

Is Ireland Meeting its International Obligations towards Refugees?

■ *Adrienne Collins*

This article is written at a time of growing public antagonism towards refugees. This contrasts with Ireland's stated interest in global human rights issues. The author assesses the 1996 Refugee Act and the problems caused to refugees and asylum seekers, the Irish state and others by the partial implementation of this crucial piece of human rights legislation. A core argument is that the failure to deal effectively with this extremely small minority group weakens Ireland's stand on human rights internationally, and shows that despite Ireland's economic boom, minority rights are not being upheld. The article contains recommendations and suggestions for immediate policy changes and medium to long term actions. Central to this is the belief that asylum is an opportunity for Ireland and asylum-seekers are potential contributors to Irish society. While the focus is on state responsibility a role is suggested for all members of society with regard to refugees and asylum seekers.

Refugees: definition, origins, destinations

Article 14(1) of the United Nations Declaration of Human Rights states: "Everyone has the right to seek and to enjoy in other countries asylum from persecution." The 1951 United Nations Convention relating to the Status of

Refugees (or Geneva Convention) was drawn up to deal with the aftermath of the Second World War. It was set in a European context but this was broadened to a worldwide context with the addition of the 1967 Protocol. Article 1 of the Geneva Convention defines a refugee as

a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of nationality and is unable or, owing to such fear, is unwilling to return to it.

An asylum seeker is a person who has fled her/his country and, in seeking asylum in another country, is claiming to be a refugee under the Geneva Convention. Some asylum seekers are not deemed to be Convention refugees but are given humanitarian leave to remain in the country where they are seeking asylum. Programme or quota refugees are refugees invited as a group to a country in time of great political turmoil. Programme refugees do not need to prove they are within the Convention definition. This was the case in Ireland with groups of Bosnian refugees in recent years.

The Office of the High Commissioner for Refugees (UNHCR) was established in 1950 and has responsibility for providing international protection for refugees and for seeking permanent solutions to refugee problems. The UNHCR estimates that almost 14 million people fulfil the stringent criteria of who is a refugee, a huge number when one considers that the definition excludes many groups in need of protection both within their country of origin and outside it. The definition does not explicitly include persecution on the basis of gender or sexual orientation as a ground for claiming refugee status, although some states have done so. Victims of generalised violence are not automatically included in the definition. Not all cases of conscientious objectors to military service come under the definition and the Convention definition also excludes displaced people.

Over and above the 15 million or so refugees in the true sense, i.e. persons who have crossed a national frontier, there are some 14 million "internal refugees", i.e. displaced persons. Economically, politically, socially and psychologically speaking, these people are just as vulnerable as other refugees, but not having left their countries of origin, they receive

neither protection nor support from the international organisations.¹

Migrants are also excluded from the definition in the Geneva Convention.

People flee or migrate to escape from wretched or degrading conditions. Migration is hardly altogether voluntary, there is always an involuntary, coercive element involved... A great deal of migration is involuntary in the sense, for example, of natural disasters, famine and/or lack of economic opportunity forcing people to migrate. But it is "voluntary" in the sense of people not being forced to flee on account of persecution, or the threat of persecution, being directed at the individual.

The term "flight" has lost its former pregnancy. Today, only a small proportion of the world's refugees have taken to flight on account of persecution or the threat of persecution directly aimed at themselves. The majority flee as part of a mass movement, due to war and/or armed conflict."²

In 1969 the Organisation of African Unity Convention was adopted which broadens the definition of refugees to include:

Every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

Storey argues that a wider definition such as this, encompassing flight arising from *collective* rather than *individual* persecution would be more appropriate.³

Having outlined the limitations of the definition, it is important to point out that the obligations undertaken by signatories of the Convention and Protocol are limited also. The objective of the Convention was to set minimum standards for the treatment of refugees. It provides that the host state should afford to the refugee treatment at least as favourable as that afforded to aliens and treatment akin to that enjoyed by nationals in matters such as the practice of religion, freedom of association and wage-earning employment. The refugee is entitled to have her/his status determined with reference to the Convention and Protocol as of right rather than at the pleasure of the state. In contrast, the concept of asylum traditionally

refers to the exercise by the state of a discretionary grant of safe haven, as Heffernan points out.⁴ This is also stressed by the Minority Rights Group Report:

The right to asylum is limited even under these Conventions. Refugees are guaranteed the right to “seek” asylum but not to be obtain it: it is the sole prerogative of the state to recognise refugees and grant them asylum on its territory.⁵

In the absence of a general right, international law may come to the aid of both refugees and asylum seekers in the form of the principle of *non-refoulement*. This affords protection from forcible deportation or expulsion to a state in respect of persons where the life or freedom of the individual may be threatened for the reasons listed in the Geneva Convention. It is of vital importance in the light of the refusal of states to recognise a right to seek and be granted asylum.

