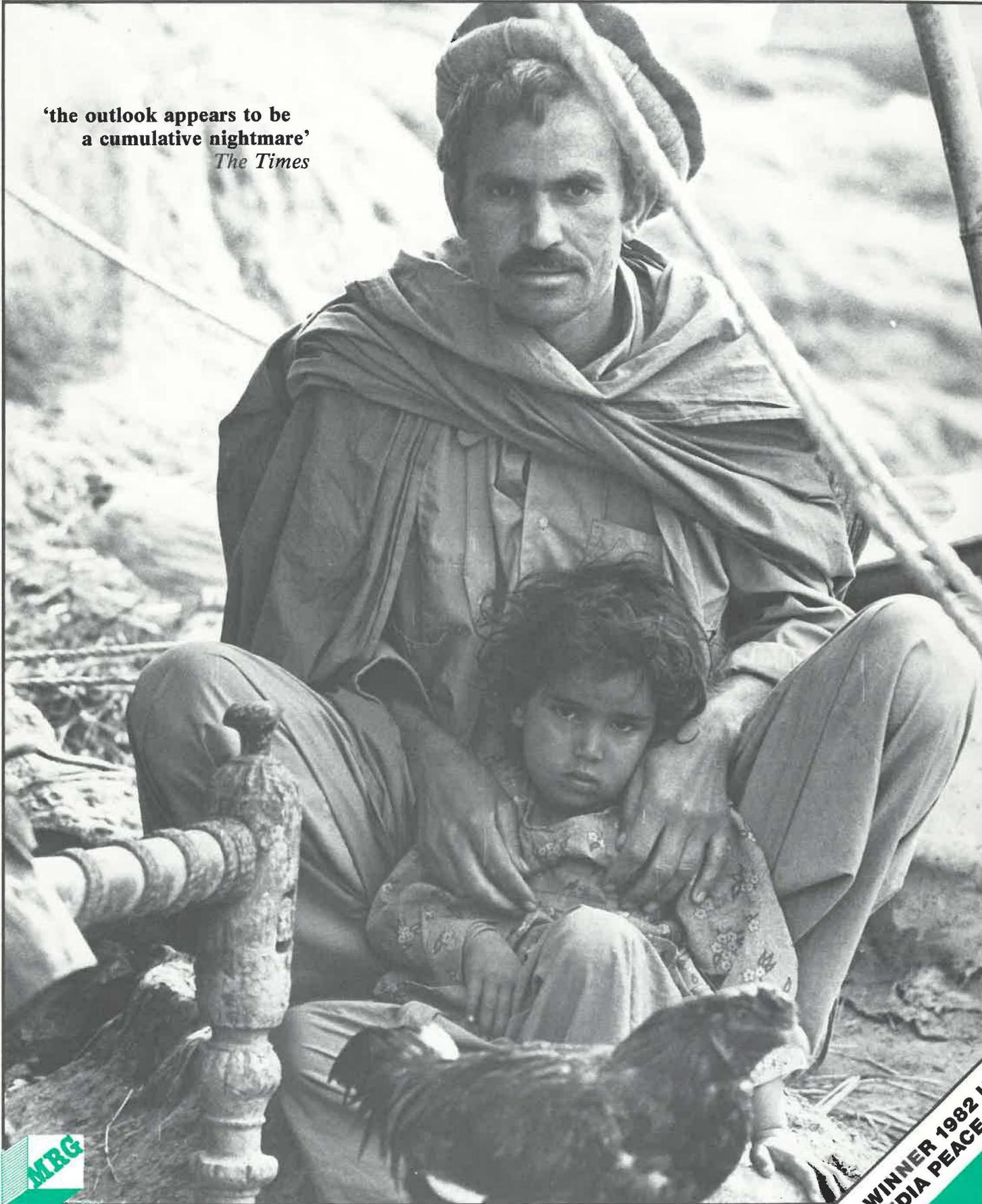


# The Refugee Dilemma

The Minority Rights Group Report No.4

'the outlook appears to be  
a cumulative nightmare'  
*The Times*



## THE MINORITY RIGHTS GROUP

is an international research and information unit registered in Britain as an educational charity under the Charities Act of 1960. Its principal aims are —

- To secure justice for minority or majority groups suffering discrimination, by investigating their situation and publicising the facts as widely as possible, to educate and alert public opinion throughout the world.
- To help prevent, through publicity about violations of human rights, such problems from developing into dangerous and destructive conflicts which, when polarised, are very difficult to resolve; and
- To foster, by its research findings, international understanding of the factors which create prejudiced treatment and group tensions, thus helping to promote the growth of a world conscience regarding human rights.

