

# ASYLUM IN BRITAIN

*A question of conscience*

by Anthony Harvey

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## Chapter 1

### *Fortress Britain*

#### *Words and Attitudes*

There is a number of words we can use for people in our own country who are not of the same nationality as ourselves, and each word expresses a different feeling towards them. If we call them *strangers*, we may be intrigued by them, we may observe them with friendly curiosity, we may even perhaps welcome them and ask them in. If we call them *foreigners*, a note of distrust and antipathy maybe lurking in our minds. These people, perhaps, are intruders on the British scene, they have no genuine right to be here, we don't want too many of them, and however much we may need them (say, as tourists) we don't expect them to stay too long. These negative feelings become even more pronounced if we refer to them as *aliens*, a word that carries a certain sense of threat. Not merely do they not belong, but they represent something 'alien', they could be an influence on us and our society which we would prefer to keep away. It is not for nothing that the (usually hostile) beings imagined to be inhabiting other planets and threatening to invade us are called 'aliens'.

In recent years two more terms have been added to the repertory of words we use for those who, one way or another, do not 'belong', and so must be regarded with suspicion: *immigrants*, who have come to be seen as a social and political problem, particularly after the recent influx of workers from eastern Europe, and *asylum seekers*. Of all the words we have listed, this last probably has, for many, the most sinister and threatening connotations. Asylum seekers, we are constantly told, are here to take advantage of our high standard of living and our welfare and health services, to take jobs that ought to belong to our own people, to claim housing for which many of us have been waiting for years – in short, they are scroungers, who have left their own impoverished countries seeking a better life here, and are attracted in particular by the amount of state support they will be able to claim. Of course there may be some who are 'genuine', that is to say, who are fleeing persecution and have a right to be among us in a country that is claimed to have an honourable history of giving protection to the persecuted – indeed it has been established<sup>1</sup> that if we call them 'persons seeking sanctuary' rather than asylum seekers people may be quite sympathetic to them. But the force of the second word in the term – 'seeker' – is precisely this: these people have not, or not yet, established that they are 'genuine'. We can't call them 'refugees' or 'victims of persecution' because it has not yet been proved that this is what they are. They are just as likely to be people simply seeking a better life at our expense – 'economic migrants', as they are officially called. In which case they ought not to be here; and, of all the words we use to describe the 'strangers in our midst', *asylum seeker* (as some of the popular press discovered years ago) is the one most likely to arouse our resentment.

#### *Asylum Seekers/Economic Migrants*

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<sup>1</sup> Independent Asylum Commission, *Saving Sanctuary*, (First Report 2008) p.15, reporting a CITIZENS SPEAK consultation.

It is of course true that some of those who arrive in this country, or indeed in any country with a relatively high standard of living (and all western European countries are confronted by this), are here for what we could call the wrong reasons: they simply want a better life for themselves and their families and would like to take advantage of the opportunities and benefits which a country such as ours offers. Not that this is a blameworthy desire in itself– it is one that most of us share in one way or another, and many of our fellow-citizens are in fact emigrating to other countries for precisely these reasons: they just want ‘a place in the sun’. But in the case of our attitude to asylum seekers there is another factor, and this is to do with ‘rights’. As citizens of our own country we justifiably believe we have rights that ought to be protected – to property and housing, education and health care, security at home and against foreign enemies, equal treatment before the law, and so forth. And beyond these specific rights we also feel we have a right to preserve the character of the country we have grown up in and have affection for: we should not allow it to become overcrowded, to lose its national character through an influx of foreigners or to have the benefits we enjoy shared with those who have done nothing to deserve them. Accordingly we rely on the government to protect these rights and are highly critical of it if it fails to do so. Meanwhile, when we hear stories about these alleged asylum seekers, or read about them in the newspapers, all these feelings are liable to surge into our consciousness. The term ‘asylum seeker’ itself can become a word of abuse.

These feelings may not only be to do with resentment and the claiming of rights, they may also be to do with fear. We live in a society where there is an increasing gap between the rich and the poor, not only between the very wealthy and the destitute, but between the great majority of us and what some sociologists have identified (somewhat controversially) as an ‘underclass’. Some of this bottom layer of society may seem physically threatening: they are reputed to live by crime and violence, and we may feel we need protection from them. Others have no stake in our society simply because they are poor; but these may still present a threat, in that they embody the unwelcome possibility that some of us may fall ourselves into poverty and be regarded by others as ‘the undeserving poor’. Others, again, are labelled ‘illegal’ – migrant workers who have no legal right to be here. These people are liable to receive sub-standard wages and to have their rights disregarded; they are vulnerable to exploitation; and it can hardly be said that they represent a threat – indeed it is generally recognized that they are essential for the functioning of our economy and we greatly benefit from their presence. But because they belong economically to the lowest class in our society, some of whom are actively violent and lawless, and because, when we see them, we may even have an unpleasant twinge of conscience at the conditions many of them live and work under, many of us prefer to live so far as possible apart from them and ignore their existence. Some of us even prefer to live in gated enclosures with security personnel to keep all such people at a safe distance. And if, as we are often led to believe, this ‘underclass’ is being swollen by a flood of asylum seekers – people whom the government could surely do something to keep out – our resentment may well be compounded with an element of fear at the consequences of having still more rootless and potentially threatening people entering the country. In this way the term ‘asylum seeker’ takes on, for many, a still more sinister connotation.

But there is also a number of people – still a minority, but a significant one – for whom ‘asylum seeker’ has quite different connotations. These people may have met

an asylum seeker themselves, and heard a horrific story of torture, rape and a desperate flight assisted by ruthless smugglers. They may have read accounts of conditions in some war-torn or drought-stricken country which makes them understand why some have been forced to uproot themselves and their families and undertake the arduous and dangerous journey into the unknown of another country. They may be involved as voluntary or professional workers with the reception and welfare of victims of violent persecution – people who have lost homes, family, occupation, and the last shreds of their dignity as human beings – and feel appalled that such traumatic experiences in the past should be being compounded in this country by the inhumanity of a bureaucratic system of control and regulation driven by the political cry that we must be seen not to be ‘soft’ on refugees. For all such people, the term asylum seeker, far from being one arousing resentment or fear, invites immediate sympathy and concern, along with a deep revulsion against the punitive attitudes that seem characteristic both of officialdom and of much of the popular press.

These contrasting attitudes can be found in all sections of the public, regardless of class, race or religion. But they touch a particularly sensitive nerve in people of religious faith. Not only Christians, but Jews and Muslims also, find in their scriptures clear injunctions to respect and welcome strangers of every kind and to treat every human being with the dignity due to one created in the image of God. A concern for human rights – which by definition extend to all human beings of whatever class, race or condition – is not, of course, the preserve of religious people alone: it is one of the great principles they share with the majority of their fellow citizens. But, as we shall see, their religion impels them to take human rights with the greatest seriousness and to be vigilant for any violation. In the case of asylum seekers they have reason to believe that these violations are taking place every day. Applicants for asylum may be detained without charge, denied the possibility of release on bail, separated from their families, deprived of adequate legal representation, forced into destitution and ultimately deported in ways that appear utterly inhumane. No one with a conscience formed by religious faith can fail to be disturbed when confronted by the evidence of such procedures carried out in the name of the people of this country.

Christians, however, have still more reasons to feel this concern. They are not alone in believing they should ‘love their neighbours as themselves’; but the particular challenge of Jesus Christ is to find one’s neighbour, not just in the person next door or even down the street, but in the most destitute, the most rootless and the most vulnerable, wherever they may be. With regard to those they encounter who are hungry, without adequate clothes, sick or in prison, they are haunted by the saying of Jesus that when ministering to them they are ministering to Jesus himself, and when failing to do so they are turning away from him. And they will recognize in asylum seekers the most obvious victims of these afflictions. To turn their backs on them is tantamount to rejecting Jesus himself. To fail to acknowledge them as their neighbours, who should be loved and cared for as themselves, is to declare themselves unmoved by the parable of the Good Samaritan.

But how do we know that these people are ‘genuine’? It is true that Christians should not be in the business of passing judgment – we do not naturally doubt the word of those who tell us the harrowing story of their lives. But there is no denying that, with asylum seekers as with every kind of person, things are not always what they seem.

Of course there are people trying to exploit the system, of course some are criminals or possibly even terrorists, of course we cannot believe every story we are told. It is not without reason that the government takes on the responsibility for sifting the applicants and weeding out those whose claims are unfounded. For the admission of asylum seekers to this country (as to any country) is not just a matter of humanitarian concern: it is a matter regulated by international law. The Universal Declaration of Human Rights declares that 'Everyone has the right to seek and enjoy in other countries asylum from persecution' (Article 14); and this was given legal force by the Refugee Convention of 1951. Under this Convention every country that is a signatory – the U.K. among them – is obliged to give protection to all who can show that they were forced to flee their own country by reason of 'a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion' (Article 1 (2)). If we fail to do this we may be in serious breach of our legal obligations. But equally, we are certainly not obliged to admit those who have no such well-founded fear, and indeed it is assumed that we would be foolish to do so. Every country has to control the rate of immigration (or so, at least, it is normally believed), and by the time we have admitted those who are genuinely fleeing for their lives, along with those who have good reason to enter for family or occupational reasons, it may seem that we shall have allowed as many immigrants into this country as it can possibly accommodate. Hence the need for a government agency (formerly the Immigration and Nationality Directorate, then the Border and Immigration Agency and now the U.K. Border Agency) that will provide for the policing of our borders and the sifting out of false applicants for asylum.

This, as it turns out, is an extraordinarily difficult task. Typically, an asylum seeker who arrives at a British port or airport has left his or her own country to escape death or torture, has had to make a secret departure either with no travel documents or with false ones provided by smugglers or traffickers, has lost touch with family and friends, has made a difficult and dangerous journey across continents, and is then confronted (often in a strange language) by stringent bureaucratic regulations that have to be understood and complied with in a matter of days if the claim for asylum is to have any hope of success. The only support such people can give to their application is their own story. In the nature of the case, they may have no 'evidence' to support their version of events – no document, no witnesses, not even a friend to speak for them. Under the present rules they will initially have no lawyer to represent them<sup>2</sup> (though they may have received some legal advice before the first interview). The immigration officer then has the difficult task of deciding whether or not the stories are true. This is not just a matter of checking them for consistency and plausibility. All sorts of factors make the judgment a complicated one. The applicants may have been raped or tortured and be reluctant to talk of these traumatic experiences. Whether conditions in the countries they have left are really such as they describe is difficult to know for certain – much research is done on this and is available to officials, but it is not always up to date and is often more complex and nuanced than the officials have time to digest fully. Then there is the problem of language: interpreters of, say, an African dialect may belong to a different tribe and understand the terms differently or even have a conscious or unconscious bias against the applicant. Add to this the sense imparted to immigration officers that it is in the

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<sup>2</sup> Unless they are being processed through the Solihull Pilot scheme, which provides for legal representation at the substantive interview.

country's interest that any sign of inconsistency in an application should be vigorously followed up and exposed, and that no applicant should be admitted if there is the smallest doubt about the genuineness of the application – all this makes the government's responsibility exceedingly difficult to fulfil. On the one hand it has to comply with its legal duty to give asylum to the persecuted; on the other it has to protect British citizens from deceitful or criminal immigrants; and on top of this it is expected to treat all applicants with fairness and humanity.

When I arrived I was in a state that wasn't normal for me. My first problem was at the airport with the language. Then there was the interrogation. It is difficult to remember what was happening to me because of the psychological effects of what had happened to me.... I was really frightened that the information I was giving them would be passed on to the Bolivian authorities. It was like another interrogation. Remembering [what had happened to me] was really bad for me. It was another psychological trauma. The pressure of these questions – it was as if I wasn't in London. It seems like I was back in Bolivia. The only difference was they weren't beating me up .... [The Home Office] didn't treat me like a leader but like a subversive. They asked me, 'How were you tortured?' This was very difficult to remember because I didn't want to remember.”

*Bolivian indigenous leader, Asylum Voices, 2003, p.25.*

Yet it has to be said that there is much to cause concern in the official handling of these procedures and in the legislation which this and previous governments have placed on the statute book to control immigration. The task confronting immigration officers, as we have seen, is difficult, demanding and often stressful;<sup>3</sup> yet many of those who are appointed have until recently been in the lowest grade of the civil service, have been required to have few educational qualifications and have received only a few weeks' training (in striking contrast with Canada, for example, where immigration officials have to be university graduates).

“The UNHCR recommends that a longer training period, including in research techniques, is considered and that it conclude with compulsory competence assessments”,

*UNHCR Quality Initiative Project  
2nd Report, 2005, § 4.2*

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<sup>3</sup> The UNHCR has expressed concern that the degree of stress that Immigration Officers and Caseworkers work under has not been sufficiently recognized. It specifically recommends that “stress management training be incorporated in both the initial and ongoing training of caseworkers.” UNHCR Quality Initiative Project, 2nd Report, 2005, § 3.10.

They work within a centralized system based at Lunar House in Croydon, which is notorious for having embarked on a massive computerized register that broke down, for losing applicants' files, and for building up a backlog stretching over years.

“In February 2001 I applied for my wife’s leave to remain. All my documents were taken and receipts handed. We were told to wait. I waited until February 2002. I went down to Lunar House with my receipt, only to be told they had lost my documents, had no recollection of my enquiry and would have to re-apply. I did so and gave them the benefit of the doubt. We are now in the year 2005 and still waiting.”

*Evidence given to the Lunar House Enquiry  
(South London Citizens, Report (2006) p.38.*

The great majority of applications for asylum made at the port of entry are refused; but the number of these refusals that are overturned on appeal indicates that the initial interviews have not been sufficiently well prepared, and when even those appeals are unsuccessful a further number has been quashed at the stage of judicial review.<sup>4</sup> Quite apart from the danger of not fulfilling our legal obligations towards genuine asylum seekers by failing to identify them correctly, the human cost exacted by these procedures in terms of months or even years of uncertainty (often spent in detention) and of actual destitution if an appeal is unsuccessful, must raise questions in any civilized society about the reasonableness of the policy and the effectiveness and humanity of its implementation. Given that we have an obligation under international treaty to contribute to the support of the millions of asylum seekers in poor countries<sup>5</sup>, can it be right that we (along with other nations in the developed world) spend fifty times as much on the processing and support of each individual in the U.K. as is contributed to protect any single refugee who has remained in the less developed world?

These concerns are regularly voiced by individuals and agencies who see the working of the system at first hand and care for the survival, the health and the dignity of some of the most unfortunate people in the world – those who are forced into the situation of seeking sanctuary in another country. But a Christian observer, again, may have more profound misgivings. One of the main objectives of this elaborate system of control and interrogation is to distinguish between genuine asylum seekers – who have the protection of international law and must be received into the host country – and ‘economic migrants’. These may be people who have fled conditions, not of persecution and immediate life-threatening danger, but of such acute insecurity (the result, for example, of civil war) or of such poverty and shortages of food, water and

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<sup>4</sup> The Solihull Pilot scheme, which provides for a lawyer to attend the initial interview on behalf of the claimant, has resulted in a much higher success rate at that stage, with fewer appeals thereafter.

<sup>5</sup> The Covenant on Social, Economic and Cultural Rights (1966), articles 2(1) and 11 are usually interpreted as implying an obligation to contribute to international aid for the benefit of refugees in poor countries, though “under present interpretations of international human rights law, the failure of a government to provide foreign aid ..... is probably not legally actionable”, James Hathaway, *The Rights of Refugees under International Law* (2005), p.495. H.M.Government is on record as regarding this Covenant as ‘aspirational’ rather than ‘justiciable’.

education for themselves and their families that they have felt bound, for their very survival, to seek a better life elsewhere. These people have no protection at law; they have no 'right' to enter this or indeed any European country; yet they have taken the risk of leaving their homes and sometimes their families, travelling without passports or other documents that may have been taken from them by the smugglers or traffickers, gaining entry illegally, and then resorting to the only means available to them of securing a right to remain: claiming asylum. Clearly these applicants are not 'genuine asylum seekers'. They could never prove 'a well-founded fear of persecution'. Yet their decision to leave their own country has been forced on them by circumstances beyond their control – circumstances which touch the conscience of many of us so deeply that we contribute generously to agencies such as Christian Aid. When they arrive in this country there is no reason why they should not be regarded as just as deserving of compassion and welcome as those who have been actively persecuted. The entire procedure for sifting asylum seekers from other immigrants is based on the distinction between those individuals who are forced to leave their own countries by specific forms of persecution and those forced to leave by civil war or by acute hardship, starvation and poverty. Much of the apparently inhumane treatment many immigrants receive during this procedure, and a huge amount of suffering inflicted on individuals and families, is for no purpose other than to maintain this distinction. Yet from a Christian point of view the distinction has little meaning. Both of these categories include people who have left their homes under extreme duress: they are our 'neighbour' in acute need, and we have an absolute duty to come to their aid and offer them a welcome. Is the fact that those in one category – asylum seekers – are protected by the 1951 Convention, and that those in the other – 'economic migrants' – are not, a sufficient reason to withhold from the latter the welcome we are bound to give to the former? Must our Christian duty towards those in need be limited by this artificial distinction? More important still, can we approve, as Christians, of a system much of which is based, as it seems, on an arbitrary distinction between one form of duress and another? Is there any moral, as opposed to legal, justification for turning away those whose needs may be just as great? Is it acceptable that our government, despite sharing responsibility for the violence that has overtaken Iraq, should have refused entry to more than a handful of the two million refugees who fled that country in the aftermath of our invasion, simply on the grounds that the acute dangers to life and health that arise from what is virtually civil war do not amount to 'persecution'?

### *Open Borders?*

Some will say, of course, that to abolish this distinction would be a recipe for disaster. It would open our borders to a horde of hopeful immigrants, set on establishing themselves in a country where they will have opportunities for employment, a high standard of living and the protection given by our welfare state. No responsible government could contemplate the disruption and social tensions that would result from mass immigration on this scale. But is this true? People do not willingly leave their own homes and countries. The hundred-and-twenty-five million individuals categorized by the United Nations as 'migrants' have seldom done so of their own free will: it takes a lot to force people to move, and when they do their ambition, more often than not, is to spend just a few years working in a safe place or a prosperous economy, make enough money to secure the future for themselves and their families and then return to their own countries. And, where the host country allows this, they



will make a significant contribution to it through the work they do and the taxes they pay. A serious economic argument can be mounted for a much more liberal policy with regard to immigration – not least because the number of British people emigrating at this time, along with foreigners returning to their own countries, is about two thirds of the number admitted to enter.<sup>6</sup> The notion that we shall be ‘swamped’ by immigrants is highly questionable; the argument that we would benefit by the presence and labour of (mostly temporary) immigrants is strong; the remittances sent home by immigrants from poor countries to support their families amount to more than all the aid contributed by the developed world; and the suffering caused by our present attempts to make a distinction between one kind of immigrant and another should be a powerful motive for policy makers to reconsider the procedures.

Not that these arguments are decisive. Many points can be made on the other side. Economists are by no means agreed on the costs and benefits of more generous immigration rules, and the expected increase in population movements as a result of global warming have added a new and, for some, threatening factor to the equation. On the other hand the policy of open borders has already been implemented to a certain extent in the European Union without serious ill-effects – indeed with positive gain for some economies – and the member states have agreed to a policy under which, after 2011, there will be half a billion European citizens with full rights to live and work in any part of the Union they please. This shows, at the very least, that the argument is open and that a serious case can be made for change, and makes it all the more imperative for Christians to protest against every case of apparently inhumane treatment at the hands of those who have to implement government policy. It is a policy that is based on assumptions about the dangers and disadvantages of less rigorously controlled immigration which are widely contested and may turn out to be mistaken. Moreover it takes little account of the benefits which asylum seekers may bring to this country, many of whom are highly qualified, and all of whom are by definition people of character strong enough to have undertaken a painful and hazardous escape from persecution in their home country.

### *Smuggling*

One of the consequences of adopting a more liberal immigration policy is that it would effectively combat one of the great evils of the present situation: the smuggling of illegal immigrants by international gangs of racketeers. There are endless stories of what would-be immigrants endure at the hands of such people, and no one doubts that, in general, these stories are true. A large sum of money is collected from relatives and friends on behalf of an individual or a family. This is handed over to the smuggler, along with any travel papers they may have. They then find themselves totally in the power of these agents, many of whom are unscrupulous and subject their charges to acutely dangerous, as well as painful, conditions – even lacking food and water during a long sea crossing. Finally they abandon them, utterly destitute and without any evidence of their provenance or identity, in the country where they hope to obtain asylum. Fatalities on these journeys are numerous; treatment is inhumane, and huge sums of money are made by the entrepreneurs. This iniquitous trade thrives

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<sup>6</sup> In 2006, 207,000 British nationals emigrated and 193,000 foreigners returned home. 591,000 immigrants settled in this country. Net addition to UK population: 191,000. Office for National Statistics, November 2007.

on the very obstacles which the receiving country places in the way of all immigrants. In Britain there is virtually no way an applicant can enter legally, and the smugglers offer the only recourse. If there were an easing of the immigration rules the opportunities for this illegal trading in human cargo would be diminished and the profits of the traders reduced – a result which would be welcomed by government as much as by anyone who becomes aware of this scandalous side-effect of public policy.

But the trade thrives not only on the obstacles placed in the way of asylum seekers at our ports and airports. Their problems may begin nearer home. Recent legislation has made it illegal to travel to Britain at all from countries where the alleged persecution is taking place without first obtaining a visa. Even to attempt to do this may be out of the question for a person being pursued by the authorities. But, if the attempt is made, he or she will find that the consular official is as implacable as the immigration official in this country – visas are simply not given to those seeking asylum in the U.K. or any developed country. The system has been, in effect, exported to the countries from which asylum seekers are likely to come, and as many barriers as possible are put in place to prevent them even making the attempt. Not only this, but the airlines and other carriers face substantial fines if they are found to have given passage to persons who have no legal right to travel to the U.K., and have to instruct their agents abroad to act like immigration officers, checking the credentials of all their passengers. Most people, that is to say, however strong their case for protection, will encounter virtually unscalable barriers at every stage of the journey, even though this country, like almost all the prosperous countries of the world, is bound by treaty to give asylum to those who are persecuted. A smuggler or trafficker who offers to circumvent all these barriers is assured of eager clients.