The worldwide refugee situation

Estimates vary greatly about the number of people in need of protection. Twenty-six million people were of concern to the UNHCR in 1996 – refugees (13.2 million), returnees, others of concern and internally displaced people.⁶ Amnesty International puts the figure at 15 million refugees and 25-30 million people who have been forced to leave their homes but who have not crossed an international border.⁷

The heaviest concentrations of refugees are in some of the poorest countries of the world, e.g. Malawi, with an average per capita income of \$180 had 200,000 Mozambican refugees, equivalent to 2.4% of its population in 1987 and Pakistan with an average income of \$370, hosted 3 million Afghan refugees, equivalent to 2.7% of its population. .

The overwhelming majority of the world’s 15 million or so refugees come from and are to be found in the poorest countries of the Third World. Most of them are women and children. This means that countries whose economic and social situation is already under heavy strain are put in a worse position than ever when they become sanctuaries for large numbers of people from neighbouring countries.⁸

The response of Western governments in the 1980s and 1990s

Amnesty International has noticed a worrying trend in recent years as governments address issues relating to refugees in terms of immigration control, while human rights issues are sidelined.⁹

Since the late 1980s almost all Western governments have tightened immigration regulations and made access to refugee determination procedures more difficult. This has coincided with a time of growing unemployment in Europe. While internal border controls within the EU have been removed, external borders have been strengthened to keep out non-EU nationals and the result has been aptly named "Fortress Europe" by its critics. Those who succeed in gaining entry now find their rights severely limited. The criteria for assessing who is or is not a genuine refugee are becoming even stricter. An increasing number of asylum seekers are being denied full Convention status but are granted "leave to remain".¹⁰ This affords them a minimal level of protection but permission to stay can be withdrawn at any time and rights vary tremendously across countries. They are increasingly being deprived of welfare benefits for which they were once eligible.¹¹

In the EU in recent years there has been an attempt to formulate a common policy within an inter-governmental framework and outside other EU institutions, as this was thought to be faster and much easier to implement. The end result is a series of Conventions and Resolutions which are outside the control of the European Parliament, Commission and Courts. These include the Schengen Agreement, (a joint police intelligence network set up to exchange information between some European states on asylum seekers), the Dublin Convention, (which determines which state decides on an asylum request) and resolutions on "manifestly unfounded applications" and "host third countries".

Egan and Storey point out that the language used throughout EU policymaking in this area indicates that the policy is driven by collective self-interest in keeping asylum seekers out of the EU, rather than principled adherence to international law.¹²

The fall of communism has had a significant impact on the profile of refugees in the European Union. UNHCR figures for

1992 show that 64% of the 556,947 people arriving at immigration control in EU states and declaring themselves refugees needing sanctuary from persecution were from Europe – mostly from the former Yugoslavia, Romania and Bulgaria, compared with 44% of the lower total of 420,150 in 1991.¹³

Table 1 shows the number of asylum applications in a variety of Western European countries in 1996.

Table 1: Asylum applications and status determination decisions in selected asylum countries – 1996¹⁴

<i>Country</i>	<i>No. of Applications</i>	<i>Convention Status</i>	<i>Rejected Applications</i>	<i>Humanitarian Leave Granted</i>
Austria	6,990	70	8,030	0
Belgium	12,780	1,580	4,060	0
Denmark	5,870	0	0	0
Finland	710	10	250	330
Germany	149,160	23,900	123,920	2,070
Italy	680	170	520	0
Netherlands	22,860	0	0	0
Portugal	270	10	170	60
Spain	4,730	240	4,520	190
UK	27,870	2,280	28,020	5,010
Sweden	5,750	130	3,100	3,080
Ireland	1,179	33	26	6

A profile of refugees and asylum seekers in Ireland¹⁵

Heffernan points out that a clear distinction can be drawn between individual refugees and the groups of individuals whom Ireland admits, by agreement, either temporarily or for resettlement.

Group or resettlement refugees may be admitted on an extra-

Convention basis in the sense that their status may not be individually determined and the rights which they enjoy may be rooted in the terms which the Government has agreed to admit them into the State.¹⁶

In 1956, Ireland accepted a group of Hungarian refugees, the vast majority of whom used Ireland as a transit country and were resettled in the US and Canada. In 1974, 200 Chilean political refugees arrived, most of whom returned to their home country when democracy was restored there. In 1979, at the request of the UN, 200 Vietnamese people were resettled here. This community has now grown to almost 600 with some relatives arriving annually and the birth of a second generation in Ireland. In 1985 the Irish government agreed to allow the Baha'i community in Ireland to receive 26 individuals who had fled political persecution in Iran. Due to the outbreak of conflict in former Yugoslavia in 1992, 180 refugees from Bosnia were accepted. Further groups of medical evacuees from Bosnia were received and there are now approximately 700 Bosnians in Ireland with arrivals of relatives for family reunification.