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# The Refugee Dilemma

**By Dr Frances D'Souza and Dr Jeff Crisp,  
with additional research by Stevanne Hill.**

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The British Refugee Council comprises approximately 50 voluntary agencies working with refugees in the UK and overseas. It has published *Refugee Report 1984: An International Survey*, a comprehensive reference work containing articles about refugees; a country-by-country guide to refugee movements and conditions throughout the world; statistical tables; a bibliography and a directory of British and International agencies working with refugees. The British Refugee Council publishes a wide range of other material, and has established a Resource Centre and Archive containing one of the largest collections of refugee-related information in Europe. It is a participant in the European Consultation on Refugees and Exiles, which has published *Asylum in Europe: A Handbook for Refugees and Exiles*. For further information contact the British Refugee Council, Bondway House, Bondway, London SW8 1SJ. Telephone 01-582 6922.

*The cover photograph shows Afghan refugees at a refugee village near Jehangirabad, North-West Frontier Province, Pakistan (for UNHCR by S. Errington).*

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# The Refugee Dilemma

by Frances D'Souza and Jeff Crisp

Additional Research by Stevanne Hill

With a Foreword by Prince Sadruddin Aga Khan

## CONTENTS

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Foreword by *Prince Sadruddin Aga Khan*

*World Refugee Map*

1. Introduction
2. Historical Perspective
3. Who is a Refugee? –  
The Attempts at an International Definition
4. The Spirit and Practice of International Conventions
5. UNHCR Recommendations to Governments
6. Official Recognition of Refugee Status
7. Procedures for the Acceptance and Resettlement  
of Refugees
8. The Limitations of International Law
9. Implementation at the National Level:  
The United Kingdom
10. The Rights of Asylum-Seekers in the UK
11. The Rights of Recognised Refugees in the UK
12. Refugee Rights in the UK: A Critique
13. Conclusion: The Refugee Dilemma

*Appendices:*

- I United Nations Refugee Assistance Statistics
  - II United Kingdom Refugee Statistics
  - III International Evaluation: Ten Countries
- Further Reading and Information*

# THE UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS

*Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

*Whereas* disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from any fear and want has been proclaimed as the highest aspiration of the common people,

*Whereas* it is essential, if a man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

*Whereas* it is essential to promote the development of friendly relations between nations,

*Whereas* the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

*Whereas* Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

*Whereas* a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore,

## THE GENERAL ASSEMBLY proclaims

THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

*Article 1.* All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

*Article 2.* Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

*Article 3.* Everyone has the right to life, liberty and security of person.

*Article 4.* No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

*Article 5.* No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

*Article 6.* Everyone has the right to recognition everywhere as a person before the law.

*Article 7.* All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

*Article 8.* Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

*Article 9.* No one shall be subjected to arbitrary arrest, detention or exile.

*Article 10.* Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

*Article 11.* (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

*Article 12.* No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

*Article 13.* (1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

*Article 14.* (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

*Article 15.* (1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

*Article 16.* (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

*Article 17.* (1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

*Article 18.* Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

*Article 19.* Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

*Article 20.* (1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

*Article 21.* (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

*Article 22.* Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

*Article 23.* (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interest.

*Article 24.* Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

*Article 25.* (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

*Article 26.* (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

*Article 27.* (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

*Article 28.* Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

*Article 29.* (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

*Article 30.* Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.



*Refugees are too often regarded as a 'problem'. The contribution they can make to their country of asylum is overlooked. The photograph shows a young Vietnamese nurse with an elderly patient at the hospital of St John and St Elizabeth, London. (Photo by Vicky White for the British Refugee Council.)*

