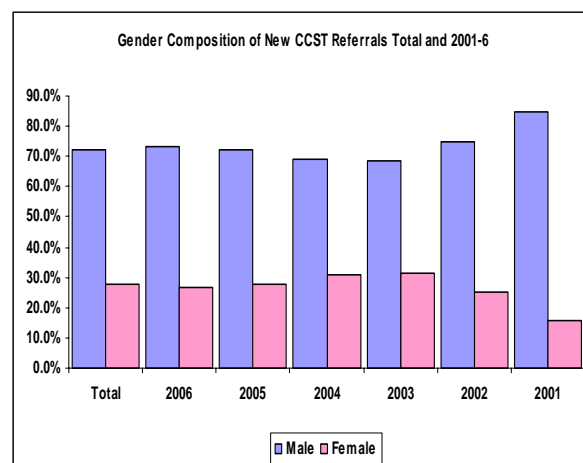


Table 4: Comparison of Top 5 CCST and ORAC Countries of Origin, 2006.

ORAC Countries of Origin	ORAC %	CCST Countries of Origin	CCST %
Nigeria	24%	Sudan	13%
Sudan	7%	Iran	10%
Romania	7%	DRC	10%
Iraq	5%	Somalia	10%
Iran	5%	Nigeria	6%

4. The Istanbul Protocol and Irish Developments

The first international standard for the assessment and formal documentation of alleged torture for determination bodies is that found in the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or degrading Treatment or Punishment)¹⁹. Structured in six chapters with four annexes and published in the six official languages of the UN, it was developed by an international panel of 75 medical, legal, human rights and forensic science experts.

The Protocol outlines the procedures and details the steps to be taken by States, investigators, legal and medical experts to ensure the impartial medical and psychological investigation and documentation of alleged torture.²⁰ An important development in the Irish context is that the Istanbul Protocol formed the basis for the drafting of a 'Framework Document for the Production, Interpretation and Use of Medico-legal Reports in Determining Refugee Status' which includes a format for Medico-legal reports.

This process was guided by the independent chair of the Dublin office of the United Nations High Commissioner for Refugees and at a multi-agency meeting held on 12th December 2006, a final draft of the above mentioned Framework was completed by the principal parties: the Office of the Refugee Applications Commissioner, the Refugee Appeals Tribunal, the Refugee Legal Services, and the Centre for the Care of Survivors of Torture at SPIRASI. It is anticipated that the 'Framework Document for the Production, Interpretation and Use of Medico-legal Reports in Determining Refugee Status' together with a more comprehensive compilation of relevant material in the form of annexes, such as the Istanbul Protocol, will be published during 2007. The importance of such an agreement is that it will hopefully contribute to better quality reports and a better use of them.

5. Working with Interpreters

Communication problems pose a basic barrier in the provision of any service for ethnic minorities.²¹ Face to face interpretation is therefore frequently required. Apart from the strictly linguistic component of communication, the ability to observe and correctly interpret body language, gestures and facial expression, is equally important. In some circumstances, communication may be relatively straightforward such as when there is a common language shared between the clinician and client. In practice, this is seldom the case. Our experience is that Interpreters are normally required in at least two-thirds of therapist-client interactions. Expertise in mediated communication is an indispensable skill and training is necessary both for the interpreter in a specialist setting and the service provider. Of the 646 new and repeat visit clients seen by staff at the Centre for the Care for Survivors of Torture in 2006, 65% required a trained interpreter.

Apart from the substantial direct financial costs involved, €8,000 in 2006, accounting for 12% of the overall CCST expenditure, there are also additional time considerations involved. Moreover, working with interpreters poses specific challenges when engaging therapeutically with survivors of torture. Some of these challenges can be enumerated as follows: the definition of the remit of an interpreter and professional boundaries, the dynamics introduced when a third party is present in a highly sensitive setting, the possibility of secondary traumatisation and counter-

transference dynamics,²² confidentiality issues²³ the training and support needs of both interpreter and health care professional,²⁴ the need to appropriately match an interpreter for gender and age²⁵ as well as religious and ethnic backgrounds.²⁶

We have found that engaging an interpreter per se is not enough to guarantee quality. It is equally necessary for an interpreter to be skilled in the particular mode of interpretation required. This is especially the case in mental health and psychotherapeutic contexts. For instance, the use of the literal mode may be required in a medico-legal setting while it would be inappropriate in a psychotherapeutic setting. The quality of interpreting is a critical variable in the chain of communication and if found faulty can cut the efficacy of the communication chain.

Conclusion

Torture has been described as the act of killing a person without their dying. One of our earlier clients expressed how he felt after arriving in Ireland as follows: *"As I see it, I'm like someone who is dead already. It is just the body that still breathes. I feel like someone who is dead but my frame is walking around. I myself say that it is not me whose (sic) here. It's like I'm already buried back home in my country. There are a lot of problems affecting me because of that torture"* Such powerful and feeling filled words capture something of the prolonged and sapping pain that survivors carry and perhaps remind us all, whatever our particular roles, that the journey to safety and security is likely to be lengthy.

For further information or referral forms, please contact Edward Horgan, Manager of the Centre for the Care of Survivors of Torture at 01-882-3550 or ccstmanager@spirasi.ie

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Jesuit Refugee Service:

“To accompany, to advocate and to serve”



Eugene Quinn,
National Director, JRS Ireland

About JRS worldwide

The Jesuit Refugee Service (JRS) is an international Catholic non-governmental organisation, founded in 1980. The mission of JRS is to accompany, advocate and serve the cause of refugees and forcibly displaced persons worldwide. JRS operates at national and regional levels with the support of an international office in Rome.

JRS programmes are found in over 50 countries, providing assistance to refugees in camps, to people displaced within their own country, to asylum seekers in cities and those held in detention. The main areas of work are Education, Advocacy, Emergency Assistance, Health and Nutrition, Income Generating Activities and Social Services. It is estimated that more than 450,000 individuals are direct beneficiaries of JRS projects worldwide.

JRS is concerned that refugee protection standards have been eroded in many parts of the world. JRS International has co-ordinated the efforts of JRS national offices to take action through lobbying, submission of policy papers, education, media work, and collaboration with other organisations.

JRS also contributes to research in issues relating to refugees at the University of Oxford and the University of Deusto,

Bilbao. At Oxford, the 'Pedro Arrupe Tutor' undertakes overseas research in the name of JRS as well as facilitating the training of JRS personnel.



At the Institute of Human Rights, University of Deusto, Bilbao, the main tasks of the Pedro Arrupe Tutorship include conducting research, teaching and consultancy concerning refugees and forced migration for church agencies, other non-governmental organisations and for governments.

In Europe, JRS works in 27 countries. Activities include:

- visiting asylum seekers in detention
- giving legal advice to asylum seekers and irregular migrants
- counselling those traumatised by persecution and flight
- serving as chaplains in open reception or accommodation centres as well as in closed facilities or premises (detention)
- providing food and shelter to destitute migrants.

JRS in Ireland

JRS (Ireland) is a national office of the Jesuit Refugee Service. It was established in 1996; Frank Sammon SJ was National Director from 1996 to 2006.

The role of JRS Ireland in the period 1996–2002 was principally in the areas of policy, individual advocacy, and support for other projects and organisations in the sector. In 2002, in partnership with the Jesuit Centre for Faith and Justice, JRS (Ireland) obtained funding from the European Refugee Fund to set up an integration project, Community Links.

In August 2006, a fulltime Country Director was appointed to JRS Ireland. JRS Ireland is now being established as a charitable trust and a new Head Office is being set up in Limerick.

JRS Ireland aims to:

- Promote improvements in the reception and integration of asylum seekers, refugees and migrants.
- Support non-Irish nationals who are in detention under immigration legislation.
- Advocate for a more just and speedy immigration system and asylum process.
- Foster a more positive public image of asylum seekers and migrants in Ireland and deepen public understanding of asylum and migration issues.

Integration

The work of JRS Ireland in the area of integration is carried out primarily through the Community Links project. The overall purpose of the project is to promote the integration of newly- arrived communities and to help them become part of the local community. Community Links focuses especially on the needs of refugee and migrant families living in Dublin's inner city.

The core aims of Community Links are:

- To support community activities so that real communication, trust, friendship and co-operation can grow for the benefit of all.
- To dispel myths and misinformation about refugees and asylum seekers.

- To provide refugees and migrants with social, cultural and life management skills that will enable them to cope with everyday situations in their new surroundings, to engage in further studies and to become active members of society.

Community Links has three main programmes.

1. *School Integration Programme*

This programme aims to support refugee and migrant families and local schools in Dublin inner city in a variety of ways. The school integration programme's activities have included:

the translation of documents and prospectuses for several schools and colleges in Dublin inner city; the provision of interpretation services for parents with limited or no English; the production of a leaflet on the educational system in Ireland in a number of languages.

Among the awareness-raising activities carried out in schools are: a Story and Picture Competition, *Linking Communities*, in primary and secondary schools; support for Jesuit schools in Ireland entering the JRS *Pedro Arrupe Award*; and presentations on refugee issues.



A School Resource Folder has been published; this was developed following consultation with teachers. It contains country data on the main migrant countries of origin and letter templates in ten languages for communication between parents and teachers.

For further information on this resource, contact Ruth Diaz-Ufano at clproject@jesuit.ie.

2. *Capacity Building Programme*



This programme organises training courses aimed at enhancing the capacity of community leaders and groups and supporting individuals in acquiring new skills. The training courses provided during 2006 included Positive Parenting, CV Preparation, Interview

Skills and Intercultural Communication. A particularly interesting initiative was a training course on the Roles and Responsibilities of Board/ Management Committee Members, specifically designed for refugee led community groups.

For a list of training courses planned in 2007, contact Majella Dennehy at cl.capacitybuilding@jesuit.ie.

3. *Intercultural Activities*

Through a series of intercultural events and activities this programme hopes to lessen the isolation of asylum and refugee families, facilitate interaction and bonding between participants and enable them to learn more about different cultures and communities now living in Dublin.

During 2006, intercultural events included a World Refugee Day Open Forum, and an Understanding Ireland Film Forum. There was an enhanced Summer Programme of sports activities and outings, very well attended by both migrant and local families.

An Intercultural and Interfaith Calendar for 2007 was published and circulated widely. For more information about the calendar or intercultural activities, contact Michael Ancheta, at cl.outreach@jesuit.ie.

Working Groups Community Links has established two working groups to plan and organise certain activities and events. These working groups include volunteers from various cultural, religious and ethnic backgrounds.

The Integration Support Group coordinates intercultural community events and activities, including the Summer Programme. A Women's Integration Group includes women from local and newly- arrived communities. It focuses on capacity-building initiatives and aims, through its meetings and activities, to deepen understanding of the different cultural and religious traditions of members, with particular reference to women's issues.

Peer Tutoring and Outreach

During the past year, JRS Ireland has expanded its language services. Three initiatives are underway involving one-to-one peer tutoring in English language for asylum seekers and refugees. The first involves Transition Year Students from Belvedere College providing language classes to residents of the Georgian Hall reception centre; the other two are in collaboration with the Suas Committee and students from Trinity College and they provide a service to residents in the Hatch Hall reception centre and to members of the Somali Community.

A JRS project worker also visits reception and accommodation centres to provide outreach and support for asylum seekers in Dublin.

Detention

JRS Europe has taken a lead role in campaigning against the increased use of detention for asylum seekers and irregular migrants, and against the conditions of their detention.

In 2004 it published a comprehensive report, *Detention in Europe*, on administrative detention of asylum seekers and irregular migrants in Europe. A dedicated website www.detention-in-europe.org monitors the situation with regard to detention in European Union member states.

In September 2005, as part of a Europe wide campaign to raise awareness on this issue, JRS Ireland arranged for four Irish MEPs to visit Cloverhill Prison to assess the conditions of detention for persons detained under immigration provisions.

JRS Ireland provides ongoing outreach and psychosocial support to women detained in Mountjoy Women's Prison under immigration provisions. A follow-up service for women after release from detention is also provided.

A word of thanks

JRS Ireland could not 'accompany, advocate and serve' the cause of refugees, asylum seekers and new communities in Ireland without the generous assistance of many people.

I would like to express my deep gratitude to all our patrons for their financial support and to all the people who, in a voluntary capacity, support our work and services.



New Rules for the New Irish – The Immigration Residence and Protection Bill 2007 Public Conference

The Law Society hosted a one day public conference on 27 January on the Immigration, Residence and Protection Bill 2007. The keynote speaker was the Tánaiste and Minister for Justice, Equality and Law Reform, Michael McDowell, TD. Presentations were also given by Brian Ingoldsby, Kevin O'Sullivan and David Costello from the Department of Justice, Equality and Law Reform. There was also a range of other speakers and panellists which included Grainne Brophy from the RLS, Ciara Smyth, Lecturer in Law in NUI, Galway, Lucy Gaffney, Chairperson of the National Action Plan Against Racism in Ireland, Noeline Blackwell, Director General of Free Legal Aid Centres and Catherine Cosgrove, Legal Officer in the Immigrant Council of Ireland. We include summaries of speeches by the Tánaiste and Brian Ingoldsby as well as a paper by Grainne Brophy.



Immigration, Residence and Protection Scheme- Protection Aspects



Grainne Brophy, solicitor, Refugee Legal Service

(This is a longer version of an article which appeared in Public Affairs Ireland)

Historical overview

The 1951 Geneva Convention relating to the Status of Refugees provides the framework for the legal protection provided to refugees. Ireland joined the United Nations in 1956 and, also in that year, acceded to the Convention.

Prior to 1996, the concept of a refugee was unknown to Irish legislation. The treatment of non-nationals was provided for by the Aliens Act 1935 but it made no provision for the manner in which applications for asylum would be dealt with. The mid-1990s witnessed a dramatic increase in the number of asylum applications. Initially applications were processed on an administrative basis which were somewhat formalised by the Von Arnim procedures and subsequently the Hope Hanlon procedures. The Refugee Act 1996 put the administrative procedures on a legislative footing. The Refugee Act was amended *inter alia* by the Immigration Act 1999, the Immigration Act 2003 and the Immigration Act 2004.

Immigration, Residence and Protection Scheme

In an attempt to streamline the legislation and put in place a manageable legislative framework and to honour obligations arising at EU level, the Government is in the process of drafting the Immigration, Residency and Protection Bill. The Scheme of the Bill was published and was subject to a consultative process with the Human Rights Commission. It is intended that the statutory Scheme will encompass a code both for Immigration and Protection claims. The Bill will include the transposition of the EU Council directive 2004/83 EC on minimum standards for the qualification of status of third country nationals or stateless persons. The Bill will repeal all existing asylum legislation.