What are the reasons for this draconian policy? This country, despite some deplorable instances of exclusion in the past, still has a reputation for its welcome and generosity towards those fleeing persecution. It is now also bound by treaty to offer asylum to genuine victims of oppression. By making entry at our borders not merely difficult but in many cases (such as failure to produce travel documents) actually illegal, so that on arrival a refugee may find him or herself charged with a criminal offence and confined in a detention centre or even in prison, we are not merely flying in the face of what many believe to be an honourable tradition and refusing help to some of those who most deserve our active concern; we are coming perilously close to reneging on our obligations under international law – indeed, to avoid this, some policy makers would like to see the Convention revised so as to permit still more rigorous selection and control. Part of the reason for this hardening of attitudes is to be found in the surge in the number of asylum seekers in the nineties of the last century and in the first years of the present one. During this period the number seeking asylum in the U.K. was approaching a hundred thousand a year. Even though this figure was still smaller than the number of British citizens emigrating each year, it became a matter of political importance to reassure the public that an influx on this scale would not be allowed to continue. New and highly restrictive legislation to tackle the issue was brought in by the Conservative government in 1996, and this has been followed by a series of measures all designed to reduce the number of claimants arriving in this country. As we shall see, these measures, along with other factors, have greatly reduced the number of arrivals. The barriers against entry have become virtually unscalable.

### *The 'Pull Factor'*

Behind these political initiatives lies an assumption which is again open to question. It is assumed that a large number of would-be asylum seekers come here because they are attracted by the advantages we can offer. Social security, free health care, a right to housing, opportunities for employment – all these things, so lacking in poor developing countries, seem to be on offer to those who live in Britain. Add to this the British reputation (which still lingers) for fairness and even-handed justice, and we can see (so the argument goes) why so many people from poor countries try to gain access to ours. The answer, therefore, must be to make this country less attractive to them. If the 'pull factors' of financial support by the state, free health care and free education are removed from the equation, the number of those seeking to come will surely decline. Accordingly the lot of those applying for asylum has become progressively less 'attractive'. Stringent rules and a strictly limited period for applying for asylum, restrictions on legal aid available for appeal, removal of the right to work and support themselves while waiting for a decision, financial support at a level below what is regarded as the poverty line, removal of all support once the application has finally failed, and physical detention without criminal charge for indeterminate periods without any adequate reason given and few opportunities for bail – these add up to a package which would surely deter all but the most obstinate and determined immigrants. And indeed it is the case that numbers have declined dramatically – they are less than half what they were when this policy was initiated. The policy makers can claim to have solved the problem.

But is this correct? Was it really the 'pull factor' which caused the problem? During the same period the internal conditions in some countries from which so many fled have changed or even improved, reducing the demand; and the rigid controls placed, not just at our borders but in our agencies abroad, have made Britain (like most European countries) an increasingly impregnable fortress, so that even the huge number of refugees leaving Iraq (over a million arriving in Jordan, a country a quarter the size of the United Kingdom), have not caused an increase in the numbers coming here. Moreover the evidence that it was because of the 'pull factor' that so many came before is, to say the least, questionable. It certainly is not confirmed by the stories that asylum seekers tell themselves: the majority of them have simply come to wherever they believed they would find a safe haven or where smugglers or traffickers have brought them – survival, not prosperity, was their immediate concern.

“There's a lot of facts English people don't know .... People pay up to five grand, ten grand for a family to get here. Why would they come for £28 per week?”

*(Kosovan Albanian)*

“We are coming here because we have had political problems, not for the money .... Each person coming here pays \$5–6000 [to agents]. This is enough to live on sitting at home without work for five to ten years.”

*(Young Kurds) Asylum Voices (2003) p.21.*

Of course the policy makers will agree that this may be true of those genuinely fleeing persecution; but they will point to the large number of those whose application fails, and who can therefore be assumed to have come, not from a situation of personal danger, but simply to 'better themselves'. If only a third of those who apply turn out to be 'genuine', the rest have surely come because of the rosy picture they have of the life that awaits them in Britain. In which case it is surely right to make sure that this picture is corrected as quickly as possible. If such people find themselves destitute, imprisoned and threatened with deportation soon after they get here, the word will soon get round, and the demand will shrink to reasonable proportions. Even if the consequence is considerable suffering for some in the meantime, the end result will be beneficial for all. The object, after all, is one that is widely supported by the public: to reduce the unacceptable flood of 'bogus' asylum seekers.

But this whole line of reasoning rests, once again, on a questionable assumption. It is perfectly true that at least two thirds of asylum applications fail at the first stage<sup>7</sup>. But does this mean they are 'bogus'? Despite all the efforts of voluntary agencies which try to provide help at the port of entry, the procedure that has to be followed if an application is to succeed is dauntingly rigid and complex and is conducted in what may be a strange language, possibly with inadequate interpreters, before an over-worked official who may have no direct knowledge of the applicant's country of origin. Failure to comply with the demands of this procedure will cause the application to fail. In addition, immigration officers have the difficult task of deciding, without

"UNHCR's Third Report [March 2006] focused on the quality of asylum interviews .... its observations suggest that a significant number of interviews are poorly prepared, lack focus and do not properly assist in establishing the facts of a claim."

*UNHCR Quality Initiative Fourth Report (2007) §2.3.51.*

Lay Naing fled to Britain [from Burma] in 2006 after being imprisoned and beaten for distributing literature critical of the military junta. But his asylum claim was thrown out and three appeals were rejected because he did not make an immediate claim for protection when he arrived in Britain. In November 2007 he was granted leave to remain after the personal intervention of the Prime Minister.

*The Independent, 22nd November 2007.*

supporting evidence of any kind, whether the applicant is telling the truth; and they are placed under pressure by the policy of their department, which is to suspect falsehood wherever there is inconsistency – in other words, to assume guilty unless proved innocent. Add to this that many asylum seekers have been traumatized by their experiences,

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<sup>7</sup> Except in the Solihull Pilot scheme. See above n.4

“There is a deep cynicism at the heart of the Home Office asylum decision-making process that encourages a culture of disbelief of asylum seekers’ claims. Solicitors find themselves fighting a guerilla war with the government to ensure the basic human rights of asylum seekers are protected”.

*Local solicitor Margaret Finch, testifying to the IAC, 2007.*

both of persecution and of travel, are unwilling to speak directly to a stranger about episodes of rape or torture, and are accustomed for their own safety to saying as little as possible to any official interrogator. Is it surprising that a large number of these applications ‘fail’ at the first stage? Many of these ‘failures’, indeed, are overturned on appeal (it is often pointed out, and is confirmed by the results of the Solihull Pilot scheme<sup>8</sup>, that a better and fairer system at the first interview would save a great deal of trouble and expense rectifying errors later on); many of the procedures themselves are successfully challenged in the course of judicial review. To say that the number of those whose applications ‘fail’ shows that the majority are ‘bogus’ is a travesty of what anyone who has worked among asylum seekers knows by personal experience: that they are for the most part genuine victims of experiences that few of us would be able to confront with such courage and resilience. The reason they have failed to establish their claim may have nothing to do with whether they are ‘genuine’. It may be because they have not understood the procedure or made their claim promptly enough. It may be because they are too traumatized to be able to tell their story correctly. It may be because they were poorly served by the interpreter, or the interviewing official was inadequately informed about conditions in their country of origin. It may be (and this is increasingly the case with the new restrictions on Legal Aid) that they could not secure a competent lawyer to take up their case. Some, indeed, have been rescued at the very last moment from deportation by the intervention of a Member of Parliament bringing evidence (apparently neglected by the authorities) of the dangers faced in the home country if the person is deported. The claim that the majority of asylum seekers are not ‘genuine’ certainly cannot be established just on the basis of the number of failed applications. All the evidence gleaned from the applicants themselves tells the other way. In which case the authorities, acting in our name and supposedly in our interest, are not merely subjecting innocent people to grave danger and suffering; they are placing us in breach of our obligations under international law.

In the chapters that follow we shall look more closely at the various stages in the process that will lead an asylum seeker either to acceptance in this country or to removal or destitution. We shall ask at each stage whether the procedures are just and humane, whether we can in conscience acquiesce in them, and whether they are acceptable in the light of Christian principles. We shall recognize that government has a difficult task, and that public support for a more humane system is not always to be taken for granted. But we shall not hesitate to challenge any aspect of the system which appears to go against our legal obligations, against accepted principles of

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<sup>8</sup> See above, n.4

justice and humanity and against the dictates of a Christian conscience. But first we need to set the whole question in a wider context.

### *Strangers and Pilgrims*

We began by noting the negative connotations that cluster round the term ‘asylum seeker’, and suggested that these spring from a sense that asylum seekers may be trespassing on our rightful heritage, causing strain on our social structures and swelling a class of unfortunates about whom we feel either conscience or fear. These feelings are understandable: they must be dealt with rationally, and our fellow citizens most certainly do have rights that should be protected. But there is a specifically Christian dimension to this which makes these apprehensions look less justifiable. Christians inherit from the history of the Jewish people and from their own scriptures a sense that the rights and privileges that go with a home, a territory and a nationality are of a provisional nature and are of secondary importance compared with the ultimate values associated with the Kingdom of God. The people of Israel began as a nomadic community which settled for a time in Egypt and was forced to leave under considerable duress. After a period of national sovereignty in the Promised Land it was once again forced into exile, and soon after its return was occupied, first by Hellenistic rulers and then by the Romans. This experience strongly reinforced the metaphor of a nation of migrants, lacking the security of a permanent home of their own and therefore forced to seek a more permanent ‘home’ in an otherworldly kingdom instituted by God. A similar experience befell Christians from very early days. The background to the Letter to the Hebrews appears to be the predicament of Jewish Christians who had come ‘out of the camp’ (13.13) — that is, who had deliberately excluded themselves from the Jewish community in which they had formerly found their identity and their security — and now felt bereft of the social and religious support which such a community provided. To them, the example of Abraham, who ‘set out, not knowing where he was going’ (11.8), had a particular resonance; and by way of reassurance the writer reminded them that they had exchanged their former citizenship for the supernatural assembly of those ‘enrolled in heaven’ (12.23). Similarly, the Christians in Philippi, a Roman colony with a notably strong sense of Roman nationality, had to be strengthened in their confession of a ‘Lord’ who was not Caesar and in their proclamation of a ‘gospel’ or ‘good news’ which was not like those regularly issued by or on behalf of the Roman emperor. Accordingly Paul reminds them that their *politeuma* (which means a ‘commonwealth’ or ‘colony’ such as their fellow citizens in Philippi were members of) is now in heaven — they are, in that sense, exiles, refugees, persons bereft of the social support provided by an established ethnic or cultural community (Philippians 3.20). The consequence of their conversion to Christianity was that they had to relinquish the support which comes from an inherited civic, social and cultural identity and to discover deeper resources in the *koinonia* or society created by Christ and in the expectation of a world order fundamentally different from that which was taken for granted by their pagan or Jewish fellow citizens. In the language of John’s gospel, Christians were ‘in the world, but not of the world’ (17.11,14).

It follows from this brief summary that Christians can never regard language about nationhood, sovereignty, and the rights of inherited citizenship as having ultimate validity. We are essentially a pilgrim people; our citizenship is in heaven. We recognize the legitimate rights of our fellow citizens to the home and environment

which they have inherited; but we cannot accept that these rights necessarily override the duty we owe to strangers in our midst, whose stories arouse our compassion and whose plight is made still more pitiable by the treatment they are liable to receive when they come among us. Moreover, this necessary detachment from the security that seems to be given by national and ethnic identity gives Christians a vantage point from which to judge the value of nationhood itself. Part of this judgment may certainly be positive. People seeking asylum are benefiting from the existence of national frontiers, in that by travelling to a territory under a different jurisdiction they can expect protection from their persecutors. In this sense, the existence of the nation state is to their advantage. But there is another aspect which is much less positive. If people seeking safety find that they are refused the right to stay in the country in which they hoped to find refuge, they become victims of a system which serves also to reinforce the citizens of the host country in their belief that they have a natural right to enjoy its resources themselves and to exclude uninvited aliens from it. It is of course possible to find support in the Bible, particularly the Old Testament, for this belief. But from the point of view of a Christian nurtured on the concept of a pilgrim people with true citizenship only in another world, any system or ideology which reinforces an exclusive nationalism must be regarded as essentially due for re-assessment.

Such a re-assessment is timely in any case, since political theorists are now calling the whole concept of national sovereignty into question. It is, after all, a relatively modern concept, which has never been accepted, for example, in Islamic political thought and which is being progressively eroded by modern international treaties and institutions such as the European Union and by the power of multi-national companies. Moreover the necessity to maintain tight control over borders for economic reasons is also being called into question. Economists are by no means agreed that the economy of this country would suffer if there was a much more liberal immigration policy. Signs of liberalization may already be detected in the government's intention to institute a 'points policy' and allow immigrant workers to enter the country if they have certain skills and competences. This policy has disturbing moral implications: it appears to rate potential immigrants by their utility, not by their need, let alone by their equal dignity as human beings.<sup>9</sup> But it does at least indicate that the notion of more 'open' borders may make economic as well as moral sense. In this context, the Christian understanding of human existence as the progress of a pilgrim people with their eyes fixed on realities other than those of the material world provides a further motive for challenging some of the restrictions on human liberty and cross-border movement which exist only as a consequence of the assumed economic and political necessity of tightly controlled borders and which bear so heavily on the fortunes of those whose plight compels them to seek refuge in lands other than their own.

Finally, if there is a distinctive Christian stance towards refugees, it derives both from a doctrine of God and from the example given by Jesus. Our belief in the Trinity implies that a relationship between individuals belongs to the very nature of a God who is recognized in the dynamic of our personal and social relationships when they

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<sup>9</sup> Faced with a similar proposal for a 'points system' in France in 2006, the French churches made a statement that included the judgment that "the only foreigners acceptable in France will be those judged necessary for the economy; individuals and their personal situation will become secondary and their rights will be restricted. It is our duty as Christians to insist that human beings should always be at the heart of our policies and the law should always protect the weakest."

are informed by his love. And these relationships are not confined to friendships between equals, nor do they depend on the conventions of class and status. They embrace a love shown equally towards all fellow human beings and especially those who are suffering and oppressed. Jesus welcomed to his table those whom the society of his time despised or distrusted, and forged from the community of his followers a society bound by the bonds of a generous and self-sacrificial love. For Christians today, the presence among us of individuals who have been systematically deprived of the rights and advantages enjoyed by our fellow citizens, and whose personal stories are often such as to inspire intense compassion and concern, can be nothing less than a challenge to express our faith through action, hospitality and friendship, and to allow ourselves to be enriched by such experiences. In the following pages, alongside an analysis of the predicaments faced by asylum seekers in this country (much of it based on the evidence presented to the Independent Asylum Commission in 2007), we shall note ways in which this challenge can be met, and indeed often is being met, by Christian churches, other faith communities, charitable agencies and compassionate individuals. Our analysis will result in a challenge, not just to politicians and administrators, but to all people of good will – and, above all, to ourselves.



## Chapter 2

### *The Process*

#### *Rights and Obligations*

Two converging sources of protection are available to asylum seekers. First, under the Universal Declaration of Human Rights, any who fear or experience persecution in their own country have the right to apply for asylum in another and to enjoy certain basic rights once the application has been made. Secondly, according to the Convention Relating to the Status of Refugees (1951), all states that are signatories (which includes all liberal democracies) have a legal obligation not to send such an applicant back if there is a genuine risk of that person suffering such persecution again (an obligation technically known as *non-refoulement*). As a result of these affirmations, which have become part of international law, this country, along with most others, has bound itself to offer protection to all individuals who come to our shores who have a 'well founded fear of persecution' on the grounds specified in the Convention. It is released from that obligation only if the applicant is found not to be in need of protection. It follows that persons who have a genuine fear of persecution in their home country have an absolute right to seek asylum here and the government has an absolute obligation to provide protection for them; this may be refused only if their fear turns out not to be well founded.

In addition to these rights which are specific to refugees, asylum seekers may claim the protection offered by international human rights law. The Universal Declaration of Human Rights (1948) does not of itself give them legal protection, though it may be appealed to as a standard which governments are expected to conform to; but these rights may become enforceable through regional treaties that governments have entered into. In the case of the United Kingdom, the European Convention for the Protection of Human Rights and Fundamental Freedoms, which came into effect in 1953, was incorporated into British law in 1998 and should guarantee refugees certain fundamental human rights.

But virtually all rights and obligations may conflict with others that are equally well established. In this case there is a conflict with another obligation which weighs heavily on governments, that of securing the country's borders and controlling immigration. For this purpose governments are entitled to pass legislation determining who may lawfully enter the country and empowering officials to challenge and if necessary remove any who are here illegally. This challenge may take the form of a criminal charge: by entering the country without accreditation (such as a visa or other travel documents) a person may be committing an offence, for which the penalty is a fine, imprisonment or removal. Accordingly the procedure for interrogating those who appear not to have a legal entitlement to remain in the country may take the form of a trial before judges along the lines of customary legal process.

Given this potential conflict between one set of rights and another, we may ask what form of interrogation and testing is appropriate for those seeking sanctuary from persecution. According to this country's immigration laws they have almost by definition no right to be here: they may have no travel documents or visas, and they

are unlikely to belong to any category of those who may establish themselves here legally. In this sense they are 'illegal immigrants', and subject to the criminal justice system. On the other hand they have come here claiming the protection which this country is obliged under international law to give to those who establish a genuine fear of persecution; their mere arrival does not constitute an offence, and cannot of itself be made subject to a criminal charge. Should not the necessary examination of their claim for asylum therefore follow some different procedure, more appropriate to their circumstances?

The question might seem straightforward; but in fact it is quite complex. Though asylum seekers may on the face of it be innocent persons asking only to receive the protection which is due to them, it may turn out in some cases that they are not what they pretend to be: they may be claiming asylum simply in order to procure the right to establish themselves in this country, in which case it might be appropriate to bring a criminal charge against them, followed, if necessary, by forcible removal. Before doing so it would be necessary to establish the evidence on which such a charge would be brought – or rather, in many cases, to take account of the lack of evidence the claimant may have to establish a claim for asylum. This would be essentially a matter for officials charged to investigate the case, possibly preliminary to a legal process.

In practice, therefore, much will depend on which set of rights and obligations is given priority. If the right of the individual to seek sanctuary and the obligation of governments to offer protection are uppermost in legislators' minds, they will be likely to devise a system of interrogation that will simply weed out unfounded cases and give genuine applicants every opportunity to prove their need. If the rights of their own citizens take precedence, and the most urgent task seems to be to control immigration and prosecute those who are here illegally, then they will use methods more akin to bringing criminal charges against offenders and imposing prescribed penalties if they are found guilty. The first approach would be likely to result in methods being used such as would be familiar to the social services, giving clients every chance to tell their stories and prove themselves to be genuinely in need, only turning them over to other authorities if they appeared not to have a credible case; the second would more naturally use methods appropriate to policing and the law courts, rigorously testing claimants' accounts under threat of criminal proceedings or forcible removal should their credibility not be established.

### *The Process: Guilty until proved Innocent?*

Let us look at it now from the point of view of the asylum seekers themselves: what form of investigation is most appropriate to their situation? Their individual circumstances, of course, may vary considerably. Some may be already in this country on temporary permits to study or visit relatives: while they are away from home there may have been a coup or revolution which makes it unsafe for them to return home. Some may have found their own way here, say, on a tourist visa, and applied for asylum after they arrived (only a very short time is allowed for this if it is to be successful). Some may have been smuggled into the country, and arrive destitute and without travel documents. But the great majority have a story to tell which can be understood only when one has some knowledge of the political situation in the country of origin. Moreover their experiences may be such as are exceedingly

difficult to communicate rapidly. A woman who has been repeatedly raped may be unwilling to speak of it until her interrogator has gained her confidence; a victim of torture may be emotionally incapable of giving an account of it without expert help and persuasion. Some may be utterly exhausted by travelling and being smuggled past frontiers; some may be traumatized by having witnessed scenes of atrocities carried out in front of them, sometimes even involving the deaths of family members. In the nature of the case they may not be able to produce evidence supporting their story other, perhaps, than scars on their bodies. Establishing whether their story is true is likely to involve patient and sympathetic listening and sensitive attention to the way it is told: any questioning that seems threatening or expresses disbelief may have the effect of reducing to silence the person from whom one is trying to elicit the full story. In short, it is a process which requires time and patience if the truth is to be established.

What agency or procedure would be most appropriate for this purpose? Some charitable organizations have gained experience of these problems, and can set an example. *The Medical Foundation for the care of Victims of Torture*, for instance, has developed techniques for enabling victims to come to terms with what they have suffered sufficiently to be able to speak of it coherently. Other charities working with refugees have found similar ways of establishing their credibility. But one condition which seems essential for eliciting a true story when that story may contain great depths of suffering is that the questioner should seem to be *on the claimant's side*.<sup>10</sup> The moment that questions are felt to be hostile or betray incredulity, confidence is lost and the subject may instinctively recoil – many have been subjected to inhumane interrogations in their own countries and have developed instinctive reactions to protect themselves from giving away information that might be used against them or their friends and relations. Building up trust and confidence is a necessary part of the task of the questioner.

In theory this is an approach which might well be adopted by officials charged with the reception of men and women who arrive at a port seeking asylum. These people are claiming to be the victims of persecution, and may have horrifying stories to tell of what they have endured and of the situation which they have felt bound to flee. The officials' task would be to give them a sympathetic hearing and, having made the necessary checks, to direct them to offices or agencies which will provide immediate support. In this way the government would be fulfilling its obligation to give protection to those who are exercising their right to seek asylum.

