

Working Notes Issue 51 Editorial

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December 2005

Editorial

This issue of Working Notes commemorates the twenty-fifth anniversary of the establishment of the Jesuit Refugee Service (JRS). The mission of JRS is ‘to accompany, advocate and serve’ refugees and displaced persons across the world. The Jesuit Centre for Faith and Justice works closely with JRS Ireland in a joint integration project, Community Links, funded by the European Refugee Fund, and in public advocacy and lobbying on behalf of refugees and asylum seekers in relevant areas of policy.

A common concern expressed in all the articles in this issue of Working Notes is that countries are adopting increasingly restrictive asylum policies and practices and there is a consequent erosion of the rights of asylum seekers. In his article, John Dardis SJ, Provincial of the Irish Jesuits and former Director of JRS Europe, points to the danger that the particular needs of refugees and asylum seekers will be eclipsed by a focus in public policy and debate on more general immigration issues.

The increase in the use and duration of detention in EU countries is highlighted in the article, “To Detain or Not to Detain?”. In 2004, JRS Europe launched a campaign to raise awareness of conditions in detention centres across Europe and of the absence of safeguards for third country nationals who are detained. In September 2005, following a request from JRS, four Irish MEPs visited Cloverhill Prison to assess the situation of foreign nationals detained under immigration legislation. Their report on the visit is published for the first time here. While the MEP visits to places of detention across Europe are extremely valuable in highlighting the current conditions of detention, JRS challenges strongly the need to detain asylum-seekers at all. It argues that detention should be considered only when an application for asylum has been rejected, all avenues of appeal exhausted, and a person is to be deported. Concerns about national security or alleged criminal activity on the part of an asylum-seeker should be dealt with through the criminal justice system, with the usual due process guarantees.

Deportation or removal procedures are highly controversial and emotive. In her article on deportation, Sr Joan Roddy says that in general removal procedures do not take into account the long-term fate of the people deported. She argues that it is not enough that states abide by a strict legalistic interpretation of the Geneva Convention that they must not return people to a situation of persecution. Rather, states have a broader responsibility: humanitarian considerations require that ensuring the protection of the person’s social and economic wellbeing should be a central consideration in making decisions regarding deportation.

Catholic Social Teaching has much to say on the Christian response to the plight of refugees worldwide. As Cathy Molloy points out, the Christian call to solidarity should find expression in our individual and collective actions to address the needs of asylum-seekers and refugees. Church

teaching highlights the need to tackle the gross level of global inequality which is the root cause of many of the factors, such as political unrest, violent conflict, and extreme deprivation, that result in people leaving their own country to seek asylum.

Finally, for any readers who might wish to become actively involved in addressing the issues raised in these various articles of Working Notes, here are two suggestions. Firstly, you might consider supporting the JRS campaign for the establishment of a Europe-wide body to monitor conditions in places of detention - for example, by writing to your local TD or MEP. Secondly, the JRS Community Links Project, which aims to facilitate the integration of refugees in the Dublin 1 area, has numerous volunteering opportunities. If you are interested, please contact Ruth Diaz Ufano, Project Co-ordinator, at 01 806 9899 or by email at clproject@jesuit.ie

To Detain or Not To Detain?

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December, 2005

TO DETAIN OR NOT TO DETAIN?

Eugene Quinn and Renaud de Villaine

"Eugene Quinn is Director of the Jesuit Centre for Faith and Justice and Acting National Director of JRS Ireland. Renaud de Villaine is Policy and Advocacy Officer for JRS Europe"

In January 2004, the United Nations Secretary General, Mr Kofi Annan, heavily criticised the policies of the European Union towards refugees and migrants. In a speech to the Members of the European Parliament, he spoke of 'offshore barriers' and of 'refused entry because of restrictive interpretations' of the Geneva Convention relating to the Status of Refugees. He said that asylum seekers are 'detained for excessive periods in unsatisfactory conditions'.¹

Two months later, in March 2004, the European Parliament's Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, in its "Report on the Situation as Regards Fundamental Rights in the European Union", said:

(The Committee) ..is concerned at the plight of foreigners being deprived of their freedom in holding centres despite the fact that they have been charged with no crime or offence and calls for holding centres, in particular holding centres for asylum-seekers, to meet human rights standards.²

On 13 January 2005, eighty asylum seekers detained in Safi barracks, one of the four detention centres in Malta, were beaten up by members of the Maltese Armed Forces in response to a peaceful protest that they had organised against the conditions of their detention. In the end, twenty-four of the protesters had to be taken to hospital with serious injuries.

On 28 June 2005, a delegation of twelve European MEPs from the group GUE-NGL (Union for Europe of the Nations and Group-Nordic Green Left), visited a detention centre for immigrants on the island of Lampedusa off the coast of Sicily. The MEPs were particularly shocked by the living conditions of the detainees and the way they were treated. In the report which they issued after the visit, the MEPs said that they had been 'stunned' by what they had seen.³

This article will consider the issues and questions surrounding the detention of asylum seekers in Europe and in Ireland. There are serious issues also regarding pre-removal detention of irregular migrants but these are beyond the scope of the article. {mospagebreak }

'Pre-admission' Detention

In general, detention is interpreted in legal terms as an administrative measure and not a measure of a penal system, although it takes on characteristics of criminal incarceration. The United Nations

General Assembly speaks of a 'detained person' as 'any person deprived of personal liberty except as a result of conviction for an offence'.⁴

The administrative detention of asylum-seekers is termed "pre-admission detention" as distinct from the detention of irregular immigrants with the intention of deportation, often described as "pre-removal detention". Detention has become an increasingly widely-used instrument in European asylum and immigration policy in order to enforce existing policies and legislation. Not only has the number of detainees risen, but the length of time people spend in detention has also increased.⁵

Right to Manage Migration Flows v Right to Liberty

A state's fundamental right to manage migration flows is largely undisputed. The state has a right to protect its people by preventing those who try to immigrate illegally, as well as those who might pose a threat to the health or security of the nation, from entering the country. In an ethical analysis of the detention of asylum seekers, Professor Markus Babo, University of Lucerne, writing in a JRS Europe report, Detention in Europe, argues:

This right must be enforceable, so that anyone refused entry, who does not leave the country voluntarily, may be forcibly removed. Without such sanction, legal immigration would be impossible to control and maintain and therefore the state would be forced into a passive role.⁶

Detention of nationals from non-EEA (European Economic Area) countries (frequently referred to as third country nationals) may be used to provide such sanction. On the other hand, it cannot be denied that detention violates a person's liberty. The right to liberty is a fundamental human right, which is protected by Article 6 of the Charter of Fundamental Rights of the European Union which states: 'Everyone has the right to liberty and security of person'. As Professor Babo points out:

Should a state find it necessary to limit this right to liberty, it is obliged to give reasons, for the removal of liberty represents a grave moral evil to the affected individual. This can only be ethically justified, if an even greater evil (generally for the relevant state or society) is to be avoided by such means. Deprivation of the right to liberty of movement can therefore be allowed only in absolutely exceptional circumstances.⁷

Thus detention should only be considered as a measure of last resort. (An extract from the ethical reflection on the detention of asylum seekers by Professor Babo is given in Box 1 below)
{mospagebreak }

Box 1 : Pre-Admission Detention - An Ethical Analysis **Professor Markus Babo, University of Lucerne**

Pre-admission detention happens immediately after arrival. It is legitimized by the argument that a great number of refugees cross European borders and that it has to be assumed that only very few of them are in need of protection. Detention of asylum applicants is deemed necessary to establish their identity and need for protection more quickly and easily and to facilitate removal where necessary. This could only be justified on ethical grounds if detention of asylum applicants were the

lesser evil for the state and its people in comparison to the application for asylum without removal of liberty, and if a serious national emergency were threatened. This might be true if there were such a high number of asylum applicants that processing their applications without detention would be impossible.