Key provisions

Principal features of the Scheme are the disestablishment of the Office of the Refugee Applications Commissioner with its replacement by Irish Naturalisation and Immigration Unit, which is part of the Department of Justice. The Refugee Appeals Tribunal is to be replaced by the Protection Review Tribunal. The Scheme introduces a single procedure, whereby an applicant at first instance will have their claim for Refugee status and Subsidiary Protection assessed. The Scheme introduces the concept of a temporary protection permit, which is granted to a protection applicant for the duration of their protection claim and allows them to remain in the State. The permit expires immediately following an unsuccessful application for protection. If an applicant fails to submit an appeal to the Protection Review Tribunal within the statutory deadline, the applicant will be deemed to be unlawfully in the State and will be required to remove themselves. It is unclear whether there will be provision to lodge a late appeal with the Protection Review Tribunal. This situation could create difficulties for a protection applicant who may face persecution on his return to his country and whose appeal deadline may have been missed through no fault of his own. On a practical basis he may not have a visa/passport or financial means to remove himself.

In the case of *Duba* the court held that the provisions of section 16 (3) of the Refugee Act 1996 did not preclude the acceptance by the RAT of an appeal outside the time limits.

Burden of proof

Head 47 amends significantly the current statutory provisions relating to Burden of proof, contained in Section S11 (A), by stating that it shall be for the protection applicant to establish that he or she is entitled to protection in the state. This shifts the burden of proof. Presently only an applicant from either a country designated as safe, or an applicant who has lodged an application in a country which is a party to the Geneva Convention or who is subject to Dublin Regulation is subject to such a provision.

Credibility

The Scheme amends the current statutory provisions as contained in Section 11 of the Refugee Act 1996. It introduces new grounds which grounds are based on the EU Council directive 2004/83.

The new grounds include *inter-alia* whether the applicant has

- (i) raised only issues that are not relevant or of minimal relevance to the examination of whether he/she qualifies as a refugee.
- (ii) Adduced manifestly false evidence in support of his or her application or has otherwise made false representations either orally or in writing.
- (iii) Made inconsistent contradictory, unlikely or insufficient representations in attempting to substantiate his/her claim that he/she would be at risk of persecution.

Leave to remain

Under the new procedures there will be no provision for an unsuccessful protection applicant to make an application for leave to remain on humanitarian grounds. The Scheme permits the Minister to allow an applicant to remain in the State if there are exceptional reasons, which reasons can only relate to why an applicant left his country. It is unclear in the Scheme as drafted how the Minister might consider representations on matters that fall outside the refugee and subsidiary protection definition.

Protection Review Tribunal

The Bill creates a new appeals tribunal with enhanced powers, the Protection Review Tribunal. The Scheme defines the Tribunal hearing as inquisitorial in nature. The Scheme permits the Chairperson to refer a tribunal decision to the High Court where he/she considers there has been an error of law. The chairperson might consider doing this by way of case stated and on notice to the parties. The Scheme provides the Chairperson with power to review draft decisions of Tribunal Members. Such a provision may interfere in the independence of the Member and fair procedures would dictate that this should be on notice to the relevant parties, with provision to make relevant submissions.

The Scheme permits the Chairperson to publish decisions of the Tribunal. While this appears to comply with the Supreme Court decision in *Atanasov*¹, it would be preferable if all decisions of the Tribunal were published as recommended by international best practice.

There is provision allowing the Chairperson to publish guidelines directing how a claim for protection should be assessed. There is a wealth of jurisprudence from the High Court on this issue contained in judgments such as *Bujari*², and *Da Silveria*.³ In the case of *Zhuckova*⁴ - Clarke J found that;

“A finding of lack of credibility has to be based on a rational analysis which explained why, in the view of the deciding officer, the truth had not been told.”

In the case of *Sango*⁵ Peart J found that there must be a finding on the core facts of the claim. These legal principles could be incorporated into Tribunal guidelines. There is precedent for such an approach from other jurisdictions. The US Immigration and Nationality Act contains specific provisions in relation to determining credibility, in particular it notes that there should be consideration of the totality of the circumstances and of all relevant factors, that credibility should be assessed with regard to reports of the Department of State on country conditions, any that consideration should be given as to whether any inaccuracies or falsehoods go to the heart of the applicants claim.

The publication of guidelines would be welcomed by Practitioners who continue to observe a lack of consistency in decision making by Tribunal Members and find in some decision that the Tribunal Member has failed to make findings on core matters of fact relating to the asylum claim.

Judicial Review

The Illegal Immigrants (Trafficking) Act 2000 provides for specialised procedures regarding Judicial Review of asylum and refugee matters. An application for Leave must be made within 14 days of the date on which person was notified of the decision/ recommendation/refusal or making of the order. This period can only be extended where Act considers that there is “good and sufficient reason” doing so.

Leave is only granted where the Court is satisfied that there are “substantial grounds”. There is no appeal to the Supreme

Court except with the leave of the High Court and where that Court certifies that its decision “involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court”. The Bill was the subject of a Supreme Court reference and its constitutionality was upheld. The Court found that the discretion of the court to extend the time to apply for leave where the applicant shows “good and sufficient reason” for doing so was wide and ample enough to avoid injustice where an applicant has been unable through no fault of his or her own or for good and sufficient reason to bring the application within the fourteen day period.

The Scheme introduces new procedures in relation to Judicial Review. It provides that an application for Judicial Review against a transfer or a removal of a foreign national shall not of itself suspend the transfer. It does allow the court to suspend the transfer or removal for the purpose of giving instructions to an applicant’s legal representative, where it is satisfied that the giving of such instructions would otherwise be impossible. This provision is of concern to Solicitors given the practical difficulties that arise with progressing a case where the client is outside the jurisdiction and more particularly from the applicant’s perspective, given the potential dangers faced by them on their return to their country of origin.

In the case of *Adebayo & others v ORAC & a Garda Siochanna*⁶, Peart J noted that;

“There is no reason why an applicant could should or would be prevented from making his or her application in person if so desired. In such a situation clearly a presence in the State is a pre-requisite. Secondly it will in all probability be a disadvantage for a person to engage legal representation and properly and fully instruct lawyers from a great distance. That is an unwarranted restriction on a right of access to the courts, and could infringe to an impermissible degree the principle of equality of arms. Thirdly given the short applicable time limits and the procedures in place to ensure, as far as can be ensured, an expeditious conclusion of the proceedings, the removal of the applicant from the challenge to deportation is surely a measure which ought to be regarded as disproportionate to the objective sought to be achieved.”

Head 72 of the Scheme provides that the Court may not extend the period unless it is satisfied or the applicant has satisfied the court of each of the following conditions fulfilled; the applicant –

- (i) did not become aware until after the expiration of the period referred to in that subhead of the material facts on which the grounds of the said application for leave are based, or
 - (ii) did, before that period’s expiration, become aware of those facts but only after such number of days of that period had elapsed as would not have made it reasonably practicable for the applicant to have made said application for leave before that period’s expiration,
 - (iii) the applicant could not with reasonable diligence have become aware of those facts until after the expiration of that period, or, as the case may be, those number of days had elapsed,
- and

⁶ Unreported Peart J 27/10/2004

¹ *Atanasov v Refugee Appeals Tribunal & Ors* (2006) IESC 53.

² Unreported Finlay Geoghegan J 7/5/2003

³ Unreported Peart J 9/7/2004

⁴ Unreported Clarke J 26/11/2004

⁵ Unreported Peart J 24/11/2005

(iv) The said application for leave has been made as soon as is reasonably practicable after the applicant has become aware of those facts,

or

(v) that there are other exceptional circumstances relating to the applicant whereby through no fault of the applicant the application could not be made within the period referred to in subhead (2) (a).

Does this set a higher threshold than good and sufficient reason?

The Scheme grants the court discretion to make an order for costs against the applicants legal representative, where in its opinion, the grounds advanced are invalid or ought to be quashed, or are frivolous or vexatious. In a recent case the President of the High Court held that the power to make an order for costs against a Solicitor should be exercised only if the solicitor is 'guilty of misconduct or gross negligence'.

It is to be noted that although an applicant is obliged to comply with very strict time limits in bringing an application for review, the average life of a case is in excess of 18 months. Further it is not unusual for the State to have difficulty complying with court time limits for submission of replying affidavits etc.

Separated children

The Scheme contains new provisions in relation to separated children. The HSE will be required to appoint a responsible adult where it is satisfied that a child is not in the custody of an adult. There is no definition in the Scheme defining a responsible adult.

A recent report from the Law Society recommends that a uniform definition of separated child should be adopted in legislation to reflect the broader international definition, which defines a separated child as "a child who is under 18 years of age and who is separated from both parents and is not being cared for by an adult, who by law or custom has responsibility to do so".

There is a concern that minors are being re-united with adults or relatives who are not their legal guardians within the meaning of the Guardianship of Infants Act 1964. The adult in whose care they are placed may not pursue a claim for asylum on their behalf.

There are other issues relating to separated children, such as age assessment, access to the courts, the procedures to be adopted in the processing of a minor's asylum application, which issues are not addressed by the Scheme of the Bill. The failure to address these matters is a missed opportunity.

Conclusion

The Bill is currently being drafted however no clear indication has been given as to when it may be published.

While certain aspects of the Bill are to be welcomed such as the single procedure for processing claims and the fact that the Bill will put in place a manageable legislative framework to govern asylum law, many provisions of the Scheme as outlined above are of concern. There appears to be a serious lacuna in respect of applicants who fall outside the restrictive definition of refugee or subsidiary protection. The provisions requiring applicants to remove themselves from the State following an unsuccessful claim raises issues regarding the protection of applicants. Finally there clearly is a missed

opportunity in respect of separated children to set down clear guidelines and procedures and to adopt a definition of separated child in line with international best practice.

Grainne Brophy is co. author with Moira Shipsey and Emmet Whelan of "A Practitioner's Guide to Asylum and Protection Law in Ireland", a text book to be published by Clarus Press later this year.

An Overview of the Key Features of the Scheme of the Immigration, Residence and Protection Bill 2007

(The following is a summary of a presentation given by the Tánaiste and Minister for Justice, Equality and Law Reform, Michael McDowell, TD)

The Tánaiste began by saying that "our wealth and prosperity and economic well being are built on and depend on inward migration. Inward migration today as nearly always in the past has the potential to enrich and to strengthen the Irish state. Within limits diversity strengthens rather than weakens Ireland".

He referred to the "profound transformation from a country of emigration to one of substantial immigration, bringing us very quickly to a position where 10% - and this figure is increasing - of our population is made up of immigrants representing 120 nationalities... This represents arguably the most significant demographic change in Ireland since the Famine."

Key Principles underlying the Bill

The Tánaiste said that underlying the Immigration Residence and Protection Bill (which he intended to bring to the Oireachtas during this coming term) there is a series of key principles, all of which have "equal weight in the scheme of things":

Management of immigration

"First: it must be recognised that Ireland, like any sovereign state, starts out from a position that no foreign national has an absolute right to come here. The State has not only the power to manage the entry to, presence in and removal from the State of non-nationals, but in fact has a duty to do so in protection of the interests of society; that responsibility rests on the Executive of the day, the Government."

He noted that the Bill retains ministerial discretion in a number of areas and that he did not "propose to pass the management of the immigration system over to the Courts".

Protection of security and good order

The second principle according to the Tánaiste is:

"[O]ur immigration system must operate in a manner that protects the security and good order of the State, its citizens and - let's not forget - our communities of foreign nationals lawfully present here and forming part of Irish society... Foreign nationals who break the law or help others to do so are liable to be removed."

Respect for human rights

The third principle "is the essential requirement that human rights are fully respected". The Tánaiste said that he took this responsibility seriously and that he had referred the draft heads of the Bill to the Irish Human Rights Commission and had received a detailed response, for which he was grateful.

Single Process

He said that the Bill would streamline the way in which we deal with protection applicants:

“The single process, which will give protection applicants a complete answer to the question “please can I stay?, will be in ease of those actually in need of the protection of the State, and will be fair also to the taxpayer who has to support protection applicants until that decision is reached.”

Sustainability

The fourth principle is sustainability by which the Tánaiste meant “the capacity of the country, its infrastructure, its labour market, its schools, housing and other services to accommodate the people coming into Ireland.”

Illegal residents

Fifthly, the Tánaiste said that “there must be a very clear distinction between those who are in the country legally and those who are not. This distinction will operate in two ways: First, those who are illegally here must remove themselves and if they do not then the State will do so...”

“Secondly, the hospitality of the State and access to its services must be reserved for those who come through the legal route and who play by the rules...Ireland will be a welcoming and generous host to those who come through the front door...At the other end of the scale persons unlawfully here will be excluded from all but the most basic services...Long term residents ... will have rights as close as possible to those of Irish citizens. Below that status, a sliding scale of entitlements will operate depending on a person’s status; and this is being established in discussions with the relevant State service providers.”

Selectivity

The sixth principle is selectivity: “Immigration systems the world over compete to invite people with particular expertise and talent...The Immigration, Residence and Protection Bill will support that initiative, and my Department will on an ongoing basis be responsive through policy statements to the needs of the economy and of society in general.”

Detention

The Tánaiste said that because the majority of claims turn out to be groundless he is “looking seriously at the possibility of including in this Bill provisions, such as those operating with success in the Netherlands and the United Kingdom, for detaining selected protection claimants on arrival in the State or on later making their claims for protection, with a view to processing the claims to finality, with whatever appeal stages are necessary, as a matter of great priority and, if they turn out to be without foundation, removing the claimants forthwith from the State.”

The Tánaiste said that “the same high standards of procedural fairness will apply as to normal investigations”.

Balance

The Tánaiste said that the Bill is also about striking a balance:

“It is about balance at an elementary level between the needs of Irish citizens and those seeking to come here... No one is suggesting unlimited access. No one is suggesting zero access. We all want immigration to be managed in an efficient and transparent manner.”

The balance is also between legislation and Ministerial discretion:

“It brings for the first time all of the aspects of immigration under a legislative umbrella... At the same time it retains the necessary level of ministerial discretion to enable political responsibility to be properly discharged in an area that is fundamental to the interests of the State. These elements - legislation and discretion - are not in conflict, rather they are complementary.”

Policy statements

The Tánaiste spoke of the proposed use “policy statements in tandem with clear, legislatively specified procedures”. Under this heading he said that he intended to publish a scheme for long term residents, which is “modelled to a considerable degree on the EU Directive on Long Term Residence”. There would also be a series of policy statements drawn up in the area of family reunification. In relation to the victims of trafficking he said that it is his intention to ask the Government to sign the Council of Europe Convention on Trafficking and that he will also “provide a clear policy statement setting out how these cases will be managed once it is established that trafficking has taken place”.

Naturalisation

The Tánaiste said that he is considering a reform of the formalities and procedures for the granting of citizenship through the process of naturalisation: “It seems to me that citizenship as distinct from residence, which carries with it the right to participate in the civic life of the country and which entails duties already mentioned of fidelity to the nation and loyalty to the state should perhaps be conferred only on those who can demonstrate that they have a minimum level of understanding of the nation and state to which those duties are owed and a minimum capacity to interact linguistically with the other citizens of the state.”