But, as we have seen, this obligation may conflict with the responsibility to control borders and regulate the flow of immigrants; and if this is given priority, very different procedures may come into play. Significantly, the officials whom asylum seekers will encounter when they enter the U.K. (or when they apply for asylum after entering) do not work for any agency which bears the words 'asylum' or 'protection' in its name. Their department, formerly called the Immigration and Nationality Directorate, then the Border and Immigration Agency, has recently been renamed the United Kingdom Border Agency (UKBA). All of these names make it clear that the

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<sup>10</sup> In its Third Quality Initiative Report (2006) the UNHCR recommended (Recommendations 36 and 38) that "guidance be issued on inappropriate types of questioning and that such guidance should explicitly recognize the importance of establishing and maintaining a rapport with the interviewee." This was reiterated in the Fourth Report (2007) §2.3.73.

responsibility of the officials must be understood as primarily that of controlling borders and regulating immigration – that is to say, of keeping out undesirables rather than assisting those who may have a right to enter. And there is more to this than a name: the pressure of alleged public opinion (fomented by parts of the media) to stem the flow of ‘illegal’ immigrants, particularly asylum seekers, and the response to this by politicians anxious to ride with it rather than stand against it, has meant that Immigration officials see their task primarily as one of reducing the number of those who should be allowed to enter by imposing stringent tests and controls. Home Office publications make this absolutely clear. With respect to the New Asylum Model (about which more later), the claim is made that

*“we have already made real progress in reducing the number of unfounded asylum applications .... we have reduced the number of asylum applications .... we have dramatically reduced processing times .... we have consistently decided more cases than we have received new applications .... the current structure of the asylum system has enabled us to make these very important achievements”.*<sup>11</sup>

“Just because something is done quickly does not mean that it is done well. The overriding concern should be to achieve a fair and just decision. Unfortunately, speed seems to have pushed justice into second place.”

*Kerry Jopling,  
a solicitor from the Refugee Legal Centre in Leeds.  
IAC public hearing, September 2007*

Note the word *achievements*. What is to be ‘achieved’ is *reduction*; and when this is achieved the agency has done well. Its procedures must therefore be designed to give the least possible chance for any person to obtain leave to remain in this country who has not a well proven case for staying. Accordingly the burden of proof is laid firmly upon the applicant, whose story may be disbelieved until and unless it can be proved that there is a ‘real risk’ (the term used by lawyers) of persecution in the home country. In short, the purpose of the system is to create a close-meshed net through which only those whose credibility cannot be doubted will be able to pass.

### *The Substantive Interview*

This is not, of course, what asylum seekers will be expecting when (often after great danger and deprivation) they exercise their right to seek asylum from persecution and arrive, often exhausted and traumatized, in this country. The first intimation they will receive of the kind of procedures they must expect to undergo comes when, after the initial screening interview (which does little more than establish identity and nationality), they may be advised to find a lawyer to help them to prepare for their substantive interview with the authorities. *A lawyer?* Having to consult a lawyer means having to prepare for some kind of legal process. If the interview were to be purely investigative, such as might be conducted by a voluntary agency, no lawyer

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<sup>11</sup> Home Office brochure: New Asylum Model

would be required: the interviewer would be deemed to have the skills needed to help the applicant tell a coherent and credible story. But they are advised that a lawyer, or at least a specialist adviser<sup>12</sup>, is needed. Rather similarly, persons arrested on the street in this country are advised to have a lawyer present during interrogation at a police station, since ‘anything they say may be used as evidence against them’. The official conducting the interview cannot therefore be regarded as likely to be a friend helping the applicant through the procedures: he or she is more likely to be an adversary determined to exploit any inconsistency or lack of coherence in the applicant’s story. Hence the need for a qualified person to help the applicant prepare a consistent ‘case’.

At this stage, however, it would be incorrect to call the interview a ‘trial’. A lawyer is not permitted to be present (except under very special circumstances, such as severe mental illness in the applicant, or in the Solihull pilot scheme under the New Asylum Model); an interpreter is provided (though the applicants may also bring their own to check the accuracy of interpretation); and the hearing is conducted by a single official. The interviewer has the task of eliciting the applicant’s story and assessing its credibility. Afterwards the story will be checked against information available to the official about the applicant’s country of origin. This is derived from a dossier known as Country of Origin Information, compiled from a number of official sources, regularly up-dated and also subject to review by an independent panel; but the official may in fact use more general Operational Guidance Notes, which are less stringently monitored and may not always be relevant to a particular case. Within weeks (or sometimes days) a letter will be sent either granting leave to remain (though the legal status conferred on the applicant may vary) or else giving reasons for refusal. In other words, this initial interview might be called ‘inquisitorial’ rather than ‘adversarial’, in so far as there is no cross-examination of the claimant’s case other than by the interviewer: it is the interviewing officers alone who have the task of assessing the account laid before them and coming to a decision.

### *Appeal: Rights and Limitations*

Yet it is a decision which has legal force. If it is positive, the applicant may legally claim the rights which the host government is bound to award to a genuine asylum seeker. If it is a refusal, no such rights are granted and it can be challenged only by legal process. Either way, the applicant may need a lawyer. If the claim to asylum has been accepted, access to the rights which flow from it may run into difficulties which only a solicitor can handle; if it has been refused, an appeal must be brought before a tribunal which is set up on the model of a British law court. At this point the process is no longer ‘inquisitorial’: it becomes ‘adversarial’. The Home Office will instruct an advocate whose task is to oppose the application and convince the tribunal that the applicant is not telling the truth. To present a case which has any chance of proving their credibility, applicants will necessarily need a lawyer qualified to represent them. Applicants who try to argue their case personally and without professional help are

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<sup>12</sup> Since 1 April 2005 the Legal Services Commission has required all advisers to be accredited if they wish to provide legally-aided advice. Nevertheless, ‘poor quality advice is still a major issue.’ IAC Interim Findings, ‘*Fit for Purpose Yet?*’, March 2008, p.38. The NAM Solihull pilot project has provided for legal representation at the substantive interview, and the IAC strongly recommends that this should be extended to the whole country.

little more likely to succeed than private persons doing the same in ordinary courts of law.

Witnesses outlined a litany of difficulties that asylum seekers faced once their claims had been refused and they tried to appeal against the Home Office. These ranged from lack of access to legal advice, poor legal representation and the strict, short time scales for lodging an appeal. The Commissioners were taken aback by the effects that these problems had on the lives of asylum seekers.

*IAC public hearing, Press Release, September 2007.*

“The adversarial nature of the asylum process stacks the odds against the asylum seeker”,

*IAC Interim Report, March 2008, p.2.*

It is here that asylum seekers are liable to encounter a major obstacle. Lawyers are expensive, and asylum seekers are by definition unlikely to have any financial resources. British law, like international law, guarantees to every individual an equal right of access to the courts and legal representation; but this is dependent on funds being provided for the purpose by the state. In Britain, the administration of these funds (known as Legal Aid) is managed by the Legal Services Commission, which is legally bound to extend its help to refugees by a European Directive of 2004. Under this, the British government is obliged to provide free ‘legal assistance and/or representation’ for the purposes of at least the first review or appeal against a refusal. But in 2003 the government (in order to save an estimated £30 million) reduced the maximum of 100 hours that would normally be funded for each client to a mere 5 hours (unless a special case were made for more), eliciting a vigorous protest from the UN High Commissioner for Refugees and effectively reducing the number of solicitors who were prepared to offer their services under these conditions. In addition, the government has now stipulated that, to qualify for contracts to represent clients trying to take their appeal to a further stage through judicial review, a law firm or solicitor must achieve a minimum success rate of 35–40%. Moreover a solicitor must be satisfied that the appeal has at least a borderline prospect of success if the client is to receive Legal Aid. These measures have forced many lawyers who were expert in asylum law to abandon Legal Aid-supported practice; and asylum seekers may now have great difficulty in exercising their right to have their case brought to an appeal tribunal. In the words of the Refugee Council’s support pack for advisers (Spring 2007), ‘More and more asylum applicants are finding it difficult to access legal advice, particularly at the appeals stage’.

“At present my workload is bringing me close to breaking point and every imminent removal is worthy of my time and consideration. I am simply unable to do so. The increasingly limited number of immigration/asylum solicitors is taking its toll on us all”.

*Anne, who is a solicitor and a senior teamleader at the Refugee Legal Centre, in a private communication.*

Selam, a refugee from Ethiopia, had been made destitute because of poor legal representation, before finally having her refugee status granted. She was forced to change her solicitor seven times in two years, and had her claim turned down because the letter informing her of her appeal date was sent to the wrong address. Becoming destitute, she relied on charity before seeing no alternative other than to work illegally. She was caught working illegally and was imprisoned for four months. “I couldn’t go on living in destitution – I have no words to describe what life was like for me. I tried to kill myself so many times.”

*IAC public hearing 2007.*

Shoherah, a Somali asylum seeker who fled to the UK with her daughter, was moved from Liverpool to Barnsley and had to find a new solicitor. When she eventually found one there was not enough time to prepare her case. She had to sell her support vouchers to pay for legal help. “I think about me and my child and I wish we had never come to the UK – nobody wants us. They say claiming asylum is not a crime, so why are these invisible bars around us?”

*IAC public hearing, September 2007.*

It is, of course, understandable that the government should have a concern about the amount of public money which may have to be spent on lawyers who are engaged by asylum seekers – non-citizens of this country – to contest decisions made according to established procedures by the government’s own officials. Until recently, claimants were given the opportunity to appeal twice, the second time to a higher level tribunal. The procedure has now been simplified (and presumably made less expensive) in that there is now only one tribunal to appeal to (the Asylum and Immigration Tribunal). This application requires much legal preparation by a lawyer, who may receive only a fixed fee for the case regardless of how complex it is, or even no fee at all if it is unsuccessful. It is no wonder that a great many cases, even if meritorious, do not proceed this far. But the rigorous restraints on Legal Aid remain in place, and are likely to do so for the foreseeable future – the total budget for Legal Aid is already at a level that it would be politically unacceptable to increase. In part this may be alleviated by the willingness of less qualified people to advise claimants in the early stages of their claim. Non-specialist lawyers acting *pro bono*, or experienced agency workers, may be authorized to assist, and given that there are many people in civil society who are willing to help in this way the authorization arrangements could well be extended. Nevertheless the effect is that asylum seekers find themselves confronted

by a system that seems almost designed to put them at a disadvantage. First, there is the interview, for which relatively little preparation time is allowed<sup>13</sup> and which is conducted at a speed and in a style set entirely by the interviewing official. This interview, more often than not, results in refusal (in fast track cases a staggering ninety-eight per cent). The claimant then has ten days (or five if in detention) to prepare an appeal, for which the lawyer (if one has been found) is allowed only five hours; if this fails, further appeals (on the grounds of an error in law, new evidence being available, or for judicial review of the reasonableness of the decision) virtually depend on the willingness of lawyers and voluntary agencies to take up the claimant's case. Yet the system, even when honed down to this extent, is still expensive: lawyers and judges still have to be paid out of public money to reconsider the decision given at the first interview – often overturning it. Quite apart from the difficulties and anxieties caused to genuine asylum seekers, can a system which has to devote such massive resources to reviewing and if necessary reversing the initial decisions of its own officials be claimed to be either just or value for money, let alone humane?

“The number of law firms offering legal aid to asylum seekers has reduced by a third in just eighteen months – precisely because most firms provide legal aid to asylum seekers at a loss.”

*Mark Phillips, representing ILPA  
(Immigration Law Practitioners Association)  
at IAC public hearing, February 2007.*

Ismail, whose mother and brother were shot dead in front of him by the Janjawid militia in Darfur, was ditched by his lawyer just a day before before the deadline for lodging his appeal - despite previous assurances that he would be represented. “My appeal failed and I spent four months homeless and hungry. One day it became too much and I tried to kill myself at Leeds train station. I will never forget the kind lady who took my hand and stopped me – but I would prefer to die than go back to the Sudan.”

*IAC public hearing September 2007*

### *The New Asylum Model*

It was in view of this obvious deficiency of the system that the government put in place its ‘New Asylum Model’. The key feature that was introduced by this system was a ‘Case Owner’ – in principle a single named official, though in practice it may be one of a team. This Case Owner takes responsibility for the individual asylum seeker from the beginning to the end of the process. Every new asylum seeker will now be put in contact with a single official, who will oversee the progress of the case and be able to give advice on all practical aspects of it. Case Owners will have achieved a higher civil service grade than has been customary for Immigration

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<sup>13</sup> “Home Office policy is that legal advice is not required in order to submit a claim”, LSC Annual Report 2005–6. But see above, n.7.



Officers and will have received more extended training.<sup>14</sup> They will be familiar with the case at every stage, and can help claimants and their representatives to keep track of its progress. They are also empowered to introduce some flexibility into the time scale for appeals in order to allow for the special circumstances of an applicant. In short, they have the opportunity to give a human face to the procedure and remove some of the threat inherent in what otherwise appears as a faceless system, designed only to cast doubt on the veracity of the applicant's story.

All of which sounds like a significant step in the direction of instituting a more humane and less adversarial procedure. Whether it is so in reality will have to be judged when the New Asylum Model gets fully into its stride – it became operational only in the early months of 2007. Some features of it are positive, particularly the assurance given to claimants that there is someone whose job it is to keep them informed of progress. But it has to be said that the context in which these new Case Owners do their work is one which must severely limit their ability to give asylum seekers the time they need to establish their case. The system has been introduced as one that will result in 'faster tightly managed processes' and is intended to make it

"In one case heard under the Home Office's New Asylum Model, the case owner denied refugee status to an asylum seeker, saying, 'I am going to fail this case now, but it will be overturned at appeal stage.' The asylum system is failing in many respects – it is as if it is designed to catch the asylum seeker out."

*Charlotte Cooke, Head of Operations at the Refugee Council in Leeds, in evidence to the IAC public hearing, September 2007.*

possible to process claims considerably more quickly than before. The opportunity formerly given to a claimant to set out a case in writing (the Statement of Evidence Form) has been abolished; the time scale for legal advice and for preparing a case is reduced; claimants who say they have been tortured may receive neither sufficient time nor the help of a specialized agency to establish the fact;<sup>15</sup> final decisions may be made by a senior Case Worker who has never met the claimant and has not been trained within the new system;<sup>16</sup> children are interviewed by NAM staff who have little specialized training;<sup>17</sup> and the overall purpose is described, once again, as that of processing claims more rapidly. The fast track procedure in detention is retained and is to be enlarged, an initial screening will sort out cases according to their likelihood of being well founded, and a substantial number will have no right to

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<sup>14</sup> HEO . Qualifications: University Degree 2.2; training 55 days

<sup>15</sup> Practitioners' view on NAM: Inger Denhaan, Immigration Advisory Service 2007. In its Fourth Quality Initiative Report (2007) the UNHCR still had to insist that "where the need for further evidence (such as a medical report) has been identified in the course of an asylum interview, applicants must be given a reasonable number of working days to produce it" §2.3.64, referring to Recommendation 21 of the Third Report (2006).

<sup>16</sup> "UNHCR ..... draws attention to the lack of asylum specific experience of a significant number of Senior Caseworkers." UNHCR 4th Quality Initiative Report, 2007, §2.3.88.

<sup>17</sup> "Five days' [training] is not enough for a police officer or social worker to be allowed anywhere near children, so why is it enough to let NAM staff decide over the life and death of UASC (Unaccompanied asylum seekers' children)?" Ib.

appeal against a refusal at first interview before being sent back to their home countries. It is evident that, despite the appearance of a more personal and caring approach with the introduction of Case Owners, the drive behind the system remains that of reducing numbers. The Case Owners themselves, though their primary function is to advise the applicant and monitor progress, are also decision makers and may even appear at a Tribunal as witnesses against the claimant. The accent is still on controlling immigration, not offering protection.

Claudette, an asylum seeker from the Ivory Coast, broke down in tears as she recounted how the Home Office interpreter and the officer from the flagship New Asylum Model laughed at her during her asylum interview.

*IAC public hearing, February 2007.*

Indeed one of the purposes of the new system is admitted to be to ‘maximise deterrents against unfounded applications’ – a highly questionable motive both morally and in international law. At the beginning of the process, some who arrive in this country seeking asylum will be immediately denied it on the grounds that they appear to have had the opportunity to apply in another country en route to the U.K. or to have come from one of the 14 countries generally designated ‘safe’. Others may be ‘fast tracked’ and placed in detention, where the procedure for determining their claim will be greatly accelerated (reducing, as we shall see, their chances of success). Others again, if they carry false documents, may find themselves in the position, not of claiming a legitimate right, but of having to defend themselves against the charge of illegal entry. Indeed, under legislation passed in 2005, they may even be charged with a criminal offence and, if convicted, be given a prison sentence. This appears to be in clear contravention of Article 31 of the Refugee Convention, which expressly forbids the penalization of refugees who arrive without authorization so long as they make a clean breast of their illegal entry and can show good reason for their application for asylum.

It is clear, therefore, that the policy of the UK with regard to the admission of refugees has swung decisively away from giving priority to the protection of vulnerable people: its success is now measured by the degree to which it limits the flow of immigrants. It is a policy which certainly enjoys public support. For reasons spelt out in the first chapter, a prosperous and heavily populated country such as Great Britain may feel threatened by even a small number of aliens establishing themselves here, and if those who can be represented as ‘illegal immigrants’ can be prevented or deterred from entering in the first place, the government will certainly win favour in the eyes of much of the electorate. But the government is also expected to act with decency and to follow policies that conform with international standards in respect of human rights and the humane treatment of the victims of violence and oppression. In the case of the asylum seekers who reach our shores (who are only a tiny fraction of the world’s refugees, most of whom have found refuge in much poorer countries than ours), it is a matter, not just of humane treatment, but of doing justice to the rights of each individual, not only as a fellow human being, but specifically as one who by

virtue of having been forced to leave the home country and seek protection elsewhere, has acquired rights which the international community has bound itself to respect.

### *The 1951 Convention: Rights and Reservations*

These rights stem principally, as we have seen, from the Convention Relating to the Status of Refugees (sometimes known as the Geneva Convention) that came into force in 1951. This Convention, which built upon an earlier treaty formulated by the League of Nations in 1933 but not widely adhered to, spelt out what might be involved in the fundamental right, included in the Universal Declaration of Human Rights, 'to seek and enjoy in other countries asylum from persecution'. It was negotiated in the aftermath of the Second World War, which had displaced several million people from their own countries: states in Europe and elsewhere had an interest in formulating common guidelines for their treatment and resettlement. Since then, the refugee problem worldwide has increased massively and affected far more countries, particularly in the developing world; and the actions of the coalition of western forces that invaded Iraq in 2003 created a further two million refugees seeking safety in neighbouring countries in the Middle East. In these changed circumstances, is it still reasonable that a refugee should be able to claim the rights that were afforded by a treaty signed over half a century ago under very different circumstances?

To answer this it is necessary to bear in mind the limitations which attach to any formulation of rights and obligations. The number of rights that exist absolutely and without any possible qualification is in fact very small. The right not to suffer torture under any circumstances is one of them; but even this open to being interpreted with a certain flexibility. If a person being interrogated has knowledge of a plot which threatens to kill or maim a number of people (the 'ticking bomb' scenario), it cannot be wrong to bring some pressure on that person to reveal it. The exact amount of pressure allowable, and the point at which that pressure approaches actual torture, must be matters of judgment at the time. Yet most would agree that even in these exceptional circumstances the obligation to save the lives of the innocent cannot be claimed to override the right not to be tortured. As for other human rights such as the right to work, to education, and even to access to the courts, these all depend on the resources available. In a time of high unemployment no government can ensure that the right to work can be enjoyed by all its citizens; many countries cannot yet afford schooling for all their children; and even the right to legal process depends on the judicial system being operational (which it may not be in the aftermath of war or revolution). Certainly governments have a duty to provide these things. But if they are unable to do so it is meaningless to claim that an individual's rights have been violated. Human rights, it has been said, are like a cheque drawn on a bank. If the money is there, the cheque book holder is entitled to draw it. But if the account is empty the cheque is meaningless. Applied to refugees, their right to protection must similarly be limited by the ability of the host country to accommodate them. The countries neighbouring Iraq that have closed their borders to any further refugees are doubtless doing so because they simply do not have the resources to accept any more. No appeal to rights can have any purchase in this situation. It is for other countries to

assume responsibility for the safety of those who have been displaced as a result of their own actions – which at the time of writing they have been regrettably slow to do.

It is because the honouring of these rights is conditional on the resources available that states that became parties to the Convention were enabled to do so with reservations. Some states, for instance, explicitly reserved their right not to provide waged employment or free schooling to refugees or to guarantee them freedom of movement; others specified that they accepted the obligation to receive refugees only from certain other countries. It was realized that no treaty could be effective which bound the contracting states to commitments they would be unable to fulfil.

In principle, however, a wealthy and liberal nation such as the United Kingdom should have no cause to make such reservations: it possesses the resources to honour all the basic rights of refugees. But this does not mean that the honouring of those rights will automatically be translated into government policies and actions. Like all legal documents, any international instrument or treaty requires interpretation, and a considerable body of precedent and legal opinion has been built up around questions how to implement its provisions and give effect to the obligations that are implied by them. It is here that governments find considerable latitude with regard to refugees. Who exactly qualifies as a ‘refugee’? How is a claim for asylum to be assessed? How far can ‘administrative convenience’ be stretched to limit the freedom of a claimant? These and many other questions are open to legal debate and find their way into decisions made by judicial authorities in the receiving countries. Moreover there appears to be no legal impediment to seeking to restrict the number of asylum seekers entering the country by imposing visa restrictions abroad. All members of the European Union, for instance, now insist on prospective asylum seekers obtaining visas from consulates abroad – something which it is hardly possible for them to do, particularly since those consulates are likely to be instructed to be less than generous in issuing the necessary documents. Hence an inevitable growth in illegal smuggling. But hence also (doubtless along with other factors) the fifty per cent drop in the number of asylum seekers entering European countries in the years following the imposition of these measures.

### *Human Rights – Protecting the Vulnerable*

It is therefore seldom possible to argue that a government is offending against international law if it appears to be failing to respect the rights of refugees. Yet it is not necessary to be positivistic and assume that the validity of these rights depends entirely upon a government’s obligation or willingness to promote them. Rights, in most people’s understanding, are pre-legal, that is to say, they exist independently of whether a legal statute is in place to give them effect. They can be appealed to as a standard to which any government ought to conform. And indeed this appeal is often very vocal. A nation or a government that appears to be violating the basic human rights of an individual through discrimination on grounds of race, or through arbitrary imprisonment, may find itself the object of widespread protest and obloquy – as China found in the months preceding the 2008 Olympics. There is no reason why the rights specific to asylum seekers, let alone their human rights, should be any different. Claiming rights has become part of the culture of today. If the rights of persons seeking asylum were more widely understood, they might well find more popular support, which could be brought to bear on government and eventually influence

public policy.