Both the numbers of quota refugees and individual asylum seekers are minuscule in comparison to other EU states. Until very recently, programme refugees made up the bulk of refugees coming to Ireland. However, an increasing number of asylum seekers have arrived in Ireland individually or in small groups in the last few years claiming they fear persecution in their country of origin. This article focuses on the latter group.

Table 2: Numbers of asylum seekers in Ireland 1991-97

1991	1992	1993	1994	1995	1996	1997*
31	39	91	355	424	1,179	2,992 ¹⁷

* to end of September

The numbers claiming asylum in Ireland have risen dramatically in the very recent past. There were approximately one hundred new arrivals per week during July and August 1997. The increase in numbers results from a range of factors. Ireland was not a traditional country of asylum but asylum seekers in situ were followed by others. There was a very large increase in the rest of Europe in the late 1980s and early 1990s which affected Ireland a few years later. Other factors include entry restrictions and greater border controls in many countries. Access to welfare

has also been significantly restricted in some countries to the extent in the UK the Red Cross Society has begun deliveries of food parcels.

The countries of origin of those claiming asylum in Ireland include: Romania, Zaire, Commonwealth of Independent States, Somalia, former Yugoslavia, Angola, Algeria, Congo, Iran, Iraq, Kenya, Cuba, Nigeria and Sudan. Over eighty countries worldwide are now represented.

Table 3: Recent decisions on refugee status

Convention Refugee decisions in Ireland	1996	1997*
Recognition – Convention status	33	160
Recognition – Humanitarian leave to remain	6	95
Rejected applications	26	175
Number of decisions made	65	430 ¹⁸

* to end August

Ireland's international obligations in relation to refugees and asylum seekers

The passing of the Prohibition of Incitement to Hatred Act (1990) enabled Ireland to ratify two International Covenants – one on Economic, Social and Cultural Rights (1966) and one on Civil and Political Rights (1966). The latter Covenant contains provisions against torture, cruel, inhuman and degrading treatment or punishment (Articles 7 and 10), and in favour of liberty (Article 9) and of the right to a fair trial (Article 14), all of which are of relevance to refugees and asylum seekers.

Ireland is the only EU member state which has not yet ratified the 1951 UN Convention on the Elimination of all Forms of Racial Discrimination (CERD).¹⁹ It has no anti-discrimination legislation, as the Supreme Court recently ruled that the two pieces of legislation (Equal Status Bill and the Employment Equality Bill) drawn up in this area were unconstitutional. The absence of protection in this area is becoming increasingly noticeable with the increase in publicly expressed antagonism towards refugees.

In March 1996 the then Irish government published the first ever White Paper on Foreign Policy entitled *Challenges and Opportunities Abroad*.²⁰ Although Storey's assessment is very positive on the sections dealing with development aid, debt and the arms trade, he argues that there is a lack of coherence between foreign and domestic policy in relation to refugees. He is extremely concerned at the lack of reference to refugees arriving in Ireland: "It can be argued that how the government deals with those Third World nationals who attempt to enter Ireland is equally an indicator of the ideals underlying foreign policy, and the willingness to implement them".²¹

Storey points out that there is no reference to refugees in the chapter of the White Paper devoted to human rights, despite the reality of widespread and worsening violation of refugees' and asylum seekers' rights throughout the world.

The omission from the White Paper of any reference to Ireland's own asylum policies, and the emphasis around the discussion of EU asylum policy on questions of criminality, reflect a government perception that such matters impact on Ireland in terms of perceived security interests, and not foreign policy or human rights ideals.

Although Ireland is a signatory to the 1951 Geneva Convention and its 1967 Protocol, the terms of the Convention were not incorporated into domestic law until the 1996 Refugee Act, and even that has only been partially implemented. The only realistic form of protection for asylum seekers prior to 1996 was based on a letter written by the then Assistant Secretary in the Department of Justice in December 1985 to the representative of the United Nations High Commissioner for Refugees in London. The letter set out a ten point procedure in relation to refugees and asylum seekers which the Minister undertook to apply. The content of the procedure was inadequate, Heffernan writes, and it did not have a legislative basis.²² However, the High Court case of *Fakih v. Minister for Justice* of 6 March 1992 affirmed that the administrative basis for the procedure is binding upon the government. The Supreme Court case of *Gutrani v. Minister for Justice* of 2 July 1992 confirmed the binding nature of the commitment to apply the procedure and also the fact that it is subject to judicial review. This allows recourse to the courts for failure to apply the procedure or to apply it correctly. However, the right was a limited one, addressing the procedural rather than the substantive nature of the determination itself.