The Scheme of the Immigration, Residence and Protection Bill 2007

Brian Ingoldsby, a Principal Officer in the Civil Law Reform Division of the Department of Justice, Equality and Law Reform stated that the Bill “will represent the most radical overhaul of the State’s immigration laws since the enactment of the Aliens Act 1935.” The following is a summary of Brian Ingoldsby’s paper:

Main provisions of the Bill

The Bill will provide:

- A new statutory process for the promulgation of statements of immigration policy;
- A statutory framework for processes where none has heretofore existed (e.g. visas);
- New methodologies for giving expression to lawful residence in the State (i.e. residence permits);
- The introduction of the concept of long-term residence in the State with rights equivalent to those of Irish citizens;
- Simplified processes for the removal of persons unlawfully in the State; and
- More efficient processes for complying with the State’s obligations to those in need of protection.

Fundamental Principles

The Bill will set out a number of fundamental principles governing the presence of foreign nationals in the State, namely:

- The principle that a foreign national will be lawfully present in the State only if he or she has a current valid residence permit
- A foreign national who is present in the State without such a permit, or whose permit has either lapsed, not been renewed or has been revoked is unlawfully in the State;
- A foreign national who no longer has a valid residence permit is under an obligation to leave the State forthwith;
- A foreign national who fails to comply with the obligation to leave the State is liable to be removed, if necessary against the person's will and if necessary with arrest and detention for that purpose.

It is expected that the Bill will remove any existing confusion about the lawfulness or otherwise of a foreign national's status in the State.

Immigration Policy Statements

The Bill will contain provisions for the making and promulgation of policy statements which will guide the day-to-day operation of the new legislative arrangements by immigration officers, officials of INIS and others.

Immigration policy statements will be laid before the Houses of the Oireachtas for the information of both Houses and gazetted in *Iris Oifigiúil* as soon as possible after they have been made.

This approach is in line with High and Supreme Court judgments which make clear that the creation and variation of immigration policies to suit changes in social or economic climate or for any other reason are matters for the Executive, not the Legislature.

Fair Procedures

The Bill will strike a balance between the interests of foreign nationals wishing to migrate to the State and the obligation of the State to manage such migration and the need to have in place systems and procedures which facilitate those interests in a fair, transparent and coherent manner. The Bill will contain detailed provisions relating to visas, entry to the State, residence permits, removal from the State and protection. The level of detail in the Bill will provide clarity, procedural guarantees and transparency and should also lead to greater consistency of decision making. Foreign nationals will continue to have access to the courts by way of the judicial review process.

Visas (Part 3 of the Scheme)

The Bill will put the visa pre-clearance process on a statutory footing. It will make provision for:

- A statutory definition of a visa, transit visa and visa required person
- The process of applying for a visa and the matters to be taken into account in considering whether a visa is to be granted.
- The process for revocation of a visa
- The process for review of negative visa decisions

The Bill will make a clear distinction between a visa (which gives a person permission to present at a point of entry seeking permission to come in) and a residence permit (which is what allows one to be present in the State).

Entry into the State (Part 4 of the Scheme)

The Bill will reproduce much of the present law on entry to the State including provisions dealing with refusal of entry and with carrier liability for proper documentation.

Residence Permits and Registration Requirements (Part 5 of the Scheme)

The intention is that there will be a variety of classes of residence permits to suit different categories of foreign nationals. Residence permits will be subject to:

- The duration of the permit
- Whether it is renewable
- Whether and to what extent the holder can access publicly funded services or seek employment, etc.

Under the Bill short-term, non-renewable entry permits will be issued on arrival to foreign nationals coming for a visit or for short courses of study. Holders of such entry permits will be expected to leave on or before expiry of the permit and there will be no obstacle to a person who has held such a permit applying again from abroad for a subsequent visit.

It is expected that immigration policy statements will set out the various classes of permits which will be issued and the conditions attaching to each class of permit. The permit will be a crucial element in the identification of that person in the context of accessing benefits, etc.

Long-term residence

The Bill will make provision for a statutory long-term resident status. The benefits of long-term resident status will include access to State services, benefits and allowances on a par with Irish citizens in most respects, including access to third level education. The Bill will make provision for two routes to this status:

- Gradual acquisition following periodically renewed residence over five years; and
- For particularly sought-after migrants and their families, many of the attributes of long-term migrant status directly on arrival in the State, with full acquisition after a two year probationary period.

Revocation or non-renewal of permit

There will arise from time to time circumstances where non-renewal may have to be considered or where during the currency of the permit the question of revocation may arise. In order to work fairly and effectively it is necessary for the Bill to contain provisions that a person who has been lawfully in the State cannot suddenly and without notice be put in the position of being unlawfully in the State. If the question arises of revoking or not renewing a medium or longer term renewable permit a process of notification will be made and the person will be given the opportunity of making representations as to why such a proposal should not be followed through.

Removals (Part 6 of the Scheme)

The Bill will set out the process of removing a person who is unlawfully in the State. A person will be unlawfully in the State where he or she has:

- Entered illegally
- Had his or her residence permit revoked or not renewed for stated reasons following the consideration of any representations
- Remained in the State following the expiry of his or her residence permit; or
- Been refused protection in the State and permission to remain on any other grounds, following a comprehensive examination of his or her application to remain in the State on protection and other grounds.

Where a person is removed the Bill will prohibit that person from seeking or being granted permission to enter the State for a period of not less than six months. This period can be reduced by the Minister in appropriate cases.

The Bill will:

- Deal comprehensively with the State's obligations in relation to *non-refoulement*
- Allow for the imposition by an immigration officer of a residence and reporting requirement on a foreign national instead of a person being arrested and detained;
- Contain provisions making foreign nationals who have been removed under the Scheme liable for the costs incurred by the State in removing them.

The existing legal obligations of carriers in relation to foreign nationals being removed will be maintained.

Brian Ingoldsy concluded by stating: "We are at present working with the Parliamentary Counsel to the Government to finalise the text of the Bill with a view to its publication as soon as possible".

IHRC Observations on the Scheme

A number of speakers including the Tánaiste referred to the Irish Human Rights Commission *Observations on the Scheme of the Immigration, Residency and Protection Bill 2006*. Two issues came up again and again during the Conference: detention and the marriage of foreign nationals in the state. The following are some excerpts from the IHRC Observations on the Scheme:

"General observations of the IHRC

...The IHRC also wishes to reiterate at the outset its view that prison is not a suitable place of detention for asylum-seekers and other immigration related detainees who are attempting to enter the State or who are subject to removal orders. The IHRC notes that the Scheme contains a number of provisions that allow for the arrest and detention of protection applicants and for their detention in a "prescribed place" (Head 18(4)(b)(ii), Head 26(8), and Head 40). The IHRC is particularly concerned about the negative impact on children whose parents are detained in prisons on immigration related grounds and who are then placed in the care of the HSE. The CERD Committee and the CPT have both highlighted this issue in respect of Ireland and have recommended that special detention facilities offering material conditions and a regime suitable to the legal situation of such persons should be established in Ireland..."

"6.2 Permission to enter the state

Head 18 specifies the circumstances in which a foreign national can be given permission to enter the State. Where a person has made an application for protection, the immigration officer is required, where practicable, to issue the person with a protection temporary residence permit in accordance with Head 26. Where it is "not practicable" for the immigration officer to issue a protection temporary residence permit the immigration officer can either detain the person or require the person to remain in a specified place to facilitate the issue by the Minister of a protection temporary residence permit.

IHRC analysis and recommendations

Head 18(4)(b)(ii) – Under Article 5(1)(f) of the ECHR the arrest or detention of a foreign national pending the decision on his or her admission, deportation or extradition must be lawful and must be in conformity with the applicable provisions of both domestic and international law and should not be imposed arbitrarily. Moreover, the domestic law should be sufficiently accessible and precise and this is especially the case with regard to asylum-seekers.

The UNHCR EXCOM Conclusions provide that the detention of an asylum-seeker should be a measure of last resort and should only take place in a number of limited circumstances. The IHRC is of the opinion that sub-Head 18(4)(b)(ii), which allows an immigration officer to detain a foreign national where it is "not practicable" for the officer to issue the foreign national with a protection temporary residence permit, raises questions of compliance with Article 5(1)(f) of the ECHR and goes further than EXCOM Conclusion 44. This provision is in place to deal with the scenario where a person makes an asylum application in a place where it is not possible to issue that person with a protection temporary residence permit. The circumstances in which a person can be detained should be more tightly prescribed in order to avoid the excessive use of this power, and in general, detention in these circumstances should be a measure of last resort. There is no specification in relation to the maximum period for which a person can be detained and where that person will be detained.

The IHRC recommends that adequate safeguards should be put in place in respect of this detention including the requirement that the detention should be for the shortest period possible and that the authorities should be required to obtain a protection residence permit for the person as a matter of priority."

"7.3 Protection temporary residence permit

Head 26 provides for a protection temporary residence permit for a foreign national who has been granted permission to enter or remain in the State for the purposes of a protection application. Sub-head 2 specifies various times when the protection temporary residence permit will be deemed to have expired. In particular, the protection temporary residence permit will be deemed to have expired on the date on which notice is sent that a protection application appeal has been determined. Head 26(8) grounds (a)-(g) set out the circumstances in which an immigration officer or member of the Garda Síochána can detain a protection temporary residence permit holder.

IHRC analysis and recommendations

Head 26(2) – The IHRC is concerned that the provisions around the expiry of a protection temporary residence permits may result in persons being deemed unlawfully present following the refusal of their protection application at first instance and appeal. Where a protection application is refused at both first instance and appeal the person may still have a claim to remain in the State on humanitarian or other grounds. Under the current proposals in relation to the expiry of protection temporary resident permits such persons will no longer be in possession of a valid residence permit to remain in the State and will be under an obligation to remove themselves from the State. The IHRC recommends that the residence permit status of such persons needs to be clarified

Head 26(8) – The IHRC is concerned about the wide number of grounds on which a protection applicant can be detained under the Scheme. In particular, grounds (b), (d), (e) and (g) appear to go further than the UNHCR EXCOM Conclusion 44 in relation to the limited circumstances in which asylum seekers should be detained. The IHRC recommends that the Scheme should be amended to comply with this UNHCR standard and that detention of protection applicants should be a measure of last resort.

Head 26(13) – A District Court judge can continue to detain a person for successive periods of 21 days where he or she is satisfied that one or more of the grounds under Head 26(8) applies until that person's protection application has been finally determined. There is no maximum period of detention specified in relation to such persons.

Under Article 5(1)(f) of the ECHR the Court has not specified a maximum period of detention for which such persons can be detained. However, it is clear that the State authorities should exercise due diligence in pursuing the expulsion proceedings and should not allow the detention period to be unnecessarily prolonged. Furthermore, under Article 9(1) of the ICCPR in order to avoid a characterisation of arbitrariness, detention should not continue beyond the period for which the State party can provide an appropriate justification. Moreover, the review of the person's detention should include a substantive review of the justification for his or her continued detention and should not be unduly limited.

The IHRC recommends that in order to comply with these human rights standards the legislative proposal should be amended to require that where a protection applicant has been detained his or her protection application should be prioritised and dealt with promptly. In particular, Head 50 should be amended to include this category of applicants as one in respect of which the Tribunal can afford priority. Moreover, legislation should specify that in considering whether to renew the applicant's period of detention under the grounds specified in Head 26(8) for a further 21 days the District Court judge should also review the continued appropriateness and justification for the persons detention and should consider whether alternatives to detention would be more appropriate having regard to the characteristics of the protection applicant."

"8.2 Arrest and detention of foreign nationals for the purposes of removal from the State

Head 40 sets out the powers of the Garda Síochána and immigration officers for the arrest and detention of foreign nationals for the purposes of removal from the State. Where a

foreign national is subject to removal a Garda Síochána or immigration officer will be empowered to detain that person under warrant in a prescribed place. A person arrested or detained for removal can be detained until he or she is removed from the State but may not be detained for a period exceeding 8 weeks in aggregate. A person subject to removal will not be detained if they are under the age of 18 years. However, where the immigration officer has reason to believe that the person is not under 18 years the immigration officer will be able to detain the person.

IHRC analysis and recommendations

Head 40 - One of the key safeguards contained in Article 5(4) of the ECHR is the right of a detained person to "take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful". The IHRC recommends that to ensure such a right can be exercised effectively in practice the Scheme should explicitly provide that the person being detained should be provided in writing, in a language that they understand, with information on their right to challenge the legality of their detention, the validity of the decision to remove them from the State and their other rights whilst in detention.

Head 40(2) – the UNHCR guidelines on unaccompanied minors and the Committee on the Rights of the Child require that persons under the age of 18 years should never be detained for reasons relating to their immigration status. Where an age assessment is deemed necessary it should be carried out by a person with relevant expertise in a child-friendly manner and the individual should be given the benefit of the doubt where there is remaining uncertainty. The IHRC recommends that Head 40(2) of the Scheme should be amended to reflect these standards."

"10.2. Marriage of foreign nationals in the State

Head 67 provides that the marriage of a foreign national to an Irish citizen does not of itself give that foreign national a right to enter or be in the State. A foreign national will not be entitled to marry in the State without first notifying the Minister of his or her intention to marry. A marriage solemnised in breach of the requirement to notify will be void. A foreign national must be the holder of a residence permit to marry. The holder of a protection temporary residence permit and a non-renewable residence permit will not be entitled to marry unless the Minister grants an exemption. A person who is asked to marry a foreign national will be required to request evidence of a notification from the Minister. Where a person knowingly solemnises a marriage which is not in accordance with the Heads; is a party to such a marriage; or facilitates such a marriage he or she will be guilty of an offence.

IHRC analysis and recommendations

Under the proposed Irish regime, protection applicants and holders of non-renewable residence permits will not be entitled to marry at all without first getting an exemption from the Minister for Justice. Such an exemption will not be given where, among other grounds, it is inconsistent with immigration policy or where it would not be in the interests of public security or public policy.

The IHRC is concerned that the provisions applying to protection applicants and other non-renewable permit holders amount to a serious restriction with the right to marry

contained in Article 12 of the ECHR and recognised under the Constitution. The grounds on which the Minister may refuse to grant an exemption to this category of persons can be subject to very broad interpretation. The IHRC is of the view that it needs to be demonstrated how this restriction of the right to marry in relation to protection applicants and other non-renewable permit holders is in pursuance of a legitimate aim under the ECHR and the Constitution. If this measure is being introduced for immigration control purposes to prevent persons from marrying in order to gain residency or other rights from that marriage, is there evidence to suggest that this is in fact a pressing social need requiring this restriction? In the absence of such evidence the IHRC is of the view that this measure cannot be justified as being in pursuit of a legitimate aim under the ECHR and the Constitution.

