

Human rights have no borders

by Maura Lean

A key challenge facing the Irish people today is to build an Ireland in which the values of multiculturalism and inclusion are recognised and practised.

The number of refugees world wide has grown from 8 to 15 million in the last decade. In this context the much publicised rise in the number of asylum seekers coming to Ireland, from 424 people in 1995 to 3,883 people in 1997, is minuscule. The increase, however, has been accompanied by growing levels of racism and xenophobia.

The Irish State has a responsibility under international law not to tolerate racism. Much of the coverage of refugees in the media and some of the comments made by candidates during the June 1997 general election campaign contrast sharply with the spirit of inclusion and human rights which lies behind the designation of 1997 as European Year against Racism. Headlines such as 'Refugees spark housing crisis', 'Crack-

Zlata Filipovic, an author, was airlifted out of Sarajevo and now lives in Dublin.

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down on 2,000 sponger refugees', and 'Refugee rapists on the rampage', create an erroneous impression of refugees over-running the country, and equate being a refugee with being a criminal.

Ireland - from island of exiles to an island mentality

Over one million Irish-born people live overseas, most of them in Britain, the USA, Australia and Canada. Tens of thousands of others live throughout Europe, Africa and Asia. An estimated seven million people have left this country since the 17th century and it is estimated that 70 million people around the world identify with Ireland [1]. In the 1980s a generation of Irish saw the Morrison and

Donnolly visas, permitting quota allocations of Irish people to work in the United States, as a passport to economic wellbeing and opportunity in the USA. Yet, in contrast, before the second world war Ireland closed its doors to Jews. The gains which Jewish migrants subsequently brought to Ireland in the 1940s and 1950s were quickly obvious. Countries of origin of asylum seekers coming to Ireland now include Romania, Algeria, Somalia and the Democratic Republic of Congo (formerly Zaire).

In the *Voice of Refugees* magazine earlier this year Khalid Ibrahim, co-ordinator of the Association of Refugees and

Asylum Seekers in Ireland (ARASI), wrote "Irish people have been respected all over the world for two main reasons. Firstly, they have no colonial history. Secondly, they have suffered from being an oppressed nation... They have emigrated worldwide... Irish culture is very rich and has left its effect on the culture of many countries. We hope that some of our culture can be accepted and celebrated beside the Irish culture" [2]. Such hopes contrast sharply with the present reception for asylum seekers at state level and in parts of society.

The White Paper on Foreign Policy and the 1996 Refugee Act

In March 1996 the then Irish Government published its first ever White Paper on Foreign Policy. It states that Ireland's development policy will place "renewed emphasis" on "responding to the growing number of refugees and displaced persons" [9.18]. In an assessment of the White Paper [3], Andy Storey notes that it is overtly concerned with the plight of refugees internationally but has little to say regarding the situation of refugees coming to Ireland. He points to a surprising omission: the chapter of the White Paper which deals with human rights (chapter 8) makes no reference to refugees despite the widespread worsening violation of refugees' and asylum-seekers' rights throughout the world. By not approaching this issue from a human rights perspective Ireland risks undermining its credibility in other international fora on human rights. The White Paper's discussion on the need for more open and transparent EU procedures on asylum and immigration [3.207] is overshadowed by its emphasis on issues such as drugs, immigration, extradition and organised crime. By including the issue of asylum within this context a clear association is made with

criminality rather than with human rights.

Ireland's 1996 Refugee Act sets out procedures to deal with refugee claims and states refugees' rights. Although some aspects of the legislation have been criticised, its impact, if implemented, is regarded by the Irish Refugee Council (IRC) and others as broadly positive. It includes rights to reside, to health care and to social welfare, and access to the courts. It states that asylum seekers must be informed on arrival of their right to consult a solicitor. If a person is not granted refugee status they can still be allowed to stay on humanitarian grounds if they are fleeing famine or disaster, although their rights and benefit entitlements are not specified.

However, by 1 September 1997 only five sections of the Act had been initiated and, arguably, only two of the five implemented sections had changed procedure in any significant manner. A central pillar of the Act had also crumbled. An injunction taken out by a former Minister for Justice, Patrick Cooney, prevented the appointment of a Refugee Commissioner, the independent determination body conceived to make application recommendations to the Minister. (It has since become clear that the large backlog of cases awaiting finalisation - currently over 4,000 - necessitates the appointment of several Refugee Commissioners [4].)

A major shortcoming of the Act is that asylum seekers still do not have the right to work, which affects their ability to be self-sufficient and to contribute to Irish society whilst their application is being processed - and this can currently take up to between two and three years. A further shortcoming of the Act is its inadequate provision for interpretation facilities. It states only that there will be interpretation, where possible, for refugee determination procedure (see Section 8, sub-section 2; Section 11, sub-section 2; and Section 16, sub-section 11d). In this context opportunities for refugees to use their skills to help each other should be utilised. The creation of ARASI increases the scope for this,

giving refugees and asylum seekers a body which may be directly involved in advocacy and facilitating links with local community organisations.