Although the Irish Refugee Council, which represents 54 NGOs along with Amnesty and other human rights groups, criticised certain aspects of the Act, they were very pleased with the overall thrust of the legislation. The Act enjoyed all-party support which was a clear demonstration of the high value placed on human rights in Ireland.

Refugee Act 1996

The Refugee Act 1996 provides for a comprehensive determination procedure under which an application for protection as a refugee may be examined and sets out the rights enjoyed by Convention refugees, Programme refugees and asylum seekers. The Act explicitly acknowledges that the scope of the definition of a refugee may extend protection to individuals persecuted on the basis of their gender, sexual orientation or membership of a trade union. This is an extremely welcome step. Section 5 of the Act incorporates the principle of non-refoulement as expressed in Article 33 of the Geneva Convention, thereby bringing into Irish Statute law, an obligation on the state to consider applications from people fleeing persecution in their home countries for refugee status in Ireland.

The Refugee Act provides for the following: a statutory process under a new agency, the office of the Refugee Applications Commissioner, to make recommendations as to who is and who is not a refugee; a right of appeal to a statutory refugee appeals board; and a full set of rights equal to those of Irish citizens for individuals recognised as Convention refugees.

The above aspects of the Act were welcomed by all groups and individuals working in support of human rights in Ireland and marked a major advance on refugee protection in Ireland. The Act was criticised, however, for including the concept of manifestly unfounded applications.²³ The Irish Refugee Council argued that the use of this so-called “fast-track” system, does not actually speed up the process but in fact considerably complicates it. Such processes have been tried and abandoned in other jurisdictions such as Canada and criticised for being neither efficient, economic nor just. The Refugee Act was also criticised for allowing for the detention of asylum seekers; not allowing for a right to work; and for bringing into national law an agreement for Ireland to be party to the Dublin Convention.

Section 22 of the Act provides for the incorporation of the Dublin Convention into domestic law by order. This Convention outlines which state should be responsible for determining an asylum request (normally the first EU state to which an asylum seeker is admitted). This means that the EU will function as a single asylum unit, as an asylum applicant turned down in one country will be automatically rejected in all other EU countries. The Convention has been severely criticised by human rights groups for not standardising the procedures for dealing with asylum claims across countries as each country retains its own national regulations. Considering the fact that asylum procedures fall short of international standards for the protection of asylum seekers in many countries hoping to be party to the Convention, "the arrangements set out in the Dublin Convention could in practice mean that a person seeking asylum in a member state may be compelled to lodge his or her application in a country whose procedures lack essential safeguards".²⁴ In short, the Dublin Convention gives governments the power to decide in which country potential asylum applicants can have their application processed.

One of the Irish Refugee Council's primary concerns with the Refugee Act is the lack of legal aid provision for refugee applicants. Historically, independent practitioners offered legal representation and advice on a pro bono basis but due to the increase in numbers, the Irish Refugee Council set up a modest Legal Assistance project in 1994, funded by the UNHCR, with some staffing through a Community Employment scheme. In January 1997 the Department of Justice agreed to fund the project on an interim basis. Funding was provided until the end of September 1997.

The current position in Ireland

The Refugee Act was passed in June 1996, however, it still has not been implemented in full although certain sections relating to the operation of third country procedures were brought into force from 29 August 1997.

The number of asylum seekers has grown rapidly in the past three years and this has placed a massive strain on a system which was not prepared for them. The Department of Justice allocated very few staff to processing applications with the result that many asylum seekers have waited two, three or more years for a decision. The only housing specifically for asylum seekers is

a Red Cross hostel with accommodation for eight people, so the Homeless Unit of the Eastern Health Board has had to look for beds wherever they could find them. Asylum seekers were placed in hostels for the homeless, tourist hostels, bed and breakfast accommodation and hotels. Many experienced great difficulty finding a place to stay and paying other living expenses. Asylum seekers looking for longer term accommodation increase demand in the private rented sector, and many landlords have been openly racist in not accepting them.

Given the increase in numbers, problems were inevitable. Unfortunately this is what happened as the following examples illustrate:

- The staff of the Homeless Unit of the Eastern Health Board took industrial action in January 1997 over working conditions. After a period of chaos as newly arriving asylum seekers sought accommodation through a telephone emergency line staffed only by English speakers, a better office was found and a Refugee Unit set up.
- The Irish Refugee Council agreed to run an interim legal service from 1 January on a three monthly basis. Over the summer, it requested additional resources from the Department of Justice to cope with the increase in client numbers and a longer time-scale to work within, to allow the project to fulfil its original aims. As there was no reply offering adequate resources beyond September, the Council reluctantly decided to cease its advice service and publicly called on the Department of Justice to announce a comprehensive scheme of legal aid. This had been promised by previous governments.