This, however, is not the case. Only a fraction of worldwide refugee migrations reaches Europe. There were 10.5 million refugees throughout the world in 2002, of which only 2.3 million came to Europe and only 615,000 to North America, while 7.5 million went to Africa and Asia¹⁰ ... Countries in the southern hemisphere... continue to accept considerably more refugees in spite of their lower standard of living. Numbers alone, therefore, cannot serve to justify the indiscriminate detention of all refugees.

The fact that less than half the migrants are officially recognized as being in need of protection under the Geneva Convention relating to the Status of Refugees,¹¹ is insufficient reason in itself for the routine detention of all asylum applicants. Since the attainment of refugee status remains practically the only entry route into Europe (apart from family reunification and immigration for highly qualified labour) all those willing to migrate are forced down this route, which is getting narrower and narrower.

The EU member states have reinforced their borders and surrounded themselves with a belt of third countries. Alongside this, special asylum procedures have been implemented at airports, which make it almost impossible to enter the EU legally. Refugees are therefore increasingly driven into the arms of professional human smugglers and traffickers and are virtually forced to disguise their identity and route of movement. Otherwise they risk ending up back in their country of origin. You cannot expect people who try to escape from inhumane conditions in their home country to apply for visas and enter a foreign country legally carrying a valid passport. Often they have neither the time nor the money to acquire the necessary travel documents. While these facts highlight the need for structural change in Europe, they must not lead to global suspiciousness of all those who try to acquire refugee status.

Anyone who takes the international commitments towards refugee protection seriously cannot justify the routine detention of asylum-seekers just for the sake of simplifying administrative procedures. In years gone by, there was a much greater number of asylum applicants than now, and authorities coped without pre-admission detention. Where necessary, the administrative burden could be eased by less stringent methods, e.g. by the implementation of registration procedures and restrictions on mobility. It is a fallacy to suggest that the asylum process can be speeded up by detaining asylum-seekers. Better results could be expected from increasing the number of investigating personnel...and improving their training.

Since 11 September 2001 and, again, 11 March 2004, the issue of national security has become a key argument in favour of detention of Islamic migrants travelling without valid documents.¹² This certainly has to be taken seriously. Where there is an acute threat, even stricter controls and more serious restrictions of individual rights can be justified. However, one must bear in mind that the terrorists did not enter the relevant countries as refugees. Any routine detention of (particular groups of) asylum-seekers based on the argument of national security also serves to criminalize without differentiation and to strengthen xenophobic tendencies. By reducing migration issues to a national

security problem one loses sight of the fact that it isn't the refugees that must be fought. What must be fought are the things which cause migration, such as unjust economic and social orders, ecological destruction, inhumane political systems and the erosion of traditional cultural foundations in the refugees' home countries. Thus the argument of national security must be employed with great care and only in exceptional circumstances. Security measures should never be implemented solely at the expense of refugee protection, as explicitly confirmed by the EU Commission. {mospagebreak }

Detention in Europe

For persons who have fled their country due to a 'well founded fear' of persecution based on race, religion, nationality, membership in a particular social group, or political opinion, and who have already endured imprisonment, and in some cases torture, in their country of origin, the effects of detention can be particularly grave. Often the poor living conditions in detention centres have been adjudged to amount to inhuman or degrading treatment, as defined by the European Convention on Human Rights.⁸

In the case, ⁹ the European Court on Human Rights considered that the conditions of detention of the applicant, a Syrian detained while awaiting expulsion to his country of origin, when taken together with the duration of his detention which was eighteen months, constituted inhuman treatment. In this case, the applicant had been confined in an overcrowded and dirty cell with insufficient sanitary and sleeping facilities, insufficient water, without fresh air and natural daylight and no yard in which to exercise.

Detention in many instances has negative psychological effects. At the end of last year, a Turkish woman and her four children, aged between four and eight, were locked up in a small room for twenty-two days in a UK detention centre in Dungavel, prior to removal to Germany. In Germany, they were all granted humanitarian protection on the grounds that two of the children were recognised to be in great need of psychotherapeutic care resulting from their treatment in Dungavel.

The duration of detention is a common problem across many EU states with migrants often being detained for long periods of time. Both Malta and Germany allow detention for up to eighteen months; Belgium for up to eight months. In the United Kingdom, the period of detention can be indefinite. France is the honourable exception, with a maximum duration of detention of thirty-two days.

Detention is an expensive measure. The estimated cost of detention in the UK is in excess of €10,000 per detainee.

Most countries have detention centres specifically for foreign nationals: however, in the UK, migrants may be detained in prisons, while in Malta they are detained in camps.

JRS Europe argues that detention is a systematic but flawed response to increasing numbers of immigrants arriving in Europe every year. {mospagebreak }

Irish MEPs Visit to Cloverhill

In Ireland, the vast majority of males detained under immigration legislation are in the detention facilities in Cloverhill Prison, Dublin. (The vast majority of females are detained in the Dochas Centre in Mountjoy Prison. Other centres which can be used for detention are specified in the legislation.¹³)

On Friday, 16 September 2005, four Irish MEPs - Proinsias de Rossa (Labour), Bairbre de Brun (Sinn Féin), Mairead McGuinness (Fine Gael) and Gay Mitchell (Fine Gael) - visited Cloverhill detention facilities to assess the situation of unsuccessful asylum seekers and irregular migrants detained there and awaiting deportation.

This followed an approach by JRS Europe to Irish MEPs asking them to visit places of detention for migrants in Ireland. Since 2004, JRS has been engaged in a Europe-wide advocacy campaign to highlight the conditions of migrants detained in Europe. Part of this campaign has been to urge MEPs to visit places of detention in their own country.

Box 2: Report on the Fact-Finding Visit of Irish MEPs to Cloverhill Prison, 16 September 2005

1. Findings

Approximately 70% of the 110 foreign nationals detained in Cloverhill are there under the provisions of immigration legislation. MEPs found that the facilities were humane and the conditions of detention generally satisfactory, although the question of possible overcrowding had been raised during the visit.



The detainees benefit from the same services as prisoners on remand, including health care, psychological assistance and access to sport activities. MEPs praised the staff in Cloverhill whom they considered to be committed to ensuring that the conditions of detention were as good as possible in the circumstances.

However, they all expressed serious concern that asylum seekers and irregular migrants are being detained in a prison when they have not committed a crime. Bairbre de Brun MEP was of the view that detention in prison facilities 'can have serious negative consequences for the mental and physical well-being [of the detainees] and can often add to existing trauma and mental health problems'.¹⁵

A particular concern was the length of detention, with the average duration being between 30-50 days. Under the Immigration Act 1999 the maximum period for which person awaiting deportation may be detained is 56 days. However, under Section 9 of the Refugee Act 1996, the maximum period of detention is unspecified as a judge may commit an asylum seeker to successive periods of ten days in detention while their application is being determined. Gay Mitchell MEP said he was 'surprised to learn that persons could be held for up to 56 days on the say-so of a Garda without judicial review'.

The delegation highlighted the fact that families were separated in detention. Cloverhill is a male-only prison;

women and children are detained in the Dochas Centre at Mountjoy Remand Prison (Dublin). Proinsias De Rossa MEP pointed out that: 'this is contrary to the provisions of the EU Directive that lays down minimum standards for the reception of asylum seekers 16 that Ireland has unnecessarily opted out from'.¹⁷ There is a family room for visits in Cloverhill, but this is subject to a waiting list.

A major deficiency identified by the MEPs was the lack of educational facilities for those in detention in Cloverhill. The Governor assured the MEPs that the prison has educational facilities in place and has appointed teachers, but agreement from the trade unions involved is still pending. Mr. De Rossa noted that as Cloverhill is the most modern prison in Ireland: 'it begs the question whether or not educational services are available in any of the other detention centres and what kind of other facilities are available in them?'¹⁸ .