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## **FOREWORD**

**by Prince SADRUDDIN AGA KHAN** (former UN High Commissioner for Refugees)

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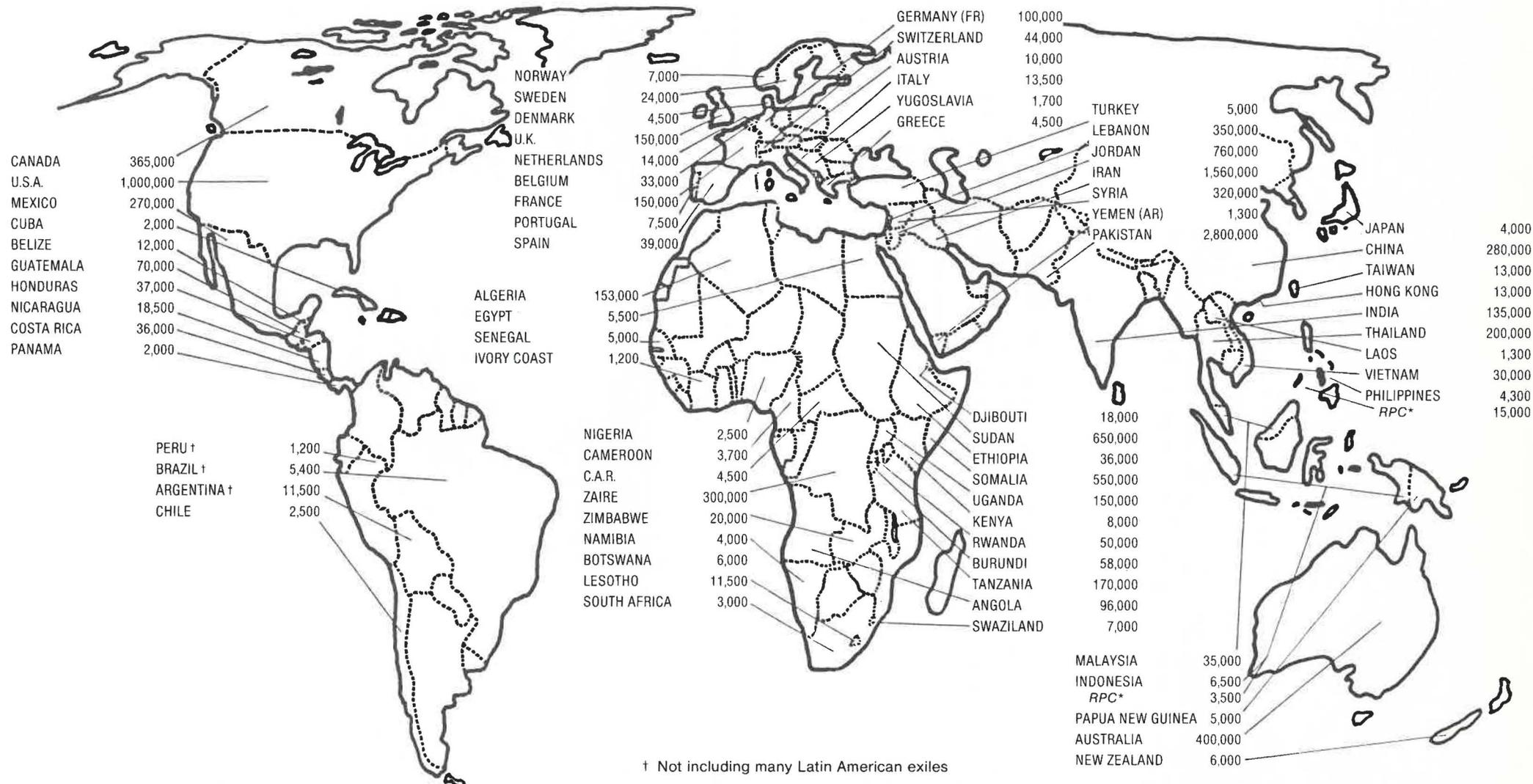
Mahatma Gandhi once said that a civilization can be judged by the treatment afforded to its minorities. One way to judge governments is by the manner in which they treat refugees who have sought asylum on their soil. It is appropriate therefore that the Minority Rights Group should put out this informative report on the plight of the uprooted. Their number is growing and the problem is nearly unmanageable in certain parts of the globe: only through international cooperation can we hope to relieve this mounting suffering and the political and social tensions which it inevitably brings in its wake.

How can host countries in Africa, Asia or Latin America be expected to keep their doors open without adequate guarantees that material assistance and resettlement opportunities will be

provided by other nations? Some governments have claimed that the world's indifference forced them to restrict the granting of asylum.

Non-governmental organizations enjoy a measure of independence which I used to envy when I was High Commissioner for Refugees: the UN is too often hamstrung by the sacrosanct principle of non-intervention in the internal affairs of sovereign member-states. This is particularly frustrating when human rights are at stake.