“The [Legal] Project has always aimed to ensure that the asylum procedure is a joint, and non-adversarial project, between the advocate, the applicant and the Department, with the common object of discovering simply who does, and does not, require protection. We would hope that the scheme of legal aid which must now be provided by the Department will continue this vital role.”²⁵

A very serious issue in relation to attitudes in Ireland has been the fuelling of anti-refugee sentiments in the public at large during and since the June 1997 general election campaign. Although some journalists have written balanced and well researched accounts of refugees in Ireland, Watt asserts that some of the coverage of refugees in recent months can at best be

described as irresponsible and at worst outright racist. Watt has analysed some of this media coverage.²⁶

A number of themes can be discerned from a study of press coverage over the last two months:

- The repeated assertion that there is a flood or tide of refugees and asylum seekers coming to Ireland.
- The persistent association of refugees and asylum seekers with begging, petty theft, and serious crime.
- The tendency to claim that most refugees and asylum seekers are bogus, that they are here to exploit our welfare system and services; they are a burden on our taxpayers and are in reality mostly economic migrants.

Watt also gives examples of headlines such as “5,000 refugees flooding to Ireland”; “Refugee rapists on the rampage”; “Crackdown on 2,000 ‘sponger’ refugees”.

Some asylum seekers have abused the trust of staff in health boards and other state and non-state agencies by claiming money under different names. A tiny number have committed crimes within the state. Although their actions may have been criminal, it is unacceptable to brand all asylum seekers as criminals because of the actions of a few.

Instead of blaming asylum seekers for “flooding” into Ireland and “sponging” off our welfare state, it is time to ask why the Department of Justice takes so long processing claims and why asylum seekers are not allowed to work after a given period of time, as is common in many other states. The lengthy determination process allows asylum seekers to develop ties within this state and thus to find it more difficult to leave.²⁷ For those with cases which satisfy the Geneva Convention definition of a refugee, they have a lengthy and stressful period of uncertainty and waiting. Asylum seekers can find it extremely stressful to have nothing to do during their long wait while their case is processed. It is contrary to the culture of many of these people to receive welfare money from the state. In this they have no choice due to the ban on taking a job, even though they want to work, have varied talents and skills to contribute, not to mention a different cultural perspective which is invaluable in the workplace and in society at large.

Collins, (1992) examined inequalities in the treatment of refugees and asylum seekers.²⁸ All the interviews highlighted that no matter how good the procedure and reception arrangements, asylum seekers also need to feel welcome and that

they belong somewhere. Many had experienced discrimination in seeking accommodation, dealing with government departments in relation to welfare payments, and in their everyday life. Some had experienced outright racism. All of them stressed the need to feel accepted and to have the space to begin to rebuild their lives.

It is important to emphasise the vital role of individuals and members of groups in ensuring Ireland treats refugees and asylum seekers properly. How a society treats asylum seekers is linked to how it treats all marginalised individuals and groups. Like all issues of social justice, this is an issue which challenges society as a whole and each individual in that society. Individuals have a key role in making asylum seekers welcome in the community and discouraging negative stereotypes.

It is worth noting that quite apart from asylum seekers, visitors and others who require visas to enter Ireland are experiencing increasing difficulty getting visas, not to mention getting through border control. As part of the European Year Against Racism the Irish Association of Social Workers organised an international conference in August 1997 dealing with issues such as racism, ethnicity and refugees. Ironically visas to attend the conference were refused to delegates from Ghana, Pakistan, Romania, Croatia and the Philippines. These refusals were upheld on appeal. Such incidences do significant damage to Ireland's international reputation.

On her last day in office in June 1996 the former Minister for Justice, Nora Owen, signed an order under the Aliens Act 1935 which for the first time set up immigration control for people arriving from the UK. She also sent a letter to the UNHCR on the same day outlining a new non-statutory procedure for those arriving via the UK who asked for asylum. Immigration Officers were to inform a senior official in the Department of Justice (at least Assistant Principal grade) of any such case. The official was authorised to make a decision to accept the person into the asylum procedure or to send the person back to the UK. There was an undertaking that if someone was sent back, their name would be given to the Home Office and the UNHCR. The Minister stated that the procedure was to supersede the procedures laid down in the 1985 letter from the Department of Justice to UNHCR, outlining a 10 point procedure, in the absence of legislation, for dealing with asylum applications, despite the fact that the 1985 letter was upheld by both the High Court and the Supreme Court.²⁹

The new procedures received widespread criticism, including the following:

The [Irish Refugee] Council believes that the content of the new procedure may violate Ireland's obligations to provide minimum safeguards to asylum seekers under recognised principles of international law. It appears that by putting this alternative measure in place the former Minister for Justice has effectively ignored the provisions of the Refugee Act 1996 which provide for such safeguards. Such a decision would appear to undermine the democratic process as expressed by the Dáil and Seanad through the passage of the Refugee Act 1996, and the stated intention of two previous governments.³⁰

The implementation of these new procedures has been very badly handled. Plain clothes gardaí have been stopping people at Dublin airport, the ferry ports and stations for trains and buses coming from Northern Ireland. They clearly have little or no training in dealing with refugees and asylum seekers. Some do not recognise the valid documentation of a recognised Convention refugee arriving in Ireland; five gardaí surrounded an African man until his (white) Irish friend who was a priest came to his assistance; they took away the temporary identification paper which one asylum seeker had as he went to meet a friend off the Belfast train at Connolly station.³¹ In all cases the people questioned looked "different".