Mairead McGuinness MEP wondered: 'whether prison is the right place to handle this very delicate issue. While I'm not happy that people who are not criminals are effectively locked up in prison, any solution to this problem must be better than that currently on offer by providing enhanced language services, health and other services.'

Bairbre De Brun MEP said that she plans to raise the issue of the detention of asylum seekers and irregular migrants both at national and European level.

2. Recommendations

After the visit, the MEPs recommended that:

- detention should be used as a measure of last resort;
- those detained under immigration and refugee legislation should be separated from sentenced prisoners and those remanded on criminal charges;
- overcrowding must be avoided in all circumstances;
- the period of detention should be kept to the minimum and a reasonable maximum clearly laid down in legislation;
- the right to family life, as provided by the European Convention on Human Rights,¹⁹ should be guaranteed to those in detention;
- Ireland should sign up to the EU Directive laying down minimum standards for the reception of asylum seekers. {mospagebreak }

Conditions in centres used for detention in Ireland again became the focus of attention in November 2005, with the publication of a research report, "Immigration-related Detention in Ireland", which had been commissioned by the Irish Refugee Council, the Irish Penal Reform Trust and the Immigrant Council of Ireland. On the basis of interviews with detainees, and of an independent examination of living conditions, the report concluded that: 'neither Cloverhill Prison nor the Dochas Centre provides an appropriate environment in which to hold immigration detainees'.¹⁴

The visits by MEPs to detention centres in Ireland and other countries underline the need to establish an independent EU monitoring body to ensure that the conditions of detention for asylum seekers and irregular migrants in Europe are satisfactory and in line with human rights standards. JRS Europe has recommended that the European Commission should set up a body to monitor and periodically report on the development of national legislation on detention and detention practices in the EU Member States, as well as in the EU candidate countries and their non-EU neighbour countries.

Pre-Admission Detention of Asylum Seekers in Ireland

1. The Legal Basis

The amended 1996 Refugee Act outlines six grounds under which an immigration officer or a member of An Garda Síochána may detain an asylum-seeker. These are when, 'with reasonable cause', he or she suspects

that an asylum-seeker:

- poses a threat to national security or public order in the State;
- has committed a serious non-political crime outside the State;
- has not made reasonable efforts to establish her/his true identity;
- intends to avoid removal from the State in the event of his or her application for asylum being transferred to a convention country or a 'safe third country' (under the Dublin Convention asylum seekers must apply for asylum in the first 'safe' country that they enter);
- intends to leave the State and enter another state without lawful authority; or
- without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents.²⁰

2. The Numbers

The November 2005 report, "Immigration-Related Detention", showed a significant fall in the total number of people detained under immigration provisions between 2003 and 2004: from 1,852 to 946. This reduction of 48 per cent in the numbers detained occurred in parallel with a fall in asylum applications in Ireland of some 40 per cent between 2003 and 2004. However, while the total number of detainees has decreased, the duration of their detention has increased significantly, with 619 people detained for longer than 50 days in 2004 compared with 367 in 2003.²¹

Only aggregate statistics are provided on immigration-related detention, so there is no breakdown to show what proportion is made up of different groups, for example, pre-admission asylum seekers; pre-removal detainees; those who have been refused permission to land or other groups of irregular immigrants. Analysis and discussion of the issue of pre-admission detention in Ireland requires that specific data on the extent to which asylum seekers are being detained should be made available.

3. The Safeguarding of Due Process

There is considerable discretion given to immigration officers and Gardai to detain asylum seekers at the point of entry. Immigration lawyers have raised the question: who vindicates the rights of asylum seekers at the point of detention? Imagine the situation of an individual asylum seeker who arrives at a port of entry to Ireland and is detained because they cannot adequately prove their identity or are carrying false travel documents: what safeguards are in place to ensure that their rights are respected?

It is important to remember that if an Irish national is arrested for an alleged crime they have certain statutory and constitutional rights. A Garda will inform them of these rights and allow them call their solicitor who can advise them on how to proceed. The rights of foreign nationals being detained under immigration legislation, should likewise be protected; they are entitled to an explanation of the reasons for their detention in a language they understand and to have access to legal assistance.

4. Duration of Detention

In looking at the question of the maximum duration of detention in Ireland, it is necessary to refer to the procedural rules arising from the Refugee Act of 1996 [as amended by the Immigration Act 1999, the Illegal Immigrants (Trafficking) Act 2000, and the Immigration Act 2003].

An asylum-seeker, detained under the decision of an immigration officer or a member of An Garda Síochána, 'shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district in which the (asylum-seeker) is being detained' (Section 9 (10)). The District judge may decide either 'to commit the (asylum-seeker) concerned to a place of detention for a period not exceeding twenty-one days from the time of his or her detention', or to release them. Subsequently, a District Court judge may commit the asylum-seeker for further periods of detention (each period not exceeding twenty-one days) pending the

determination of the asylum-seeker's application if the judge is satisfied that the grounds for detention still apply. In Ireland, therefore, there is no specified time limit for detention of asylum-seekers awaiting a decision on admissibility and who fall under Section 9 (8) and (13).

5. Persons Refused Permission to Land

Under the Immigration Act 2004 third country nationals arriving in Ireland by air and sea are obliged to present themselves to an immigration officer for 'permission to land'. There are eleven grounds outlined in the Act under which an immigration officer may refuse permission to land. One of the grounds is that the person 'is not in possession of a valid passport or other equivalent document issued by or on behalf of an authority recognised by the Government, which establishes his or her identity'.²²

The Garda National Immigration Bureau reported that 4,827 people were refused permission to enter Ireland in 2003; in 2004 the number increased marginally, to 4,844.²³

The Department of Justice, Equality and Law Reform Discussion Document, "Immigration and Residence in Ireland", issued in April 2005, proposed that 'there should be provision for the detention of persons refused permission to enter'.²⁴ There is considerable concern that this will lead to the significant expansion of the use of detention in Ireland and to the introduction of 'detention centres'. {mospagebreak }

Concerns about 'Pre-admission' Detention in Ireland

1. Undermining the 'right to seek asylum'

Under current legislation Gardai and Immigration Officers have considerable discretion within the terms of the six grounds under which they can, 'with reasonable cause', detain people entering the country to seek asylum. For example, a person may be detained on the grounds that they cannot adequately prove their identity or that they are travelling with either no or false travel documents. But almost all asylum seekers are in this situation. The fact that they are detained may prejudice their asylum claim or may result in their claim being automatically put into the 'fast-track' on the basis that it is 'manifestly unfounded'. The consequence of pre-admission detention in these cases may be to undermine a person's right to seek asylum.

2. Effectiveness of Alternatives

The effectiveness of detention compared with alternatives such as release on bail has been challenged.²⁵ Research in the UK, for instance, has shown that only 2 per cent of people released on bail have absconded. The amended 1996 Refugee Act allows a judge to impose conditions for release of asylum seekers who have been detained, including '(I) that the person resides or remains in a particular district or place in the State, (II) that he or she reports to a specified Garda Síochána station or immigration officer at specified intervals, (III) that he or she surrenders any passport or travel document in his or her possession' (Section 9 (10)(ii)). These alternatives to detention are obviously preferable both from a human rights and a cost perspective. The likelihood of a person absconding is clearly lower in the case of someone who is at the start of the process of trying to make a claim for asylum than it is in the case where a person has made the application, been turned down and, having exhausted all legal channels, is now faced with deportation.

3. Detention Centres

Many NGOs, including JRS, have highlighted the inappropriateness of using prisons as places of immigration-related detention. In response, it is sometimes suggested that the solution would be the introduction of specific detention centres for this purpose. This presumes that pre-admission detention is in the first place an appropriate measure. JRS would argue that asylum-seekers should not be detained until a final status determination has been made regarding their application. The only exception should be when circumstances in individual cases raise concerns about threats to national security or alleged criminal

activity. These should be dealt with under criminal law proceedings and any decision to detain should comply with due process guarantees. {mospagebreak }

Policy Recommendations

1. General

In its Report, Detention in Europe, JRS Europe outlined a range of policy positions on detention and EU immigration and asylum policy. Key among these were the following:

In the EU, an ‘area of freedom, justice and security’, there is no place for systematic restrictions of human rights.