Furthermore, in order to satisfy the requirements of proportionality the scope of the Minister's discretion to refuse to grant an exemption on the above grounds needs to be clarified. Finally, the IHRC questions whether it is proportionate to criminalise persons who enter into, preside over or "facilitate" a non-exempted marriage. In particular, the latter category could extend to an extremely broad range of activities and in the opinion of the IHRC is a disproportionate response to the aim of controlling immigration."

As religion is one of the five Refugee Convention grounds the RDC library has a growing collection of books on world religions. The RDC receives regular COI requests on religion including the different aspects of Islamic belief and practice. We asked Ali Selim, Resident Theologian of the Islamic Cultural Centre of Ireland, to outline the basic tenets of Islamic belief and practice and he has kindly written this personal introduction to Islam.

A new introduction to Islam



*Ali Selim,
Resident Theologian of the
Islamic Cultural Centre of
Ireland*

There is no doubt that we live in an orderly organized universe, where every being is assigned a place in a grand scheme. The Milky Way, the stars and all the heavenly bodies are knit together in a fascinating system abiding by unalterable laws without the slightest deviation from their ordained courses. The earth rotates around its orbit at a certain speed at a given distance away from the sun determined by its laws. Likewise, many other earthly beings, from the minute whirling electron to the mighty nebulae, invariably follow their laws. The emergence of each phenomenon and the phases through which it passes and its termination is utterly dependent on its laws set by the Creator.

Due to the fact that the slightest deviation from the ordained course drives them undoubtedly to a total destruction and for the sake of the continuity of this universe, none of these beings have been granted the freedom of choice. In addition, they have not been created but as fragments of constellations forming the entire universe innovated for the servitude of one

being i.e. man. The wind carries the clouds to one place or another where they rain causing the soil to grow food and in certain areas becomes water reservoirs providing food and beverage particularly indispensable for life on earth. The very fine operation of integrated breathing of man and plants follow the law of nature set by the Creator.

Man, unlike the other creations, has been given the freedom of choice; accordingly he will be held accountable for his deeds. Nonetheless, even in the human life the laws of nature set by the Creator are of paramount importance. Man's birth and death, strength and growth and weakness are regulated by biological laws set by the Creator. All the organs of his body, from the smallest tissues to the heart and the brain, are biologically controlled by their prescribed laws. If one endeavours to alternate any of these laws e.g. make the heart do the kidney's job or vice versa, make the stomach do the liver's job or vice versa or breathe in carbon dioxide, man's life will be terminated. In short, these prescribed laws represent the code of life set by the Creator to whom all beings portray the forced submission.

There is another type of submission; namely the positive submission, which is applicable in the area of free choice. This involves what man does and what he refrains wherefrom. If man's behaviour is in conformity with the divine revelation, then he, while accomplishing the state of Islam, will be rewarded.

Islam, the religion uniquely not named after its founder or after the community or nation in which it has been born, means to submit your will to the will of your Creator i.e. abiding by His Commands and abstaining from His Prohibitions represented in the divine code. In fact, Islam is an attributive title. Anyone who possesses this attribute, apart from his race and phenotypical traits, is categorically described as a Muslim. The sun and the moon, likewise all other components of the universe from the tiniest specks of dust to the magnificent galaxies of heaven, submit themselves to the powerful all-pervasive laws set by the Creator. Hence, they are Muslims.

When man holds fast to the divine revelation he will attain his euphoria. Submission to the Creator does not connote suppression of desires and lusts nor does it involve giving free rein to desires. To the contrary, it aims at a well balanced life where desires and lusts can be expressed in an organized way where spirituality is observed. That unique equilibrium grants man his euphoria in this life and the life to come. Again when one submits his will to the Will of his Creator occurs the harmony between the forced Islam, i.e. submission to the biological laws, and the positive Islam i.e. behaviour in conformity to the divine revelation, resulting in a total relaxation and relief. In other words, when the biological components of tongue are fine and the tongue speaks the truth a combination of material and spiritual rest, contributing to the well-being of the person, will be attained. On the other hand, if the tongue is healthy but indulges in lies and sayings of evil, it will be exhausted since there will be a counter tension between the forced submission and the positive submission. This exhaustiveness will in turn negatively affect the entire body. The situation can be critically complicated as one cannot have corrupted tongue and sound hand. All organs of man's body are to be of one direction or another, so it is either a total rest or a total disturbance. In spite of this, man has the right to make his choice. Allah says:

"Let there be no compulsion in religion. Truth stands out clear from error: whoever rejects Tagut¹ and believes in Allah has grasped the most trustworthy Hand-hold that never breaks and Allah hears and knows all things." (Trans. 2:256)

Islam stands on two organically integrated solid foundations; practice and belief.

Among the fundamental intellectual topics, the existence of God enjoys a paramount importance. Some confirm and others deny. Undoubtedly, one of the major factors of the emergence of a phalanx of deniers of God is the intellectual prevention and domination of some followers of certain religions.

The truth stands out clear from error. Since the earliest prehistoric eras, the concept of God has been a part of the texture of human society. In addition, the term God is very ancient and exists in all languages. It is a generally admitted fact that people will not consensually agree on error. Man has, in his disposition, the capacity to believe in God.

The concept of the Unity of God is asserted by the fact that God is not a body. A body is a compound of series of various elements, the union of whose is essential to form the existence of body. For compounding or division pertain to beings of beginning and end, whereas God is Eternal and Ever-lasting. A compound being is susceptible to dismantling and assembling. Glory be to God, hence it is not feasible to conceive the plurality of God.

This Muslim belief has a profound impact on Muslims' lives. The firm belief of the Oneness of Allah is interpreted in every aspect of the Muslim life. If Allah is one then one's lifestyle should be melded in a way that attains His pleasure. Things that one does or refrain there from should be a result of Theo-centered life.

Although the Muslim commonly used term to refer to God is Allah, Muslims are not hesitant to use the term God. Nevertheless, Muslims prefer to use the term Allah since it reflects certain Muslim connotations. According to English linguistics, the plural form of the word god can be formed by adding "s". So it will become gods. To the contrary, the Muslim word Allah is a unique word in the sense that it is a singular that neither dual nor plural can be made of. It cannot refer to more than one. The term god is a masculine formula that can be changed into feminine form by adding "dess" so it will become goddess which makes another difference between the two terms. The third major difference is that the term God is written in capital "G" when it refers to what is believed to be true God, whereas it is written in small "g" to what is believed to be untrue god. The term Allah can only be used to refer to the true God.

Muslims believe in all the messengers of God without any discrimination. Every nation had a Warner or a messenger from God. These messengers were great teachers of good. They were chosen by God to teach mankind and deliver His message. The Qur'an mentions the names of twenty five of them. With the Exception of Prophet Muhammad, all the prophets were national or local prophets. Nevertheless, all their messages were basically the same. Without any exceptions, Muslims believe all the prophets were mortal human beings endowed with divine revelation and appointed by God to perform certain task. Among them Muhammad

stands as the seal of the prophets and the crowning glory of the foundation of prophethood. Nevertheless, all the prophets are categorically described as the chosen people by God, who have set the highest example in all aspects of their lives.

On the basis of the above-mentioned, Muslims believe in all the revealed scriptures. God revealed His divine messages to the messengers to convey them to their respective peoples. In the Qur'an reference is made to the Books of Abraham, Moses, David and Jesus. Nevertheless, the Qur'an is perceived by Muslims as the final step in the divine initiative to guide people to the right path. Hence, its message is timeless and universal.

The Muslim Holy Scripture is called the Qur'an, an Arabic form of the infinitive derived from Qara'a, which means to read. Not only do Muslims read the Qur'an for drawing guidance in all aspects of their life, but they also recite it for other purposes such as obtaining rewards from Allah and gaining blessings that emanates from uttering the divine word.

The Muslim Holy Scripture is also called The Book as it has been committed to writing since the time of its revelation. The Qur'an was revealed at intervals over a period of 23 years. Whenever any part of it was revealed to Prophet Muhammad –P.U.H. - he would go out and recite it so the ten Quranic scribes would write it and some of the companions would learn it by heart. The fact that these two descriptions have come to be treated as names of the divine Book refers to its rightful treatment, which requires that it be kept and preserved in two places instead of one: people's memory and pages of a book. This intensive care makes it impossible for an error to find its way to the Qur'an.

Muslims believe in the angels of God, who are pure spiritual and splendid beings whose nature requires no food, drink or sleep. Neither have they physical nor material desires. There are many of them and each of them is charged with certain duty.

Muslims believe in the Last Day. It is the Day when every person will be held accountable for their deeds. It is the Day of justice. It is the Day of Reckoning on the basis of individual accountability. On such Day the good-doers will be generously rewarded and the evil-doers will have to encounter their destiny. In the Hereafter it is either hell or paradise. God is so merciful, yet one should get himself entitled to God's mercy. It is important to correctly understand the concept of God's Mercy, for some who are mistaken in this issue rely completely upon the hope that God will forgive their sins without even intending to refrain from evil deeds.

"Await the fruits of Paradise, by planting the seeds for Hell-Fire; and to seek the abode of the obedient ones, by doing acts of disobedience; and to expect a reward, without doing any worthy action; and to hope in God's mercy- after overstepping the bounds. You hope for salvation but do not tread its path. A ship never sails upon dry land." (Ihia'ul umiddeen by Imam Ghazali)

Prayer constitutes one of the five pillars of Islam the negligence of which is grave offense. It is one of the foremost means through which man practically interprets his submission to God and aspires to the loftiest goal. It is essentially important to actualize man's aspiration in a

mature course of development. The Muslim prayer is a link between man and God performed five times on a daily basis either in a mosque or elsewhere and either congregationally or individually. In their prayers, Muslims believe they talk to God via their supplications and God talks to them via their Qura'nic recitations.

Through prayer, Muslims attain immeasurable benefits and blessings beyond imagination. It strengthens man's faith and enlivens it. It purifies the heart, cultivates the conscience and comforts the soul. It fosters man's good inclinations and suppresses his evil desires. It helps to attain spiritual elevation and constantly reminds of God. It constitutes equality and unity and teaches discipline and determination.

Muslims offer their prayers at dawn, noon, afternoon, after sunset and at night. The timing of the Muslim prayer is significantly important. It encompasses man's day so that he would be in full contact with, and fully conscious of, his Creator throughout all his day.

Out of the paramount importance of prayer in Islam, it is essentially necessary to make ablution prior to establishing prayer. Ablution involves washing certain parts of the body i.e. hands mouth, nose, face, head, ears and feet. Upon the completion of ablution one can pray and as long as his ablution is valid one can offer more than a prayer whether in the same time or different times.

Another pillar of Islam is fasting during the month of Ramadan, the 9th month of the Islamic calendar. It involves refraining from food and drink from dawn until sunset. Muslims practice *sawm*, or fasting, for the entire month of Ramadan and it becomes incumbent on Muslims from the age of puberty. Nevertheless, Muslims who cannot afford it e.g. aged people, pregnant ladies and others are exempted therefrom. Families get up early for *suhoor*, a meal eaten before the sun rises. After the sun sets, the fast is broken with a meal known as *iftar*. *Iftar* usually begins with dates and sweet drinks or milk that provides a quick energy boost. Throughout the Muslim world and here in Ireland Muslims have public *Iftar*. Fasting serves many purposes. Although fasting is very beneficial to health, it is regarded principally as a method of self-purification particularly as it is accompanied by sincere endeavours of spiritual elevation. Fasting is also an opportunity to practice self-control and to cleanse the body and mind. It is an entire change of one's habits. This change enables to change. In this blessed month of Ramadan, fasting helps Muslims feel the peace that comes from spiritual devotion.. By cutting oneself off from worldly comfort a fasting person gains true sympathy with the poor and needy. Fasting in Ramadan is described as a school of morals.

Another remarkable pillar of Islam is Zakah or alms-giving. The literal meaning of Zakah is purity, but technically it designates the annual amount in kind or coin which a Muslim with means distributes among the rightful beneficiaries. Nevertheless, the spiritual meaning of Zakat is much deeper and lively than that. It is a humanitarian and sociological value.

When Zakah is due, 2.5% percent, which no longer the rich have any legal or moral possession of, it is taken from the rich and given to the rightful beneficiaries. In fact both the givers and the takers benefit therefrom; it purifies the hearts of the rich from selfishness and greed and in return it purifies

the hearts of the poor from envy, jealousy and hatred. In the meantime it bridges the gap between the various strata of society and helps to accomplish economical justice. It is a sound illustration that though Islam does not hinder private enterprise or condemn private possession, it does not tolerate selfish and greedy capitalism.

Hajj is the fifth pillar of Islam. Prophet Muhammad –peace be upon him- reiterated this meaning in a hadith by Ibn 'Umar in which he –peace be upon him- said: "Islam has been built upon five pillars: Testifying that there is no god but Allah and that Muhammad is His messenger, establishing Salah², paying Zakat³, Fasting Ramadan⁴, and performing hajj to the House for those who can make their way thereto."

The history of hajj dates back to the time of the coming of the first man, Adam, to the earth. Adam and Eve were told to leave paradise and descend to the earth, whereupon, they were commanded, to establish a shrine similar to the one in the heaven. The Shrine in the heaven is known as Al-Bait-ul-Ma'mour around which the angels circumambulate and worship Allah. The site of the first holy shrine on earth was chosen to be in Mecca and Adam, in cooperation with angel Gabriel, erected it, the Ka'ba. Upon the culmination of the process of building, angel Gabriel taught Adam the ceremonies of hajj.

Hajj stresses the Islamic values. First: Islam lays great stress on the paramount importance of the legally earned provision and strictly prohibits all types of illegal earnings. Allah said: "And eat not up your property among yourselves for vanity."(Tran.) This meaning has been reiterated by a hadith in which the prophet –P.U.H.- mentioned the case of a man who, having journeyed far, is dishevelled and dusty and who spreads out his hands to the heaven saying: 'O Lord! O Lord!' while his food is unlawful and his drink is unlawful and his clothing is unlawful and he is nourished unlawfully, so how can his supplication be answered."

From an Islamic point of view, acceptance of worship is dependent on legal provision. In a unique way, Prophet Muhammad portrayed this meaning in a hadith in which he stated that when a pilgrim whose provision is illegally earned makes his Talbiah, it will be said to him: "Your call is not answered and you are a wretched person. Your provision has been illegally earned and your hajj is not accepted and will not be rewarded." To the contrary, for the pilgrim whose provision is legally earned, it will be said: "Your call is answered and you are a happy person. Your hajj is accepted."

Second: Righteousness and performance of the acts of worship do not mean non- observance of the rule of cause and effect. For instance, a righteous Muslim is supposed to work to earn his livelihood. Thus we will diminish unemployment and there will be no people living on the expenses of others. Prophet Muhammad illustrated this meaning when he entered the mosque and saw a man that he –P.U.H.- frequently saw in the mosque. So he –P.U.H.- asked: "Who covers his financial needs." The Companions said: "His brother." The prophet –P.U.H.- said: "His brother is a better worshipper." The prophet –P.U.H.- stressed this meaning in another hadith in which he said: "That any of you would go collect wood is better than begging people whether they give or withhold."