Seen in this light, the rights of refugees and asylum seekers take on great significance. They make it impossible to accept, for instance, that persons seeking protection from persecution should find themselves in the position of apparently having to defend themselves against a criminal charge – that of having entered the country illegally – or indeed of being involved in a legal process as defendants against the allegation of telling a story that is false. These are people whose experiences are often of a kind that citizens of this country can barely imagine and (we pray) will never be subjected to themselves. Among them are among the most deserving and defenceless of innocent sufferers we may ever meet. That they should again and again report that the authorities give them little time to establish the truth of their story and seem almost intent to undermine their credibility is a situation that affronts our consciences and which our faith commits us to contest and if possible to reform. These are not merely fellow human beings, created in the image of God, who deserve our compassion and concern. They are persons in possession of inalienable rights, and those rights are again and again being refused on the grounds that the right of our country to set a strict limit to immigration takes priority over their right to seek asylum among us. No one denies that it may be necessary to control our borders against criminals, terrorists and other undesirables. Were there an unmanageable flow of would-be immigrants (which could be a result of climate change in a few decades' time) these controls might have to become more stringent. Yet it is surely unacceptable to override the established right of the persecuted to come here for protection when their number – at present a mere thirty thousand a year for this country – is a mere sixth of those who are actually *emigrating* from Britain and a mere sixth also of those who for other reasons are admitted as immigrants each year.

And there is a further factor that presents a particular challenge to Christians. When victims of persecution arrive in this country their most valuable asset is the story they have to tell. It is vital to them that their story should be believed, but in the majority of cases, initially at least, they can produce no evidence to prove its truth. All they can hope for is that their own word will be accepted; and they find themselves confronted with an administrative and legal system that appears designed to challenge their credibility. Their greatest need is for persons who will vouch for the truth of what they have to tell – and this is a specific mode of Christian service. Christians are called to witness to the truth, and this truth includes the truth they discover in other people. In the case of asylum seekers, the truth may take many hours to elicit and establish; but if, once established, this truth is called into question unjustly or arbitrarily, Christians have no choice but to intervene with their witness, their protest and their concern, and where possible to testify in court to the claimant's integrity. In the face of all the obstacles which are placed in the way of asylum seekers, helping to establish their credibility may be a prolonged and burdensome task; it may even involve being threatened with prosecution under the Immigration and Asylum Act of 1999 unless one is a person officially qualified to offer advice and representation<sup>18</sup>. But it is one that has been willingly assumed by countless advocates of their cause, and is a challenging imperative laid on all whose Christian faith leads them to

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<sup>18</sup> This Act has recently been invoked by the Border and Immigration Agency in order to prevent representations being made to officials on behalf of asylum seekers by persons (such as retired lawyers) who are not authorized by the Office of the Immigration Services Commissioner.

question the justice of the treatment being imposed in our name on these innocent sufferers.

When I went through the detained fast-track, I felt like they were giving me a direction –straight back to my own country. There was no way they could verify my story in two weeks. I was so naive – I thought the Home Office would consider my claim fairly, but they don't want to hear my story.”

*John, an ex-detainee from Zimbabwe,  
who was refused legal representation in the fast track system because of  
restrictions on legal aid, giving evidence to the IAC, public hearing, June 2006*

## Chapter 3

### *Detention – a Defensible System?*

#### *The Principle*

“No one shall be subjected to arbitrary arrest, detention or exile”– this fundamental clause of the Universal Declaration of Human Rights is a projection on to the international scene of a principle held sacred in this country since Magna Carta and formally enacted in *Habeas Corpus* in the seventeenth century. It applies to every human being, regardless of status, who has not been charged with a criminal offence. It affirms, in effect, that the arbitrary detention of an individual without due process of law is illegal wherever it takes place. In the case of refugees, this right is specifically affirmed in the UN Convention of 1951.

Like most general principles, however admirable and widely accepted, this one inevitably admits of some exceptions. In wartime, for instance, it is permissible to hold prisoners of war in captivity (though there are now internationally agreed rules governing their treatment) and to intern civilians of the nation with which one is at war – exceptions which gave, at best, only doubtful cover to Guantanamo Bay, but which do go to show that the principle cannot be invoked as a seamless cover for every individual case of imprisonment in any place at any time. Nevertheless, as a mark by which to recognize a state as one in which the rule of law is properly established, the right not to be imprisoned without charge remains fundamental. It was a sense that any erosion of this principle would be a serious departure from the rule of law that created powerful opposition against the British government’s proposal in 2005 to extend the period of time during which a terrorist suspect may be held without charge from 28 to 90 days.

“Why is it that a suspected terrorist can be detained for a maximum of only twenty-eight days, yet an asylum seeker, who has committed no crime but seeks protection, can be locked up indefinitely?”

*George Mwangi, ex-detainee,  
in evidence to the IAC, public hearing, June 2007.*

Yet exceptions do exist. Persons suffering from severe mental disorders, for instance, may have to be confined in secure institutions for their own and the public’s safety. Such exceptions have always been recognized. But in 1971 legislation was passed to create a new and much more substantial exception. This legislation allowed the Secretary of State to detain for a (virtually) indefinite period a person alleged to have entered the country illegally, without a hearing and without having to inform the detainee of the evidence. This was an altogether new power which, along with other powers conferred by the same Act, has called forth the comment that ‘under no modern legislation, not even the Prevention of Terrorism Acts and the Police and Criminal Evidence Act of 1984, have such sweeping powers over the liberty of the

individual been conferred on the executive'.<sup>19</sup> The effect of this legislation was to allow immigration officers discretion to detain any immigrant for any length of time without giving to the detainee either an indication of the length of time to be spent in detention or any reason why detention was necessary.

The reasons behind the passing of this Act through Parliament were primarily political: successive governments were having to cope with the social consequences of the arrival of a large number of immigrants from the New Commonwealth in the nineteen sixties and were anxious to assure the electorate that they could exercise rigorous control over further immigration. Since then, circumstances have changed in many respects; but the power then given to the Secretary of State, and through him to Immigration Officers, to detain immigrants in an almost arbitrary fashion has remained unchanged and has been more and more widely used. It is true that cautionary guide lines may be issued to Immigration Officers from time to time, but in this matter they have no obligation to account for their actions. They are free to order the detention of anyone whom they suspect, not merely of criminal intentions, but of possibly wishing to abscond or to create difficulties for the authorities. In recent years this power has been exercised ever more extensively. Despite the fall in the number of asylum applicants since 2004, the number of those detained at any one time has risen from around 800 in 2005 to nearly two thousand today, with a capacity in the detention estate of 4000 promised by 2010. At present it is calculated that each year around thirty thousand people pass through detention centres (now called Immigration Removal Centres, since they are used also for the detention of other illegal immigrants). For some the period spent in detention may be quite short; for some it may last for years.

There is, of course, some public support for this apparent flouting of the right of refugees to reasonable freedom of movement. The government, it is felt, should certainly not let a large number of new migrants swell the crowd of illegal workers in the 'black economy'; it is known that some criminals try to gain entry to the country by claiming asylum, and it might be a serious risk to allow them their freedom when they arrive; in some cases Immigration Officers might well feel that if they allowed some of the applicants freedom to find their own way through the system while awaiting the result of their application they might fail to report regularly to the police and disappear altogether. True, this is something of a departure from the ancient and civilized tradition of 'no imprisonment without charge'; but then these immigrants may turn out to have no right to be here anyway. Not being citizens of this country, they cannot expect to be able to avail themselves of the rights available to British nationals, and anyway (some might argue) they should be grateful that they have food and shelter provided while they are waiting for a decision on their future.

### *Fast Track*

The original purpose of detention under the 1971 Act was to enable the immigration authorities to hold manifestly 'illegal' immigrants securely until arrangements could be made to remove them. Since the 2004 Act this has become once again one of the main purposes of detention under the so-called 'fast track' system. Applicants who

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<sup>19</sup> Ann Dummett and Andrew Nichol, *Subjects, Citizens, Aliens and Others*, London 1990, p.222



arrive at a port from a country which is designated 'genuinely safe', or whose claim is 'clearly unfounded', may be taken immediately to one of two removal centres (this is now the case for nearly a third of all who arrive seeking asylum), where their claim will receive 'fast track' treatment; if there is an appeal it will be handled by adjudicators on the spot, and the only further delay before removal should be due to difficulties with consular documents or travel arrangements. This system has enabled the Home Office to claim that the time taken for the process has been greatly shortened: nearly half are removed within 42 days, seventeen out of twenty within three months. For these people, therefore, a long period of suspense is avoided, and the British tax payer is saved a great deal of money (detention typically costs slightly more than £1000 per week per person). Presented in these terms, the system can be claimed to work to everyone's advantage.

"The length of time that certain people have spent at Yarl's Wood is now becoming a serious issue. Some women have been there for more than a year, yet we have no policy for keeping people in detention for that length of time. Some people have undoubtedly been there for a long time and I am worried about the legal basis for that. .... there is increased frustration at Yarl's Wood because appropriate legal services and advice are not available. The frustration about that has caused additional problems within the centre. There has been an increase in cases of self-harm and in the number of people refusing food and being on hunger strike."

*Alistair Burt MP, who has Yarl's Wood in his constituency,  
in the House of Commons, December 20th 2005*

But how does it work out in practice? It may well be the case that the conditions in some countries are known to be such that it is highly unlikely that any of its citizens would have 'a well-founded fear of persecution' – for example, the countries of the European Union, all of which are bound by treaty to observe agreed standards of Human Rights. And it may also be the case that some applicants can easily be seen to have no possible case at the very first interview. But when it is announced that a third of all asylum applicants fall into these categories, doubts begin to arise. Can we be sure, for instance, that the Balkan states, even if members of the EU, are 'genuinely safe' for Roma people, whose stories of persecution are often harrowing and have been accepted as true on appeal? As for applicants whose claim is 'clearly unfounded', how can this be established at a preliminary interview if an asylum seeker has just arrived in a totally foreign land, possibly deeply traumatized, and mentally exhausted by the strains of clandestine travel? That a decision should have to be made at this early stage by an Immigration Officer which may affect the chances and indeed the very life of an applicant places an unreasonable responsibility on an individual official and may have dire consequences for the applicant. For it may not be by any means an easy decision. Suppose the country of origin is Uganda (which is one of those on what is unofficially known as the 'White List'): alarming stories are told by refugees of the desperate cruelties and indignities from which they have escaped. Is the official judgment, based on enquiries through embassies and other

“They took away my husband and to this day I do not know what befell him. I was blindfolded and beaten ruthlessly and often, and was raped twice by the same soldier. When I resisted the second time he bit me on the shoulder, and knifed me in the stomach. I have scars from it. I also was infected by him with gonorrhoea, hepatitis B and HIV. This I didn’t know until much later, after my asylum appeal.”

*M., an Ugandan citizen, in testimony presented to the IAC.*

agencies, that the country is ‘safe’ necessarily to be given preference over the reports of those who claim to be victims of persecution and can often show the marks of it on their bodies? Yet one entire section of the asylum process (almost a third) is now based on the assumption that this initial decision is reliable and justifies a highly accelerated procedure which routinely makes systematic use of detention.

Not, of course, that this decision is the last word for any applicant. Within two days of arrival there will be a meeting with a lawyer who works under contract for the Home Office. This consultation enables a case to be prepared for the substantive interview with the immigration authorities, which normally follows the very next day. A very short time after this, the applicant will be told of the decision. If it is a refusal (which it almost always is), an appeal is possible, though it has to be presented with the help of a lawyer within five working days. This appeal will then be heard by a panel of three judges sitting in a court within the removal centre itself. Leave to appeal beyond this requires powerful legal support, and is necessarily rare. In principle, removal will then follow as soon as it can be arranged; in practice, there are often considerable delays, and some have remained in detention for months, if not for years. But the system can be presented as one that ensures the rapid processing of applicants with reasonable provision for rectifying mistakes or injustices before removal takes place.

In all the legislation it has passed in order to establish these procedures the government has made clear its aim to be ‘fair’ as well as ‘fast’. In this context, fairness is a serious matter. It is not just a question of being even handed when awarding rights and benefits; it means being fair to those whose lives may depend on a single official’s decision. It means recognizing that this country has an absolute obligation to give protection to those genuinely in need of it, and that failure to do so may place applicants’ lives at risk when they are returned to their home country. We have therefore to ask whether the fast track procedure, involving immediate detention, conforms with this standard of ‘fairness’. To do so, it must provide means to be absolutely sure that no one who has a genuine fear of persecution or risks serious bodily harm is refused the asylum to which such people are entitled.

It follows that a great deal depends on the evidence which is used to determine each case. But the initial decision to fast track an application is made on no evidence at all that relates personally to the individual: it is ‘generic’, that is to say, it is based on a judgment that this is the kind of person who is unlikely to have a well founded claim. This judgment may well have substance. It is perfectly true that the likelihood of

persecution and threats to life due to race, politics or religion are much less likely to occur in some countries than in others, and that there may be other types of claim for asylum which can be instantly detected as fraudulent. But the consequences of this judgment are that the investigation of the claim for asylum, which is recognized as being an intricate process of matching personal testimony against known conditions on the ground, requiring, at the very least, several hours' help from a lawyer, is constrained within the limits of a single interview held within days of arrival and prepared with a maximum of one and a half hours' help from a qualified lawyer. These conditions alone would raise the question of 'fairness' acutely. But the actual circumstances in which all this takes place make it still more problematic. For a lawyer to be available for each of these fast track applicants (in one of these centres there are about 30 a month), firms of solicitors have to be contracted to the Home Office to be regularly on hand. The task is a specialist one, and requires good qualities of judgment and patience – the applicants are often not in a fit state to tell their stories intelligibly, and the need for an interpreter makes progress slow. Some solicitors are expert in these procedures; moreover solicitors have professional bodies that are able to assess the record of their peers, and could help to ensure that good quality practitioners were engaged. But the criterion preferred by the Home Office is that the solicitors' office should be as near to the centre as possible, and this leaves little chance to monitor the quality of the solicitors who accept the contract. As a result, not all these solicitors even spend the maximum time allowed (one and a half hours) with their client – some are reported to have prepared cases in a quarter of an hour. As they are not present at the interview that may be held the very next day, the chances that the applicant's story, if it is at all complicated (and most are), will be presented to the adjudicator in a persuasive form are very small – indeed it is no surprise that the refusal rate at this stage is something like 98%.

If this were the end of the process it would be manifestly unfair. But there is a further stage. Applicants have a right to appeal. To do so, they must present a case before a panel of judges within five days. For this, a lawyer is essential and must be available immediately if the deadline is to be met. This lawyer will compare the reasons given for refusal with the story told by the applicant – there are often blatant discrepancies – and seek to persuade the tribunal that the applicant should be believed. Clearly there will be little time to collect further evidence from the applicant's country of origin or gather supporting testimony from fellow nationals who may be living in the U.K. There is not normally time even to present medical evidence that the applicant has been tortured and should not have been detained in the first place – victims notoriously find it difficult to speak frankly about such experiences, and at this stage are virtually never believed if they try to do so.

The judge adjudicating in the case of a woman, 27, from the Ivory Coast and a Turkish Kurdish man, 38, said their treatment at the Oakington detention centre reflected a "persistent and sustained failure" to provide the minimum level of care to which the Government has committed itself through legislation. The Turkish Kurd arrived in Britain in April last year with injuries which suggested he had a strong case for refuge. He told immigration staff immediately that he had "proof" on his body of torture: swollen legs and hot iron marks on his shoulders, sustained through a series of beatings which took place from 1997 to 1999. The man was listed for fast-track processing and sent to Oakington, pending a decision. There, under Detention Centre Rule 24, introduced in Parliament in 2001, he should have been seen by a doctor within 24 hours. He was not seen for several weeks.

*The High Court, May 22nd 2006,  
as reported in The Independent, May 23rd 2006*

What is at stake is the applicant's credibility; and the applicant will find that the judges start with the presumption that the story is not to be believed. Claimants describe the hearing as one in which, instead of an effort being made to understand what they have been through and how difficult it may be to talk about it, the judges seem intent on tripping them up in their narrative to show they must be lying. The procedure, that is to say, is not modelled on the kind of enquiry that is intended to establish the facts as impartially as possible; the model is the British law court, in which the prosecutor does everything possible to call into question the version of events given by the defendant. In this case the 'prosecutor' is the Home Office, which has massive resources to bring to its 'case'; the claimant has little but a personal story, presented as cogently as possible by the lawyer after a brief period of preparation. In short, the odds are stacked against the claimant being believed; and it is no wonder, again, that the number of successful appeals is very small, reinforcing the public's perception (much exploited by the media and indeed by politicians) that the great majority of asylum seekers are 'bogus'.

“I spent a total of eight and a half months in detention. On the day of arrest , 16/05/07, I was not interviewed, but detained and taken to Yarlswood. I was told I would be a Fast Track case, and would be interviewed in Yarlswood. On 17/05/05 I was interviewed there. The solicitor from Nandy attended. I told the Immigration Officer of my imprisonment and torture, giving him all the details, but they did not believe me. My solicitor requested that I be released because I was a torture victim, and I should go to the hospital for treatment . IND refused, with the Immigration Officer stating to me that I was ‘not credible’, and that they would deport me.”

*M., Ugandan citizen in testimony presented to the IAC.  
M. was granted refugee status after appeal in 2006.*

“ When taking my kids to school by car, a pickup pulled up and I was bundled into my own car. My kids screamed. They pointed a pistol at me. We returned home. They broke in and started searching the house. The kids were locked up in one room. They took away boxes of FDC materials. At great speed I was taken to a safe house in Kololo, and locked up undressed for two days. Interrogation resumed, the same questions. This detention lasted about a year and 5 months. I was tortured severely, because I still refused to confess. I was repeatedly pushed inside a tank of freezing water.

Once at midnight there was screaming. My name was called, and he opened the door. A torch shone in my face, and a gun pointed at me. I squatted in the corner, covering my face. I resisted removal. He kicked me. As I resisted he bayoneted me in the right groin. I screamed and fell. He hit me on the head with the gunbutt. That’s when I lost consciousness. I still have all the scars.”

*D, a business man in his forties from Uganda, in testimony presented to the IAC. D. survived four attempts to remove him, and after judicial review in his favour was released from detention and allowed leave to appeal.*

But does not even a small number of successful appeals call into question the justice of the whole procedure? By comparison with other asylum seekers, those who have been assigned to the fast track system are given a far shorter time and fewer resources to prepare their case, and statistically their chances of receiving leave to stay are almost zero. This virtually certain path to refusal is one they are placed on by the decision of a single Immigration Officer on the basis of general guidelines, with little opportunity to consider whether the individual might be a special case or deserving of a more thorough investigation. Such a system could be called just only if it could be shown that the overwhelming majority of such cases are correctly judged at the very first stage, and that the chances of unfair discrimination against individuals is minimal. But this is by no means the case. Given the speed at which claimants’ cases have to be prepared, it is not surprising that the rate of successful appeals is not high; but it is certainly high enough to be significant. And any significant rate of occasions on which the original decision to fast track the claimant is shown to have been unjust

must call into question the justice of the whole procedure. If the initial decision to fast track an applicant, with its almost invariable consequence of refusal, turns out to be incorrect in even a small number of cases, then there is a real danger that many other individuals will be wrongly returned to their countries and that the U.K. will be in breach of its obligations under the Convention to offer asylum to those who have a well founded fear of persecution.

“A female Ugandan asylum seeker with injuries consistent with torture was denied asylum under the detained fast-track system. The Home Office broke its own guidelines by failing to pass on vital information to the decision maker and by arranging her interview with two male staff. She was eventually granted asylum after a judicial review found that she had not been allowed time to gather sufficient medical evidence. The detained fast-track process is a gateway to injustice.”

*Paul Nettleship, a duty solicitor at Harmondsworth IRC,  
at an IAC public hearing, June 2007.*

Accordingly it is no justification of the system to point out that individuals whose appeal has failed may nevertheless be rescued from removal if new evidence can be produced which supports their claim. A minimum of seven days is allowed before removal (though the period is sometimes much longer). During this time voluntary agencies may offer help: for instance, *Medical Justice* may provide doctors qualified to diagnose the physical and mental signs of torture. This may constitute genuinely fresh evidence and has in some cases prevented removal, since the repatriation, and even the detention, of victims of torture is expressly forbidden. But the fact that such rescues take place cannot possibly justify a system which in theory, and usually in practice, allows no time or opportunity for the production of such evidence before a decision is made. Torture victims are highly vulnerable people. They may have great difficulty in speaking of what they have experienced; and certifying that they have truly suffered torture is a matter for patient and sensitive questioning and physical examination. The mere fact of ‘fast tracking’ people who may have suffered torture cannot but be an injustice: by definition the process is one that is intended to be conducted at speed, whereas evidence of torture almost invariably requires time to establish.

When I went through the detained fast-track, I felt like they were giving me a direction –straight back to my own country. There was no way they could verify my story in two weeks. I was so naive – I thought the Home Office would consider my claim fairly, but they don’t want to hear my story.”

*John, an ex-detainee from Zimbabwe,  
who was refused legal representation in the fast track system because of  
restrictions on legal aid, giving evidence to the IAC, public hearing, June 2006*

‘Conducted at speed’: there is powerful pressure placed on the government (many would say shamelessly fomented by parts of the media) to reduce the number of

asylum seekers who are awaiting a decision on their application and who therefore (since they are not permitted to undertake paid work) are a charge on the taxpayer. In these circumstances a policy which aims to speed up the processing of applicants has political appeal, and a 'fast track' system seems an attractive option. And since the process is clearly very much easier to control and monitor if the applicants are all in one place, holding them in 'removal centres' is a logical consequence of the policy. As for their human rights, depriving them of their liberty for what is intended to be only a short period before they are removed from this country can hardly be described as a serious violation. All of which might be true if 'fast tracking' could be shown to be just in the first place, and if the time spent in detention was as brief as is claimed. Yet despite the odds against them, such as the impossibly short time allowed for assembling supporting evidence, a number of applicants succeed in having the initial decision reversed on appeal, and a still larger number are helped by voluntary agencies and responsible lawyers to have their cases reviewed and to avoid removal. This process may take months, if not years; the time in detention is prolonged, and the detainees' morale is difficult to sustain if they cannot be sure how their case is progressing. For what is at stake is not simply obtaining a fair decision and security from persecution: it is a matter of rectifying the initial injustice of being placed in a 'fast track' system which allows inadequate time for a proper case to be prepared<sup>20</sup>. Those who are subjected to this system, and who are helped to get the original decision reversed, will continue to be held in detention throughout the process. Charged with no offence, and often requiring specialist medical help and good access to lawyers, they are held in conditions which in some respects are more restrictive than those in prisons. Such a long period of detention is arguably a serious violation of their human rights; and it is precisely because the procedure is so often shown not to have been just in the first place that successive reviews are necessary and that the period of detention for some applicants may continue for months and even years.