JRS-EUROPE shares the Vatican’s assessment that policies which are only repressive and restrictive towards migrants and refugees, including measures such as administrative detention of asylum-seekers and irregular immigrants, are unable to control migratory flows.

JRS-EUROPE recognizes State concerns regarding security safeguards especially after 11 September 2001 and 11 March 2004. However, any necessary safeguards should not be used as a pretext to detain asylum-seekers and immigrants. JRS-EUROPE is concerned that asylum-seekers and irregular immigrants may be further victimized as a result of public prejudice and restrictive judicial and administrative measures.²⁶ Criminal and administrative law can and should address the problem of threats to national security and public order. It is unnecessary to criminalize innocent refugees and migrants through restrictive administrative practices such as detention.

JRS-EUROPE is also gravely concerned that refugee protection standards may be diminished in the face of policies and positions against terrorism.

JRS-EUROPE challenges the detention of asylum-seekers:

- The more asylum-seekers are detained after lodging a claim either at the border or in a country, the more those who have protection needs may be forced into situations of ‘illegality’ rather than pursuing legitimate asylum claims. In this way detention forces asylum-seekers to use channels of irregular immigration.
- It is not reasonable to think that an asylum claim can be better determined when the applicant is in detention rather than free and able to access legal and social services, which would aid in establishing the bona fides of the asylum claim.
- Detention itself does not help to verify a person’s identity.
- Detention criminalizes asylum-seekers.
- Detention has an adverse effect on the values of society as it normalizes exclusion and administrative imprisonment of a part of society and provokes racism and xenophobia.
- Detention has enormous financial costs.

2. Ireland

In relation to the developing situation regarding detention in Ireland, the Jesuit Centre for Faith and Justice and JRS Ireland recommend that:

(i) The provisions to detain asylum seekers under the amended Refugee Act 1996 should be revised to protect people’s right to seek asylum. Effectively, asylum seekers should not be detained except on those grounds that relate to threats to national security or suspected criminal activity. Detention under these grounds should be enforced under criminal proceedings with due process guarantees. The assessment of the other grounds already constitutes part of the process of determining status.

(ii) Existing non-custodial provisions outlined in the 1996 Act should be used as an alternative to detention, accompanied by appropriate monitoring to evaluate their effectiveness.

(iii) There is an urgent need to ensure there are adequate safeguards to vindicate the rights of asylum seekers at ports of entry. In its report, "Detention in Europe", JRS Europe highlighted the importance of ensuring that adequate information is provided for detainees about their detention and access to legal assistance. JRS Europe stressed that:

- The detainee should be informed promptly, in a language which she or he understands, of the reasons for her or his arrest.
- The detainee should have the right to be heard during the procedure, if necessary with the help of an interpreter. If the information and hearing can not be provided in the native language or any other language the person understands, she or he should be released as in this case the lawfulness of the detention cannot be guaranteed.
- The detainee should have the right to take proceedings by which a court can decide the lawfulness of her or his detention speedily and her or his release ordered if the detention is not lawful. This court should be different from the issuing body; the possibility of appeal must be given, not only at the beginning of the detention, but at any appropriate time.
- The detainee should be informed of the above-mentioned rights in a language she or he understands.
- Each detainee should be provided with legal assistance.
- The cost of the interpreter should be covered by the State.
- Detention orders should be reviewed regularly in order to ascertain that detention remains appropriate.

Access to legal assistance at the time of detention would require either legal services in airports and ports of entry or a twenty-four hour dedicated telephone line with a panel of solicitors on call. Clearly, this would require a significant investment of resources.

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- 7 *Ibid.*, par. 15.4.2.
8. Article 3 of the Convention states: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'.
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10. UNHCR, 2003 Global Refugee Trends, Geneva: UNHCR, 2004, p. 89.
11. *Ibid.*, pp. 34-35.

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13. The Refugee Act, 1996 as amended by the Immigration Act, 1999, the Illegal Immigrants (Trafficking) Act, 2000 and the Immigration Act, 2003, specify the other places of detention as: Mountjoy Prison (Dublin), Arbour Hill Prison (Dublin), Cork Prison, Limerick Prison, and Abbey Arch (Galway).
14. Mark Kelly, *Immigration-related Detention in Ireland*, Dublin: Irish Refugee Council, Irish Penal Reform Trust and Immigrant Council of Ireland, 2005. p.8.
15. Press Release issued by Sinn Fein, 16 September 2005.
16. Council Directive 2003/9/EC, Article 8 states: 'Member States shall take appropriate measures to maintain as far as possible family unity as present within their territory, if applicants are provided with housing by the member State concerned ...'. Article 14.3 states: 'Member States shall ensure, if appropriate, that minor children of applicants or applicants who are minors are lodged with their parents or with the adult family member responsible for them whether by law or by custom'.
17. Press Release by Proinsias De Rossa MEP, 16 September 2005.
18. *Idem*.
19. Article 8 of the European Convention on Human Rights states: 'Everyone has the right to respect for private and family life..'
20. Section 9 (8)
21. Mark Kelly, *op. cit.*, p. 15.
22. Immigration Act, Section 4(3)
23. Mark Kelly, *op. cit.*, p. 16.
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25. Irene Bruegel and Eva Natamba, *Maintaining Contact: What Happens after Detained Asylum Seekers get Bail?*, London: South Bank University, 2002 (Social Science Research Papers, no. 16).
26. JRS Europe is referring to measures and decisions taken by judicial and administrative authorities to detain asylum-seekers without consideration of due process, for example, in cases of automatic detention, detention without hearing, or denial of right to appeal detention.

Jesuit Refugee Service: The Challenge 25 Years On

on Friday, 09 December 2005. Posted in [Issue 51 Refugees and Asylum Seekers: No to the Silence of Indifference!](#), 2005

December 2005

The Challenge 25 Years On

John Dardis SJ

John Dardis SJ is the Irish Jesuit Provincial and was formerly Regional Director for JRS Europe

The Jesuit Refugee Service was set up twenty-five years ago by Father Pedro Arrupe, Superior General of the Society of Jesus, at a time when the people fleeing Vietnam in boats were high profile on our TV screens. Now the JRS works in over thirty countries on five continents. Former JRS-Europe Director, Fr John Dardis SJ, who is current head of the Jesuits in Ireland, reflects on the Irish situation and the international challenge.

There are over 45 million refugees and displaced persons worldwide and 80 per cent of these are women and children. In Africa and Asia they live in camps while here in Europe they are frequently detained in detention centres. Human rights organisations worldwide are expressing concern about the increasingly restrictive asylum policy of different countries and the gradual erosion of rights for asylum seekers and refugees.

There are many reasons for these developments. One is what we could call 'asylum fatigue'. Three decades ago, we were sympathetic to Boat People of South East Asia and just ten years ago to refugees from Rwanda and Burundi and to one or two other groups of asylum seekers in between.

But now it takes a highly visible catastrophe to move our hearts and to convince us that, yes, these are 'real' refugees. We are slow to believe in the more subtle forms of persecution that are taking place daily around the globe and from which people flee. Another reason for our lack of concern is what is commonly called the 'asylum-migration nexus'. This means that it is increasingly difficult to distinguish 'migrant' from 'refugee', that migrants and refugees arrive in mixed flows and that the grey area between refugee and migrant is hard at both a theoretical and practical level.