The legal situation of asylum seekers and refugees

The 1951 Refugee Convention states that refugees should not be penalised for entering a country illegally. Back in 1993 an inter-departmental committee on non-Irish nationals recommended that the existing administrative arrangements should be placed

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on a statutory footing with the important addition of an appropriate appeals authority. However, recent moves to deal with illegal immigration give cause for concern regarding the fate of refugees seeking asylum in Ireland.

On the last day in office of the previous government (25 June 1997) the then Minister for Justice put in place new port of entry procedures between the Republic of Ireland and the UK which effectively ended the right to travel freely between the two countries. UNHCR promptly expressed its concern that these new port of entry procedures for dealing with asylum seekers do not meet with Ireland's international obligations, and asked for their suspension. The operation of non-admission procedures such as those under the June 1997 Ministerial Order, without review procedures and safeguards, can result in the erosion of the central international legal right to seek asylum, and can violate the principle of *non-refoulement* now enshrined in both national and international law.

Since the Dublin Convention came into force on 1 September 1997, any asylum seeker has a right to appeal if his or her application is rejected at the port of entry on the basis that he or

she had an opportunity to apply for asylum in another EU/Dublin Convention country. The Dublin Convention also sets out the procedure for determining whether an applicant may be returned to another European state. It is, however, ironic that the only comprehensive legislative procedural statement which exists in Irish law is one dedicated to making it easier to remove applicants from the State rather than one guiding the positive identification of protection needs.

Legal aid must be made available at the point of entry and be available throughout the examination procedure. Adequate legal aid is essential to asylum seekers in order to offset their lack of knowledge of the Irish legal system and of their rights as asylum seekers, and the difficulties inherent in operating in a foreign language. The

termination, due to lack of resources, of the Refugee Legal Project of the Irish Refugee Council which provided a basic legal advice service on an interim basis, means that the only state legal aid available to asylum seekers is IR£120 (IR£1 is currently US\$1.36) towards legal costs. The actual cost of making legal representation on behalf of asylum seekers is much greater, requiring expertise in refugee law and case preparation and the use of translation and country of origin research facilities. Furthermore this limited state legal aid is only available at the appeal stage, when an application has already been made and been refused. The lack of resources being made available for this area can only indicate a very low level of priority being attached to allocating resources in defence of basic rights.

On 10 December 1997, in a letter to UNHCR, the Department of Justice set out new draft procedures for dealing with asylum applications. There is, however, concern that these procedures place the implementation of the Act on an even more distant footing. Particular concern surrounds the proposal that, during the interview process, the asylum applicant may be accompanied by a representative who cannot, however, answer questions for the applicant or intervene in any

way. The representative is to be given the opportunity at the end of the interview to make briefly any points which are considered necessary. There are some doubts as to whether such an approach is legal.

Access to state benefits

Much has been made of the costs imposed on the Irish state by the arrival of increasing numbers of asylum seekers with an estimated annual figure of IR£12 million [5]. Moreover, the visibility of asylum seekers in welfare queues, and alarmist newspaper headlines bemoaning the cost of this, have contributed to the projection of a negative image of refugees and asylum seekers. The following facts give a more accurate picture of the situation:

◆ Asylum seekers are not allowed to take up employment despite many of them being highly skilled and

◆ Asylum seekers have been accused of taking local authority houses from needy Irish families on waiting lists when in fact they are not even eligible to apply for local authority housing. Because of the shortage of available accommodation, as well as a reluctance on the part of many private landlords to accept foreign tenants or tenants claiming Rent Supplement, immigrants reluctantly remain homeless in emergency accommodation for weeks or months on end.

An agenda for action and understanding

◆ Ireland is the only EU state which has yet to ratify the *Convention on the Elimination of all Forms of Racial Discrimination*. Ratification of this, and the *Convention on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (1984), must be a top priority in advance of next year's

for the reception of refugees in consultation with statutory bodies and NGOs.

◆ The time taken to process asylum applications needs to be reduced, especially in view of the fact that asylum seekers are not able to seek employment in the interim. An incentive to process applications speedily, and thereby save public money, would be to introduce a proviso that in the event of their applications taking longer than six months to process, asylum seekers would be entitled to seek work pending a decision on their case.

◆ The Government should set up an appropriate body to advise and recommend on the full range of measures needed to receive and absorb those refugees whose applications are approved. Such preparation will require action on a number of fronts,

Dr Luo Jin Shang is a Vietnamese doctor of Chinese origin, with nearly 40 years experience as a practitioner of both Western and Chinese medicine. "I like the Irish people. They are very friendly, just like the Vietnamese. My main regret is that I cannot work as a doctor here... if I don't do anything with my medical skills, my life will lose its meaning..."



photograph: Derek Speirs/Report

qualified and capable of making a valuable contribution to our society. Neither are they entitled to unemployment assistance or to benefits based on pay-related social insurance contributions. However, an asylum seeker may claim the same weekly Supplementary Welfare Allowance (SWA) as Irish citizens - and in November 1997 some 2,400 asylum seekers were in receipt of SWA benefits - which is recognised officially as still leaving recipients living below the poverty line.

session of the UN Commission on Human Rights.