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<sup>20</sup> If the 'fast track' procedure is imposed because of irregular entry (for instance, without documents) it is arguably illegal. Cf. James Hathaway, *The Rights of Refugees under International Law*, Cambridge 2005, p.408: 'The case is strong that the assignment of refugees who arrive without proper documentation to abbreviated procedures is in essence a penalty inflicted for irregular entry ..... such procedures take on a decidedly punitive character.'

### *Other Detainees*

But in any case these fast tracked applicants represent only about a third of the total number detained at any one time. Only two out of the ten centres used for detention are intended for this purpose; the rest contain asylum seekers awaiting either the result of their process or their removal to some other country (along with some persons convicted of a criminal charge and awaiting deportation). Clearly ‘administrative convenience’ is hardly adequate as a justification for interning such large numbers. Other reasons are certainly advanced. Fear of releasing criminals or terrorists into the community is one; suspicion that the asylum seeker may abscond and be untraceable is another. But such fears can be justified only in a small number of cases, whereas at present there are nearly three thousand places available for detainees – a far larger number than in any other European country – and the Home Office is promising more. Indeed such is the number of asylum seekers being assigned to them that conditions often fall far short of what would be considered requisite even in prisons (where a significant number are still held, and without even the privileges normally granted to convicted inmates).

One of the most disturbing and disorientating factors they are exposed to is frequent moving: asylum seekers find themselves taken without warning from one centre to another, disrupting their access to legal and medical services and making contact with personal supporters extremely difficult. Restrictions on their liberty are in any case

“Within the space of just a few days, one detainee we interviewed was moved from Dun-gavel in Scotland, to Colnbrook near Heathrow, then to Lindholme near Doncaster, and then back down to Harmondsworth, which is right next to Colnbrook! This is disorientating and means the detainee loses contact with friends, family, property and legal advisers.”

*Eileen Bye, from Her Majesty’s Inspectorate of Prisons,  
in evidence to the IAC, public hearing, June 2006.*

severe: if they are Muslims, they may be refused permission to set time apart to pray; if taken to a hospital for an x-ray or other treatment they may actually be handcuffed – people who have been charged with no offence being treated like convicted criminals. Given that a spell of detention may be quite short, and may end at any time, opportunities for any constructive activity while in detention may be minimal – less than in many prisons; and there are even children among them – one out of twenty turns out to be a minor, which admittedly cannot always be determined on arrival, but the dangers of allowing someone to be at liberty who turns out to be over eighteen are surely less serious than the injustice, of holding children in detention. Each year more than 2000 children and babies are detained and the figures are increasing annually. The campaign calling for the end of detention of children in immigration centres, ‘No place for a Child’, led by Save the Children, the Refugee Council and Bail for Immigration Detainees, has received the support of 137 MPs, 13,500 members of the public and the churches. It is true that the UK government entered a reservation to its



accession to the UN Convention on the Rights of the Child, so that the needs of the child are not necessarily considered paramount in immigration matters; but this reservation has drawn forth understandable criticism. As Dawn Marshall, Scotland's Commissioner for Children and Young People, pertinently observed, "You can reserve powers at Westminster, but you cannot reserve the welfare of children."<sup>21</sup>

### *Treatment in Detention*

As for the actual conditions in the centres, although some of the detainees have been able to say, 'We are treated like equals', the comment of a larger number of witnesses is 'We have been treated like animals'; and the disturbances that have taken place in several centres underline the fact that a regime of detention that is imposed by the decision of a single Immigration Officer and that offers no reasons for confinement, no time limit, problematic rights of appeal for bail and limited access to legal, medical and personal contacts, is one that, even if it can appeal to a specific derogation from the European Convention that makes it legal (and this has been contested before the European Court of Human Rights), must arouse the conscience of many and the inevitable resentment of the inmates, who as a last resort have several times turned to violent protest.

"It is more than just physical torture, it is mental too. The staff made you feel like you don't belong. We were treated like animals."

*Faith, an asylum seeker from Zimbabwe who was detained for seven months,  
in evidence to the IAC, public hearing, June 2007*

"A lady I befriended had suffered incredibly in Uganda. She was a highly intelligent woman but after her release she was unable to walk, eat, drink or look after herself. She was also mute. This was as a direct result of her detention at Yarl's Wood. And yet the medical centre at Yarl's Wood insisted she has no medical concerns. Home Office guidelines say that torture victims should not be detained – but the Immigration and Nationality Directorate is not following those guidelines."

*Gill Butler, a befriender at the Yarl's Wood centre,  
in evidence to the IAC, public hearing, June 2007*

In her report on Detention Centres (as they were then called), published in 2004, Dame Ann Owers, H.M. Inspector of Prisons, listed four tests by which the appropriateness of the conditions prevailing in these centres should be judged:

- 1) that detainees are held in safety,
- 2) that they are treated with respect as individuals
- 3) that they are able to engage in constructive activity,

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<sup>21</sup> IAC Public hearing, June 2007. The government has now announced its intention to withdraw this reservation, which at the time of writing is still in force.

4) that they have adequate contact with the outside world.

The five centres inspected at that time varied in the degree to which they met these conditions; in some cases there were lamentable shortcomings (particularly in the establishments that were formerly part of the Prison service), in others the majority of detainees reported no unreasonable restrictions. But one test in particular revealed a serious shortcoming in all of them – the matter of safety. The opposite of safety is not only physical danger (as it might be from fire, accident, violence, intimidation and mistreatment). It is also insecurity; and this is something to which asylum seekers are particularly prone. In the words of the Report, ‘Some will have been imprisoned elsewhere in less than humane conditions; for others, this will be their first experience of a custodial environment and in a strange country. None will know how long they are to be held or whether they will be able to remain in the UK.’ That they should have an acute sense of insecurity is inevitable; but this certainly should not be exacerbated (as the same Report expressed it) ‘by being unable to obtain timely information about the progress of their cases, by anxiety about welfare concerns, or by difficulty accessing competent legal advice that may prevent their removal to an unsafe country or situation’. But in fact, in all but one of the centres, this insecurity ‘was heightened by the fact that they were unable to obtain reliable information from the immigration authorities about the reasons for their detention or the progress of their cases, or to access competent legal advice. For many, this was the greatest insecurity of all.’

It may of course be said that the rapid growth in the number of detainees has put the system under strain, and that time must be allowed to establish the observance of humane Detention Rules. It may also be said that time must be allowed for the authorities to respond to the criticisms made by the Prison Inspectorate in 2004 and in subsequent inspections. Yet that any one of the centres at present in use should fall seriously short even of the standards expected in our prisons (and there can be no doubt that some do) must cause revulsion in anyone seriously concerned for the welfare of the inmates. What seems the least acceptable of all these shortcomings is that the point at which these people are most vulnerable – their sense of insecurity – should be exposed to still further pressures. Not being told why or for how long they are being detained, or not told it in a language they can understand; having no legal right to a bail hearing, and little chance of obtaining bail without the help of charitable agencies and individuals prepared to stand surety for between £2,000 and £5,000; not being provided with easy access to legal advisers and friends outside; being moved without warning and with the disruption of such medical and legal help as they are receiving – such apparently arbitrary administrative procedures cause untold anxiety to people whose level of insecurity is already extremely high. Their expectations of finding in Britain a welcome, or even a refuge, after the inhumanities they have suffered in their own countries are again and again rudely dispelled by the sensation of being treated by the authorities as if they were guilty of some crime, with little chance of redress and a constant threat of being returned to the situation from which they have fled. Indeed even the complaints procedure at removal centres has been found gravely deficient: in 2006-7 the Complaints Audit Committee of the BIA found that 89 per cent of investigations were “neither balanced nor thorough”, revealing a serious lack of impartiality<sup>22</sup>

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<sup>22</sup> BIA Complaints Audit Committee, Annual Report for 2006-7

“At the heart of the centre’s problems were the relationships between custody officers and detainees, together with an over-emphasis on physical security which was more appropriate to a high security prison than a removal centre run under rules that require ‘secure and humane detention under a relaxed regime’ ..... many of the rules and systems would have been considered over-controlling in a prison, let alone a removal centre.”

*HMIP Report on Harmondsworth IRC, 2006*

“Recurring concerns raised by both advocacy groups and H.M. Inspectorate of Prisons include a lack of recreational facilities, overcrowded accommodation, maltreatment by centre staff, long periods kept in cells, lack of privacy, visiting restrictions, limits on making and receiving calls, an absence of 24-hour medical provision and no facilities to deal with serious illnesses”.

*Information Centre about Asylum and Refugees (ICAR),  
in a briefing prepared for the IAC, 2007*

### *A defensible system?*

Is this large-scale use of detention defensible? The United Kingdom detains more applicants than any other European country, and the Home Office has announced plans to extend its detention estate still further. It is not difficult to see the political reasons behind this policy. The surge in asylum applications in the late ‘nineties created a backlog in processing them which the present government has been trying hard to reduce. Assisted by a substantial fall in the number of those now applying, it has been able to speed up the process for many of those who have been waiting, sometimes for years; and as proof of this it can point to the number of those who are actually removed from this country. Accordingly the process of removal has become the focus of attention; and since those who are found to have no right to remain in this country are removed most easily if they are already held in detention, there is a strong political incentive to keep claimants detained in case their applications fail. And there is a further political motive. It has been one of the government’s aims to reduce the number of asylum seekers in the first place, and this has been achieved by a combination of draconian measures restricting the opportunities they have of entering this country at all. Alongside these is the deterrent effect alleged to be produced by the expectation that if they do succeed in gaining entry they may be immediately detained and never achieve the freedom for which they have come. Detention, that is, has been part of the range of measures instituted to discourage those who are persecuted in their own countries from attempting to gain asylum here. Whether this, or indeed any of the other measures taken for the same reason, have had this effect cannot be known: the decline in numbers may have to do with many factors – changing conditions in the home countries as well as the virtually insurmountable obstacles that have been placed in the way of those seeking to enter this country legally. But in any case, as a justification for depriving such people of their

fundamental human right not to be imprisoned without charge, its possible deterrent effect is certainly not morally acceptable. It is not even acceptable under international law: the 1951 Covenant makes it clear that detention can be justified only where there is some necessity to impose it (Art.31.2).<sup>23</sup> Its deterrent effect could never override the general legal assumption that refugees have a right to freedom unless there are good reasons for their detention.

And here we reach, once again, the point from which we started. A substantial proportion of those held in removal centres are subsequently found to have genuine grounds for requesting asylum ('a well-founded fear of persecution'). They are not charged with any criminal offence, they may have suffered torture, rape and every kind of indignity, they may have lost close family members and be deeply traumatized by their experiences. Yet these people may be arrested on the street and taken immediately into detention with no opportunity even to retrieve their possessions. If carrying money, it will be confiscated by the police on the suspicion of having been illegally gained, and they will need to complete a complicated appeals procedure (for which no official help or advice is provided) if they are to get it back. They may then be held in detention indefinitely, entirely because they have not yet been able to establish their claim that their story is true. Indeed their conditions may be considerably worse than those of British citizens held in prisons. Prisoners on remand have a right to apply for bail: no such right belongs to asylum seekers, for whom being released on bail is virtually impossible unless they have expert help to apply for it and promise of financial support outside. Inmates of prisons undergo a mental health as well as physical health assessment on admission and have appropriate medical care provided: inmates of removal centres are entitled to no such assessment of their mental or psychological condition and speak again and again of being denied essential medication if they suffer, for instance, from a heart condition. It is one thing to detain innocent people for administrative convenience when the period will certainly be brief and only basic services are required; but when the period may be prolonged and there is no information about its length, no likelihood of obtaining bail, no adequate medical treatment and limited access to lawyers and personal contacts, the justification for the system begins to look extremely problematic. That they should be detained while their cases are being investigated is officially justified on grounds of administrative efficiency, of security for the public and of the deterrent effect on prospective refugees. As we have seen, these grounds are, to say the least, questionable; they hardly justify the detention of a far larger number than in any other European country, let alone the government's plans to increase their number still further. For all these reasons the detention regime in this country cannot but be regarded as a serious infringement of human rights.

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<sup>23</sup> There is a case in progress before the European Court of Human Rights challenging the British Government's use of detention in the case of an Iraqi Kurdish asylum seeker who cooperated fully with the authorities but was held in detention until his claim was finally accepted. See *The Independent*, January 28th 2008.

“In 2004 the Medical Foundation examined 14 cases of alleged abuse by staff. In 12 of the cases gratuitous or excessive use of force was used and at least 4 of the detainees were found to have been tortured in their countries of origin.”

*ICAR briefing, 2007, p.12.*

Lord Bassam of Brighton, Government minister (Lord in Waiting): “We must be seen to treat people fairly and reasonably, and that is what our procedures aim to do. That is why at any one time we have, relatively speaking, a very small number of people in immigration detention. “

*House of Lords, Tuesday 15th February 2006*

In short, the detention regime as practised in this country at the present time must touch the conscience of all who care about the rights of individuals and the treatment meted out in our name to persons who are among the most vulnerable and wounded in the world. Many of our fellow citizens do in fact respond to it by acts of personal kindness and service– from subscribing to daily papers for the inmates of Campsfield House to standing surety for asylum seekers applying for bail. But we need also to set the growing detention estate in a wider context. The United Kingdom already holds in prison a larger proportion of its citizens than any other country in Europe. We have a culture in which incarceration is rapidly becoming a notable feature of our civic life, even though the level of crime has if anything decreased. Alongside this we find that asylum seekers are being held in removal centres in ever larger numbers. The time has clearly come to ask ourselves seriously whether we wish this to be a country where this tendency is to continue unchecked – whether, that is, it is true that we have not the resources in our communities to assist in the reform of all but the most serious criminals and to offer a welcome to refugees such that they will not require forcible detention while their claim is being assessed. Public policy responds to public sentiment; and if the public is really determined that those whom it prefers not to have around, either because of having committed offences or because they have not established a right to be here, should be locked away and left to officials to deal with, then politicians may feel they have little choice but to oblige with more places of forcible detention. But Christians, along with countless others of good will, must refuse to believe this is truly the intention of the majority of British citizens, who again and again show compassion to their fellow human beings when in deep trouble. The reduction of the prison population and the punishment and reform of offenders by other means must be one of our objectives. And when it comes to those who are not offenders, and who may be persons especially deserving of humane and sensitive treatment, we can surely have no hesitation in using every possible means to procure for them the liberty they deserve.

## *Chapter 4*

### *Destitute by Choice?*

“Destitute asylum seekers walk the same streets as we do, but they inhabit a different universe. It is a world of fear, hunger and enormous physical and mental discomfort.”

*Deborah Koder, New North London Synagogue  
(Letter in The Independent, October 23rd 2007)*

#### *The Right to Food and Shelter*

A sense of security, and some hope for their future in the country of refuge, may be the most pressing needs of asylum seekers on arrival in this country; but they also have immediate physical needs which they may have no means of meeting. Some (but not many) may have been able to bring money with them; some (again not many) may have friends or relatives already here who can help them; but the majority – especially those who have used smugglers or traffickers to get here – will be without money, possessions or any means of support. Food, shelter and in some cases medical care, are urgent necessities. Have they any right to expect they will be provided?

If the appeal is to the rights which are now recognized as belonging to every human being in the world, then there can be no doubt about the answer. The right to life is a fundamental provision of the Universal Declaration of Human Rights (art. 6), and this is normally understood to mean the right to the minimum of food, shelter and care required to keep a person alive. More than this, the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is now incorporated into British law, explicitly prohibits ‘cruel or degrading treatment’ (art. 3), and the Economic, Social and Cultural Covenant (1966), also entered into by the British government, declares that ‘the State Parties .... recognize the fundamental right of everyone to be free from hunger’ (art. 11.2). That a person arriving destitute on our shores should be provided with the basic necessities of life is therefore not just a humanitarian imperative; it is a requirement of international law. Indeed governments of developed countries are obliged, not only to provide for the physical needs of those who arrive as refugees, but to send aid to very poor countries that may also be receiving refugees but do not have the resources to give them food and shelter<sup>24</sup>. But of course it is not the government that provides these resources out of some independent fund: it is the taxpayer. Hence there is a political aspect to the question. Ultimately, the necessary aid can be provided only with the consent of the electorate, and this, as we have seen, cannot be taken for granted in a climate where there is often strong popular feeling against asylum seekers, who are accused of making their way here precisely in order to take advantage of the benefits they will receive on arrival. If

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<sup>24</sup> See above, n.5

the aid and sustenance given to asylum seekers can be represented as over-generous, the government may be accused of being 'soft' on refugees, which indeed has been the recent experience of the government at the hands of the parliamentary opposition. Accordingly attempts have been made to restrict the giving of support to applicants who are genuinely deserving and denying it to those, for instance, who have exhausted the appeals process and have no right to remain in the country. It has even been enacted that those who fail to make their asylum application within a very strict time limit are deprived of any support at all, even if they may still have a valid claim to asylum – a policy which evoked a famous judgment from the High Court, which found it

‘impossible to believe that Parliament intended that an asylum seeker, who was lawfully here and could not lawfully be removed from the country, should be left destitute and at the risk of grave illness and even death because he could find no one to provide him with the bare necessities of life.’ (*R v. London Borough of Hammersmith, 1996*)

Despite this, and despite a Court of Appeal ruling in 2004 declaring that it could be in breach of the European Convention on Human Rights, the notorious Section 55 of the National Immigration and Asylum Act of 2002 continues to deprive of all support some of those who applied for asylum after arrival in this country but did not do so ‘within a reasonable time’ or ‘as soon as reasonably practicable’ – often interpreted as not more than a few days. Similarly, Section 9 of the Immigration and Asylum Act of 2004 excludes from support those whose applications have failed and who are deemed not to be taking ‘reasonable steps’ to leave the UK. As a result, most charitable organizations concerned with refugees have experience of rescuing asylum seekers from utter destitution.

In other words, the present system has created categories of refugees who are unable to exercise their right even to basic food and shelter. Prima facie this is a dereliction of duty by the government; but it comes about, not by negligence or administrative inefficiency (though this is sometimes also the case) but as a result of deliberate policy. As we have seen, there is strong pressure on government to reduce the flow of asylum seekers into the country by every possible means, and deterring them by news of the deprivations they are liable to suffer if they come has been an avowed driver of policy. If this is also a way of claiming to save public money, it becomes still more politically attractive. But such justifications, which can hardly be approved morally, are certainly not acceptable under international law: only the actual inability to provide food and shelter – such as may be the case in a very poor country suddenly exposed to a major influx of refugees – can provide a valid reason for denying anyone within a country’s jurisdiction of their right to life and of freedom from degrading treatment. Research from Amnesty International UK and Refugee Action shows how

“Sometimes when people arrive on a Friday night at Manchester airport , by the time they get to the asylum screening unit at Liverpool; they find that the office is shut and are unable to access any support. So they begin their time in the UK with three nights of destitution”.

*Nigel Rose, Refugee Action, Manchester,  
in evidence to the IAC public hearing, October 2007.*

the government’s withdrawal of support from refused asylum seekers is creating a new and growing army of destitute human beings. The National Audit Office estimates that at least 150,000 people are now living in destitution in the UK.

But how is this support to be provided in a modern welfare state without prejudicing the social security rights of its citizens? Are there not some applicants to whom it should be denied? It is a principle of international law, embodied in the Refugee Convention and elsewhere, that once a person is lawfully within a state’s jurisdiction that person is entitled to the same benefits as the state’s own citizens. In a state with a welfare system, this means that the safety net provided for needy citizens must extend also to immigrants and refugees, whether or not they have been accorded official status as temporary or permanent residents. But this principle has practical implications that may cause a government genuine difficulties. Welfare benefits in the UK are administered by local authorities out of a budget devised to be adequate for their foreseeable needs and financed (at least in part) from the income raised by local taxation. But it is characteristic of any influx of refugees that they will not arrive haphazardly in all parts of the country but will congregate in particular areas – principally London and to a lesser extent in the south east generally; and this they do, not just because they naturally do not move far from their point of arrival, but because they are likely to find there a community already established of their fellow nationals, and such a community will be a crucial source of informal help and support. But this means that the local authority they come to may suddenly find itself with a large number of extra people whom it is obliged to house and support; and that the existing residents should in effect have to pay for this by economies and shortages in other local services is manifestly unfair: the burden should surely be spread across the whole country.

In response to this problem, the government first sought to limit the expenditure incurred by local authorities through tightening up the regulations for applying for asylum: only those who applied within a very short time scale would be eligible for welfare support. This draconian measure instantly created a veritable crisis for a large number of asylum seekers who for one reason or another had not been able to keep to the new timetable, and they were saved from utter destitution only by the rapid response of faith communities and others who found it unacceptable that these people should be literally left penniless on our streets. On taking office in 1997 the new Labour government saw the need to remedy this situation, and in the following years it introduced several acts of parliament relating to refugees. A fundamental change was introduced in 1999. Recognizing the unfair and unequal burden being placed on



local authorities by the obligation to extend welfare benefits to large numbers of refugees (and numbers had begun to increase significantly by this time), the government lifted asylum seekers out of the welfare system altogether and created a national agency responsible for their support: the National Asylum Support Service (NASS). This relieved the local authorities of their budget problems; but it also opened up new possibilities for the control of the flow of refugees. Once their support was no longer part of the welfare system, the level at which claimants would be supported was not pegged to any existing standard. The government was therefore free to introduce a rate of support considerably lower than that given to its own needy citizens, so discouraging (it was claimed) fraudulent asylum seekers who would otherwise seek to enter the country in order to live comfortably off welfare benefits. The level of support was fixed at 70% of normal welfare benefit (adequate, it could be argued, for survival, though not for civic participation in society), and various other benefits to do with health care and special provision were also reduced or done away with. Only dependent children, pregnant women and parents of small children were entitled to more. But this disjunction from the welfare system also made possible a radical innovation: to relieve the pressure on London and the south east (which had been demanded by the local authorities most affected), the provision of support was made conditional on accepting 'dispersal': asylum seekers, if they were to receive state support at all, would be obliged to accept accommodation wherever the agency decreed, and not to leave the assigned accommodation (or even be absent from it for more than a very few days) without special permission. This meant that they might find themselves far away from any community of their fellow nationals and even from centres where specialized legal help was available to them. Meanwhile the very strict timetable imposed in 1996 was partially relaxed; but there remained a number of factors, such as other resources available to an individual, or the exhaustion of the appeal process and final refusal of permission to reside, which would cause support to be withdrawn.