Between the end of June and the end of August, these procedures were applied in an inconsistent manner. It appears that the Irish authorities sent illegal immigrants to the UK without informing the British authorities or the UNHCR in advance as agreed in Minister Owen's June order.

The new Minister for Justice, Equality and Law Reform, John O'Donoghue, announced on 29 August the government was implementing a number of sections of the Refugee Act, including the section giving effect to the Dublin Convention. Under the Convention, asylum seekers in countries party to it can only have their case heard in one country, usually the country in which they land. Section 22 of the Refugee Act, dealing with the Convention provides a right of appeal to an independent lawyer, as yet unappointed, in cases where it is proposed that a person's application for asylum is transferred to another country. In the case of asylum seekers arriving via the UK, Irish authorities have been sending them back without processing their applications since the end of June. The Dublin

Convention places new responsibilities on immigration authorities. The country to which the asylum seeker is being returned will have to agree to handle the application for asylum before the person can be returned. They now have an obligation to examine which state has responsibility for processing the asylum application. Applicants have the right to make a case not to be returned and to state why they should be allowed to apply for asylum here. If this is rejected they can appeal this decision to a lawyer of seven years' standing appointed by the Minister.

The Irish Refugee Council remains concerned about safeguards at point of entry. More regulatory control exists now but the Irish Refugee Council still has worries regarding interpreting and legal aid facilities. Provision for legal advice to make a case against being sent back and to be allowed into the asylum procedure in Ireland is needed. The new orders are very technical making it difficult to prepare an appeal.

Minister O'Donoghue is not implementing those sections of the Act which refer to the appointment of a refugee applications commissioner as this is the subject of High Court proceedings brought by a former Minister for Justice. The present Minister is expected to amend other sections of the Act at a later date, in response to what the Department sees as the changing needs caused by the increase in asylum seekers coming to Ireland. It is vital that he maintains the spirit of the original legislation.

What must Ireland do to meet its international obligations?

The entire issue of asylum in Ireland hinges on the establishment of a fair and efficient system to decide who is a refugee and who is not and on the maintenance of access to that system. The refugee situation can be seen to have two elements – a rights element and a management element. The rights one relates to individual human rights being established in international and domestic law. The management element involves making the rights accessible to those who need to avail of them. This includes not only access to the legal procedure but also health, welfare and language supports which are required to maintain the individual during the determination period.

In drafting recommendations with respect to the treatment of refugees and asylum seekers by the state, it is helpful to divide them into those aspects which relate to ensuring legal rights and

those which relate to the provision of support services while their case is being processed.

Recommendations which relate to guaranteeing legal rights include the following:

- *International treaties protecting human rights should be ratified*
- *Education in Ireland should cover global, political, economic and social issues with particular reference to human rights and Ireland's obligations in this area.*

Speaking at the conference "Asylum – An Opportunity for Ireland" in June 1997, Frank Jennings of Amnesty International called on governments in countries of asylum to build awareness and public support for the rights of refugees, to ratify and implement international treaties relating to the protection of human rights and the rights of refugees, and to stop forcibly returning refugees to countries where they are at risk of serious human rights violations.

As the number of those seeking protection increases, governments seem less willing to live up to their international obligations. Many governments which have offered people asylum in the past are now restricting access to their countries, often justifying such actions on the grounds that they are responding to economic difficulties or anti-immigrant attitudes and growing xenophobia within their societies. Host countries should conduct public information campaigns drawing attention to the human rights concerns underlying the plight of refugees and the obligations of states to protect them.³²

Ireland should also ratify the UN Convention on the Elimination of all Forms of Racial Discrimination. Ratification of international treaties "demonstrates states' commitment to the values endorsed by the international community and allows them to be held accountable for their actions".³³ New anti-discrimination legislation needs to be drawn up and implemented as there is no legislation against racial discrimination in Ireland.

- *Ireland should encourage entry by quota refugees in a more open and inclusive way.*

Ireland should be pro-active in times of major international crisis and should not wait until being shamed into accepting quota refugees in an attempt at burden-sharing.