On Friday, which is the best of the Muslim weekdays, Muslims are exhorted to work. Allah said: "And when the

prayer is finished, then may ye disperse through the land and seek of the bounty of Allah.” In another place in the context of hajj, Allah said: “It is no crime in you if you seek of the bounty of your Lord (during pilgrimage).”

Thirdly equality: The prophet –P.U.H.- explained that people are equal like the teeth of a comb. This meaning was reiterated in many hadith. Nonetheless, the various Muslim acts of worship stress this meaning. The Muslim Salah reflects equality. Thus all people stand in Salah in straight lines. In hajj Islam strikes the highest practical example of equality when all the pilgrims wear the same Ihram white garb and set out in congregations chanting the same formula: “O Allah! Here I’m in response to Your call.” They are dressed in the same garments, the Ihram garb. For men, it is made of two white sheets; Izar is to be wrapped upon the lower part of the body and Rida’ is to be wrapped on the upper part of the body. The Izar and Rida’ are for all, the rich and the poor, the rulers and the subjects. This garb serves also as a reminder of death when man will be shrouded when no avail of wealth or offspring but the virtuous deeds.

Amidst this equality given rights granted to certain people do not fade away. For instance, the prophet –P.U.H.- said: “It is not from my community the person who does not show mercy to the children and portray respect to the elderly people and recognize the rights of the scholars.” The Qur’an teaches us how to address the prophet. Allah said: “Deem not the summon of the messenger among yourselves like the summon of one of you to another.” Muslim Caliphs set the highest example in equality. During his era, occurred the famine. However, he never favoured himself with certain food or drink. He ate the same type of food the lay people ate. Whenever he had suffered hunger or a stomach-ache resulting from hunger, he would say to his stomach: “How can I feed you when others are hungry. Whether you rumble or not I will not feed you with other than that.” ‘Umar did not live in a palace. A Roman man, when seeing ‘Umar sleeping unattended and unguarded, said: “You have ruled with justice so you enjoyed safety and so you slept.”

Fourth, the Continuity of the divine revelation and the continuous positive communication between the Muslim predecessors and followers: All the divine revelations have one and the same aim. Hence the followers recognize the place of the predecessors and make prayers for them. “And those who came after them say: ‘Our Lord! Forgive us and our brethren who came before us into the faith.” And in another place Allah said: “Those were (the prophets) who received Allah’s guidance. Follow the guidance they received.”

Upon completing the journey of hajj, the pilgrims return home as clean from their sins as the day their mothers gave birth to them. This is very significant as they, upon attaining such forgiveness, become eager to maintain this purity and diminish evil.

1. Anything worshipped beside Allah
2. Prayer
3. Alms giving
4. The ninth month of the Muslim calendar



Summaries of Recent High Court Judgments

Kikumbi and Anor. v Refugee Applications Commissioner and Ors., Unreported, Herbert J., 7th February 2007

JUDICIAL REVIEW – CERTIORARI - REFUGEE APPLICATIONS COMMISSIONER – ERROR OF FACT – FAILURE TO GIVE REASONS – OVERINTERPRETATION OF COUNTRY OF ORIGIN INFORMATION – PREFERENCE FOR ONE SOURCE OF COUNTRY OF ORIGIN INFORMATION OVER ANOTHER – CREDIBILITY – CONJECTURE – DEMOCRATIC REPUBLIC OF CONGO

Facts

The Commissioner recommended that the Applicants, DRC nationals, be refused asylum. The Applicants had claimed that they were members of the Lendu ethnic group, that they had fled from Bunia to Fataki in April 2003 due to their difficulties, and that they escaped through the bedroom window of their home when armed Hema (an opposing ethnic group) raided the house. The Commissioner found the Applicants’ evidence of moving to Fataki and their subsequent escape to be lacking in credibility, stating that it was questionable that the Applicants would move to Fataki because (a) it was the main town of the district the locus of the conflict and (b) it was run by the opposing Hema people. The Applicants contended, *inter alia*, that the Commissioner based a finding of no credibility on errors of fact, erred in over-interpreting the country of origin information, failed to give reasons for preferring one source of country of origin information over another, and reached a finding of no credibility based on conjecture.

Held by Herbert J. in refusing the reliefs sought, that the Commissioner’s authorised officer had misdirected herself in concluding that Fataki was the main town in the district when the country of origin information clearly stated that Bunia was the main town, and that there was therefore no rational basis for the authorised officer to question the claimed relocation to Fataki on this ground, but that the Commissioner’s misdirection did not invalidate her conclusion because the Commissioner’s finding was also based on an entirely separate and severable consideration that was not demonstrated to be incorrect, i.e., that considering the Fataki area appears to have been under Hema control there were serious doubts about the Applicants’ claims to have moved there given that they belonged to the Lendu tribe (*ABM; Da Silveira; Traore* distinguished).

The Court held that the decision of the authorised officer clearly demonstrated that she had carefully considered and examined the accounts given, that the Commissioner had indicated sufficiently her reasons for the negative findings, that the Commissioner was not obliged to indicate what weight she placed on each of the negative findings, that the Commissioner did not over-interpret the country of origin information, that the Commissioner carefully considered all the country of origin information, and that any error was neither significant nor material.

Obiter: that it is sometimes possible to compare various elements of an account with extrinsic material which the decider of fact can accept as reliable, viz. country of origin information from sources of proven and accepted accuracy and reliability, such as UN reports, but that sometimes there is no yardstick with which to determine whether a particular account is credible or not other than by the application of common sense and life experience on the part of the decider

of fact in the context of whatever reliable country of origin information is before him. The obligation to give reasons does not require the decider of fact to give reasons why she, applying such common sense and life experience, finds that a particular account is incredible.

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ABM v Minister for Justice, Equality and Law Reform & Ors., Unreported, O'Donovan J., 23rd July 2001
Carciu v The Refugee Appeals Tribunal & Ors., Unreported, Finlay-Geoghegan J., 4th July 2003
Da Silveira v The Refugee Appeals Tribunal, Unreported, Peart J., 9th July 2004
Dunnes Stores Ireland Co. v Maloney [1999] 3 IR 542
FP and AL v The Minister for Justice, Equality and Law Reform [2002] 1 IR 164
International Fishing Vessels Ltd. V The Minister for the Marine [1989] IR 149
Laurentiu v The Minister for Justice [1999] 4 IR 26
MJT Securities Ltd v Secretary of State for the Environment [1998] JPL 138
Ni Eili v The Environment Protection Agency, Unreported, Supreme Court, 30th July 1999
O'Donoghue v An Bord Pleanala [1991] ILRM 750
Traore v The Minister for Justice & Anor., Unreported, Finlay-Geoghegan J., 14th May 2004

Akujobi and Anor. v The Minister for Justice, Equality and Law Reform, Unreported, MacMenamin J., 12th January 2007

JUDICIAL REVIEW – LEAVE – EX PARTE ON NOTICE – ORDER 84 – CANDOUR – COUNTRY OF ORIGIN INFORMATION – MEDICAL EVIDENCE - NIGERIA

Facts

The Applicants, having failed in their asylum claims, applied to the Minister for leave to remain. These applications were refused and the Minister subsequently issued the Applicants with deportation orders. The Applicants requested that the Minister revoke the deportation orders, and this request was also refused. The Applicants sought leave of the Court to issue judicial review proceedings challenging the Minister's refusal to revoke the deportation orders. The applicants claimed that the Minister failed, *inter alia*, to have regard to their potential status in Nigeria as returned asylum seekers, the risk of arbitrary detention in Nigeria, fresh country of origin information, and evidence regarding the first-named Applicant's medical status. The medical evidence was known to the Applicants before the impugned decision issued, but had not been disclosed to the Minister.

Hanna J, had granted an interim injunction, directing the Applicants to put the Minister on notice of the making of the application for judicial review. At the hearing of an application for an interlocutory injunction MacMenamin J. directed that the application for leave should be adjourned to facilitate legal argument on three preliminary issues:

1 The appropriate test for an application for leave to bring judicial review pursuant to Order 84 of the Rules of the Superior Courts when the application for leave is made "ex parte on notice".

2 The extent to which matters presented in an application to revoke a deportation order pursuant to section 3(11) of the Immigration Act 1999 must be materially different from those presented or capable of being presented to the Minister in the making of the deportation order itself.

3 Whether a material distinction, if it concerns detention, health matters, or rights and care of a minor is of sufficient gravity to justify a different approach to the leave application in an Order 84 "ex parte on notice" application.

Held by MacMenamin J., in refusing leave, that the Applicants should fail for want of candour and lack of credit, and that it had not been established in evidence that any of the material submitted was of recent provenance, or of direct relevance in the applicants' category of returned former asylum seekers. That the medical information that the Applicants claimed had not been considered was within the power and capacity of the Applicants to obtain and submit prior to the impugned decision. That the Applicants' candour was therefore in question, and that this had not been satisfactorily dealt with. That there was no confirmatory evidence adduced from the Applicants' previous advisors that the material in question was new or unknown to them.

Obiter: That the Court should apply the lower test of "arguable grounds" but should exercise its discretion to grant or refuse leave having taken into account relevant matters, which would include

- That the facts averred in the affidavit would be sufficient, if proved, to support a stateable ground for the form of relief sought by way of judicial review.

- That on those facts an arguable case in law can be made that the applicant is entitled to the relief which he seeks.

(per Finlay CJ in *G v DPP*)

Cases Considered

Agbonlahor v Minister for Justice, Unreported, Herbert J., 3rd March 2006
Cosma v Minister for Justice for Justice, Equality and Law Reform, Unreported, Supreme Court, 10th July 2006
Dada v Minister for Justice, Equality and Law Reform, Unreported, High Court, O'Neill J., 3rd May 2006
DC v DPP [2005] Unreported, Supreme Court, Denham J.
EMS v Minister for Justice, Equality and Law Reform [2004] 1 IR 536
G v DPP [1994] 1 IR 374
Gorman v Minister for the Environment [2001] 1 IR 306
Harrington v An Bord Pleanala [2005], IEHC Macken J. 26th July 2005
Kouyape v Minister for Justice, High Court, Unreported, Clarke J., 9th November 2005
Mamyko v Minister for Justice, Equality and Law Reform, Unreported, Peart J., 6th November 2003
Mass Energy Limited v Birmingham County Council [1994] ENV LR 296
McNamara v An Bord Pleanala (No. 1) [1995] 2 ILRM 125
O'Brien v Dun Laoghaire Rathdown Co Council [2006] IEHC O'Neill J. 1st June 2006
O'Brien v Moriarty [2005] 2 ILRM 321
PB&L v The Minister for Justice [2002] 1 IR 164
Potts v Minister for Defence [2005] 2 ILRM 517
R v Inland Revenue Commissioners, ex parte National Federation of Self-Employed and Small Businesses in Ireland [1982] AC 617
Re Art 26 and the Illegal Immigrants (Trafficking) Bill 1999 [2000] 2 IR 360

Banzuzi v Refugee Appeals Tribunal and Ors., Unreported, Feeney J., 18th January 2007

JUDICIAL REVIEW – CERTIORARI – REFUGEE APPEALS TRIBUNAL – FAILURE TO CONSIDER UP-TO-DATE COUNTRY OF ORIGIN INFORMATION – SELECTIVE USE OF COUNTRY OF ORIGIN INFORMATION – CREDIBILITY – FAILURE TO ASSESS CORE ASPECTS OF CLAIM – DEMOCRATIC REPUBLIC OF CONGO

Facts

The Applicant, half Tutsi of Rwandan origins, was refused asylum by the Commissioner and, on appeal, by the Tribunal. The Tribunal found, *inter alia*, that the Applicant's evidence re his last year in, and departure from, the DRC was lacking in credibility. The Applicant contended, *inter alia*, that the Respondent failed to consider all the country of origin information, failed to have regard to more recent and conflicting country of origin information, made selective use of country of origin information, made an adverse credibility assessment without making a reasonable assessment of the country of origin information and without assessing central aspects of the claim. In seeking to show that the Respondent's analysis failed to consider all the evidence, the applicant relied on country of origin reports from the US Department of State that had not been before the Tribunal.

Held by Feeney J. in refusing the reliefs sought, that the fact that only certain documents are quoted in a decision does not lead to a determination that all documents were not considered. That reasons were identified and the Tribunal carried out an up-to-date analysis of the country of origin information, and that the Tribunal's findings were not dependent upon selective quotations and did not rely on isolated statements but were consistent with the overall content of the country of origin information. Country of origin information that was not before the Tribunal could not have been considered by the Tribunal and was irrelevant to the application. While the Applicant claimed that the country of origin information was not properly considered, the Tribunal's adverse credibility decision was made with regard to the Applicant's evidence of his last twelve months in the DRC and his departure from the DRC, and this finding was not in any event dependent upon an assessment of the country of origin information and was not peripheral to the Applicant's claim.

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John Stanley BL



Running to Standstill: Honour killings and the position of women in Pakistan



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Preface

A BBC news story from January 2006 states: "A mixed-sex marathon passed off peacefully in Pakistan after thousands of police were deployed to stop disruption by Islamic activists. Some 500 women took part in three races in Lahore, although 2,000 due to run had backed out over fears of violence. Islamic protesters had demanded women be barred from taking part, arguing their presence ran counter to Islam."¹

And also in January 2006 *Business Recorder* notes:

"At least 4,383 Pakistani women were victimized by the social vice of honour killing during last four years, according to an official report. The report says that more than half of these cases occurred in Sindh. It says that despite continuing campaigns by the government and non-government bodies, the evil continued. The report covers only cases reported with police, and those not registered went unmentioned. According to the report, Sindh tops the list with 2,228 reported incidents of Karo kari during the period from January 2001 to December 2004. The report says that honour killing is prevalent in interior Sindh, tribal areas of NWFP, Balochistan and rural areas of Punjab, where, under its different names, hundreds of women are killed every year. Most of these cases go unreported because in rural environment people hide such incidents as they consider it a matter of embarrassment."²

The *Associated Press* the previous month reported: "Nazir Ahmed appears calm and unrepentant as he recounts how he slit the throats of his three young daughters and their 25-year old stepsister to salvage his family's 'honor'."³ The article adds "Hundreds of girls and women are murdered by male relatives each year in this conservative Islamic nation, and rights groups said [on]Wednesday such 'honor killings' will only stop when authorities get serious about punishing perpetrators."⁴

Introduction

The police reaction and how the state deals with honour killings is one of the topics dealt with in this paper which examines the issue of honour killings in Pakistan and how that practice relates to the position of women in that country. Addressed too are the intermeshing cultural and religious mores which form the bedrock and provocation for honour killings alongside the societal violence against women and how discrimination rages against women. Sources consulted include UNCEDAW, Human Rights Watch, UNDP, Pakistan Human Rights Commission, World Bank & UNIFEM. Examples of honour killings intercept throughout and concluding the article adduces the present position of women and honour killings.