When this system was first introduced a still tighter control was imposed on the way support could be received by asylum seekers. Instead of cash, they were issued with vouchers exchangeable at designated supermarkets for food and other necessities. This was soon found to raise serious objections. First, and most important, it made asylum seekers highly visible in their daily life, and those of the public who were not well disposed towards them found them an easy target for abuse at supermarket tills. Secondly, since the purpose of the arrangement was to avoid distributing cash, no change could be given for a voucher of which the value was more than the purchase, so that an asylum seeker might actually be paying more for household necessities than British citizens. The force of these objections created a change of policy: asylum seekers can now receive support by presenting a voucher for cash at a post office. A new and still less generous voucher system has been instituted, however, for those whose asylum claim has failed and who are at liberty and have not taken 'reasonable steps' to leave the country.

### *The Right to Work*

Despite these controls and economies, the support of asylum seekers still involves very substantial public expenditure: they are arriving at the rate of some thirty thousand individuals a year (including families) and waiting on average several months before their cases are determined. An easily fomented public reaction to these

people – that they are ‘spongers’ living off the generosity of the taxpayer – adds to the government’s determination to speed up the process of adjudicating their claims; and in principle, of course, this is also in the interest of asylum seekers themselves, for whom long months of uncertainty about their future may be very damaging. This hostile reaction would be greatly lessened, it is often said, if only they were allowed to work for their living while waiting – which is what the great majority of asylum seekers would prefer to do, having no wish to be dependent on the charity of their hosts once they are on safe territory. Indeed the right to work is more than just a means to avoid destitution or relative poverty; it is part of the dignity of any human being. Work is a fundamental human activity, some forms of which may admittedly be demeaning, but which in principle is a means by which we establish our identity, our self-confidence and our place in society. In traditional Christian understanding it enables us to participate in the ongoing creative purposes of God and to achieve personal fulfilment through our contribution to the well-being of others. In the eyes of all, involuntary unemployment is seen as a serious deficit in the flourishing of a nation. To create this status deliberately, and to deny to someone the right to work, is to deny him or her a place of respect in the community and an opportunity to exercise the most basic form of citizenship.

But in the U.K., as in other European countries, this is not legally permitted. It is true that the Refugee Convention (art. 17) explicitly grants the right to wage-earning employment to all refugees who are ‘lawfully staying in the territory’, and this right accrues automatically to anyone who has been ‘lawfully’ here more than three years. But ‘lawfully staying’ is open to more than one interpretation: as soon as the claim for asylum is accepted the refugee will certainly be ‘lawfully staying’ and be permitted to take paid work; but any government can argue that while the claim is being considered the applicant’s future is so uncertain that it makes little sense to seek any but the most casual employment, and that to allow this might not only drive down wages for nationals but, more significantly, open up a pathway for immigrants seeking work to claim asylum and then get a foot on the employment ladder while waiting for a decision. Refusing permission to take waged employment is an important part of the government’s policy to deter illegal immigrants. This policy, which is replicated in most European states, is regarded as consistent with an accepted interpretation of the words ‘lawfully staying’ in the Convention: even though the presence of asylum seekers in the territory is not ‘unlawful’, it is argued that their ‘staying’ needs to be for a reasonable length of time before they can claim the right to work. By this interpretation, governments evidently feel authorized to deny to asylum seekers what many would regard as one of their most basic rights, and one which, if granted, would certainly restore to them, in their own eyes and in those of their neighbours, some of the dignity and self-confidence which they have lost through the process of leaving home and placing themselves at the mercy of a foreign administration. At one time this right was granted after six months’ residence, whether or not the applicant’s claim to asylum had been accepted. It has now been removed altogether, and since there is a large number of asylum seekers whose cases drag on for many months, this is a change which should surely not be allowed to continue unchallenged.<sup>25</sup>

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<sup>25</sup> It has been challenged most recently by Lord Goldsmith QC, the former Attorney General, who made restoring the right to work one of his proposals in his Report on ‘Citizenship, Our Common Bond’, submitted to the Prime Minister in 2008, paras 47–51. Restoring a right to work has also been supported recently by the T.U.C.

### *Support pending a decision*

If, then, asylum seekers cannot support themselves by working – if they seek to do so they will not merely lose their entitlement to state support but both they and their employer will be committing an illegal act, and may find themselves in prison – their access to food and shelter is dependent entirely on being eligible for state support. In principle this should cover everyone who is here applying for asylum, from the moment of arrival to the moment of acceptance or repatriation. Accommodation will be provided, though applicants have to accept being ‘dispersed’ to regions where they may have no personal contacts and even more limited access to legal services and interpreters; and cash vouchers are given, to a level significantly lower than the minimum social security allowance, that must be exchanged at a post office. In return, claimants may be required to register regularly at a local UKBA office (which may be up to 25 miles away or 90 minutes by public transport). This may cause understandable anxiety: many cases are recorded of the regular visit being used without any warning as an opportunity to take claimants into detention, with the threat of removal back to the country they have fled. Meanwhile the claimants’ children may have been making progress through the local school, and some may even have been offered places at a university – but these are usually (though, thanks to the enlightened policy of some universities, not always) subject to the payment of fees at the high overseas students rate which the family, forbidden to earn any money, will be in no position to afford. All this makes the conditions lived in by those whose claims are pending far from enviable; and for their children it may create serious obstacles to a steady course of education.

But support with food and lodging is also subject to the applicant’s compliance with certain conditions. Some of these are perfectly reasonable. If, for instance asylum seekers have resources of their own, or have friends or relatives willing to support them, the authorities may reasonably refuse to give them an allowance from public money. Equally, if asylum seekers wilfully refuse to abide by the regulations laid down for their support – refuse, for instance, to accept accommodation in an area to which they have been dispersed – then support may be withdrawn. Moreover – and this is the major cause of so many thousands being destitute in Britain today – if an asylum seeker’s claim has finally failed, and if the claimant will not agree to being removed or repatriated, support is automatically withdrawn in the great majority of cases. But all this raises a question: is it permissible to condemn a person to destitution – possible starvation, homelessness and sickness – *punitively*? Certainly the government is entitled to make rules governing the reception and support of those who come seeking asylum; and if these rules are disregarded, it may be legitimate to impose sanctions. But should these sanctions go so far as to risk a person’s very survival? No legal penalty in this or any civilized country is acceptable if it physically harms the convicted person – apart from those countries where the death penalty is still in force – and a failure to abide by regulations, however frustrating for the authorities, may legitimately result in some delays and complications, but hardly in an outcome which has the effect of a punishment. If people are found on our streets without food and shelter, some as the result of failing to comply with administrative procedures, but many more because of factors beyond their control, there is real cause for concern.

This concern has been felt very strongly by churches and other faith communities, which have been in the forefront of efforts to provide some sort of safety net. They have also been strongly encouraged by the government to play a significant part in promoting the reception and welfare of refugees. Home Office funding has enabled voluntary agencies to employ reception assistants to help applicants who are claiming support and to provide emergency accommodation and sustenance while their claim is being considered. It has also supported 'one-stop centres' where asylum seekers can get help at other stages in the process. All of which has placed these agencies in a new and somewhat ambiguous position. On the one hand they are providing services of a personal kind which the government is glad to contract from them, not only because, using volunteers, they save taxpayers' money, but because they have a good track record in work of this kind; on the other hand there is a danger that their independence may be compromised. Traditionally, voluntary agencies are there to help their clients to cope with official regulations and can be their protectors and advocates when those regulations seem to be applied inefficiently or unjustly; but once employed by the Home Office their role inevitably changes. They may become instrumental in (for instance) 'exploring alternative options' other than state support in individual cases and thereby saving the Home Office expense; they may even find themselves participating in official decisions which result in an applicant not being entitled to support at all.

For this is the crucial factor which lies behind the creation of a central agency responsible for the support of all asylum seekers. Previously, this support was the responsibility of local authorities, whose task was to give the claimants access to welfare benefits enjoyed by other needy members of the population. Their duty to do so was reinforced (as was proved by the judgment of the High Court already referred to) by the provisions of the 1948 National Assistance Act: no persons must be left utterly destitute by reason of an inability to support themselves. But now the support was to be administered centrally by an agency that could fix its own rate of benefits independently of the national welfare system and that had its own rules and conditions governing eligibility. No asylum seeker could expect more than 70% of the income support provided to nationals or the full range of normal social security benefits and

"A forty year old African lady, the sole survivor of a massacre in her village who was then detained, beaten and multiply raped.... when I met her she had been living on the streets in the UK for two years, severely anaemic due to a restricted diet and having to walk approximately ten miles to report to the Home Office every week. Profoundly depressed and with symptoms of epilepsy, I would normally have referred her to hospital, but because she would have been faced with a bill she could not pay, a torture survivor was denied vital treatment."

*Dr Angela Burnett, a GP  
IAC public hearing, September 2007.*

health services; and anyone who did not comply with the rules or meet the conditions could be denied support altogether. The system has been justifiably described as a new 'poor law'. Instead of welfare being available to all at the point of need, physical

support depends on the judgment of officials who are driven by the stated policy of the government to discourage all prospective immigrants who think of applying for asylum as a way of relieving their poverty at home. In effect, hunger and destitution are being imposed as a punishment for failure to comply with the regulations, as an incentive to cooperate with removal and as a deterrent to potential claimants. Only the rescue work of voluntary agencies prevents still greater numbers of asylum seekers being found penniless on our streets.

*Support – or none – after refusal*

In theory, of course, there is no reason why there should be a problem. A person who arrives or is already resident ‘illegally’ in this country but then claims asylum because of a genuine fear of persecution in the home country will receive support at a level thought appropriate to an individual or a family in this situation; if the claim turns out not to be genuine, even after it has been through the appeals process, the person may be ‘removed’, that is to say, taken to a removal centre (where there is food and shelter) until arrangements have been made for repatriation. All of which sounds eminently reasonable on the assumption that claims are processed rapidly and ‘removals’ follow soon after. But the reality is very different.

Some asylum seekers whose claim has been rejected from the beginning on technical grounds (such as making application a few days too late) know that they would be in

“In one case we had to help a lady who was nine months pregnant and has been released from detention with nowhere to go. There was no support for her from the state because of her status as a refused asylum seeker, and so we had to find her accommodation quickly. Cases like this are not uncommon.”

*Dave Smith of the Boaz Trust, giving evidence to the IAC public hearing, October 2007.*

“I lost my whole adult life in misery in this country. I was not poor in Iran – I did not come here for the money but was seeking refuge. I ask those in the Home Office to think, if you were to spend one day in my shoes, how would you like to be treated?”

*Ashin Azizian, a refused asylum seeker from Iran who has been in the UK for eleven years. The Home Office took five years to assess his case and then refused him asylum. Unable to work and preferring destitution in the UK to the threat of persecution in Iran, Ashin lived rough, scavenging through dustbins and sleeping in a launderette. He suffered mental health problems and despite twice attempting suicide was subsequently released with no one taking responsibility for his welfare. IAC public hearing October 2007.*

serious danger if they returned home and justifiably feel that they have no option but to stay until or unless they are forcibly removed, even if this means having no right to accommodation or income support. Some have gone through the entire appeals process and been refused, but have good reason to believe the verdict was wrong and that they would be in danger if they returned home. Some come from countries where it is accepted that it would be unsafe to send them back. Some may not be accepted by their own consulates and therefore have no documentation that enables them to return. For some, particularly those who applied some years ago, the complexity of their cases, combined with notorious bureaucratic inefficiency, has drawn the procedure out over many years, during which time, having no permission to earn a living, they will have been entirely dependent on support while establishing themselves as best they could with schooling for their children and medical help when falling ill, all of which may suddenly come to an end after the final appeal has been refused. Their removal can hardly be arranged overnight (though the notorious ‘dawn raids’ by Immigration Officers have made this a daily threat for some), and meanwhile they are left totally without resources.

In all these cases there remains one possible means of avoiding destitution: Section 4 support. To be eligible to receive this support (under Section 4 of the 1999 Immigration and Asylum Act) a refused asylum seeker has to fulfil stringent conditions: that of taking all possible steps to return but having no documents or viable route to do so, of being physically unable to travel, of having made an appeal for judicial review or of being specifically protected by the 1998 Human Rights Act. This provision is providing support for some 9,000 refused asylum seekers at the present time. But many more have either been found not to fulfil the conditions or else to be unaware that the provision exists or how to access it; and in any case their application for support will take time to process, during which they will be entirely without means of subsistence. As a result, it is estimated that there may now be as many as a quarter of a million such people living in total destitution – ‘a ‘new and growing underclass’, in the words of Sir John Waite, the chair of the Independent Asylum Commission – whose situation is such as that recently described in the House of Commons by Clare Short M.P.:

I have a lot of asylum seekers in my constituency whose applications have been refused and who will not leave the country. They are destitute, homeless and increasingly mentally ill. We cannot live with the increased number of people in that desperate condition. We must do something to sort it out.

And if the justification for this policy is that it encourages those whose claims have failed to accept repatriation, this is not only inhumane but betrays a profound

Buzimungu, a refugee from Rwanda, was finally granted refugee status after three years in limbo and two years in which his financial support was cut off. “I was moved eighteen times in that period – I lost contact with my solicitor and my GP, and my financial support was cut off just before my asylum interview.”

*IAC public hearing, February 2007*

misunderstanding of the psychology of the asylum seeker, indeed of any normal person in a comparable situation. Would any refugee voluntarily accept living in conditions of utter penury, with no health care or assurance of shelter, unless absolutely convinced of the danger of returning to their home country? If destitution is being used as a deliberate tool of government policy to force refused asylum seekers to leave the U.K., then it is not only inhumane and illegal under international law, it is ineffective and based on mistaken perceptions. All the evidence is that people prefer even total destitution to being forced to return to a country where they believe they would once again face imprisonment, rape, torture and even death. Indeed, in the words of a local government official charged with the welfare of asylum seekers, ‘The question that the Border and Immigration Agency [now the UKBA] must ask itself is, why are so many people choosing to live in destitution rather than return to their own country’?

“The Home Office said I should just return to Sudan. They detained me and took me to the Sudanese Embassy to get travel documents – effectively delivering me into the hands of the people who wanted to persecute me. I chose to be destitute here rather than face death in Sudan”.

*Ibrahim, a refugee from Darfur,  
giving evidence at a public hearing of  
the Independent Asylum Commission, 2007*

### *‘Legacy Cases’*

One response of government to this situation has been the obvious one: to speed up the whole process and ensure rapid removal in the case of refusals. Applied to recent arrivals, this is a reasonable policy: it is in no one’s interest to prolong uncertainty, so long as the outcome is seen to be just and humane. But there remains the problem of those whose cases have not yet been determined (‘Legacy Cases’), some of which have been so protracted that the claimants have necessarily built up some sort of settled life for themselves and their families. Again, the obvious theoretical solution is to arrange for all appeals to be settled as quickly as possible and for those who have been finally refused to be taken into removal centres while waiting for removal. But here the difficulties are immense. Many claimants have been waiting, not months, but years, for a decision. The number of so-called ‘failed’ – better called ‘refused’ – asylum seekers runs into tens of thousands, and the administration and policing of their removal is a huge undertaking, often provoking a vociferous outcry: the sheer inhumanity of suddenly removing children who are well established in their schools, or adults who have become respected for the contribution they have made to their communities, is something which colleagues, neighbours and school friends may find impossible to accept (a primary school head in Glasgow told the IAC that he has to spend much time helping children to come to terms with the sudden disappearance of friends and playmates). As a result, many thousands of asylum seekers have been living here for long periods; and those whose rights to food, shelter, education and

medical care have lapsed are liable to become destitute. The Home Office has set itself a target of clearing up all legacy cases by the summer of 2011; but those who have experience of these cases doubt whether this could be accomplished without the risk of serious injustices.

“When one of your friends disappears it is very sad. But it also makes you think, will I be next? What is the point of studying if I am going to be deported any day now?”

*A young asylum seeker from Iran, IAC hearing, 2007)*

### *Willingly Destitute?*

This raises, once again, the moral, and indeed the legal, question whether it is permissible for any country to allow individuals and families to suffer destitution amid a society which can well afford their support. It is true that their residence in this country can be called ‘illegal’: their claim has been subjected to due process of law and has been found unproven; in theory, therefore, they have no legal right to remain or to claim support from the state. But suppose an asylum seeker, knowing the situation at home better than any British official can, is quite certain that death or torture would follow being returned; suppose new evidence is becoming available which should alter the case at a further hearing – but this has to be applied for, and the process may take years, during which no support is provided; suppose the lawyer previously representing the claimant was incompetent or uncommitted (which not infrequently happens) and the claimant is fortunate enough to find another who will take up the case and believes there is a good prospect of success – but again the claimant is without support until the case can be re-opened. In all these situations individuals or families are at risk of utter destitution – and even, under current government proposals, of primary as well as secondary health care. In many instances they are rescued by voluntary agencies. In Birmingham, for example, the churches have a well integrated organization for providing sustenance and shelter, though limited resources have forced them to restrict their help to those who have a real prospect of being eventually accepted for asylum. Without such help, they have indeed few options. They may find a fellow countryman or woman who will let them sleep on the floor; they may turn to crime – the lesser crime of taking employment illegally, the greater crime of actually stealing food or money; as a very last resort, they may sleep on the streets and beg.

But surely, it could be said, the welfare safety net should be available to prevent such things happening on the soil of a wealthy country such as ours? Surely it should not be left to charitable organizations such as churches to supply what the government fails to supply, or to the charity of individuals moved by the plight of some exceptionally traumatized individuals? Surely there is an obligation on government to protect those who have fled to this country from the ultimate indignity of having to sleep and beg on the streets? It was, after all, to prevent such things happening that the National Assistance Act was introduced in 1948. Does not this Act itself ensure that no one should be willingly destitute?



To which an answer may be found in the word 'willingly'. Applicants whose claim for asylum has failed are required to comply with the procedures which encourage them to return home voluntarily or else to submit to forcible repatriation. If they do comply, their basic physical needs will be met. But if they do not, it can be said that they have *willingly* accepted the consequences. Unless they in a situation of some emergency such as serious illness or advanced pregnancy which qualifies them for support under Section 4 of the 1999 Act, they are disqualified from help under the National Assistance Act, and they lose their right to support from the Home Office.

Certainly this is an argument that may suffice to show that the government is fulfilling its legal obligations to give the necessary support to asylum seekers; and if the procedures for determining each case could be shown to be just and efficient and to give adequate time for claims to be thoroughly assessed (particularly, for instance, in the case of victims of torture, for whom much patient therapy is needed before the full story can be elicited), then this apparently punitive withdrawal of support at the end of the process might be justified. But the reality is necessarily far more complicated. Some of those in this situation are simply unable to comply: they cannot obtain the necessary travel documents. Some are genuinely terrified of the consequences of return, and would prefer any hardship or indignity to being forced to leave. Some have received good legal advice that their case has not been judged correctly, and cannot contemplate returning home until it has been reviewed. Of none of these can it be said that they are 'willingly' destitute: the destitution is being imposed on them as a punishment for failing to comply with an order that they are either too frightened to accept or which they have good reason to believe is based on a mistake or is impossible to carry out. All of which may make them in fact even more deserving of support. The experience of having their word doubted and their credibility challenged; the threat of being returned to the situation which they have been forced to flee, sometimes at the cost of acute hardship; the destructive sense of insecurity and loss of self-respect – all this, following what may have been traumatic experiences of cruelty and torture at home, can result in what has been aptly described as 'secondary traumatization', an acute form of mental distress requiring expert help and treatment. To refuse such people support on the grounds that they are 'willingly destitute' and cannot prove a genuine need is hard to defend. Indeed the only defence offered is that local authorities cannot afford to support them, having no budget from which to do so; and the government, having made the rules which they are alleged to have willingly broken, claims to be under no obligation to do so.

But none of this alters the fact that they are here, and that it is either impracticable, or else possibly a gross injustice, to return them to their countries of origin immediately. They retain their universal human right not to suffer starvation or inhumane treatment; and they are in a country which, through the National Assistance Act of 1948, established that no one in our territory should be willingly destitute. Can it be right that so many people whose past experiences, even if they have not been recognized by the courts as technically 'persecution', are often ones of great suffering and hardship, should be subjected to conditions from which our own citizens, whatever their previous record, have a right to be protected? Is it acceptable for the government of one of the wealthiest countries in the world to create the circumstances in which large numbers of people may become homeless and destitute unless rescued by the charitable efforts of those who find it intolerable that their fellow human beings should be reduced to absolute poverty?

### *Human Rights: do they exist?*

To many, the answer may seem obvious: these things should not be allowed. But if one goes on to ask, Why should they not be allowed?, a more fundamental question emerges on which opinions may be genuinely divided. In the last analysis the appeal is to human rights. As we have seen, according to the Universal Declaration and other subsequent codes of human rights, everyone has a right to life and to the minimum which makes life possible. But is this right absolute? Do 'human rights' exist as an inflexible standard which must be conformed with under all possible circumstances? There is a philosophical school of thought, known as 'positivism', which casts doubt on any such claim. Rights exist, it is argued, only where there are laws to enforce them and resources to supply them. Consider the 'right to work'. What sense does it make to say that this is an inalienable right when (as for example in Gaza today) at least two thirds of the working population are unemployed? Or take the right not to be imprisoned without charge: suppose the country is one where the judicial system has collapsed and due process is impossible: how can one say that *habeas corpus* is an absolute right? Even in the case of allegedly fundamental rights, such as the right not to be tortured, the positivist will argue that there is no absolute standard which can be applied. The only 'rights' which an individual enjoys are those which flow from specific laws in the jurisdiction concerned and which can be satisfied from the resources available to the state. And does not the totally different interpretation placed on human rights by communist countries – regarding deprivation of a secure livelihood as far more serious than the deprivation of free speech or the right to free assembly, for example – call into question the objective validity of any so-called 'Code' of universal rights?