On the migration side, numbers are more difficult to pin down. Besides the number of legal migrants, there are also those who arrive 'irregularly', that is, with no permission to stay or work. Numbers of these are, inevitably, hard to quantify. We do know, however, that over 700 people died trying to cross the Mediterranean in a recent eighteen-month period. Were they migrants? Or refugees? One thing we do know is that they were so desperate that they risked life and limb to get to Europe.

The human suffering and desperation underlying all this is enormous and it points to the major injustice that must be addressed. The fundamental point is that at a very basic level our world 'system' - be it economic, social or political - is not working anymore. Africa is poor, Europe is rich and people are voting with their feet, coming north in search of jobs, money, housing and food. That is a reality, which no amount of visa restrictions or extra boats in the Mediterranean can fully stop. As Europeans, as Irish people with a tradition of hospitality, we need to reflect whether we want a 'fortress Europe', ever more determined to keep people out, while migrants, in their turn, will be ever more determined to arrive.

It is clear that there will be no winners here. Increased border restrictions, in addition to having limited effect, play directly into the hands of traffickers because desperate people, no longer able to come on their own, pay traffickers thousands of euro in order to get them through the new array of security systems.

This money is feeding a growing Mafia underworld which treats people unscrupulously and where murder, torture, brutality are common currency. I remember vividly a conversation I had just two or three years ago with a JRS colleague where I asked her what measures she was taking to protect herself and her two small children. My question arose because I was aware that her outreach to refugees and migrants must be seriously disrupting the Russian mafia which were strong in her Western European area. Could a situation like this emerge in Ireland - or, indeed, is it already happening?

Pointers towards a Solution

Here in Ireland we can play our part in the search for a global solution to the problem.

We need to deal with a number of issues urgently:

- We need migrants in our economy and we need a better migration policy. The issue of green cards is vital: visas should be held by migrant workers, not by their employers.
- We need better integration of migrants. Much money is spent on the restriction of migrants crossing our borders but little on the integration of those migrants who do arrive. This is building up a problem for the future. Do we want to see riots here in ten or fifteen years, like those of November 2005 in the French suburbs?
- We need better human rights protection for those who flee persecution and are genuine asylum seekers. These are among the most vulnerable and must be protected under international law. We should not water down these rights out of a mistaken view that we are thereby solving the wider question of migration numbers. Nor should we narrow the definition of asylum seeker. The UNHCR definition of refugee is restricted to people who flee their country and cross the border for five very specific reasons. Catholic Church documents add to these reasons and thereby broaden the definition of refugee. The Church speaks of people who are fleeing because of economic injustice and because their lives are threatened by such injustice: it calls these de facto refugees. While



wider society pretends that it can restrict the number of refugees coming, and interpret the Geneva Convention in a narrow way, the Church is inviting us to a wider interpretation of refugee, which I believe is more sustainable and more just.

- We need faster processing of asylum claims. The most high-profile asylum and deportation cases here in Ireland have been ones where people have spent some years waiting for their claims to be processed, meanwhile putting down roots, studying in our secondary schools and then suddenly being asked to leave or being threatened with deportation. Public opinion has been swift to come to the support of these people. There is a sense of natural justice which says that if someone has been here two or three or more years, but because of our slowness in processing claims is only now receiving a determination of their status, then they should be allowed to remain, especially if they have made attempts to integrate.
- Asylum-seekers need to be given the right to work in certain defined circumstances. They themselves are frustrated waiting for their claims to be processed. They are given food and shelter but are not allowed the dignity of work. Public opinion unfairly turns against them because they are seen as 'spongers'; the reality is that asylum seekers want dignity and want the right to work. This need not create an automatic 'pull factor' inducing other asylum-seekers to come to our shores.
- We need to address development issues on a world basis realising that the north/south divide cannot remain and that for growth in the north to be sustainable we must attend to our neighbours in the south, treating them as real neighbours and not as competitors in the world economy.
- We need public education about the asylum system so that people really understand it and can appreciate the need to give refugee status to those most at risk. Public education is vital and the JRS is committing itself to informing public opinion about the real situation of asylum seekers.
- We need political leadership, leaders who stand for values, who stand up for the rights of those who are being tortured and threatened with murder and against those who would deny these rights. We need leaders with the courage to say that this is a right that will be inalienable in Ireland and will not be compromised under any circumstances. Too often, politicians wait to see which way the wind is blowing and asylum becomes a political football.

We in Ireland must stand up and demand of our political leaders that they reach out to the vulnerable, make a stand for them and protect the right to asylum in our country.
- We need responsible reporting. The media have generally played a positive role highlighting situations such as Rwanda, Burundi and other conflicts and encouraging us to reach out and to make room for refugees and asylum seekers. However, occasionally media headlines have regrettably been negative, speaking, for example, of 'waves' of asylum seekers.

Challenge in Global and Local Terms

Ireland is facing a challenging and rich future and migrants are making a valuable contribution to the Irish economy and infrastructure. But we cannot take for granted that this transition from a relatively mono-cultural society to a multi-cultural one will be painless.

I am not calling for unrestricted entry of all-comers. That would be foolish and unsustainable. I am calling for a clearly thought-out policy which addresses the issue at a variety of levels as indicated above. The Government is beginning to take this kind of approach. It is the only viable one for the long term.

My main concern is that at present in Ireland insufficient attention is being paid to positive integration measures. These should be seriously studied and best practice funded. We cannot afford to wait. The issue now is not whether we in Ireland should admit migrants and refugees. That debate is redundant. The issue is how to integrate the new arrivals to ensure a united society of mutual tolerance.

At a global level, the question is whether governments of wealthy countries are prepared to acknowledge that global inequality is no longer acceptable. Trade talks, development aid, debt cancellation: in all these areas wealthy countries need to see that looking out for the interests of poorer countries is, in the end, looking out for their own interests. This is a lesson they are slow to learn. Meanwhile, time is slipping away.

A Challenge to Solidarity

on Friday, 09 December 2005. Posted in [Issue 51 Refugees and Asylum Seekers: No to the Silence of Indifference!](#), 2005

December 2005

Refugees:

A Challenge to Solidarity

Cathy Molloy

Cathy Molloy is a Research Officer in the Jesuit Centre for Faith and Justice

Introduction

The Christian understanding of solidarity is one of the fundamental principles of Catholic social teaching and is often the basis on which action towards, and with, people in situations of need is promoted. Solidarity, in this understanding, goes beyond a 'feeling of vague compassion, or shallow distress at the misfortunes of so many people, both near or far' and calls for 'a firm and persevering determination to commit oneself to the common good; that is to say to the good of all and of each individual because we are all really responsible for all.¹

"Refugees: A Challenge to Solidarity 2 (1992)", a document of the Pontifical Council concerned with refugees, is of particular relevance to Ireland today as we try to respond, at many different levels, to the situation of refugees and asylum seekers. This piece will comprise a brief summary of the content of the document, with emphasis on the aspects most relevant to the topics discussed in this issue of Working Notes.

The document is in five parts:

I. Refugees Yesterday and Today: A Worsening Tragedy;

II. Challenges for the International Community;

III. The Way of Solidarity;

IV. The Love of the Church for Refugees

V. Conclusion: Solidarity is Necessary.

The second and third parts are the main focus here.

The Situation of Refugees

The situation of refugees the world over and in every age is the subject of the first part, which points out that tensions between culturally and ethnically diverse groups, between the rights of the individual and the power of the State, have often led to war, persecution, expulsion and flight. The statistics hide individual and collective suffering. For example, places which gave meaning and dignity to life, and which recall the events of one's own history, are lost to refugees. The problems associated with living in camps are highlighted: overcrowding, the insecurity of national frontiers, and policies of deterrence may transform certain camps into virtual prisons. Even when humanely treated, a refugee can still feel humiliated by having no control over his or her own destiny.