◆ The 1996 Refugee Act represents a major step forward and has the potential to place Ireland at the forefront of progressive international law and practice on asylum. However, despite being passed with all-party support 18 months ago it has been only very partially implemented. The Government should take action to implement the Act without further delay and in so doing develop a coherent programme

including economic, legal, cultural, political and educational. The experience of other European countries should be carefully examined.

◆ It is of great concern that racism has become increasingly manifest in the form of physical assaults on and threats, written and verbal, against asylum seekers. The Government, and indeed all politicians, should speak out to diffuse the current climate of rising racist tension.

◆ This tension provides a special challenge for the provision of an appropriate education campaign on the promotion and protection of human rights. This should include the schools, the non-formal sector, the media and the general public. This would be particularly timely as Ireland's former President, Mary Robinson, in her capacity as High Commissioner for Human Rights has recently assumed particular responsibility on behalf of the UN in the field of human rights education.

As one of the world's richest nations, the Irish government has a moral obligation to assist in tackling the problems of conflict and lack of development which generate refugees.

In Ireland, as in many other places, millennium fever is beginning to take off. As a society we must ask ourselves what kind of Ireland do we want for the new millennium. A key challenge is to build an Ireland where the values of multiculturalism and inclusion are recognised and practised. Refugees and asylum seekers can, if given the chance, contribute greatly to our society with their skills, experience and energy while adding to our cultural diversity. Recent European history has shown that anyone can become a refugee. It behoves us all to guarantee the highest levels of protection for those that do.

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Trócaire and the Irish Commission for Justice and Peace recently launched a joint policy document entitled *Refugees and Asylum Seekers - A Challenge to Solidarity* which contains 11 key recommendations relating to asylum seekers in Ireland. The document is available (cost IR£2 plus post and packaging) from: Trócaire, 169 Booterstown Avenue, Blackrock, Co Dublin, Ireland. Tel +353 1 2885385; Fax +353 1 2993577/2836022; Email info@trocaire.ie Website <http://www.trocaire.org>.

References

- [1] Extracted from the editorial of *The Irish Times* of 29 September 1997
- [2] Letters *Voice of Refugees* issue 4, September 1997 p1
- [3] Storey A 'An assessment of the Irish Government's White Paper on Foreign Policy: Sectional Interests versus Professed Ideals' Trócaire North-South Issues Paper no 20, July 1996
- [4] Written *Dail* answers 11 December 1997, no 316, Minister for Justice Equality and Law Reform (Mr O'Donoghue) to *Dail* Deputy (Mr Ivor Callely)
- [5] Interview with Mr Dermot Ahern, Minister for Social, Community and Family Affairs, *Sunday Business Post*, 18 January 1998, p24



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Somali family outside their home in Dublin

Uganda: the 1996 draft Refugee Bill

The Ugandan government is in the process of re-drafting its domestic law on refugees. In October 1997, a group of 36 academics, refugees and practitioners met at Makerere Institute of Social Research to discuss the 1996 draft 'Refugee Bill'. Concerns raised included the following points:

1 The draft law fails to protect the fundamental right to freedom of movement provided in Article 26 of the 1951 Refugee Convention; instead, it allows the relevant Minister to specify certain areas in Uganda where refugees may not reside, without requiring him or her to show demonstrable grounds.

2 The draft law restricts refugees to settlements without allowing them the freedom to choose to integrate locally, despite the provisions of the Ugandan Constitution; and it fails to mention the need for facilitating the naturalisation of refugees as a 'durable solution' (Article 34, 1951 Refugee Convention). The structure of refugee administration, as laid out in the draft, will also inhibit integration as it places the administration of refugees in a central government ministry instead of placing it within the context of Uganda's local council system or channelling external funds through the relevant line ministry departments so that Ugandans as well as refugees would benefit from the expansion of services.

3 The draft does not include the right to a fair hearing (Articles 28 and 44, Uganda Bill of Rights; Article 10, Universal Declaration; Article 7(1), African Charter on Human Rights) nor does it include the right to 'access to courts' (Article 50, Ugandan Constitution; Article 16, 1951 Refugee Convention). The mention of such rights as freedom of religion, rights pertaining to juridical status including freedom to acquire movable and immovable property, and certain welfare rights pertaining to education, housing and public relief, are neglected.

The group was concerned about what role civil society should play in promoting the rights of refugees and has forwarded a letter to the Ministry of Local Government proposing that the debate be opened up and consultation widened to include representatives of all the interested parties, including academics, NGOs working with refugees, human rights organisations, and representatives of the refugee community itself.

The group, chaired by Nathan Twinomugisha, director of the Legal Aid Project, continues to meet on a regular basis to discuss various aspects of refugee law. For more details, contact: Barbara Harrell-Bond, RSP, QEH, 21 St Giles, Oxford OX1 3LA, UK. Fax: +44 1865 270721. Email: barbara.harrell-bond@qeh.ox.ac.uk