For some, this argument may be compelling on philosophical grounds; but for most it seems to go against an intuitive feeling that some rights, at least, are 'pre-legal', that is to say, they exist regardless of whether or not they are on the statute book of any particular country. Human beings, surely, have an inalienable dignity simply as human beings; and from this flow certain absolute rights which their fellow humans are obliged to respect. From this conviction has flowed the *Universal Declaration of 1948* and many other similar enactments. It remains true, however, that this conviction, and the legal consequences that flow from it, are a relative novelty in the history of our civilization. It was not until the seventeenth century that thinkers such as Hugo Grotius argued for anything like universal human rights (though the Spanish theologians Las Casas and Vitoria had argued already in the fifteenth century for the rights of the indigenous Indians in America), and it was not until the French and American Revolutions that they were formulated in popular manifestos. It was then the Nazi atrocities of the Second World War which brought them once more into public consciousness: such things, it was strongly felt, must never be allowed to happen again, and the member states of the newly formed United Nations Organization agreed on a Universal Declaration of Human Rights which was to have profound consequences for international law. Even this, however, does not necessarily provide legal protection for every human being: only where its provisions have been specifically incorporated into a regional convention and then into domestic law (as in the UK in 1998) can the individual citizen claim to enjoy this protection as of right.

## *Christians and Human Rights*

It is true that talk about 'rights' has not been frequent in classical Christian theology. And this is for good reason. Rights, philosophers have argued, imply responsibilities and obligations; and it is with these, rather than with rights, that the Bible is concerned. God, we read, has imposed certain obligations on his people, formulated in detail in the law of Moses; and these imply corresponding obligations of his people towards each other. But these obligations are free-standing: they are not necessarily matched by rights. In the law of Moses, a farmer has an obligation to leave something at the edge of the field to be gleaned by the poor (Deuteronomy 24.19–22); but this does not mean that the poor have a 'right' to the gleaning. They can appeal only to the good will of the farmer and his presumed intention to fulfil the law of God: they cannot claim the corn as of right. Throughout the Old Testament there is a notable absence of language to do with an individual's rights. This emphasis on obligations rather than rights becomes even more pronounced in the Christian tradition. Jesus specifically instructed his followers not to claim their rights against those who sought to exploit them or defraud them; and St Paul, writing to the church in Corinth and commenting that their tendency to have their disputes settled before pagans brought them into disrepute, then goes on to say, 'You suffer defeat by going to law with one another at all. Why not rather submit to wrong? Why not let yourself be defrauded?' (1 Corinthians 6.7). In view of this, encouraging people to claim their rights has often seemed an 'unchristian' thing to do, and when human rights began to be given prominence in the seventeenth century, first by philosophers and eventually by revolutionaries, the churches were hesitant to support them, and indeed it was not until Pope John XXIII's Encyclical, *Pacem in Terris*, in 1963 that human rights were officially endorsed in Roman Catholic teaching.

Not that this is a case of the churches slowly catching up with principles discovered by Enlightenment philosophers or mounting a popular band-wagon entitled 'human rights'. One of the core values of Christianity, as indeed of other great religions, is the protection and fostering of the weak and vulnerable. It is a value that has inspired a long tradition of self-sacrificial giving and devoted service to the poor and disadvantaged in our own and other societies. The significance of the Enlightenment concept of human rights, first given political expression in the French and American revolutions, then formulated in the Universal Declaration and finally codified in the European Convention and incorporated into British law in 1998, is that it places in the hands of all those concerned for the weak and defenceless an instrument for their protection and for the promotion of their well-being. Whatever rights Christians may or may not feel they should claim for themselves (and many may express their discipleship by deliberately renouncing them), their faith leaves them no option but to assist the poor to claim them for themselves, especially when this is a direct means of opposing the injustices to which they are subjected. In this sense, human rights have now come to be seen as an indispensable resource for fulfilling the fundamental duty of Christians (as indeed of Jewish and Muslim believers) to assist those who are the poor, the vulnerable and the oppressed in our society. Whereas, before, these unfortunates depended for relief on the charitable instincts of men and women of good will, now they could appeal to a universally accepted standard of protection from oppression and destitution, and might even be able to seek redress through the courts if they failed to receive it. The traditional concern of Christians to succour the needy was now immensely aided by the general recognition of universal and

inalienable rights. However problematic the philosophical or theological arguments for human rights might be (and most religious people regard them as compelling, particularly the argument that every human being, being made in the image of God, has inalienable dignity, and from this flow inalienable rights) there could be no doubt that they represented an advance in the moral progress of humanity and offered precious support to a fundamental element of Christian service: the relief of the most vulnerable and marginalized in today's society.

Among these marginalized people, asylum seekers are among the most obvious examples. For a Christian, as for so many of other faiths or none, what is being done to them in our name represents nothing less than a scandalous affront to the dignity of our fellow human beings and a denial of some of our most basic instincts of compassion and solidarity. That they should be assured of their basic human right to the minimum of sustenance, shelter and freedom of movement must be a high priority in any society which claims to live by Christian values; and for those individuals and churches who see this as an integral requirement of their faith it cannot be less than an absolute imperative..

## Chapter 5

### *The End of the Process*

#### *Claim accepted or refused*

At the end of the process of seeking to establish a claim for asylum – a process which, as we have seen, may last for years and involve much uncertainty, suffering, humiliation and even prolonged detention – comes the final resolution. Those whose claim for asylum is accepted will be given an Immigration Status document conferring Refugee Status and the right to remain in this country. Those whose claim is refused but who can establish a genuine threat of persecution if they return home may receive a similar document, specifying that they have a right to remain under Humanitarian Protection. A small number also (mainly unaccompanied minors and those suffering from serious illnesses) may be given Discretionary Leave. To all of these, some help is given to assist them to settle and integrate into the society in which they find themselves. In due course those with refugee status may be able to apply for British Citizenship – though this also has recently been made a more exacting process, involving a test in English language and knowledge of the culture.

Yet at the same time, even when the threat of removal is lifted and leave to remain is granted, the former asylum seeker in any of these categories still has no certainty of a secure future. After five years the case will be reviewed, and if the home country is by then deemed safe, permission to remain will be withdrawn and the former asylum seeker given the choice between voluntary return or forcible removal. The government, of course, is entirely within its rights to impose this restriction on permanent residence: if the conditions in another country which originally caused someone to seek asylum have now ceased to obtain, the government has no further duty to offer protection and may reasonably ask the applicant to leave. Yet the human consequences of doing so when people have been here for at least five years and are well established in their communities may be traumatic. Even if they are eventually allowed to remain, the haunting fear of repatriation may have deeply affected their lives in the meantime. By way of rescue from persecution and of continuing this country's tradition of welcome to those who have fled to it from danger, such treatment is hardly something for us to be proud of. Indeed this latest addition (2006) to the long list of threatening and oppressive measures, designed to show that the government is securely in control of 'borders and immigration', is yet another encouragement to those who foster the image of asylum seekers as unwelcome intruders rather than as victims of atrocious crimes against humanity such as none of us has been unfortunate enough to experience – as people, in fact, who should be able to claim from us the highest degree of respect, concern and practical help.

There remain – and these are the majority – those who have failed to prove a genuine fear of persecution and have gone through the appeals process without success. These people have no further reason to expect the protection of the host state. If they are willing to return home, they may be offered assistance in the form of documentation, travel fares and a grant towards reintegration in the home country; while awaiting repatriation they are offered accommodation and subsistence, though at a very low level, and hardly adequate if the removal process drags out for months and even sometimes for years. If they are not willing to return, and if there are no special

circumstances which enable them to claim ‘Section 4 support’, they are given only 21 days’ grace before all provision is terminated (and we have seen some of the consequences of this in the last chapter) and are liable to be removed at any time, if necessary by force. For those who have been in this country for only a short time, this outcome, though unwelcome, may be seen to be fair and acceptable. But in many cases the claimant may have spent some years awaiting the final decision, during which time the children of the family may have become well established in British schools and the claimant become a respected member of British society. For them, a sudden notice to leave the country may come as a traumatic blow, and the human consequences of forcible removal, when reported in the media, have sometimes provoked public shock and revulsion: charitable bodies, ad hoc support groups and M.P.s have been enlisted to intervene, and at least one airline has refused to carry deported asylum seekers on moral grounds.<sup>26</sup> Sometimes the desperate physical resistance of an asylum seeker who knows what awaits him at home has forced the authorities to postpone his departure. And allegations of brutality and injury in the process have now been so well substantiated that the Home Office has been forced to set up an independent enquiry<sup>27</sup>.

“I have now met nine detainees who have been severely injured on removal.... I’m a doctor and I go in to assess the extent of the injuries .... They are escorted by at least two guards, and trussed up at ankle and thigh. Handcuffs bite into their wrists; I have seen severe cuts on their wrists. They are forced into the back entry of the plane and held down in the seat, their heads pushed down behind the seat in front. If they try to shout they are gripped around the neck until they fear they will suffocate, and sometimes there is also a grip behind their ears. Some of them have told me they thought they were going to die ... We are behaving like the most brutal regimes from their own countries.”

*Charmian Goldwyn MB BS,  
in a letter to The Independent, 24 April 2008.*

### *The Rights of Government*

What are the rights and wrongs of these sometimes harrowing episodes? On the one hand it has to be said that, in cases where removal to another country after the failure of a claim for asylum is deemed not to be dangerous, the government is absolutely within its rights to carry out the removal, if necessary by coercion. The only legal right the claimant had to be on our soil was based on proving a well founded fear of persecution. This claim the government had a duty to attend to and adjudicate. If it turns out to be unfounded, the host state has no further duty to offer protection, and the person, if he or she continues to stay, is in breach of immigration laws and can be

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<sup>26</sup> *The Independent*, 8th October 2007

<sup>27</sup> 30 September 2008. To be conducted by Dame Nuala O’Loan, former Police Ombudsman for Northern Ireland

lawfully removed from the state's territory. In the 1951 Convention there was never any intention that the sovereign right of a state to exclude unwanted immigrants should be jeopardized by the cases of those who entered with a claim for asylum and were then unable to establish their claim. Had this not been the case, governments could have justifiably complained that asylum procedures could be used simply as a passport into their territory: they would have been powerless to prevent claimants establishing themselves in the host nation even if their claim failed. From the point of view of a politician, needing to reassure the electorate that the state's borders were under control, such a prospect would have been totally unacceptable. As it is, the law is clear: any whose claim to asylum cannot be established can be lawfully removed from the state's territory.

### *Legal Constraints*

But once again, even though the state's rights seem perfectly clear in this matter, they are constrained by certain conditions which have to be fulfilled, and the right of removal may come into conflict with other rights. For example, under the European Convention, even when a claim for asylum has been judged unfounded, it is illegal to return claimants to their country of origin if their life and freedom would be threatened on account of race, religion, nationality, or membership of a particular social group or political opinion. In addition, though it is true that asylum seekers lose their right to remain if their claim fails and if no further appeal is allowed, this does not mean that they lose their rights altogether. They still have their human rights; and although not everything that is recognized as a human right necessarily enjoys the protection of the law, a number of these fundamental rights are included in regional Conventions to which the host state is signatory and which can be appealed to in a court of law. The Covenant on Civil and Political Rights (1966), which has been ratified by virtually all states which recognize the Refugee Convention, explicitly outlaws 'cruel, inhuman or degrading treatment'. This means that whatever coercion may be required to effect removal, the means adopted must not amount to anything that could be described as cruel, inhuman or degrading.

"The handcuffs were too tight. I tried to explain but the Home Office staff would not listen. It was incredibly painful. A flight attendant came to my rescue and asked the guards to take me off the plane when she saw the blood oozing from my wrists on to the floor."

*William, an asylum seeker from Uganda,  
in evidence at the IAC public hearing, June 2007.*

These rights belong to every human being, to aliens as well as to citizens. Even convicted criminals enjoy most of them – and an asylum seeker whose claim has failed has committed no offence such as would warrant being treated as a criminal. Known cases of refugees being handcuffed or violently manhandled while in transit to a hospital or to their home country are clear breaches of the human rights of these individuals as formulated in a Convention to which the British government, like most governments, is a party. Individual returnees may of course offer violent resistance,

even to the point that their removal has to be aborted if the airline pilot or sea captain thinks it advisable. But this does not justify inhumane or degrading treatment. In some cases it has been so injurious that returnees have been advised to bring a civil case for assault against the security company contracted by the government to carry out removals.<sup>28</sup>

“We continued to find detainees who had spent lengthy periods in escort vans, between multiple places of detention. One young man had been moved seven times in in six weeks..... We also found that detainees continued to be handcuffed in public places: for example when getting on or off the ferry from Northern Ireland, or in the public area of the immigration hearing centre in Glasgow.”

*HMIP Report on Dungavel IRC, July 2006*

“Contrary to expectation, these Congolese citizens had been returned from London in conditions that seemed contemptuous of human dignity.”

*Prosperité (Kinshasa daily paper), 6th March 2007*

A further human right, also firmly enshrined in the Covenant on Political and Civil Rights (art. 17), is for family life and unity to be protected from arbitrary interference by government. This means that where there are legal grounds for children to remain in the country (in the case, for example, of children of refugees born here since the refugee arrived), it is against international law for the parents to be removed without them until they have reached their majority. Still less is it permissible to threaten parents with their children being taken into care unless they comply with removal orders – yet this, in clear contravention of their human rights and of our own Children Act, has for a while been the policy of HM government.

“We came here to be protected and now they want to send us back to die – if we go back to DRC our life will be over. When we were made subject to Section 9 we were eight people with nothing to live on. For two years we lived on £30 per week donated by local supporters. We worried all the time that there would be a knock on the door and we would be removed. I lost 11 kilos in that period. I don’t feel like a human being.”

*Flores Sukula, a 21year-old from the Democratic Republic of Congo. Her family had received a letter from the Home Office that threatened to take the children into care unless they agreed to leave the UK.*  
*IAC public hearing, October 2007*

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<sup>28</sup> See *The Independent*, 5th October 2007.



## *The Politics of Removal*

Despite these legal constraints, the government is under strong political pressure to expedite removals. The British public is understandably sensitive about border control. Particularly in view of the recent fairly massive inflow of immigrants from eastern Europe, it expects the government to be aware of the strain that immigration may place on social services, health services and education and to exercise control over the arrival or length of stay of immigrants. Even in the early twentieth century, when British citizens were emigrating either temporarily or permanently to British colonies in great numbers, immigration laws were introduced to regulate the arrival of aliens; and in recent years, when the UK like other developed countries has found itself an attractive destination for would-be immigrants from the poorer regions of the world, ever more stringent border controls have been established. The assumption which the government likes to promote and justify is that these controls are effective and that the population of these islands is being held at a sustainable level. Consequently any evidence that this is not the case and that people are being allowed to enter or reside in this country illegally creates public anxiety and demands a political response. It has now come to seem a political necessity not to appear 'soft' on immigration. We have seen the effect of this pressure on other parts of the asylum process; and when, after the process has been completed, reports appear that refused asylum seekers, along with others such as criminals who have been recommended for deportation, are nevertheless being allowed to remain in this country, there is understandable indignation (which may indeed be turned on the immigrants themselves as well as on the politicians). Easily identifiable among these 'illegal' immigrants, and easily targeted by the media, are those whose claim for asylum has failed but who are by now well established in this country. The political pressure to speed up their removal is palpable and has driven public policy for some years. It is even communicated to the officials responsible for the process, whose conduct receives commendation if they can show an accelerated rate of processing the cases of those due to be removed.

To convince the public that it is in control of the number of asylum seekers who succeed in remaining here, the government needs to be able to show that its removal procedures are keeping pace with the number of those whose claim for asylum has failed and whose presence in this country is therefore unwarranted. Indeed it has to go further. There is a massive backlog of cases from previous years which has still not been determined, and if this process is speeded up (as all will desire), those who have been here for months or years and who finally fail in their applications must be added to the recent cases of those whom the public expects to be expelled from the country. This means that unless the government can show that the rate of removals actually exceeds the number of new claims that are turned down in any given year, it can be accused of allowing the population to be swollen by people who have no right to be here. Hence a sense among the legislators, which is communicated to the immigration service, that failed applicants must be vigorously traced and brought into detention so that their removal can be carried out as soon as practicable.

As a result, questionnaires have been sent out to those who are easily located – those easy to remove, those who for special reasons are receiving or who have been promised support in the interim, those who are in family units or whose presence may

constitute a risk to the UK. The UKBA maintained that no legal advice was needed to fill in these questionnaires. But in reality this may have been the last chance for a claimant to set out all the relevant circumstances: the claimant may have been here for years, may not have seen a solicitor since much earlier, and so may not know what is relevant and what is not.<sup>29</sup> Without specialist advice (which they are unlikely to be in a position to pay for, but which a number of agencies are prepared to offer if requested) the response of the claimant to the questionnaire is unlikely to have sufficient force to defer removal. As a result, there is now a strong belief among refugee agencies that the UKBA is deliberately targeting those refused asylum seekers who are most likely not to offer resistance (such as women with small children) or who are easily traceable in their communities and unlikely to disappear after notice is given. Moreover there is now the notorious practice of ‘dawn raids’, carried out in the early morning to be sure of preventing escape and attracting least notice in the neighbourhood. Many families live in constant dread of sudden arrest, and there has been powerful opposition from the neighbourhoods most affected. Schools, too, have had to come to terms with pupils being suddenly removed from classes where they have done well and made friends. Some of these cases are truly harrowing – and it is by no means only anti-deportation campaign groups who report them. Many M.P.s have similar stories to tell of cases in which they were asked to intervene.

Mary, an asylum seeker from Uganda, twice experienced dawn raids in Glasgow. Woken up and forced to dress in front of the immigration officers, she and her family were transported to Yarl’s Wood detention centre in a cage at the back of a van, given no substantial food and little water. “My children and I were treated like animals in that cage. We were hungry and had to watch while the guards ate at a petrol station. But the detention centre was even worse – we felt like criminals.” Mary broke down as she recounted her experience of the second dawn raid after her family was released from Yarl’s Wood. The terrified family hid in a neighbour’s flat and heard the immigration officers banging on the door of their home. Mary reported long term psychological effects on her children.

*IAC public hearing, June 2007.*

Of course it may be said that these draconian procedures are necessary to prevent escape: if longer notice were given of removal, those who received it might simply disappear. Nothing less than sudden and unannounced arrest will make sure of the individual’s or family’s compliance. But this argument has little credibility in a country which is reputed to be under more intense police surveillance than any other in Europe. The majority of families who have to be returned to their countries of origin simply do not have the means to move from their dwellings and start living where they will escape the notice of the authorities; and single individuals are not likely to succeed in disappearing for long. However necessary physical coercion may be in some cases, the duty of the state to carry out removals humanely must surely be

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<sup>29</sup> Practitioners’ View on NAM – Inger Denhaan, Immigration Advisory Service

recognized. Arrest without warning in the early morning means that no time is given to settle personal affairs, dispose of possessions or say farewells. Still more seriously, it may be difficult, if not impossible, for the detainee to contact his or her legal adviser or receive any legal help. In 2003 H.M. Inspector of Prisons observed that 'A major cause of concern, at all centres, was the absence of any specific provision to deal with the welfare needs and anxieties of those who had suddenly, and sometimes after extended periods of residence in the UK, found themselves detained indefinitely. Many had been abruptly separated from families who were culturally unprepared to deal with the outside world. Others had homes and possessions that they had left behind and to which they might not return.' Such treatment of vulnerable individuals is redolent of the methods of a totalitarian state. A democratic country such as the United Kingdom should surely not countenance it.

### *Practical and Moral Constraints*

Even, therefore, if removal is lawful, that is not to say that it is easy or practicable, or even that it is always morally acceptable. If it were always the case that a claim for asylum could be determined in a few days or weeks and the claimant could be held in a reception centre until the result was known, the mechanics of removal might seem fairly simple (though even then, as we shall see, it might run into difficulties if the country of origin is unsafe or has refused to supply the necessary documents). But the reality is very different. The processing of asylum claims may involve research and enquiry: lawyers representing claimants need time to put together a case. Appeals are allowed, and the additional legal work cannot be rushed. And the speed of the whole process also depends on the administrative machinery of the immigration authorities being able to keep up punctually with the process of each application – which, as is well known, is far from the case. The UKBA has a backlog of what are now called 'legacy cases' stretching back over many years; and for all the attempts made to speed up the processing of new applications, administrative delays continue to prolong the proceedings for individual claimants. The very reasonable aim of any government to complete the asylum process by speedily removing those whose applications have failed is one which in practice is extremely difficult to achieve.

But in any event these legal and practical constraints are probably less significant than the moral considerations which arise as soon as the right of the state to remove those whose claims have failed comes into conflict with humanitarian considerations. There are many thousands of asylum seekers who have had to wait not just months but years before their claims or appeals are finally adjudicated, during which time (despite having to live below the poverty line and without any opportunity to work) they will necessarily have established personal networks and some social pattern of life, and their children may have had their entire schooling in a British school. It may not be possible to establish their legal right to stay a day longer; but this does not mean that it is acceptable to wrench the family at short notice from commitments, friendships and schooling which may date from some years, and to consign them without preparation to the uncertainties of a sudden return to their own country. Even if conditions in the home country are deemed safe (and individuals may have good reason to be fearful, even if the official judgment is that they are out of danger),

“The process by which the United Kingdom Government enforces the involuntary return of rejected asylum seekers to Zimbabwe exposes them to a risk of ill-treatment at the hands of the CIO [on arrival]”.

*Judgment delivered at Home Office Tribunal  
(Mr Justice Collins and two other judges),  
October 14th 2005*

Mr Justice Collins condemned as "arguably disgraceful" the way the "vulnerable minor" [a boy aged 15] had been removed from Britain. The judge delivered a scathing attack on the way the Border and Immigration Agency arrived at the home of the teenager's foster carer in southwest London at 4 am one day last month and had him flown to Austria. The judge said: "To bundle someone out -a vulnerable minor -by going round without any warning at four o'clock in the morning is, I think, arguably disgraceful."

*The Times, December 20, 2007*

the sudden disruption of a pattern of life and social relationships that they have built up over a period of years is a stressful experience and one would expect it to be inflicted with some degree of sensitivity, especially when small children are involved.

Recognizing this, the Home Office has undertaken to ensure that pastoral visits are made to families of asylum seekers to prepare them for removal, and the UKBA has recently even recommended its staff to dress in something less forbidding than a dark uniform as a way of taking some of the horror out of the process; but evidence received by refugee agencies, particularly in Scotland, casts doubt on the helpfulness of these visits. Indeed there is even the suspicion that such visits may be used more for preliminary spying on the family than for offering support. The authorities are obliged to give '72 hours', or two working days', notice of removal in order to leave time for application for judicial review; but lawyers' associations report that this may be insufficient time to prepare an application, and once removal has taken place to a removal centre it may be difficult to re-establish contact with a lawyer. The Home Office itself has admitted that it can give no assurance that families will be given time to wind up their affairs, and has issued no guidelines on the subject. Indeed, the policy of sudden and rapid removal has been pursued unremittingly, especially in Scotland.