- *Ireland should implement domestic law in relation to refugees.*
The Irish government needs to fully implement the 1996 Refugee Act as a matter of urgency, as the most basic and essential need of all asylum seekers is to access the determination procedure. It should ensure there is an effective system of legal aid. It is vital that decisions on asylum applications are both fair and efficient in terms of waiting time.
- *Ireland should provide access to legal advice for all asylum seekers.*
- *There should be a commitment and practice of high quality training for all staff implementing asylum procedures.*
- *In view of the current level of applications allocate increased resources to all agencies handling asylum applicants.*
- *Include the issue of refugees in any follow-up to the White Paper on Foreign Policy.*
- *In line with sections 3.205 and 3.207 of the White Paper on Foreign Policy Irish representatives to inter-governmental discussions on asylum issues should demand that these fora be more open and democratic.³⁴ They should also press for EU asylum policies to be standardised in compliance with the Geneva Convention.*

Recommendations which relate to the provision of support services during the determination process include:

- *Set up a task force or working group to provide a plan of action for the reception of asylum seekers in Ireland which acknowledges the trauma asylum seekers may be suffering.*

This should cover orientation, information on rights, access to social services, counselling, and provision for accommodation. Information needs to be available in a language asylum seekers can understand.

- *Provide short-stay accommodation geared towards asylum seekers' particular needs.*
- *Provide English language classes.*

Communication is crucial to participating in any society, but there is no provision for language training until an asylum seeker has received a positive response to her/his asylum application. Some classes are provided on a voluntary basis by the Irish Refugee Council.

- *Allow access to education and vocational training after a specified length of time.*
- *Asylum seekers should be allowed to work after a specified length of time in the country.*

Both of the above would allow asylum seekers to become more active members of society.

- *Provide support in the area of psycho-social issues.*

Refugees and asylum seekers are commonly traumatised by their experiences in their country of origin. They may also have extreme difficulty in coping with the change of culture, language and lifestyle in Ireland and miss the support of their family and friends. They need access to counselling and also for support services to integrate them into Irish society. They also need support in maintaining their own cultural identity. Recently self-help groups have been set up by refugees and asylum seekers in Ireland and these should be given practical support and access to training.

- *Provide education, welfare and accommodation to meet the varied needs of unaccompanied minors.*

Conclusion

Refugees are a vulnerable and small group who come to our country seeking asylum. They rightly expect a democratic country to develop proper procedures for determining their status and to make those that do meet the stringent definition of a refugee feel welcome rather than increasing their fear and vulnerability. It is totally unacceptable for the government to claim that refugees are costing the state too much. In the first instance, the Department of Justice is responsible for the huge backlog in determining cases which in turn has resulted in higher costs in providing for asylum seekers awaiting a decision on their cases. In the second instance, Ireland is a relatively wealthy country and the number of people claiming asylum is very small by the standards of other European countries. Indeed Ireland has been experiencing a period of unprecedented economic growth which is expected to continue over the medium term.³⁵ Thirdly, it is not a choice but an obligation to guarantee a certain minimum level of protection to refugees.

Ireland has an important role to play in refugee issues worldwide, by speaking out about human rights abuses and

providing human and financial resources in this crucial area. This role should not be undermined by policies pursued at home. Can we expect that our protests against human rights abuses elsewhere which lead to refugee flows will be credible if we deny asylum applicants from these same countries due procedure?

Our society should start from the premise that asylum rather than being a threat is an opportunity for Ireland, and should avoid seeing asylum seekers and refugees as a burden. The population has been damaged by not allowing a small minority group basic protection. This is an opportunity to demonstrate good human rights practice, an opportunity for asylum seekers to contribute to Irish society both in terms of their skills and their culture, and an opportunity for Ireland to become a more pluralist and multi-cultural society.

To end with the words of the former President of Ireland, Mary Robinson speaking in June 1997 at the conference "Asylum – An Opportunity for Ireland":³⁶

If we have the right approach then we will have no difficulty in coping with the practical problems. Yes, there are practical problems, there are issues that must be dealt with and they are in the realm of policy. But if our mind is right, if our approach is right, if we see the opportunity to be true to our own history, to our own stories and people, then we will cope with those practical problems and we will do it in the right spirit and we will do it in the right way.