As we face a new decade any objective and frank analysis of the contemporary refugee situation is a welcome addition to our understanding of this tragic testimony of man's inhumanity to man. More importantly let us hope that it will contribute to bringing the problem closer to a just and lasting solution.



**WORLD REFUGEE MAP 1984**

† Not including many Latin American exiles

\* Refugee Processing Centre

Many of the refugee numbers cited on this map are approximate or estimated. Countries with fewer than a thousand refugees are not listed.

*If I should revert to a theme, it is to the universality of our problems and the universality of the effort that is demanded of us. I have heard the words "burden-sharing" wherever I have travelled. They should never serve as an alibi, for any of us, to do less than we can. Above all, we must resist the tendency to think that there are facile, general solutions . . . .'*

— Poul Hartling, UN High Commissioner for Refugees.

## INTRODUCTION

In 1959, World Refugee Year was launched in an attempt to focus international attention on the plight of people who had been displaced during and after the Second World War. Now, 25 years later, millions more refugees have been uprooted from their homes and forced to seek safety outside their own country. The geographical distribution of these men, women and children – and even of whole populations fleeing from fear and deprivation – is fluctuating almost continually; but it is an ominous development for the future that semi-permanent concentrations of refugees have in recent years increasingly built up in parts of Asia, the Middle East and the Horn of Africa. Africa alone now contains some four million refugees, largely forgotten by the world's public consciousness.

The future outlook appears to be a cumulative nightmare. Host governments and relief agencies are finding it increasingly difficult to provide adequate assistance to existing refugee populations, and yet new influxes of displaced people continue to take place.

The exodus of people leaving Vietnam after the end of the American military involvement after 1975 increased to a scale which could no longer be ignored, forcing a reluctant world to take notice and – eventually – some overdue action. The flood elicited responses ranging over noble (if at times contradictory) moralising; recriminations regarding both liability and responsibility; soul-searching analogies with past holocausts; some dramatic reportage of human misery; a prestigious emergency UN meeting, and a few practical recommendations – but, given the scale of need, relatively little thought or planning for any longer-term solutions by the international community.

Above all, the public plight of the Boat People highlighted the contradictions which exist between the abstract international definition of a refugee and the practical interpretations which governments implement within the framework of their domestic procedures. While the granting of asylum is in theory a humanitarian act, in practice, the willingness of governments to accept refugees is frequently coloured by political, economic and even racial considerations.

This report examines these contradictions (with particular reference to procedures in the United Kingdom), and attempts to render more intelligible the Conventions, Protocols, Amendments, rules and recommendations which govern the fate of those refugees seeking asylum – a corollary of the right to life. The report suggests that while these international legal instruments form an important basis for the provision of protection and assistance to refugees, they are not sufficient to guarantee the well-being of the world's uprooted millions.

Beyond the short-term deprivations and degradations of becoming a refugee, and of sometimes being exploited by middlemen, lies the (possibly lifelong) traumatic reality of never belonging: of being permanently dispossessed of homeland and rights. The practical effects of what this entails is under-researched; recent findings, however, indicate that fear, depression, and the loneliness of having no roots – often being cut off from relatives, friends, community support, culture, and means of livelihood – can have profound effects which are sometimes only apparent in refugees and their children long after resettlement.

It is tempting to examine the situation of refugees purely in terms of the problems which they experience and create. Indeed, by identifying refugees as a 'minority' in need of protection, it is all too easy to ignore the contribution which refugees make to their country of asylum and the many cases where refugees have triumphed over adversity through their own individual and collective efforts. The most meaningful humanitarian assistance

that can be made available to refugees is that which enables them to realise their own potential and to become independent, self-sufficient people able to determine their own future.

## 2. HISTORICAL PERSPECTIVE

Refugees, broadly defined as those people who move to seek sanctuary and protection, have existed since historical records began. Massive population movements have changed the demographic maps of the world during every century. The main causes then were as familiar as they are today: war; intolerance and persecution of ethnic, religious or political minorities. Solutions were, in the past, informal and often unpublicised; today, as national frontiers have become ever more sharply defined and guarded, refugees have been designated and developed into a problem requiring increasingly formal remedies, classification, and legislation. The growing emphasis on national, cultural and political homogeneity since the first World War has created more refugees than ever before and at the same time has served to restrict their movements. Other contributory factors include political instability, population growth and the pressures that this can generate; and even the development of social welfare in some richer nations. Refugees, both as minorities and as individuals, are no longer merely those physically uprooted; they are, in both a national and international context, euphemistically identified as being – and creating – 'problems'.