Some of the most harrowing stories of forcible removal illustrate vividly the inevitable consequences of surprise arrests. Those who have felt impelled to come to Britain to escape persecution, whether or not they can present a claim for asylum which will be judged valid by the authorities, are not likely to be in good health. They may have suffered long periods of imprisonment in countries where prisons are, to say the least, insanitary; they may have been subjected to torture, with serious physical as well as psychological consequences; they may have been victims of rape, contracting HIV/Aids or being left in a seriously battered condition. While awaiting the outcome of their claim all are entitled to receive at least a minimum of medical treatment, and

many are on courses of medicine which must be maintained regularly if they are to recover. The sudden removal of such people to distant centres awaiting deportation risks serious disruption to the patient's health care. Medical records may follow slowly, medicines may not be immediately authorized or available. Numerous cases are reported of people whose lives are put at risk by the sudden termination of an essential course of treatment. And not only sick people: the Turkish mother of a small

"I spent 1 week in Campsfield, where the medical centre checked with my GP and then gave me some medication. After a week I was taken straight to Heathrow. They told me the escorts had my medication. They had not given us any breakfast before leaving early. The escorts said I'd get it when we got to the airport. There I collapsed, dizzy, sweaty and hyperactive because I had not received any medication for my very high blood pressure even though I told them I needed it. Indian escorts swore at me and kicked me; 'You fucking bastard, you are going back to Uganda, you are just faking it, pretending.' A paramedic lady took my BP/heart rate. I don't remember what happened. I found myself in Harmondsworth. I stayed there for two months."

*D. from Uganda (evidence given to the IAC).*

We talked to two young men who had spent four nights in police cells before being taken to Dungavel. One of these detainees had to be taken to hospital during his four days in police custody. Although he had medication and a sealed doctor's letter on his transfer, police custody records for the period in the police station were not attached to the immigration detention authority that accompanied him.

*HMIP Report on Dungavel IRC, 2007*

baby with kidney problems was removed to Yarl's Wood for two days as a result of false information (she was awaiting the result of her appeal) and prevented from being reunited with it to breast-feed it. As a result she suffered acute anxiety for the child and embarrassment at the visible signs of her own condition, and fainted more than once. Nor was she given any assurance that she would be reunited with her child in time to resume the feeding routine; indeed she was threatened with immediate return to her country, but then – again without explanation – she was eventually released. It is easy

“I repeatedly told the officer that I was breast feeding and that my son did not take milk from a bottle. As I am hardly ever absent from him, I do not express milk. When I go to sign on, I feed him before I go and usually he can last until my return. It was also obvious at Communications House after I had been there some time that I was breast feeding as my breasts began to leak. A number of the officers mentioned the wetness on my tee shirt ..... I was told that I was to be detained and that I would be returned to Turkey ..... I kept asking them, begging them, to let me telephone my neighbour where my baby was ..... I was in a dreadful state during the time that I was at Yarl’s Wood. I am 24 years old. I have had terrible experiences in Turkey, but this was worse. I thought constantly of my son. I could not sleep at all. I cried all the time, constantly. I just did not know what was going on. “

*Mrs Gulden Purbudak, a Turkish national and asylum seeker,  
in a written statement, May 2006*

to blame the officials concerned: but they may have little opportunity to get acquainted with the personal circumstances of those whom they are charged to take into detention before removal, and are not authorized to defer arrest and transfer to a centre. More culpable, however, is the policy which may have such consequences. It is difficult to reconcile it with the obligation to respect these people’s human rights and to protect them from cruel, inhuman or degrading treatment.

#### *Detention before Removal*

Nor are all the government’s problems necessarily solved when the unsuccessful claimant of asylum is taken into detention with a view to removal. We have observed already that there is no guarantee that repatriation will take place at once. The necessary documents have to be obtained from consulates before the home country will receive them, and these consulates may not recognize individuals as their own citizens. Those being removed are entitled to apply for judicial review of their cases, and representations may be made by lawyers or members of Parliament which cause repatriation to be deferred. The medical problems just mentioned may turn out to be such as to make it impossible to travel. Occasionally the returnee offers such violent resistance (usually out of panic at the prospect of torture or imprisonment in the home country) that removal has to be aborted – it is reported<sup>30</sup> that there were two thousand removals that had to be abandoned in the last two years, usually at the request of the airline pilot in the face of struggles between deportees and escorts. As a result, every centre which has a number of refugees awaiting removal (and most do) has a population suffering from a high degree of uncertainty and fear. Some, having lost all hope of a reprieve, terrified of returning to their countries and having nothing more to lose, resort to violent protest or self-harm. Suicides are not uncommon; and conditions in the centres have been the subject of severe comments from H.M.Prisons Inspectorate.

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<sup>30</sup> *The Independent*, November 20th 2007

“Detainees in Haslar were by definition insecure. Some had been picked up without warning after several years in the UK. Others had been brought into the country by unscrupulous traffickers who had misled them about what would happen to them on arrival in the UK, and some had had long, uncomfortable and sometimes dangerous journeys ..... there was little information on arrival to allay their fears. All detainees were strip searched, and the reason for this was not explained. The traumatic effect of this on many of the nationalities in the centre did not seem to be appreciated. Feelings of insecurity were compounded by inadequate staff supervision in the dormitories and the absence of doors to most of the rooms.... a significant proportion of detainees had not legal representation.”

*HMIP Report on Haslar IRC, 2003*

### *Removal and the Community*

But behind these distressing consequences for individuals of the present removal policy lie some broader considerations which must particularly trouble the Christian conscience. When a person who has become known and respected in a community for several years (or even since birth in some cases), or when a family with children well established in their school careers is suddenly arrested and taken into detention, the local protests which often follow are not motivated only by a sense of outrage at this treatment of children, friends and respected neighbours; they arise from a sense that violence is being done to the community itself. Christians may readily assent to measures that government may need to take to control the flow of immigration at our borders, and to the necessity of a judicial scrutiny of claims for asylum before an immigrant is given leave to stay. But when these procedures drag out over months or years, humane treatment of individuals and families implies enabling them to integrate with the communities in which they find themselves and giving them the opportunity to lead a relatively normal life. Children particularly require a sense of purpose and stability if this precious period of their life is not to be lost in terms of education and personal development. These are benefits which can be offered only by friends, neighbours and local institutions such as schools and churches – in other words, by the local community; and in the eyes of Christians these people become ‘neighbours’ in a very immediate sense, challenging us to extend to them the friendship and help which is their due; and this we can do only by making them so far as we can members of our community, which both seeks to give them confidence to build up a normal life and also receives from them the enrichment of contact with other cultures, religions and customs.

All of this presupposes a long-term perspective and a reasonable expectation of a settled existence. In the early stages it is understandable that a family’s status is subject to determination and that they must be prepared to face removal if their claim is unsuccessful; but as time passes neither they nor the host community can make progress if they cannot plan for at least the near future. Sudden removal is an affront to the efforts being made, not only by Christians but by the whole community, to create a purposeful and harmonious relationship with those in our midst. In the case of

other immigrants whose leave to remain has expired the officials are bound by guidelines which oblige them to take into consideration the extent to which individuals and families are integrated into a community and make a contribution to it before carrying out removal. Natural justice seems to demand that the same consideration should be shown to asylum seekers – indeed it is a sense of the sheer injustice of denying them such consideration which lies behind much of the public indignation aroused by what appear to be arbitrary and inhumane removals. As it is, the apparent targeting of persons for removal who have become well integrated into their community and are therefore particularly easy to trace and locate is widely regarded as something which approaches the degrading and inhumane treatment that is specifically prohibited in international law. But it also threatens the cohesion and development of any society which has taken seriously the Christian ideal of a body of people bound to one another in service and mutual respect.

“When a child is removed and does not turn up to school one day it is like a ripple in a pond – it affects all the people around them. Some pupils in Glasgow are now receiving counselling to help them overcome the trauma of losing a fellow pupil. It is an emotion very similar to a bereavement, and schools are not set up to deal with that sort of trauma.”

*Euan Girvan, a teacher at Drumchapel High School,  
giving evidence at the IAC public hearing, June 2007*

### *Asylum and Immigration*

This community aspect of the removals procedure needs to be set in a wider context. There is a common perception today, much exploited by parts of the media, that the character and identity of this country, and the cohesion of social communities within it, are under threat from the sheer pressure of immigration. The opening of our borders to nationals from newly acceding EU countries in Eastern Europe has resulted in the arrival of half a million new immigrants, the great majority of whom are here legally and have a right to work. Many of them will return home in due course, and the flow is likely to be reduced as countries such as Poland raise their own standard of living. But this has only intensified public concern about those who are here and working illegally. It is estimated – and in the nature of the case there can be no precise figures – that there are between 300,000 and 500,000 ‘illegals’, the majority of whom are men and women who have overstayed their visas and are now working in the ‘black economy’, often for very low wages. In principle, the government is committed to locating these people and expelling them from the United Kingdom; in practice, not only is this barely possible (it is estimated that it would take 25 years and cost many millions of pounds), but it would be seriously damaging to the economy: many of our service industries rely heavily on the labour of people who because of their irregular status incur no national insurance payments from their employers and are not in a position to demand comparable wages and decent conditions of work. Like asylum seekers, they are subject to insult and harassment from a public that is not sufficiently



discouraged from indulging in xenophobia and can even be encouraged to do so; but unlike asylum seekers their value to the economy and to society generally is quite widely recognized, so much so that there is now a well organized campaign, backed by members of at least one political party, to press for their legalization. Significantly this campaign, with the motto *Strangers into Citizens*, is a project of the Citizens' Organizing Foundation, a charity which seeks to facilitate action by ordinary citizens to achieve goals, local or national, which are strongly desired by many but which government fails to promote. It works, that is to say, on issues of justice in society for which there is clear popular support. The wide support given to *Strangers into Citizens* is clear evidence that large numbers of people recognize the injustice of exploiting the labour of immigrants and denying them basic rights in society and would wish to see their situation regularized. The proposal is that after a period of four years, and subject to various conditions of good conduct and local support, they should be allowed a probationary period and then accepted as full British citizens. Though warmly welcomed by a substantial number of MPs, by the four London mayoral candidates in 2008 and by religious leaders and trades unionists,<sup>31</sup> the proposal has been rejected outright by the government on the grounds that it is unnecessary for the supply of labour in the British economy and that anything like an amnesty would act as a magnet to other prospective immigrants, who would be tempted to try their luck at working here illegally and then being awarded citizenship.<sup>32</sup> Once again we can see the delicate balance which any government has to strike between humane and accommodating policies towards deserving strangers on the one hand and the need to appear responsibly 'tough' about border control on the other. In this case many might feel that it has leant too heavily towards toughness; other European countries in similar circumstances have introduced amnesties without serious social consequences, thereby enhancing the contribution of immigrants to their economy and (more importantly) removing a serious instance of injustice from their society. Treating them as if, once located, they ought immediately to be repatriated, or otherwise as if they did not exist at all, not only condemns them to hardships and uncertainties, it actually encourages the hostile feelings which any established society is liable to feel towards newcomers. It would arguably be a benefit, not just to the immigrant workers, but to the harmony and cohesion of society as a whole, if they were to be fully integrated and given the status of citizens. We give lip service to the importance of race relations. We would do well to take seriously any measures which may remove some of the sources of racial and ethnic tension and animosity and rectify a palpable injustice within our society.

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<sup>31</sup> The Independent, April 10, 2008, quoting Jack Dromey, Deputy General Secretary of Unite.

<sup>32</sup> Joan Ryan, Under-Secretary of State at the Home Office, Parliamentary debate in Westminster Hall, June 20th 2007, Hansard col. 439WH. Cf. "The Home Office said there would never be an amnesty", The Independent, April 10, 2008.

“I am a refused asylum-seeker. I am 33 years old and originally from Cameroon. I have lived in the UK for the last nine years of my life. I am married with two young children. I met my wife in the UK and my son and daughter were both born here. This country is all they know. It is their home, and where they belong. The Home Office took several years to process my case. During that time, I trained as a nurse. After my case was refused, I worked illegally as an agency nurse. The work was not regular and the pay was bad, but at least I could support my wife and children and make use of my nursing training. I am not working any more. My employer asked for copies of my permission to work in the UK, which I could not provide. My family was evicted from our house, and we are now sleeping in friends' sitting rooms. I feel as if my life is ruined. It is terrifying to be homeless with two children but my family has no rights in this country .... Let me escape from this terrifying limbo.”

*Roman Ngouabeu, from Cameroon.  
The Independent, April 10, 2008.*

This is the context in which we need to consider the relatively small, but still substantial, number of asylum seekers whose claim has been refused and who have ‘disappeared’ into the wider society and are subject at any time to arrest and removal. Their position is extremely precarious. They are denied all social service benefits, and they commit an offence if they attempt to do paid work. The government is even considering proposals to deny them free primary health care unless they are certified as mentally ill, despite the risk to society of the presence of untreated sick people.

Ben, originally from Algeria, was shot whilst serving in the army, and had his leg amputated. As a member of the armed forces he was targeted by groups opposed to the government ..... He fled to the UK ..... While his asylum application was pending, Ben received some treatment on the NHS ..... and a new prosthetic leg was made. However when his asylum application was rejected, the NHS refused to provide him with the new leg that had been made specially for him ..... His thigh is now infected and extremely sore, problems compounded by periods spent sleeping rough .....

*Head of Refugee Services, British Red Cross,  
in a letter to The Independent, 17 January 2008.*

Many survive only through the charity of individuals or the support given by voluntary agencies. Their plight is one that is hard to justify in any affluent and civilized society; but it is also one which is a threat to the efforts of Christians and others who aspire to build a community on the basis of caring relationships and mutual trust, and to contest those forms of racism which easily spring from the

presence of ‘foreigners’ deemed to have no right to be here. Yet a right to be here is what politicians of both the main parties refuse to grant, even after a period of several years: their concern to maintain the appearance of tight control over our borders and rigorous regulation of immigration makes the alleged ‘pull factor’ of any kind of amnesty politically decisive. Once again the inherent conflict between humane provision for strangers on the one hand and border control on the other is resolved by government taking the harder line and leaving it to churches and other voluntary agencies to succour those who will inevitably suffer from its policies.

### *A Christian Response*

In 1985 a report was published by an Archbishops’ Commission of the Church of England on the acute deprivation prevailing – virtually unknown to the rest of the country – in and around the major cities of England (*Faith in the City*). This report, which caused a considerable stir and commanded widespread public support (as well as strident political objection), based its appeal primarily on a sense of justice. British people have traditionally been regarded as committed to standards of fairness, which is a form of justice; and if people are being treated in a way that is manifestly unfair or unjust, and if this is brought to the notice of the public at large, a tide of opinion will demand that the injustice be redressed. In the case of *Faith in the City*, the report made many people aware for the first time of the extent of the injustice which was being suffered, through no fault of their own, by some of their fellow citizens; and the response which this aroused galvanized the church into unprecedented action and had an appreciable influence on public policy. But it is by no means only in the church that people have a concern for justice. There is a wide consensus that our society ought to be just, and public indignation is easily aroused when it becomes known that there is a serious case of flagrant injustice in our midst.

These pages have sought to show that there is indeed a serious case of injustice in our midst today. It is being inflicted on people who have come here to claim an internationally recognized right of asylum, who have taken great risks and suffered great hardships to reach safety, who have had to leave behind everything, sometimes even spouses and children, who are destitute on arrival and ask only for a fair hearing and opportunity to support themselves by working for their keep. Instead they are liable to be aggressively questioned, presumed to be lying unless they can prove their credibility, have limited legal representation when they appeal, are denied all right to work, are often placed in detention while waiting for a decision, are dispersed to regions where they may have no personal contacts and difficult access to lawyers, and may even be denied accommodation and provision for health and food if their final appeal fails and if (after perhaps many months or even years of residence) they do not immediately comply with directions to be removed from the country. In short, they are denied some of the most fundamental of human rights.

Why does this injustice not arouse public indignation? There are many reasons. Perhaps the main one is that people are systematically encouraged to disbelieve asylum seekers’ stories. It is repeatedly stated that only a minority of those who apply for asylum establish their claim in the first instance to have a well founded fear of persecution. They are then branded as ‘economic migrants’ or ‘bogus asylum seekers’, and lose any sympathy they might have had from the wider public. What is not so widely known is that many of these failures are the result, not of a false story,

but of technical and language problems, poor legal advice when making their application, or even bureaucratic obstruction; and in any case many are reversed on appeal. Asylum seekers simply do not deserve the bad press they so often receive. On the contrary, their stories are often such as to arouse deep compassion among those who work among them and indignation at some of the policies and regulations which cause them so much hardship here. That they should receive a fair hearing, not just during admission procedures, but before the public at large, is something to be urgently worked for by all who care for the truth and have a compassionate concern for these victims of so much uninformed obloquy.

A second reason, as we have seen, is quite simply fear. The public is afraid of being 'swamped' by immigrants, of having their national identity eroded, of being deprived of housing by newcomers, of their children's schools becoming overcrowded, of health care being overstretched, of a new 'underclass' being created; and asylum seekers seem the most obvious cause of these developments. These fears, we have argued, are much exaggerated, but they are not easily dispelled. Here too it is urgent that our fellow citizens are made aware of the very small proportion of the total number of immigrants that is represented by asylum seekers, who in any case tend to be individuals of considerable gifts and character who are more likely to benefit this country than cause it harm.

But indignation, most of all, must be aroused by the sheer inhumanity of subjecting those who have endured persecution, torture and loss to procedures which so often deny them their human dignity and place them in circumstances which some have found little better than the ones they have fled. We have tried to look fairly at the difficulties faced by legislators and administrators, and have recognized the difficulty of balancing the legitimate claims of asylum seekers against other public needs and priorities. Yet again and again we have found that the balance has tipped too far towards the presumed public interest: severe curbs on legal aid, long periods of detention with no assurance that the case is progressing, destitution on the streets under threat of sudden arrest and removal – these and other clear infringements of their human rights demand that the system should be reassessed and reformed. It is precisely such re-assessment and reform that the Independent Asylum Commission was set up to undertake and recommend. Its findings and recommendations were published in a series of reports in 2008<sup>33</sup>. They provide an agenda for urgent action, not only by politicians and civil servants, but by all persons of conscience and goodwill. They prompt us insistently to make the injustices inflicted on those seeking asylum more widely known, and so to contribute to moving public attitudes towards a greater acceptance of our obligation to offer sanctuary to those who establish a claim and to deal humanely with those who fail to do so. Such a change of attitude in the public at large will not be accomplished easily; but it is by no means impossible if

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<sup>33</sup> *Fit for Purpose Yet?* (Interim Findings)

*Saving Sanctuary* (First Report of Conclusions and Recommendations)

*Safe Return* (Second Report of Conclusions and Recommendations)

*Deserving Dignity* (Third Report of Conclusions and Recommendations)

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sufficient people of conviction are prepared to work for it. The Commission's research has shown that, although 'asylum' is a word with negative connotations for most people, suggesting such things as mental illness or criminality, 'sanctuary' is something the majority approve of being offered to those genuinely in need of it<sup>34</sup>. If this latent good will can be mobilized through better understanding, and if public opinion begins to show greater sympathy for those in need of sanctuary, it may at last be possible for a democratically elected government to shift the balance from undue emphasis on border control to active and well resourced concern for genuine refugees.

For Christians, moreover, there is a still more fundamental cause of concern. To a great extent (as Archbishop Rowan Williams remarked not long ago) the refugee problem is a problem of our own making. Not just the slave trade, but the systematic exploitation of the resources of Asian and African countries in the colonial era, have made the developed countries permanent debtors to the rest of the world. Refugees from poor countries may be seen as people coming to reclaim the inheritance of which they were robbed during centuries of western rule and domination. They are also people who are the primary victims of the failure of the more powerful countries of the world to establish peace with justice in other continents, or even among themselves. It is they who (in the Archbishop's words) must 'hold the human race to account' and who 'bear the real cost of war, oppression, brutality, greed and power.' Christians cannot feel at ease with themselves and the world if they have not only failed to accept this responsibility but have acquiesced in further injustices being visited upon those refugees who have struggled to reach our shores.

There are also wider issues that must trouble Christians and demand Christian action. We have to ask, Why did they come in the first place? The conditions which have forced people to leave their home countries and seek asylum are a scar on the record of our western civilization. We have failed to eliminate what the UN Charter of 1945 called 'the scourge of war', and it is war that has created the majority of the 25 million refugees in the world today. The great majority of these refugees are living in almost total destitution in neighbouring countries in the poorest parts of the world, while the richer countries are willing to accept only a fraction of that number. The economic policies of the major industrial countries, often subservient to opportunist political alliances, have failed to reduce the poverty of two thirds of the world; and it is this poverty which has increased the flow of migrants to the richer countries of the west. Even in our own country we have a widening gap between the rich and the poor and have failed to achieve the kind of harmoniously integrated society that can extend a genuine welcome to refugees and immigrants. We believe, in faith, that all these things can be changed; we have a vision of a society in which these gross inequalities are recognized to be unacceptable; in which for citizens of even the poorest countries there is (in the words of Christian Aid's slogan) 'life before death'; in which all human beings can meet and interact with dignity and mutual respect; and in which a diversity of culture, religion and background is valued for what it can give to the larger community. Consequently we are committed as individuals, as churches and as members of a 'Christian' society to work for refugees by every means open to us and to join with those of other faiths and none who share our yearning for a compassionate society, for peace, and for a just distribution of the world's resources.

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<sup>34</sup> 'People believe strongly that it is a good thing that the UK provides sanctuary to those fleeing persecution', Public Attitudes Research Project, *IAC First Report, 'Saving Sanctuary'* p.15.

*Faith in the City* can claim to have been a principled response to a flagrant injustice being tolerated in our society. It should surely be followed by a similar effort on the part of all men and women of conscience and goodwill to show their active and committed *Faith in Asylum* – or rather, as the Independent Asylum Commission recommends in view of the much more positive connotations of the word, *Faith in Sanctuary* – the sanctuary which this country is legally and morally bound to offer to those who come to our shores for protection from persecution.