The *Associated Press* above note the part of authorities in honour killings and the *Institute for Human Rights* points out in 2003 that "Police are also usually reluctant to register complaints relating to honour killings. It should also be noted that in honour killing cases investigating police officials often

receive little support from the family of the victim as the practice continues to have wide social approval and are thus dependant on circumstantial evidence.”⁵

Cultural acceptance

A study by the *World Bank* in 2005 commenting on the cultural acceptance of honour killings states: “Owing to the tribal nature of society in some parts of Pakistan, the perpetrators are seen as having vindicated their honor in the eyes of both the local law enforcer and society. As a result, the practice of summary killing of a woman suspected of an illicit liaison, known as ‘Karo Kari’ in Sindh and ‘Siyahkari’ in Balochistan, is known to occur in all parts of the country.”⁶

UNIFEM describe in 2006 women being culturally demarked: “Typically, in many areas of Pakistan, a man’s honor is defined by the chastity and piety of women. Should a woman enter into any relationship with a man that is outside the norms of society, it means that she is subverting the order of things, and ‘undermines the ownership rights of others to her body – and indirectly challenges the social order as a whole. She becomes black, *kari* (Sindhi) or *siahkari* (Baloch).’”⁷

An ‘honour’ killing

A specific example of an honour killing is reported by *Salon* in January 2006

“So-called honor killings are a devastating fact of life in Pakistan, but a case last week was so gruesome it rocked the country. The Associated Press reports that Nazir Ahmed, a 40-year-old laborer, was arrested after confessing to killing his 25-year-old stepdaughter because he thought she had committed adultery. Ahmed then slit the throats of his three daughters, ages 8, 7 and 4, as a supposed preventative measure so they wouldn’t repeat their sister’s behaviour when they grew up. And if all that isn’t horrible enough, he also made his wife watch the killings. “I thought the younger girls would do what their eldest sister had done, so they should be eliminated,” he told the AP”.⁸

Violence against women is covered by the *UNCEDAW* treaty on the ‘Convention on the Elimination of all forms of Discrimination Against Women’ which Pakistan ratified in 1996 and reporting in 2006 stated: “The reports of the two successive Special Rapporteurs on violence against women, its causes and consequences indicate that honour crimes are a serious problem in Pakistan and that perpetrators of such crimes are rarely brought to justice.”⁹

Definition of honour killing

A definition of honour killings is provided from 2004 by *CMJ* as follows: “Honour killing is an imprecise term for murder precipitated by the aggressor’s loss of “honour” and can provisionally be defined as a “ritualised form of violence usually with male perpetrators and often, but not always, female victims. This extra-judicial punishment is meted out by private actors according to customary law and there is usually no way to repeal the sentence. The offender is usually killed by close family members, most often a brother, father or husband, on their own accord.”¹⁰

Tribal culture

Commenting on the victims of honour killings a news article in *Dawn* states in June 2006: “In the majority of cases, the young girl or woman is innocent, but so strong is the hold of tradition and custom, of tribal culture and feudalism, of misguided beliefs of the community and general attitudes

towards women, that it is easy to make that woman suffer a gruesome death. In rural areas, feudals and their sons hold sway, to the extent that many feudals regularly keep men, women and children in the virtual slavery of bonded labour.”¹¹ The article adds: “Further complication is added by the increasing poverty, the lack of education, religious extremism, biases against women, strong patriarchal traditions, and now, by the proliferation and easy availability of small arms.”¹² It is also stated: “As if this were not enough, victims, or their relatives who seek justice, are faced with yet another hurdle: the law. Initially, Pakistan’s Constitution provided equal rights for all, irrespective of caste, creed or sex. This received a major setback in 1979 onwards, when the Hudood Ordinances, the Law of Evidence, and Qisas and Diyat were introduced.”¹³

Regarding the place of women the *Institute for Human Rights* in 2003 states: “... in Pakistan, women are seen to embody the honour of “the men to whom they belong”. By being perceived as having entered into an ‘illicit’ relationship, or otherwise behaved in an ‘inappropriate manner’ they are seen as having defiled her guardian’s and family’s honour. A man’s ability to protect his honour is judged by his family and neighbours. Therefore he must publicly demonstrate his power to safeguard his honour by killing those who have damaged it and thereby restore it.”¹⁴ After describing an increase in honour killings the reports adds:

“One of the key factors is the Pakistani government’s failure to take effective measures to end the practice of honour killings and the virtual impunity with which honour killings are committed. Other reasons that have been mentioned are weakening of the institutions of the state, corruption, economic decline, breakdown of agriculture, a high rate of unemployment and landlessness. Commentators have also argued that the crisis of the civil society in Pakistan has turned the population to look for alternative models, for example, in the traditional tribal customs. It has also been argued that due to the economic decline more women have been entering into the workforce, and men find it difficult to adapt to seeing women outside the traditional “four walls.” Many men resent the exposure of women to the outside world, and their increased self-confidence.”¹⁵

And women as the *CMJ* paper from 2004 describe, are constricted within the definition of honour in Pakistan: “In Pakistan honour is a multidimensional term that includes familial respect (*izzat*) and social prestige (*ghairat*). Honour can be described as a relation between a person’s own feelings of self-worth and that of the peer-group (“honour group”) to which he belongs. Because honour bestowed socially it is ephemeral and can be lost. Losing honour invites ridicule and disgrace and subjects the family to “shame”. Honour can not only be lost, however, but also regained by returning the offensive act. A wide range of acts are considered shameful, but none more than those that compromise female chastity.”¹⁶ The paper adds: “In honourbound societies, female chastity represents the family’s “symbolic capital”. To protect it, the offending woman must be killed rather than divorced or excommunicated, an act which in itself is considered shameful. Killing her removes the offensive act, redeems family honour and resurrects its prestige.”¹⁷ The paper notes: “In Muslim societies marriage, in which romance has no place, upholds social structure and the alliance between families, lineages and clans and the reproduction and creation

of offspring. Hence, marriage is instrumental, a means to an end. Romance, on the other hand, is the structural anti-thesis, concerned with personal gratification, always in secret and in contravention of official morals. This structural opposition helps explain why all forms of illicit romance provokes condemnation, ostracism and frequent killing of those involved...''¹⁸

A perpetrator in the aftermath, who with his brother killed his sister and her lover, is quoted in *The Guardian* from February 2007: "We feel no shame. They had been warned," said Aslam, a slightly built father of eight. "We did it for honour," said Ahmed defiantly. "In our society a man without honour is nothing." A man's pride exacts a high price in hidebound rural Pakistan. Almost every day a woman is beaten, clubbed or shot to death for what is euphemistically termed "adultery" - sex outside marriage. In most cases the killer is a father, brother or uncle. 'There's an increased brutalisation of society,' said Kamila Hyat of the Human Rights Commission of Pakistan, which recorded about 300 so-called honour killings in 2006 - about the same number as the previous year.' ''¹⁹ The article goes on to state: "But although 'honour killings' are often linked to Islam, they are more often a product of a poor, uneducated and deeply feudalistic rural society. Mr Bukhari, the police chief, said only schooling and greater prosperity - areas where Musharraf's military-led government has failed to make much progress - would end the phenomenon.' ''²⁰

After adding detail to the above killing an article from February 2007 co-opted in the *IPPF* then goes on to note how honour killings are justified stating initially: "Brothers, Mohammad Aslam and Maqbool Ahmad admit killing their sister Elahisen and a neighbour, Ghulam Nabi Shah, when they found them together in Elahisen's room on the night of 27 January. They smashed their skulls with a brick and then strangled them with a rope. Then they gave themselves up to the police saying they had redeemed their family honour. According to official figures, more than 2,700 women and about 1,300 men have been killed in honour-related offences in Pakistan since 2001.' ''²¹ The article states: "According to official figures, more than 2,700 women and about 1,300 men have been killed in honour-related offences in Pakistan since 2001. Human rights organizations put the number much higher, saying that most honour crimes are never reported to the police.' ''²² The article also states: " 'They have restored their family honour - the deceased deserved to die,' says Ghulam Abbas Bhatti, a resident of Khatan village. 'We have done no wrong and the law will not treat us unkindly,' says Mohammad Aslam. Legal experts believe the brothers may be right. 'Honour' killers in Pakistan have several cushions within and outside the law, say experts. Popular opinion in Pakistan has usually remained sympathetic to the perpetrators of such crimes. This is also reflected in the attitude of the police and judges who are often biased in the offender's favour.' ''²³

Causes of honour killings and violence against women

Why honour killings happen is related in a report in 2005 by *Centre of Strategic Planning for Development* noting: "Honour killing appears when a man assumes that his wife or sister have contravened norms relating to the behavior of women, thus damaging a man's honor. It can be a suspicion about a woman's fidelity, the woman seeking divorce or even the woman being a victim of a rape. Social pressures are high to eliminate the offending woman.' ''²⁴

Honour killing in Pakistan derives from the paradigm of violence against women; *UNIFEM* comment in 2006: "violence against women remains high in Pakistan matched by the same level of inertia by the government.' ''²⁵

And such violence the same report says "...is generally swept under the carpet, which includes physical, verbal, sexual (marital rape) and psychological abuse. One severe form of domestic violence is burning women either by dousing kerosene over her or through 'stove burning'.' ''²⁶

How violence against women relates to the human rights situation in Pakistan in 2006 is published in a report by the *Pakistan Human Rights Commission* which states: "Institutionalized violence, in the form of discriminatory laws and official attitudes reflected in the reluctance to pass legislation that could protect women against violence, contributed to the many incidents in which women were beaten, raped or murdered.' ''²⁷

One reason women can be killed in Pakistan is provided by *UNIFEM* in 2006 stating that "women can also be killed for being raped since they become a social stigma for their family and tribe and therefore have to be gotten rid of.' ''²⁸ The macro-position of violence against women in the same report states: "it has been observed that customary practices have lead to disempowerment, and violence and honor killings have constantly threatened the right to security.' ''²⁹

General situation of women

The situation of women in Pakistan is delineated in a *UNDP* paper from 2005 which states:

"One of the biggest challenges is to create enabling environment by expanding, updating and rewriting the archaic civil, criminal and family laws along with their effective enforcement. The laws are needed to protect rights of women to inherit family wealth, give them a fair deal in marital contracts and provide adequate protection against violence. Violence is very common and weak protection against it is the root cause of women immobility. In addition, in areas where policies and due legal procedures exists, they need to be effectively enforced.' ''³⁰

The *Institute for Human Rights* report in 2003 on legal issues as follows: "The legal status of women in Pakistan has been described as being defined by "interplay of tribal codes, Islamic law, Indo-British judicial traditions and customary traditions... [which have] created an atmosphere of oppression around women, where any advantage or opportunity offered to women by one law is cancelled out by one or more of the others.' ''³¹

And addressing the prevailing position of women *UNIFEM* note in 2006: "Although customary practices in Pakistan vary from region to region, yet one uniform trend that prevails is the subordinate position accorded to women. This deeply entrenched notion overrides the rights of women provided under formal and religious laws.' ''³²

UNIFEM note in the same paper how religion has not been blameless regarding the human rights situation of women: "It has to be pointed out that throughout the process of Islamisation, women and minorities have suffered the most and their human rights have been constantly abrogated.' ''³³

Discrimination against women

A *UN* report from 2005 says regarding religious punctiliously that "Violence and aggression against women in public is seen as linked to the rise of conservative forces in society that

aggressively and consciously act to prevent women's public appearances and participation."³⁴ The paper adds:

"The state has a vital role to play in discouraging violence and eliminating impunity by prosecuting those violating women's rights and bodily integrity. Unfortunately policy makers and law enforcement agencies lack sensitivity to deal with VAW and so-called 'honour' killings and crimes appropriately. The social acceptability of VAW, including crimes in the name of honour remains firmly entrenched in society. It is particularly disturbing that numerous legislators – who are meant to uphold the laws and expected to promote human rights – have actually defended the abominable practice of murder and maiming done in the name of so-called 'honour' killings and crimes in different assemblies."³⁵

UNIFEM in 2006 add for women that "the majority remain disadvantaged and are designated as second-class citizens due to systematic discrimination purported by social and cultural norms and attitudes."³⁶

The *UNDP* note the background to the inequality of women in 2005 stating:

"One of the major challenges in way of gender equality and women empowerment is the access. Whether it is access to education, health facilities, employment opportunities, information or to credit facilities, all of these obstruct in the way of women empowerment and the efforts to reduce the gender gap. Due to low access to education, literacy rate is low. Mortality and morbidity rates are high for females due to a variety of reasons. Many health facility units located at a distance from communities are inaccessible by women of rural areas. Inaccessibility is compounded by restricted mobility. The latter constraint may not prove binding if health facility units were within accessible limits. Exclusive reliance and acquiescence of rural women in decision making of males leads to delayed actions. In addition due to illiteracy, women have a little access to information about health care. There is an urgent need to increase awareness among female population about health and hygiene issues."³⁷

The report adds:

"In Pakistan, discrimination against women and their neglect is reflected in all spheres of life. It is evident in females' health and nutritional status, in their education and employment opportunities, their lack of participation in decisions that affect their lives and in social norms. They are handicapped by the limited opportunities, which may have an array of consequences that result in higher rate of psychological problems. On the top of the list of such problems is depression. Although gender biases exist in all societies, the situation is particularly disturbing in Pakistan where poverty, ignorance and some traditions have combined to give women a position of subordination to men. While women remain a neglected segment of our society, it is ironic that the rights granted to them under the *Shariah* and laws of the land are also denied to them in order to appease the egocentric attitude of our male-dominated society. Many women in the Pakistani society are deprived of their basic rights. At the same time, despite increasing public, professional and scientific interest in the problem of women abuse, little has been done about protection and promotion of the women's rights. Even after delineating and defining what the actual role of women in the society is, the position of women remains ambiguous and uncertain."³⁸

The report also states:

"Women have limited access to opportunities. Lack of market links and mechanisms and control over productive assets further restrict job opportunities. Restriction in mobility further prevents women entry into the broader workforce and public areas. Thus not only women participation rates remain low; they work in a much narrower range of occupations, e.g. agriculture, health and education. Also they choose to work closer to their homes and hence may command lower wages. Seventy percent of rural women work in agriculture and livestock sectors, and three quarter of the urban female labour force work in non-formal sector, where women are deprived of adequate remuneration and other job benefits. Female participation rate may increase through skill training, investments in time-saving infrastructure, micro credit, some regulation of the home-based work, and affirmative actions to discourage discriminatory practices. In addition to the above there is no sustainable employment policy for women. Involvement of women entrepreneurs in diversified export base remains very thin."³⁹