Movement of individuals or families between neighbouring and distant groups has characterised non-industrialised societies throughout the world. Previously, these traditions have frequently paid little attention to the boundaries of sovereign states. Tensions and concomitant restrictive legislation have arisen when, amongst other factors, national tenets have come to predominate over those of the migrant poor. Whereas the oppression and expulsion of political or religious minorities (see, *inter alia* the Minority Rights Group's Reports nos. 6, 11, 14, 16, 20, 24 and 32) have been a recurrent theme in history, asylum did not in the past necessarily require formal permission as it does today. In addition, escape routes have effectively been barred through the development of fixed and closed state frontiers – and consequently a political matrix or at least complexion has been forced upon most refugee legislation.

It is worth considering the key factors which motivate people to uproot themselves and their families to face an unknowable future. (Of course, some potential refugees are not permitted to leave their country and thus never become actual refugees.) Even a cursory glance at the precedents for the major refugee movements during and since 1918 clearly reveals that most people take such drastic steps when they – subjectively or objectively – believe they are denied their basic right to maintain a former way of life; because economic, religious or ethnic practices have been summarily forbidden; because they belong to a victimised political minority; because they or their close family members have been deprived of citizenship and the right to work and support themselves; or because economic and political conditions are such that life has become intolerably insecure. A person becomes a refugee because not to do so is likely to mean death from violence, or, at the very least, in order to escape a level of insecurity that is intolerable even to those who may be inured to poverty or persecution.

Although the immediate reasons for flight – and indeed the circumstances and opportunities for resettlement – vary, it is interesting to examine which refugee groups have been granted asylum most readily and by which countries. This will provide a framework within which the present refugee 'crisis', and the adequacy of the response to it, can be more properly assessed.

### (a) Refugees and the Aftermath of the Second World War:

The rise of fascism within Europe provoked a massive movement of refugees and displaced people. Vulnerable groups such as Jewish intellectuals began to leave Germany voluntarily in the 1930s, but the scale of this exodus was minute compared to that which took place during the Second World War. Throughout Eastern and Central Europe, millions of people were forcibly uprooted by the Nazi government and placed in concentration camps and slave labour camps. Fighting between German and Allied troops exacerbated the situation, and at the end of the war there were at least six million refugees and displaced people in Europe.

During the early postwar years, the majority of war refugees in Europe were able to return to their countries once hostilities had ceased. Populations moved back to areas previously occupied by German forces, and peoples in Eastern and Central Europe were exchanged: for example, in 1946 Hungary and Czechoslovakia agreed on a voluntary exchange of their respective ethnic minorities. It is, however, undoubtedly true that not all exchanges were voluntary; many thousands of Soviet citizens were forcibly repatriated and the majority were sent to Stalin's slave camps; the Croats handed over to Tito were murdered, almost to a man. Between 1945 and 1961, 3¼ million refugees from East Germany were granted political asylum in West Germany. Elsewhere in the world, political changes were also creating new refugee movements. Religious fighting in India and the eventual emergence of Pakistan in 1948 created millions of refugees, who, like their counterparts in the later Bangladesh war, became the responsibility of the national governments and to some extent of relief agencies when the fighting stopped. In the Middle East, once the State of Israel had been established almost all the Jewish refugees still unsettled in Europe were absorbed, and subsequently Jewish refugees from Arab states, the British colony of Aden and elsewhere, went either to Israel or settled in the United States or Latin America. Ironically, while the creation of an Israeli state provided a homeland for many Jewish refugees, it simultaneously produced one of the largest refugee movements of this century. Over 750,000 Palestinians were forced out of their homes and into neighbouring countries such as Jordan, Syria and Lebanon. Palestinians in camps continue to occupy the uniquely recognised position of permanent refugees under the special protection of the international community (under the aegis of the United Nations Relief and Works Association – UNRWA).