The document points out that only those seeking asylum on the grounds of persecution because of race, religion, membership of political or social groups, are explicitly recognised as refugees under the UN Convention Relating to the Status of Refugees,³ and its related Protocol. The Pontifical Council supports the view that the right to refugee protection should be extended also to others 'whose human rights are equally disregarded', such as victims of armed conflicts, erroneous economic policies or natural disasters. In relation to economic migrants, the document says that justice and equity demand that appropriate distinctions be made and that those who flee economic conditions that threaten their lives and physical safety must be treated differently from those who emigrate simply to improve their position.

Global Interdependence

The Pontifical Council is critical of the fact that despite an increased awareness of interdependence among peoples and nations, some States, 'guided by their own ideologies and particular interests, arbitrarily determine the criteria for the application of international obligations.' Some countries, which have in the past been generous in receiving refugees, are now moving towards political decisions aimed at reducing the number of entries and discouraging new requests for asylum. The document recognises that periods of economic recession can make the imposition of certain limits on reception understandable, but says that the right to asylum can never be denied when a person's life is seriously threatened in their homeland. The efforts of numerous people within various nations who are committed to sensitising public opinion in favour of the protection of the rights of all and of the value of hospitality are recognised.

Challenges for the International Community

Catholic Social Teaching and its emphasis on the fundamental dignity of every human being is the basis for the Pontifical Council's strong assertion that the refugee is not an object of assistance but the subject of rights and duties. Countries are called on to recognise the rights of refugees and to ensure these rights are respected as much as those of their own citizens.

Protection must not be limited to a guarantee of physical integrity but extended to all the conditions necessary for a fully human existence. Food, clothing, housing, protection from violence, are primary needs to be met. Access to education and medical assistance, and the possibility of assuming responsibility for their own lives, cultivating their own cultures and traditions, and freely expressing their own faith, must be facilitated also. And, since the family is the fundamental unit of every society, the reunification of refugee families must be promoted.

Further, the Pontifical Council states the desirability of all States becoming party to the 1951 Convention on the Status of Refugees and to the related Protocol of 1967 and seeing to it that they are respected. The exercise of the right to asylum proclaimed by the Universal Declaration of Human Rights (Art. 14,¹) should be recognised everywhere and not be obstructed with deterrent and punitive measures.

On the issue of detention of refugees, the position of the Council is very clear. A person applying for asylum should not be interned unless it can be demonstrated that he or she represents a real danger, or there are compelling reasons to think that he or she will not report to the competent authorities for due examination of his or her case. Moreover, asylum seekers should be helped with access to

work and to a just and rapid legal procedure.

No to Forced Repatriation

The document strongly opposes forced repatriation:

Scrupulous respect for the principle of voluntary repatriation is a non-negotiable basis for the treatment of refugees. No one should be sent back to a country where he or she fears discriminatory or life-threatening situations (n. 14.). Where the competent government authorities do not accept asylum seekers, arguing that they are not true refugees, they have a duty to make sure they will be guaranteed a secure and free existence elsewhere.

No to the Silence of Indifference

Indifference is not acceptable. The interest in helping refugees often clashes with the fear of an excessive growth in their numbers and of a confrontation with other cultures. The Council addresses specifically the role of the social communications media, pointing out that, by policies based on solidarity and human understanding, they can prevent refugees from becoming scapegoats for the ills of society. The presentation of a clear, positive image of refugees is particularly necessary where their presence is being exploited to intentionally distract attention from serious domestic or foreign problems.

Indifference, the Council says, constitutes a sin of omission. Instead, we are called to solidarity, which helps to reverse the tendency to see the world solely from one's own point of view. Recognition of the global dimension of problems emphasises the limits of every culture and urges us towards a more sober lifestyle with a view to contributing to the common good.

The Way of Solidarity

This section of the document points out the growing sense of interdependence which finds expression in international institutions such as the United Nations and international non-governmental organisations, and associations of volunteers, lay or religious. Alongside this, there is the painful confirmation of political, social, and economic hostility, racial and ideological antagonism, illustrated in the unresolved problem of refugees. Special recognition is given to the United Nations High Commission for Refugees created in 1950 to ensure 'international protection' for refugees and to search for 'durable solutions' to their problems. (18)

The spirit of solidarity challenges any indifference on the part of citizens and institutions of democratic and economically developed States and requires action on the causes that are the source of the growing numbers of refugees. The structures that keep so many people in a condition of extreme marginalisation need to be changed if the aspiration to have human rights universally respected is to be made real. In this context, legitimate interventions by the international community to protect human rights cannot be seen as violations of sovereignty.

Solidarity towards refugees supports voluntary repatriation and requires joint initiatives of humanitarian assistance and co-operation for development. The Pontifical Council acknowledges that the entry of refugees into a country can create inevitable inconveniences but points out that their arrival can also stimulate the development of local societies given suitable political and economic decisions by the host country. For their part, refugees are called to help one another,

placing their resources, human and spiritual, at the service of the search for valid solutions. The overcoming of selfishness and of fear of the other are also required by solidarity, as well as long-range action of civic education which can contribute to the elimination of some of the causes of the exodus of refugees. Prevention mechanisms and a better, concerted action between international institutions and local authorities are needed also.

The Role of the Church

Holding the dignity of the human person, with all his or her needs, in first place is the priority. The tasks of the local church and the parish are spelled out in terms of the responsibility to offer refugees hospitality, solidarity and assistance at many different levels: personal contact; defence of the rights of individuals and groups; denunciation of injustices and action for the adoption of laws guaranteeing their effective protection; education against xenophobia; creation of groups of volunteers and emergency funds; pastoral care.

The mutuality of solidarity is reflected in the call to the local church to instil in refugees respectful behaviour and openness towards the host country. Benevolence, respect, trust and sharing are practical expressions of a culture of solidarity and hospitality. The spiritual needs of refugees are to be met and any form of proselytism is deplored.

Particular priority is to be given to children, and to providing specific moral support to women who

constitute the largest percentage of the refugee population throughout the world. Refugees too are called to join with volunteers and participate in the discernment and expression of their needs and aspirations. Co-operation within the church, and between the churches of the countries of origin, of temporary asylum, and of permanent resettlement, is necessary.



Finally, cultural institutes, universities and seminaries are asked to play their part by reflecting on the plight of refugees, contributing to the formation of public opinion, and by developing analysis that will help enhance a sense of hospitality. The document concludes with a restatement of the need for solidarity and the assertion that human solidarity, as witnessed by any community that welcomes refugees and by the commitment of national and international organisations that care for them, is a source of hope for the real possibility of living together in fraternity and peace.

Conclusion

The problems faced by refugees in Ireland today and by those who work with them, as demonstrated in the preceding articles, are many and complex. Refugees: A Challenge to Solidarity offers not only a clear statement of the values underlying the Christian perspective but also practical ways to proceed if we are to take solidarity seriously. This perspective suggests that engagement with the plight of refugees, at whatever level is possible for groups and individuals, is required by both basic humanity and Christian solidarity. Much is needed both at the structural level, which deals with causes, and at the personal level, which deals with effects on particular individuals and groups. Response at individual and group level in the areas of hospitality, action for justice, education against xenophobia, are just some of the ways suggested for people to engage and show true solidarity with refugees and those seeking asylum. Indifference, we are told, is a sin of omission. Doing nothing is not an acceptable option.

References

1. Pope John Paul II, *Sollicitudo Rei Socialis*, Encyclical Letter, 30 December

1987, London: Catholic Truth Society, n. 38.

2. Pontifical Council for the Pastoral Care of Migrants and Itinerant People, *Refugees: A Challenge to Solidarity*, 1992 (www.vatican.va/roman_curia/pontifical_councils/corunum/documents).