The origin of discrimination against women

The *World Bank* in 2005 comments on the origin of how women in Pakistan are treated: "Discrimination against females begins right from the time of their birth, as this occasion is greeted with sorrow and despair in some backward households. The girl child is considered a social liability and marriage is believed to be her only goal in life. So strongly are these concepts entrenched in her that she cannot even imagine that these could be erroneous or unjust norms of behaviour."⁴⁰

UNIFEM states in relation to parturition in 2006: "In Pakistan, as in many other countries, the inferior attitude towards women is present from the time of her birth, which is acknowledged with despair rather than joy. The girl child is taken as a form of liability – someone who will not be able to contribute anything to the family. Her only asset is her power of reproduction and that of being a sexual object."⁴¹

A specific example of how young females are dealt with regarding to health is reported by the *US Department of State* 2006 noting that "According to the National Institute of Child Health Care, more than 70 percent of deaths between birth and the age of 5 years were caused by easily preventable ailments such as diarrhea and malnutrition. While boys and girls had equal access to government facilities, families were more likely to seek medical assistance for boys."⁴²

In relation to the education of women *UNIFEM* notes in 2006: "The literacy rates for women are abysmally low with about 70 per cent being deprived of the right to education."⁴³

The *US Department of State* in 2006 addresses the history of educating women in Pakistan noting: "The national literacy rate of 38 percent showed a significant gap between males (50 percent) and females (24 percent) due to historical discrimination against educating girls."⁴⁴

Human Rights Reports

The constriction of women's rights in Pakistan is the environment within which the prevailing position of honor killings exist. The *HRW* annual report of 2007 on events of 2006 states:

"As in previous years, violence against women and girls, including domestic violence, rape, "honor killings," acid attacks, and trafficking, remained serious problems in

Pakistan. Survivors of violence encounter unresponsiveness and hostility at each level of the criminal justice system, from police who fail to register or investigate cases of gender-based violence to judges with little training or commitment to women's equal rights. According to Pakistan's Interior Ministry, there have been more than 4,100 honor killings since 2001. However, provisions of Pakistani law that allow the next of kin to "forgive" the murderer in exchange for monetary compensation remain in force, and continue to be used by offenders to escape punishment in cases of honor killings.⁴⁵

In 2006 *Amnesty International* on 2005 states: " "Honour" killings and mutilations of girls and women, and to a lesser extent of boys and men, continued. Successful prosecutions for "honour" killings were rare."⁴⁶

The *FreedomHouse* report of 2006 on events of 2005 citing the Human Rights Commission of Pakistan states:

"According to the HRCP, at least 1,000 women are killed by family members in so-called honor killings each year. Usually committed by a male relative of the victim, honor killings punish women who supposedly bring dishonor to the family. Government-backed legislation introducing stiffer sentences and the possibility of the death penalty for those convicted of honor killings was signed into law in January. However, given a prevailing environment where authorities generally do not aggressively prosecute and convict the perpetrators of violence against women, activists have questioned the effectiveness of the bill"⁴⁷

On 2005 the *US Department of State* in 2006 states: "Honor killings and mutilations occurred during the year (see section 1.a.). Women were often the victims at the hands of their husbands or male relatives. No accurate statistics exist on the number of honor crimes committed during the year. However, human rights groups believed that such incidents were fairly common"⁴⁸

The *Daily Times* of Pakistan in March 2006 comments on how honour killings remain endemic, quoting the Human Rights Commission of Pakistan: "The HRCP said that there had been no decrease in honour killings despite the anti-honour killing law passed in 2004. Instead, the number of women murdered had increased in the year 2005 as compared to the previous year, it added."⁴⁹

And the *Asian Human Rights Commission* reviewing the year 2006 states:

"Despite claims to the contrary from the Pakistani authorities, the state of women's human rights in the country remains atrocious. Women in Pakistan are still under harsh conditions, customs and laws in the country. According to NGO Lawyers on Human Rights, in Pakistan, from 2000 to 2006, 9379 women were killed, 117 women were killed after rape, 3116 cases of rape were reported, 1260 women were gang raped, 4572 cases of honour killings were reported, and 1503 women were burned to death. The role of the State and its law enforcement agencies, particularly the police, ensure that protection of women's right is not ensured and fail to apply due diligence."⁵⁰

Current situation

And into 2007 it is reported by *Stop Honour Killings*: "Compiled on the request of the Federal Women Division, the report places the number of honour killings in Pakistan at around 2,500 to 3,000 cases every year. LAHORE: A total of

578 Pakistanis including 362 women and 216 men were killed across Pakistan in the name of honour between January and December 2006, figures compiled by the Ministry of Interior reveal."⁵¹

A judge commenting on 1 January 2007 in an article by Rana Tanveer in the *Daily Times* states: "Honour killing is nothing new in our society."⁵²

The *Asian Human Rights Commission* reports in February 2007: "The practice of honour killings continues to occur with alarming frequency in Pakistan, mainly in Sindh Province. Honor killings often occur on the pretext of maintaining honor. The male relatives who commit the murders are rarely prosecuted in traditional communities. It appears that any action, real or fabricated, if deemed by the family as compromising their honor, may be considered a valid reason to commit murder."⁵³

An example of an honour killing and its repercussions from February 2007 is noted by the Pakistan Human Rights Commission who comment: "At least two incidents of the most horrendous brutality towards women have been reported over the past four days."⁵⁴ It adds: "The fact that these acts of bestiality took place underscores the fact that official claims to safeguard the rights of women have little substance."⁵⁵ It also states: "HRCP can only express deeply felt anger and sorrow at the fact that women continue to be subjected to such grotesque violence. No society which suffers such behaviour can be permitted to call itself civilized. Going by past record, the fact that arrests have been made in both cases is no guarantee that the perpetrators will be punished. HRCP demands the authorities deliver on their promise to guarantee women's safety and dignity of person by ensuring that all those responsible for carrying out or conniving in such crimes are penalized under the law and a clear message sent out that such crimes will not be tolerated."⁵⁶

Conclusion

The *BBC* news story at the start of this paper covering the mixed-sex marathon noted how the event passed off without incident due to a hefty military presence but the honour killings go on. The following news stories derive sequentially from *StopHonourKillings* in February 2007.

In Sukkur *Payton* on 9th of February 2007 in *StopHonourKillings* notes: "A young married woman was killed allegedly by her husband over Karo-Kari..."⁵⁷ The honour killings go on. And on...

Noting the Human Rights Commission of Pakistan, *Payton* on February 9 2007 in *StopHonourKillings* reports: "A STAGGERING new statistic on the so-called honour killing of women and girls in Pakistan was revealed yesterday when the country's top human rights body reported that at least 565 died last year - double the number killed the previous year."⁵⁸ *Payton* adds: "Almost 500 of the honour killings followed accusations of 'illicit relations' ⁵⁹ The honour killings go on. And on

Again reporting for *StopHonourKillings* on 11th of February 2007 *Payton* notes: "A suspicious husband shot dead his wife over Karo-Kari on Saturday night in the village of Soomar Shaikh in Mirpur Mathelo police limits. Reports said accused Raes Shaikh suspected his wife Latifan Shaikh, 25, was Kari and developed with this sense he shot her dead between Friday and Saturday night. The area police have arrested the accused and recovered the gun used in the crime from his

possession. No case was registered till filling of this report.”⁶⁰ The honour killings go on. And on...

On the 16th of February 2007 the same rapporteur and agency note: “Police reports said that Nazar Hussain Shar gunned down his wife Sharifan and a youth Qaiser Shar in the Nazru Shar village in the limits of Mirpur Mathelo police station. Later, he buried them without funeral rites. The reports further said that Qaiser Shar had come from Kashmir and stayed in the house of accused Hussain Shar. The accused saw Qaiser Shar with his wife Sharifan in objectionable condition Thursday midnight and he killed them on the spot, the reports said.”⁶¹ The honour killings go on. And on...

On 20th of February 2007 Payton for the same agency notes: “Zilla Huma Usman, the minister for social welfare in Punjab province and an ally of President Pervez Musharraf, was killed as she was about to deliver a speech to dozens of party activists, by a “fanatic”, who believed that she was dressed inappropriately and that women should not be involved in politics, officials said.”⁶² The honour killings go on. And on...

Reporting in Stop Honour Killings on 21st of February 2007 Joanne Payton notes: “Haider Otho, allegedly killed his spouse, Rani, in village Char, near Daulatpur Safan, on the night between Monday and Tuesday because he suspected that she had illicit relations with another person.”⁶³ The honour killings go on.

¹ BBC News, (29 January 2006), “Pakistani women race peacefully”.

² Business Recorder, (23 January 2006), “4,383 Women ‘Sacrificed For Honour’ In 4 Years”.

³ Associated Press, (29/12/05), *Pakistani Killed Daughters to Save ‘Honour’*

⁴ Ibid.

⁵ Katja Luopajarvi, (2003), *Honour Killings as Human Rights Violations*, Research Reports of the Institute No 17, Institute for Human Rights, Abo Akademi University [Finland]

⁶ Zia Ahmed Awan, (October 2005), Paper 1 *Violence Against Women and Impediments in Access to Justice*, in Pakistan women in context: a companion volume, World Bank.

⁷ UNIFEM, (October 2006), *The Interplay of CEDAW, National Laws and Customary Practices in Pakistan: A Literature Review* by Fatimah Ihsan and Yasmin Zaidi in “Conceptualizing Islamic Law, CEDAW and Women’s Human Rights in Plural Legal Settings: A Comparative Analysis of Application of CEDAW in Bangladesh, India and Pakistan” – edited by Prof. Shaheen Sardar Ali”.

⁸ Salon, (5/1/2006), *Pakistan grapples with a particularly gruesome case*.

⁹ E/CN.4/2003/75/Add.1, paras. 1132-1134 and E/CN.4/2005/72/Add.1.” UNCEDAW, (5 October 2006), *List of issues and questions with regard to the consideration of an initial and periodic report*.

¹⁰ Are Knudsen, (2004), *License to kill: Honour killings in Pakistan*, CMI.

¹¹ Hilda Saeed, (5 June 2006), “Honour killings a cruel misnomer”, *Dawn*.

¹² Ibid ¹³ Ibid

¹⁴ (Katja Luopajarvi, (2003), *Honour Killings as Human Rights Violations*, Research Reports of the Institute No. 17, Institute for Human Rights, Abo Akademi University [Finland]).

¹⁵ Ibid

¹⁶ Are Knudsen, (2004), *License to kill: Honour killings in Pakistan*, CMI

¹⁷ Ibid ¹⁸ Ibid

¹⁹ *The Guardian*, (7 February 2007), “‘We feel no shame’ - the brothers who killed their sister for honour”.

²⁰ Ibid

²¹ IPPF, (8 February 2007), *Pakistan: ‘Honour killers’ expected to walk free*

²² Ibid ²³ Ibid

²⁴ Centre of Strategic Planning for Development, (2005), *Human rights for women and children in Pakistan*

²⁵ UNIFEM, (October 2006), *The Interplay of CEDAW, National Laws and Customary Practices in Pakistan: A Literature Review* by Fatimah Ihsan and Yasmin Zaidi in “Conceptualizing Islamic Law, CEDAW and Women’s Human Rights in Plural Legal Settings: A Comparative Analysis of Application of CEDAW in Bangladesh, India and Pakistan” – edited by Prof. Shaheen Sardar Ali

²⁶ Ibid

²⁷ Pakistan Human Rights Commission, (8/2/07), *Rights of the Disadvantaged in Human Rights Report 2006*

²⁸ UNIFEM, (Oct 2006), *The Interplay of CEDAW, National Laws and Customary Practices in Pakistan: A Literature Review* by Fatimah Ihsan and Yasmin Zaidi in “Conceptualizing Islamic Law, CEDAW and Women’s Human Rights in Plural Legal Settings: A Comparative Analysis of Application of CEDAW in Bangladesh, India and Pakistan” – edited by Prof. Shaheen Sardar Ali

²⁹ Ibid

³⁰ UNDP, (2005), *Pakistan Millennium Development Goals Report 2005*

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Resurgence of the Taliban



*David Goggins Investigates.
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Who are the Taliban?

The Taliban, an ultra-conservative religious group, was founded in Kandahar in 1994, under the leadership of a village Mullah named Mohammad Omar who had fought against the Soviet occupation forces during the 1980s. The name “Taliban” means “Students”, and was chosen because most of the group’s members were educated in religious schools, called *madrassas*. The Taliban almost entirely recruited their members from the Pashtun tribe, which is the largest ethnic group in Afghanistan, and which also inhabits those provinces in northern Pakistan adjoining Afghanistan. In 1996 the Taliban captured Kabul and by 1998 were in control of 90% of the country. During their time in power the Taliban implemented an extreme form of Islamic *Sharia* law, as a result of which men were forced to grow beards while women were compelled to wear the *burqa*, were not allowed to work and were denied access to education. There were also many public executions, floggings and amputations.

Background to the present conflict

During their time in power the Taliban provided sanctuary to Osama bin Laden and his al-Qaeda movement. This led to UN sanctions being imposed on Afghanistan following al-Qaeda involvement in the bombing of American embassies in Kenya and Tanzania in 1998. The Taliban continued to protect al-Qaeda after the 11 September attack on New York and refused demands by the US that bin Laden be handed over for trial and that all terrorist training camps be closed. The US responded by forming an alliance with anti-Taliban forces based in northern Afghanistan, with the US providing air support to Afghan ground forces. By early December 2001 both al-Qaeda and the Taliban had been driven out of Afghanistan.

Sanctuary in Pakistan

Mullah Omar and his senior commanders succeeded in escaping across the border into the tribal areas of northern Pakistan, where they were able to regroup their forces. The escape and subsequent revival of the Taliban is described in a BBC News report which says:

“After being routed in 2001 the Taleban found a safe sanctuary in Balochistan and the North West province of Pakistan. They have been able to set up a major logistics hub, training camps, carry out fund raising and have been free to recruit fighters from *madrassas* and refugee camps. The Taleban have received help from Pakistan’s two provincial governments, the MMA, Islamic extremist groups, the drugs mafia and criminal gangs – while the military regime has looked the other way. Al-Qaeda has helped the Taleban reorganise and forge alliances with other Afghan and Central Asian rebel groups. Thus the current Taleban resurgence is a reflection of the failure of policies by all the major players in Afghanistan – the US, Nato, the UN, the international community, the Afghan government and neighbours such as Pakistan.”

The importance to the Taliban of a safe haven in Pakistan is commented on in a report from the International Crisis Group (ICG) which says:

“It was the sanctuary of this international border that allowed Taliban leadership to survive the 2001 war and regroup in the intervening years. Today, Taliban leadership and spokespeople operate brazenly in areas bordering Afghanistan’s Pashtun belt in the south and east. Its fundamentalist religious schools, never reformed despite countless promises by President General Musharraf, offer almost limitless recruits.”