Footnotes

- 1 Ministry of Labour, Sweden, 1990, "The Pre-requisites for and the Direction of a Comprehensive Refugee and Immigration Policy", Document No 3.1, Ninth IOM Seminar on Migration, Geneva, December 1990, p.2
- 2 Ibid., p.2
- 3 A. Storey, 1993a, "EC Asylum Paper", for use at EC NGOs' General Assembly Migration Workshop, Brussels, April 1993, p.2
- 4 L. Heffernan, 1993, "In search of a human rights approach to refugees", in A. Whelan, (ed.), *Law and Liberty in Ireland*, London, Oak Tree Press, p.187
- 5 Minority Rights Group Report, 1990, p.8
- 6 "UNHCR at a Glance", UNHCR Public Information, August 1996
- 7 Amnesty International, *Refugees: Human Rights have no Borders*, London, 1997
- 8 Ministry of Labour, Sweden, 1990, op.cit., p.3
- 9 D. Petrasek, 1993, "Amnesty International: Monitoring human rights around the world", *Refugees*, UNHCR, no.92, April 1993, p.12
- 10 S. Egan and A. Storey, 1992, "European asylum policy: A fortress under construction", in *Trócaire Development Review*, 1992, p.54

- 11 G. Loescher, 1989, "The European Community and refugees", *International Affairs*, vol.65, no.4, p.631
- 12 S. Egan and A. Storey, 1992, op.cit., p.62
- 13 *The Guardian*, 1 June 1993
- 14 A zero may indicate that the value is zero, not available or not applicable. Figures taken from UNHCR Statistics, <http://www.unhcr.ch>
- 15 While this article was being written there were significant changes, indicative of the uncertainty and lack of effective management of this key human rights issue.
- 16 L. Heffernan, 1993, op.cit., p.187
- 17 Number of applications awaiting a decision in September 1997 was 2,818: Dáil Questions 9 October 1997, p.643, Reply by John O'Donoghue, Minister for Justice, Equality and Law Reform
- 18 The number of immigrants has increased in recent years, reaching a high of 44,000 in the 12 months to 30 April 1997. Of these 20,000 came from Britain, 14,700 from the rest of the EU and the USA and 9,300 from other countries. In the same year 29,000 left Ireland, 12,000 (44%) to the UK; 7,300 went to other non-EU or non-US destinations. *Statistical Abstract*, 29 October 1997, Central Statistics Office.
- 19 Steps are underway to remedy this with the intention to have both the CERD and the Convention Against Torture ratified in advance of the next UN Commission on Human Rights session in March 1998. The timing is also important in the context of the 10 December 1997 being the start of the 50th anniversary year of the Universal Declaration of Human Rights.
- 20 Discussed in detail by Andy Storey, "Sectional interests versus professed ideals - An assessment of the Irish Government's White Paper on Foreign Policy, *Trócaire North-South Issues Paper* no. 20, July 1996.
- 21 *Ibid.*, p.5
- 22 L. Heffernan, 1993, op.cit.
- 23 The EU's resolution on manifestly unfounded applications (MUAs) aims to deal quickly with asylum seekers who obviously do not fulfil the definition of a refugee, in the authorities' view, by way of a "fast track" procedure. However, the criteria for deeming an application manifestly unfounded are very debatable, in particular the notion of a safe country. As Amnesty International points out (1992, p.13) a country can be safe in general for particular groups of persons while it poses a threat to others. Human rights situations can change very quickly and obviously foreign policy could influence which countries are designated safe, as could factors such as the number of asylum seekers from a particular country.
- 24 "Europe: Harmonisation of asylum policy", Amnesty International EC Project, Brussels, November 1992, p.4
- 25 Press statement, Irish Refugee Council, 24 September 1997
- 26 P. Watt, 1997, "The media reporting of refugee and asylum seekers", 1997 *European Year against Racism*, Issue 5, August 1997
- 27 It is estimated that about one-third of asylum seekers who arrived in Ireland in 1996 have since left the state; interview with Nadette Foley, Irish Refugee Council, October 1997.
- 28 A. Collins, 1993, "Inequalities in the treatment of refugees and asylum seekers in Ireland", unpublished MA thesis, University College, Dublin
- 29 Letter from Cathal Crowley, Assistant Secretary, Department of Justice to UNHCR, regarding asylum procedures, December 1985
- 30 Press statement, Irish Refugee Council, 4 July 1997
- 31 Reported to the author by the Irish Refugee Council
- 32 F. Jennings, speech at Irish Refugee Council conference, "Asylum - An Opportunity for Ireland", June 1997

33 Ibid.

34 See Storey, 1996, op.cit, page 5. The White Paper states that the “Government would consider proposals to transfer some of the issues (perhaps immigration and asylum)... into the EC Treaty” (3.205); and that “the Government accepts that as the issues dealt withare of such direct concern to the citizens of the member states, decisions taken by the Council on Justice and Home Affairs [subsuming asylum and refugee matters] must be open to appropriate parliamentary scrutiny, whether at European or national level” (3.207).

35 See David Duffy, John FitzGerald, Ide Kearney, and Fergal Shortall, ESRI Medium Term Review 1997-2003

36 Speech by President Mary Robinson at the Irish Refugee Council conference “Asylum: An Opportunity for Ireland”, Dublin, 13 June 1997