3. The Convention defines a refugee as one who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.' Article 1, A.2.

Deportation

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Deportation

Joan Roddy DMJ

"Sr Joan Roddy DMJ is Director of the Refugee and Migrant Project of the Irish Bishops' Conference"

Today, for many of us, the mention of return, removal, or deportation, conjures up thoughts of dawn raids on people's homes and rushed midnight air flights. Swift enforced departures, with little or no forewarning, are accompanied by hasty packing, frequently under Garda surveillance, with no chance to communicate this unexpected turn-of-events to friends, neighbours, church or school, much less say good-bye. For some parents, it has meant family break-up where they have had to leave behind small children. Those of us who watched that RTE Prime Time programme which showed one such experience cannot but have been moved to see the grief of mothers and the trauma etched on the faces of their children. What-ever the arguments, it is difficult to believe that there is not a better alternative than a procedure which leaves parents on one continent and their young children on another, thousands of miles away.

In Search of Refuge

The majority of those returned to their country of birth are people who, originally, had come as seekers of asylum. We might well ask ourselves what intervening series of events can culminate in somebody who came in search of refuge being forcibly removed - in a word, deported - from the state. To deport, as defined in one standard dictionary, is to expel - e.g. "as an undesirable alien or foreigner". Even while accepting, in principle, the right of a state to deport in certain circumstances, deportation has harsh resonances.

Much has been documented internationally about breaches of human rights due to inadequate processes preceding deportation, methods used to remove people and the fate of those returned to unsafe situations. Even if today we usually speak of return or removal rather than deportation, the reality, by whatever name, is often in sharp contrast to the ethos of protection which gave birth to the 1951 Convention Relating to the Status of Refugees (the Geneva Convention). Nor is the reality generally in accord with the call to offer hospitality to the stranger which permeates the Christian Scriptures and is at the heart of the teachings of all the great religions.

Right to Seek Asylum

It was in the aftermath of World War II, and the large-scale displacement and movements of peoples, that the Geneva Convention, a legally-binding treaty, was adopted by the United Nations.

Under a Protocol adopted in 1967, the geographical and time restrictions of the Convention were removed so that it was no longer only people affected by events in pre-1951 Europe who were eligible for protection. The Convention defines who a refugee is, gives a person the right to seek asylum in another state which is a party to the Convention and imposes a duty on the state in question to accept and process each asylum application. Under the terms of the Convention, a refugee is a person who is not afforded protection by the forces of law and order of her or his state and is unable or unwilling to return to her or his country of origin due to a 'well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group'.{mospagebreak }

The Convention explicitly states that persons fleeing their country of origin on any of the grounds which it specifies shall not be liable to penalties on account of irregular entry to another state which has become party to the Convention. Critically, it sets out the right of a person seeking asylum not to be removed to a state where her or his safety might be threatened. This right - the right of non-refoulement - is a crucial protection of which serious account must be taken in considering an application for recognition as a refugee and in deciding on return of persons whose application fails.

Ireland's Commitments

As a signatory to the Geneva Convention, and in accordance with the demands of domestic legislation contained in the Refugee Act, 1996 (as amended), Ireland is committed to operating an asylum system that respects due process and is transparent, fair, humane and prompt. Clear status and appropriate rights must be guaranteed to those admitted, whether as refugees or with other forms of leave to remain in the country. Equally, the rights of those who are judged not to have grounds on which to be allowed to remain must be fully respected.

In a 2002 publication, in a section entitled 'Grasping the Nettle of Expulsions', Trocaire and the Irish Commission for Justice and Peace stated:

A clear, fair and efficient adjudication procedure, with all the necessary attendant safeguards, will by definition admit not only those whose application is well-founded but also others whose applications will be rejected. ... Deportation of some applicants (assuming there are adequate safeguards in the system) is an inescapable part of a fair and efficient process...¹

Removal, then, following the final rejection of an asylum application, is an integral, albeit difficult, part of the asylum process. However, with a growing array of increasingly restrictive asylum-related policies and practices being put in place, serious concerns arise as to whether people seeking asylum can gain access to the country to make an application and, whether, if they do gain access, their application gets a full, fair and transparent hearing. Measures to prevent those seeking asylum from reaching the country, legislation which imposes penalties on those who transport asylum seekers without regular travel documents (Carriers' Liability), fast-tracking of applications and limited legal aid, interpretative and other supports cannot but impinge negatively on the right to apply for asylum and to have the application fully and fairly processed.

While reliable and accurate statistics are difficult to come by, it would seem that Ireland - in common with most EU countries - gives refugee status to less than 10 per cent of those people who

apply for asylum. Countries have the option to grant 'leave to remain on humanitarian grounds' to people whose lives are in danger but whose application for asylum does not meet the stringent criteria of the Geneva Convention. However, Ireland, unlike the UK and many other EU member states, very rarely grants this lesser and more temporary form of protection. For example, in the six years from 1999 to 2004, only 518 people were granted 'leave to remain' in this country.

Given, then, that a large proportion of those who come to Ireland seeking asylum are refused permission to stay, it is inevitable that a significant number of people have no choice but to return to their home country or be returned there by the state.

Protection Concerns

In the light of the procedural lacunae in the asylum systems of most, if not all, European countries, including Ireland, as well as of the increasingly restrictive interpretations of the refugee definition, it cannot be assumed with any certainty that someone whose asylum claim has been rejected is, therefore, not in need of international protection. There are, in fact, many valid concerns regarding people who sought asylum and whose application was refused. These concerns arise as a result of evidence of poor decision-making, prolonged asylum procedures, inappropriate return of vulnerable people, return of people to unsafe countries and inadequate return procedures. The removal of Olunkunle Eluhanle to Nigeria, shortly before he was due to sit his Leaving Certificate, was, by the admission of the Minister for Justice, a wrong decision and grounds for the Minister's finally allowing him return to Ireland. However, not all questionable decisions regarding return gain the same public attention or have such a positive outcome. While return following a fair and prompt decision on an application can be justified, it is hard to condone returning someone who has been in the country for several years, has settled into life here, is actively involved in a local community and may have children attending school.

It is essential to recognise the problems which a majority of rejected asylum seekers face and to emphasise the potentially devastating consequences for the lives of individuals of asylum processes and return policies and practice which disregard the facts of each individual case. In general, removal procedures do not take account of the long-term fate of the people deported, with many being returned to unsafe situations where, on arrival, they are liable to face arrest, imprisonment, torture and even death. For this reason, suspensive effect of decisions must be available, so that a comprehensive legal review can be completed before a removal order is enforced. {mospagebreak }

A Complex Issue

The issue of return is complex, yet in public debate on it, as well as in the framing of policy and procedures, rarely is this complexity adequately recognised or considered. Instead, the hostile political climate towards refugees and asylum seekers has meant that the issue of return is often approached in a very simplistic and negative way.

In many instances, return enforcement measures are being developed without appropriate human rights safeguards. Most alarmingly, the focus in the EU has been on agreeing the logistics of removal procedures without member countries first having put in place comprehensive, just and transparent asylum policies and



procedures. In this context, it should be noted that while international law prohibits collective expulsions, some EU member states jointly charter flights to return people to their country of origin. Any aspect of asylum policy or practice - from initial application for asylum to refugee recognition or eventual removal from the State - which would represent a dilution of legally binding obligations under international and European law must be vigorously opposed. Ireland, in common with its European partners, must take measures to ensure the quality and sustainability of return for those who can be returned to their country of birth or to the country in which they had lived before coming to Ireland, as well as fairer policies for those who cannot be returned.

Return - under Different Guises

There are three categories of return - voluntary, mandatory and forced. Some people who no longer have a legal basis for remaining in a country may consent to return. There are no comprehensive statistics to show the numbers of asylum applicants who, when their claims have been rejected, leave of their own accord. However, for return to be voluntary in any real sense, the person returning needs to have a legal basis for remaining in the country, yet chooses to leave.