Events following the Hungarian Revolution of 1956 illustrate just how effective, efficient and rapid the international community has proved it can be in resettling refugees (just as in 1917-20 nearly 1.5 million political refugees from Russia had been accepted mainly in Europe – as well as nearly half a million Armenian and 1.25 million Greek refugees from Turkey.) Some 200,000 Hungarians fled into neighbouring European countries after the uprising. By 1958, over 170,000 had been resettled in countries mostly of their choice, including Australia, Canada, and the US, with some 20,000 going to the UK, and approximately 18,000 returning to Hungary. Similarly over half a million Cuban refugees were welcomed and registered by the United States authorities in a spectacularly efficient 'freedom flight' airlift programme between 1965-73. Sympathy for those unwilling to tolerate a communist regime was an even more strongly felt concern in the 1950s than it is today. (The U.S. Refugee Act (Sec. 203(a)7) specifically makes provision for a yearly quota of refugees from communist dominated countries. Under the quota system, would-be refugees from non-communist states *must be* victims of political, racial or religious persecution.) Nevertheless, the fact that the majority of refugees in both the Cuban and Hungarian cases were white, educated, often professionally skilled and culturally from a Euro-Western background were obvious inducements to the developed Western countries where they eventually settled.

**(b) The Changing Pattern – 1960 Onwards:** In the last 25 years, political and economic instability in the Third World, combined with superpower rivalry and the worldwide spread of modern weaponry, has produced major refugee movements in every part of the globe. In Africa, there are at least three million refugees and an unknown number of displaced people. Pakistan alone is acting as host to well over two million Afghan refugees, while every country in South East Asia has been affected by the movement of refugees out of Vietnam since the American withdrawal. In the Middle East, the Arab/Israeli conflict and the fighting in Lebanon has forced many Palestinian refugees to move for a second time. A by-product of these exoduses has been a new flow of asylum-seekers from Third World countries into the developed states of the West. This flow has prompted a number of host governments to introduce more restrictive legislation and administrative practices, designed to exclude asylum-seekers or to deter them from seeking refugee status. The current economic recession has been a crucial factor in this situation. For example, prior to the United Kingdom's 1962 Commonwealth Immigrants Act there was clearly a need for cheap labour during Britain's expansionist period; by contrast, the 1971 Immigration Act – which recognises, in the rules of administrative procedures, six types of citizenship – formed a response to changing political and economic conditions.

The fundamental attitude of many governments became to keep any appreciable number of new people out, and the granting of asylum became a last possible resort. But which people are to be kept out and why? Those countries such as Australia and New Zealand which, until recently, have encouraged immigration often exclude the refugee who may not fulfil the strict health, language and professional (or other skill) requirements. Other nations – for example Canada, Switzerland, Austria and in Scandinavia – commendably make special provision for the acceptance of the sick and mentally and physically handicapped refugees.

The dilemma is how governments, which are not immediately responsible for their condition, can cope effectively with the human consequences. Basically, they are faced with the predicament of how best to reconcile international humanitarian obligations to refugees with domestic obligations for the well-being of their own nationals (and electors). However, it is clear that some refugees are in more urgent need of protection and asylum than others. What are the procedures, political biases and mechanisms at both national and international level, available to ensure that the concern first formalised in the 1930s following the massive refugee problem created by the First World War, continues to be translated into effective action?

### 3. WHO IS A REFUGEE? – THE ATTEMPTS AT AN INTERNATIONAL DEFINITION

**(a) Refugees as a Long-Term Problem:** The Western stereotyped image of a refugee probably includes the following characteristics: poor, ill-educated, and under-nourished. The common view (often derived from media pictures or charities' advertisements) is one of pathetic individuals, their children and a few belongings on their backs, fleeing with fear and bewilderment in their eyes. This picture is often all too familiar and true, but today the world is also confronted with well-educated and relatively wealthy refugees and a growing number of people who leave their own country to escape economic hardship rather than political persecution.

The word 'refugee' has an immediacy suggesting an emergency status or at least a short-term problem. However, the historical indications are that, almost inevitably, a proportion of refugees will become semi-permanent exiles. The most extreme and unique case of the long-term ill-consequence of political upheaval is represented by the Palestinian refugees, who now number over four million worldwide, the largest numbers in Jordan, the Gaza Strip, and West Bank. The provision of assistance to these uprooted people is a massive undertaking. The 1984 budget for the United Nations Relief and Works Agency for Palestinian Refugees in the Near East amounted to well over \$200 million.