The Taliban have stated that their intention is to drive what they describe as foreign occupation forces out of Afghanistan and to restore an Islamic state. To this end they began conducting guerrilla operations in southern Afghanistan which have greatly escalated over the past two years. This campaign has led to fears that a resurgent Taliban may succeed in regaining power in Afghanistan.

Taliban Mindset

Rasul Bakhsh Rais, a director of the Quaid-i-Azam University in Islamabad, explains the mindset of the Taliban as follows:

“The Taliban grew up in the religious atmosphere of the *madrassas* and went through the rigours of a hard and isolated life that had very few amenities. Their early childhood experiences, socialisation in the all male institutions devoid of any sensibilities of a family life has vastly shaped their mindset and behaviour patterns with the Afghan society. Rigidity, Puritanism, glorification of martyrdom, *jihad* and masculinity are some of the traits that symbolise the political culture of the Taliban. In our view, the social and psychological dynamics of the *madrassas* have greatly shaped this culture and the mindset. The centuries old curriculum, which totally ignores scientific subjects and studies of the modern world, has failed to develop a well-rounded individual in the Taliban. Simplicity, from living to thinking, has reduced their analysis to a simple calculation of good and evil, and every thing is evil if it does not fit into their worldview. It is the strong faith in the righteousness of their ideas and conduct, which gives them a sense of mission to change the world in their image.”

Lost Opportunity

Following the defeat of the Taliban there was a period of several years when the US and the international community had the opportunity to assist the Afghan people in building a stable democratic state in Afghanistan. However, various commentators have suggested that the new regime and its backers made a number of serious mistakes. These mistakes are said to include appointing discredited warlords to positions of authority, an emphasis by the US on purely military operations rather than the reconstruction of Afghanistan’s infrastructure, failure to alleviate poverty and raise the standard of living for the Afghan people and failure to reconcile with former Taliban members who wished for peace.

Commentators have blamed the reappearance of the Taliban on the failure of the United States and the international community to provide sufficient support to the newly-elected regime of President Karzai, with the ICG saying that:

“The insurgency has its roots in the way that nation building was approached in 2001-2002, when the U.S. and others

opted for a quick, cheap war followed by a quick, cheap peace.”

Human Rights Watch (HRW) has expressed a similar view, stating:

“This crisis was predictable and largely avoidable. The failure of the international community, led by the United States, to provide adequate financial, political, and security assistance to Afghanistan despite numerous warnings, created a vacuum of power and authority after the fall of the Taliban. Where the United States and its allies failed to tread, abusive forces inimical to the well-being of the Afghan people have rushed in.”

British General David Richards has attributed the present difficulties in Afghanistan to a concentration by world powers on the situation in Iraq, stating:

“There’s no doubt there is a resurgent Taliban problem. Why? Largely it’s because people took their eye off this ball and a vacuum was allowed to develop and that vacuum was filled by the Taliban. I think, probably internationally, for a while Iraq absorbed people’s interest and resources.”

The Senlis Council, an independent think tank, which unlike other NGOs actually has researchers on the ground in Afghanistan, has commented on this failure to build a stable state, stating:

“Five years of nation-building efforts led by the US and UK have resulted in an Afghanistan that is neither secure nor prosperous. An intensive and extended focus on relieving the poverty of Afghans could have created a solid foundation on which to re-build Afghanistan. Instead, because poverty has not been prioritised, the international community’s democracy-building efforts are collapsing as Afghans starve.”

The failures of the international community have been acknowledged by Tom Koenigs, the most senior UN official in Afghanistan, who recently said that:

“We have made mistakes, and we shouldn’t repeat them. We have completely underestimated the challenge of governance in the southern provinces. The resurgence of the Taliban there was only possible because there was a power vacuum.”

Afghan World View

The Senlis Council has criticised the manner in which the international community has approached the situation in Afghanistan, suggesting that the US and its allies do not understand Afghan culture and stating:

“There has been a profound failure on the part of the international community to appreciate that the majority of Afghans have a completely different ‘world view’ to that of the ‘Western’ world. The US Administration lacks understanding of this Afghan world view, and has failed to appreciate the reality Afghans are experiencing: that aggressive security-focused stabilisation and ‘nation-building’ responses are perceived as a war against Afghan culture and religion.”

The Senlis Council also criticises the failure of the international community to conduct a “hearts and minds” campaign aimed at gaining the support of the Afghan people, stating:

“When international military forces first intervened in Afghanistan, much was made of the winning of “hearts and minds”, but this campaign has been lost. Locals assert that neither the “foreigners” nor the Afghan government had

made any efforts to counteract the detrimental effects of drought, poverty and poppy eradication in their provinces, and local’s apparent fear of the international military forces show that the “hearts and minds” campaign has failed.” Anger is now commonly expressed in southern Afghanistan, and many Afghans who supported the international forces now speak of them with hatred.”

Return of the Taliban

The Taliban reappeared as a major force in August 2003 when hundreds of their fighters attacked a police station in Barman with rockets, heavy machine guns and grenades. Since then there have been numerous reports of attacks on the Afghan police, the killing of persons associated with the Kabul government, attacks on redevelopment projects and frequent clashes with NATO forces, particularly in Helm and Province. Recent suicide bombings in which civilians were killed have also been attributed to the Taliban.

The Senlis Council has produced a detailed report on the re-emergence of the Taliban in southern Afghanistan. This report states:

“A growing insurgency is currently consuming Afghanistan’s southern provinces: five years after their removal from power, the Taliban now have psychological and *de facto* military control of nearly half of Afghanistan. Despite concerted international military efforts, the Taliban have successfully reorganised their forces, adapted their tactics, recruited and trained new combatants, and more importantly, gained substantial support among the Afghan population.”

The Senlis Council also comments on a lack of government control of southern Afghanistan, stating:

“Five years later, large areas of Afghanistan, particularly in the South, are not under central government control. Insurgency is present in half of the country: the Taliban are back and advancing rapidly towards Kabul. The Taliban’s return is directly connected to a number of failures on the part of the international community, many of which are linked to the formulation and implementation of failed counter-narcotics policies.”

Who is the leader of the Taliban?

The military leader of the Taliban in southern Afghanistan is believed to be Mullah Abdullah, a veteran commander who fought against both the Soviets and the Northern Alliance. He is thought to be around 40 years old and has a reputation as a ferocious fighter, despite losing a leg to a land-mine early in his career. He is said to be one of the most trusted followers of Mullah Omar, and was a member of the Taliban’s 10-man leadership council prior to the change of regime in 2001. Some sources claim that he is operating out of Pakistan, although this is denied by the Pakistani government, who claim that he is operating near the former Taliban stronghold of Kandahar.

Taliban Tactics

In an interview with Al Jazeera Taliban Commander Mullah Dadullah described the tactics used by the insurgents as follows:

“Taking cities is not part of our present tactics. Our tactics now are hit and run; we attack certain locations, kill the enemies of Allah there, and retreat to safe bases in the mountains to preserve our mujahidin. This tactic disrupts and weakens the enemies of Allah and in the same time allows us to be on the offensive. We decide the time and place of our

attacks; in this way the enemy is always guessing. We have attacked and occupied certain locations for a short period of time. This was done only to achieve the objectives of the operation. But we will always retreat to our safe bases.”

Night Letters

The Taliban makes use of a means of intimidation known as “night letters” These are notices which are sometimes pasted to the walls of mosques or government buildings, or which may be left in homes or public places. The letters, which may be anonymous or may be signed “The Taliban”, are said to be posted under cover of darkness by Taliban sympathisers. The letters warn against working for the government or foreigners, sending children to school, or engaging in any activity disapproved of by the Taliban. The use of night letters has proven to be highly effective and are said to be the reason that many police officers in Kandahar resigned from the force.

Attacks on Education

Particular targets for attack are the teachers and students of girl’s schools. These attacks are not only due to the perception that schools represent government authority but are also motivated by the Taliban ideology which is totally opposed to the education of women and girls. A HRW report on this topic states:

“Most Afghan girls still do not attend school more than four years after the Taliban were replaced by the government of President Hamid Karzai. For many, the reason is insecurity: it is simply too dangerous for students and their teachers to go to school, or for aid organizations and the Afghan government to construct new schools. Human Rights Watch has documented more than 200 attacks from January 2005 to June 21, 2006, of schools being blown up or burned down, teachers killed and threatened, and students intimidated.”

HRW also comments on the effects of the Taliban threat to schools, stating:

“Physical attacks or threats against schools and their staff hurt education directly and indirectly. Directly, an attack may force a school to close, either because the building is destroyed or because the teachers and students are too afraid to attend. Attacks and threats may also have an indirect ripple effect, causing schools in the surrounding area to shut down as well.

Civilian Casualties

There have been many reports of civilian casualties resulting from fighting in southern Afghanistan. This includes a report from the Senlis Council which states:

“The war in Afghanistan has led to a significant amount of civilian casualties, killed or injured by both parties, neo-Taliban or US and NATO troops. In fact, civilians are the principal victims of this war, either from intentional attacks or as collateral damage. Moreover, the Afghan population suffers more from damage on infrastructure, crops, public services, health facilities and schools.”

This report also refers to casualties resulting from air-strikes, stating:

“In several operations, international military coalition air strikes caused a huge number of casualties. Not only have air strikes proven highly counter-productive because of continued civilian casualties, but they have also failed to reduce the level of insurgency.”

HRW has estimated that during 2006 over 100 Afghan civilians were killed by coalition forces. There were protests by Afghans on 3 March 2007 after 10 civilians were killed by US soldiers during a suicide attack on a convoy, while on 5 March 2007 nine Afghan civilians were killed after their house was bombed by NATO warplanes. Experts have expressed the fear that the killing of Afghan civilians allow the Taliban to claim that they are protecting the people while the foreign forces are killing them.

Increasing violence in 2006

The Senlis Council points out that there was a massive increase in Taliban activity during 2006, stating:

“In recent months Afghanistan’s insurgency has grown and evolved. Attacks by non-state actors in Afghanistan have increased five-fold during 2002 and mid-2005. From a monthly average of just five in 2002, there were in mid-2005, on average, 25 attacks each month. In July 2006, this number increased to over a hundred attacks, including clashes against heavy-equipped Taliban groups consisting of dozens of combatants.”

Corroboration of an increase in the level of violence during 2006 comes from a HRW report which states:

“More than 1,000 civilians were killed in 2006, many of them as a result of attacks by the Taliban and other anti-government forces in southern Afghanistan. In all, more than 4,400 Afghans died in conflict-related violence, twice as many as in 2005 and more than in any other year since the United States helped oust the Taliban in 2001.”

The Current Situation

A report of the UN Secretary-General revealed that the incidence of insurgency-related violence in January 2007 was twice that of January 2006.

Numerous Taliban attacks were reported in February 2007, including an attack by a suicide bomber on Bagram Air Base during a visit by US Vice-President Dick Cheney.

The Taliban launched their most daring attack yet, when on 2 February 2007 the town of Musa Qala in Helmand Province was overrun by a force of about 700 fighters. This attack broke a truce that the town’s elders had brokered in October 2006 in which both British and Taliban forces had agreed to withdraw from the area. No attempt has been made to retake the town, apparently due to a fear of inflicting unnecessary casualties on the civilian population and the belief of NATO commanders that the Taliban would soon withdraw of their own accord. However, the Taliban still remain in control of Musa Qala and are reported to have arrested the elders.

Who is winning the war?

Most US and other western sources express the view that the Taliban will eventually be defeated, although this will require sending more troops into the conflict areas and that it may take several years to achieve victory. Typical of this optimistic viewpoint is an ICG report from January 2006 which says:

“As ISAF expands into Helmand, Uruzgan and Kandahar, it will face threats from a number of quarters. It will be challenged by drug cultivators and traffickers, warlords and commanders, local insurgents and cross border terrorists. The threats posed by each of these groups are different, although they all seek to undermine stability and often work together in fluid alliances. But they do not have widespread support among the Afghan people. Recent surveys have shown that

Afghans, by a large majority, oppose the Taliban, al Qaeda, warlords and drug traffickers. In the past fortnight we have seen big protests against the recent spate of suicide bombings. Surveys have also shown widespread support for efforts by the international community to bring security to Afghanistan. When you talk with the people of Afghanistan the request is most often for more foreign troops, not fewer."

Afghans living in the conflict area are reported to be more pessimistic. On 19 March 2007 the Senlis Council released the results of a survey of 17,000 Afghans in southern and eastern Afghanistan, which indicated that 49% of those surveyed believe that the international community will lose the war with the Taliban. Commenting on this survey Norine MacDonald QC said:

"The results from the survey are extremely alarming because they indicate that the international community is in serious trouble in Afghanistan." (Senlis)

The Afghan Newspaper Eqtedar-e-Melli has printed criticism of NATO claims that the international community is gaining the upper hand against the Taliban, saying:

"Prior to the launch of the operation, NATO and Afghan forces claimed that the enemy did not have the capability or strength of manoeuvre and offensive, and were about to fragment. In fact, it seems the current situation in those regions is completely different from the one those officials had claimed. In fact, efforts have been made to conceal the truth from the public."

It is widely expected that the Taliban will launch a new series of attacks following the end of the harsh Afghan winter. A typical comment comes from Australian Foreign Minister Alexander Downer, who recently said:

"Our analysis is that there is likely to be an upsurge of Taliban activity over the next few months."

Statistics for casualties incurred by both sides in the present war can be found on the History Guy website at: http://www.history.guy.com/war_in_afghanistan.html

For a list of individuals belonging to or associated with the Taliban see the following document on the UNHCR website:

<http://www.unhcr.org/cgi-bin/texis/vtx/rsd/rsddocview.pdf?tbl=RSDLEGAL&id=43a2b4384>



Current Awareness

Asylum and Nationals of Member States of the European Union: Information Note

Application by Ireland of EU Treaty Protocol on Asylum for Nationals of Member States of the European Union

Department of Justice website 31 January 2007

<http://www.justice.ie/80256E010039C5AF/vWeb/pcJUSQ6Y9HL7-en>

Notice of IBC/05 Renewal Scheme 31 January 2007

[http://www.justice.ie/80256E010039C5AF/vWeb/fIJUSQ6X XNMG-en/\\$File/IBC05Renewal.pdf](http://www.justice.ie/80256E010039C5AF/vWeb/fIJUSQ6X XNMG-en/$File/IBC05Renewal.pdf)

European Legal Network on Asylum (ELENA) course on Asylum Procedures, the EU and International Human Rights Law 4-6 May 2007, Holiday Inn, Rome.

The course will examine the Asylum Procedures Directive in light of International Refugee and Human Rights law and EC

law, including the impact of policies such as fast track processing upon asylum seekers. It will also address the impact of the Qualification Directive on the use of evidence in asylum procedures, with a particular focus on the role of country of origin information and medical evidence.

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Journal of Refugee Studies
Refugee Survey Quarterly

Immigration

Immigration and Nationality Law Reports
Tolley's Immigration, Asylum and Nationality Law

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Newsweek
The Economist
The Guardian Weekly
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