It is increasingly common for European states to use methods to induce or coerce people to agree to return, making the return in fact mandatory. Forced return involves those who have not given their consent and who, on removal, may be subject to sanctions or the use of force. {mospagebreak }

Inherent Limitations

While there is no indication that a vigorous return system discourages asylum applicants, governments, for political gain, often tend to use returns to demonstrate a tough approach to asylum. However many the number of people returned to their country of birth, these always represent only a fraction of those whose asylum application has been rejected. Of almost 12,000 Deportation Orders signed by the Department of Justice, Equality and Law Reform, less than 2,500 have been effected.²

Even when it is recognised that an individual cannot be returned, many of those whose application has been rejected do not receive a legal status and find themselves in a limbo situation without the right to work in order to earn a living and with very limited and totally inadequate state support. As a consequence, there is always a significant group who remain as undocumented persons and for whom life is, therefore, vulnerable, poor and precarious.

Yves' Story:³ Very shortly, it will be five years since Yves fled his home on another continent and came to Ireland seeking a place of refuge. Yves sought asylum on grounds of active membership of a political party which was outlawed when a military government came to power. He is in no doubt but that return to his country would result in certain imprisonment and probable death. With his initial application and later appeal both rejected - in a process which in his particular case, and not just in general terms, raises serious questions regarding compliance with the Geneva Convention and domestic refugee law - Yves applied for judicial review. That was three years ago, and he is still waiting for his case to be heard. In the meantime, a long-standing health condition has worsened. Without leave to work, he has availed of a range of short courses and, wherever possible, helps as a volunteer. Informally, official sources have said that because of geographical location, Yves' country is not one to which Ireland returns people.

Fair Return Policies

In its recent paper on the return to their countries of birth of people whose asylum application has been rejected, the European Committee on Refugees and Exiles (ECRE) makes a number of key recommendations:

- Fair and efficient asylum systems are a pre-requisite to return.
- States must not enforce returns prematurely.
- International cooperation, in a spirit of solidarity, with countries of origin at all stages of the return process is a pre-requisite to achieving sustainable return.
- For certain categories of persons, states should not enforce removals and legal status should be granted particularly to those who cannot be returned for reasons beyond their control.
- People seeking asylum whose applications have been rejected should be adequately supported by the government of the host country through the provision of basic socio-economic benefits until it is really possible for them to leave that country.
- In undertaking returns, states must ensure their actions do not breach any of their human rights obligations under international and European law.
- Detention should only be used as a last resort, and should be in full compliance with international human rights law.
- There should be follow-up and monitoring of returns to identify whether return policies are safe, effective and sustainable.4{mospagebreak }

Post-Return

It is important to recognise that returns can be efficient and, at the same time, be carried out in a manner that is safe, dignified and humane, with the persons concerned retaining a sense of self-worth and of control over their lives. The success of return policies - with the wellbeing of the persons returned being the key criterion - should be systematically evaluated.

Successful re-integration in the country of origin is a key factor in ensuring the sustainability of return. It is essential for states to assist in the reconstruction and development in countries of origin and to support the re-integration of returnees. Linkages to development policy are necessary so that returns are sustainable and do not breach human rights.

Portia's story:5 Portia, who came to Ireland as a separated child (an unaccompanied minor), lived here for two years. She was deported to Lagos early in 2005, a few days before her twentieth birthday. On arrival, she was taken into custody, and released on payment of a 'fine' (with money given to her by some Irish friends for possible emergencies.) To her knowledge, she has no remaining family in Nigeria. Irish officials gave her no contact number in case of emergencies. The Nigerian government provided no support. She had no shelter, no money, and very few belongings. Portia descended into deep depression and came under serious pressure to enter into prostitution in order to survive. Through the concern and intervention of her Irish friends, and with the assistance of an Irish missionary order, some small amount of funding has reached her. This has enabled her to rent a room and feed herself. Her Irish friends worry about her and wonder how long they can continue to provide emotional and financial support at this distance.

Learning from Experience

An in-built monitoring component in deportation procedures would:

- give feedback on the validity of decisions on asylum applications;
- provide a check on whether persons deported gained safe access to countries of origin;
- give information on how those returned have been able to re-integrate into their community.

In matters relating to all forms of return, cooperation and involvement should be sought from relevant NGOs, Churches and refugee representatives, including those working in countries of origin. Representatives of these groups can also be valuable participants in an independent body to monitor removals and to investigate complaints with regard to detention or removal procedures.

Return of Migrants

The issue of return does not affect only those whose asylum application has failed. Migrants who, for whatever reason, find themselves in an irregular situation may also be removed to their country of origin. In a system where, for example, renewal of work permits is in the hands of the employers and where right to residence is tied to right to work, employees often find themselves in an irregular situation when, because of procedures over which they have no control, their work permit has been allowed expire.

Similarly, students can for various reasons find themselves in an irregular situation if, for instance, they want to extend their stay either for further studies or to enter the workforce. Among the key factors to be taken into consideration in framing new immigration legislation is the streamlining of systems and procedures to ensure that immigrants do not unintentionally become irregular in relation either to work or to residence and, as a consequence, risk deportation through no fault of their own. The human rights of migrants whose situation becomes irregular, and who are liable to be returned, must be fully respected.

It is to be hoped that the consultation in relation to the discussion document, Immigration and Residence in Ireland,⁶ issued by the Department of Justice, Equality and Law Reform in April 2005, will lead to legislation which provides protection for migrant workers and their families, in line with international human rights standards. In particular, and as was strongly argued by the Churches' Asylum Network (CAN), in its submission in response to the discussion document, Ireland can give a lead to its EU partners by signing and ratifying the UN Convention on the Rights of All Migrant Workers and Members of their Families. {mospagebreak }

Human Rights Approach

It is vital to ensure that policies, procedures and practice in relation to return should fully respect the needs and the dignity of the people affected. The achievement of this presumes a human rights-centred approach to all aspects of asylum and immigration. In a joint response in September 2005 to the European Commission proposal for a Directive on Common Standards of Return, thirteen NGOs, including Jesuit Refugee Service- Europe and Caritas Europa, highlighted that at the heart of such an approach would be a commitment to ensuring that:

- Seekers of asylum whose applications were turned down, and who have been in the country for

two years or more, and irregular migrants in the country for the same period, would have their status regularised.

- Removal would be the last resort in dealing with irregular migrants and seekers of asylum whose application has failed, as should detention.
- In all cases, family unity would be strictly respected.
- Particular importance would attach to the protection against removal of vulnerable persons such as children, the seriously ill or trafficked persons.
- Those facing detention and removal would enjoy the right of a comprehensive legal review of the decisions affecting them, with suspensive affect.
- Priority would be given to the establishment of independent institutions to monitor detention and removal and to deal with complaints regarding detention or removal operations.⁷

Conclusion

In a broader context, respecting the rights of asylum seekers and migrants who come to Ireland must be accompanied by a real commitment to work internationally to end the con

ditions and situations which force people to leave their countries in the first place. Unless and until the existing inequitable distribution of power and resources across the globe is addressed in radical ways, the flow of refugees and asylum seekers, as well as of economic migrants, will continue and, most likely, will grow.

Our international obligations can be honoured in different ways: through support for conflict prevention and resolution, through development co-operation, by advocating fairer trade policies, lobbying for just solutions to international debt and promoting human rights globally. The honouring of the State's commitment to ODA is not an option to be pursued only if domestic economic circumstances are favourable, but rather a requirement of social justice - in the words of Pope John Paul II:

Genuine and practical solidarity with those in need is not a favour conceded, it is a demand of our shared humanity and a recognition of the dignity of every human being.⁸

In no way should the granting of ODA or any other form of development support be dependent on the recipient country's adopting a particular asylum or immigration policy, nor should aid be linked with that country's agreement to re-admit its own nationals whom the donor country may wish to return.

In Ireland today, the way is open for us to welcome the stranger and to work together toward a global culture of justice and peace. We have the resources of imagination, creativity and knowledge, as well as the financial, technical and economic possibilities - have we the vision and the commitment? And if not...?

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