Although the resettlement rate of Vietnamese refugees from Hong Kong has been relatively high, much less world attention would have been directed to these people had they not taken to boats; the prior price for world concern and action was the drowning of many thousands. Today, refugees are continuing to leave Vietnam, but their chances of being resettled in a country such as Australia, Canada, the USA or United Kingdom are growing increasingly slim. While those who were admitted to these countries struggle to establish a new life, many remain in camps, not knowing when, if ever, they will be given the same opportunity.

The numbers of refugees fleeing war in the Horn of Africa have not benefited, to the same extent, from media attention. For example, it is estimated that at present over one million refugees from Ethiopia are concentrated in Somalia, Sudan and Djibouti. It is unlikely that many of these refugees will be able to return to their own country in the foreseeable future. Meanwhile, relief organisations are providing food, medicine and rudimentary health care and education systems. However, the longer term responsibility for resettlement remains that of the host government which, in an already poor country, has to balance concern for the newcomers with a greater responsibility towards the ills of its own people. A similar dilemma confronts the government of Pakistan, which has given refuge to well over two million Afghans since the Soviet intervention in 1979.

In recent years, Central America has also become a major area of refugee movement and population displacement. Up to half a million people have fled from the civil war in El Salvador, while the Guatemalan government's campaigns against alleged subversive

have forced up to 200,000 refugees to leave the country. A growing number have been making their way into the USA, but as the American government supports the regimes in both countries, their claims to be the victims of political persecution are rarely accepted.

**(b) Definitions and Conventions Relating to Refugees:** The first United Nations High Commissioner for Refugees, Dr. van Heuven Goedhart, was appointed in 1950 and he and his staff drafted the 1951 United Nations Convention relating to the Status of Refugees. The terms of the Convention referred *only* to those events occurring in Europe prior to 1 January 1951. A refugee was defined as follows:

‘Any person who owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable, or owing to such fear, is unwilling to return to it’.

The United Nations Convention Relating to the Status of Refugees, initially signed by 13 countries was itself the outcome of previous definitions and quasi-legal agreements by various organisations, including the League of Nations and bodies such as the International Refugee Organisation (IRO) and the Intergovernmental Committee for European Migration (ICEM). The IRO was set up in 1946 to take over the work of resettlement, care and maintenance of refugees from the United Nations Relief and Rehabilitation Administration (UNRAA) and the Intergovernmental Committee for Refugees (IGCR). ICEM, instituted in 1951, continued the IRO work of promoting migration, including that of refugees, from Europe.

The Protocol of 1967 amended the Convention by removing both the time and geographical limitations. Effectively this meant that henceforth *all* refugees, and not just those resulting from the Second World War, automatically came within the protection afforded by the 1951 Convention.

The 1951 UN Convention and 1967 Protocol remain the principal international instruments and accession has been recommended by various regional organisations including the Council of Europe, the Organisation of American States and the Organisation of African Unity (OAU). This latter body drafted additional recommendations and procedures for dealing with the growing problem of refugees in Africa. The 1969 OAU Convention was, and is, intended to supplement existing procedures relating to refugees. However, additional articles emphasise the non-discrimination clauses whereby no refugee shall be refused recognition because of religious, racial or political affiliations. Those individuals who may be fleeing from war or civil disturbance or escaping violence of any kind in Africa are also recognised as refugees. Thus while the 1951 Convention rules that fear of persecution is the necessary and sufficient condition for refugee status, the emphasis is on political persecution. By widening the concept of persecution from the essentially political persecution implied in the 1951 Convention, by including reference to asylum, and, finally, by making explicit the mechanism of voluntary repatriation, the 1969 OAU Convention makes more liberal and innovative provisions for refugees in Africa.

Sub-clauses of the UN and OAU Conventions, various subsequent articles, amendments and recommendations as to procedures for the determination of refugee status fill many a shelf in UN and government offices. It would seem at first glance as though every conceivable contingency has long been taken care of and that any victim of persecution of almost any kind is covered by the terms of the Conventions. The spirit of the Conventions can be summarised as follows: that every person is entitled to freedom from persecution and that he or she will receive recognition and assistance from the international community in order to effect that freedom. The second crucial outcome of the 1951 Convention is the corollary that no person should or can be forcibly repatriated (*refoulement*) to his own country, the source of his fear of persecution. The major and outstanding constraints within the terms of both Conventions are that an individual *must* have crossed a national boundary in order to achieve official recognition as a refugee and that his fears of persecution be *well-founded*. Finally, in neither the 1951 UN Convention nor the 1967 Protocol is there specific reference to territorial asylum, which remains a concept rather than a recom-

mendation embodied in the text of either document. The delay between signing and subsequent ratification of any Convention is often considerable and, indeed, a Signatory State may never become a Contracting one. The original, precisely drafted texts may become modified (as was the case with the 1951 Convention) to gain wider adoption and in so doing also become more vague and flexible in order to attain the formal accessions required for any international Convention to become operative.

United Nations Conventions and Protocols are intended to be legally binding within the territory of the Contracting State. The position of Conventions in international law is that Contracting States are obliged to bring their domestic provisions into accordance with their international obligations. This can mean either that new laws have to be introduced, old laws changed or existing laws be sufficient to enact the Conventions and Protocols. The United Nations can and does request formal statements from Contracting States as to their procedures for implementing Conventions.

Additionally, Member States, although party to a given Convention may introduce their own *reservations* to certain articles which are thus not legally binding. A country may not ratify a Convention but may be party to a subsequent Protocol. For example, the United States of America has only ratified the 1967 Protocol pertaining to refugees and *not* the 1951 Convention. Once ratified, however, the Convention requires that Contracting States ‘. . . . shall communicate to the Secretary General of the United Nations, the laws and regulations which they may adopt to ensure the application.’

At the time the UNHCR was started, the ‘cold war’ was at its height, and both the High Commission and the Convention reflected a background of the many refugees then coming from Eastern Europe to the West. The Soviet block countries have since consistently ignored – though not obstructed – the UNHCR and its budgetary requirements. China however is now an active member of the UNHCR’s executive and is both contributing funds and has admitted more than 250,000 refugees from Vietnam.

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#### 4. THE SPIRIT AND PRACTICE OF INTERNATIONAL CONVENTIONS

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The latitude in implementing the 1951 Convention is considerable. Added to the consequent confusion, is the obvious difficulty in achieving international agreement as to the meaning of the phrase ‘well founded fear of persecution’, and, possibly most important of all, there is the related problem of the right to asylum.

The determination of refugee status however is not simple. There are two distinct refugee categories:

- (i) those who are part of a mass movement provoked by invasion, oppression or war
- (ii) individuals who claim to have escaped persecution in their own country.

The former group are often recognised as refugees but individuals in the latter category may have great difficulty in justifying that their fear of persecution is well-founded and in achieving recognition of their refugee position. In Western Europe, a growing number of the asylum-seekers from countries such as Ghana and Uganda are regarded as ‘economic refugees’ escaping from hardship in their own country. In the United States too, Central American refugees crossing the border from Mexico are regarded in the same way as the ‘wetback’ illegal immigrants who have traditionally gone north in search of better economic opportunities.

It is quite possible for a country to have impeccable legislation incorporating the directives of the Convention and Protocol and yet refuse admission to the most obvious victims of persecution. Case studies indicate that although *refoulement* is not a normal procedure, it is, in some countries, dependent on the port of entry official’s personal understanding of refugee status and his subjective judgement of how well-founded the individual’s fears are. It is clear that this understanding is often imperfect, largely because the phrase ‘well-founded fear of persecution’ is, itself, ill-defined. There is no single interpretation but generally the definition refers to persons whose life and liberty are in danger and whose need for protection from persecution existed prior to their escape. It is easier to designate those who are excluded from Convention status – for

example, those who have been convicted of crimes against peace or humanity or those guilty of war crimes. At the other end of the spectrum, there are undoubtedly severely poor people who are forced to move to urban areas for jobs, but are not 'refugees'.

The United Nations High Commissioner for Refugees, non-governmental and voluntary agencies who have or assume responsibility for refugees, as well as individual national government departments, recognise and act as far as they can for many other categories of refugees. These categories include stateless persons, exiles, migrant workers unable to return to their countries of origin because of civil disturbances or fear of persecution, and political dissidents. Such categories of people have in practice similar benefits to Convention refugees with some important exceptions.

When the UNHCR was established in 1950, its mandate was to call upon governments to provide protection for refugees 'not excluding those in the most destitute categories'. The competence of the High Commissioner extends to those who are outside the country of nationality, or if they have no nationality, the country of former habitual residence and who require protection. The mandate is wider than allowed in the Convention, but once again there is the clear indication that unless a person has removed himself from his country he cannot come within the potential protection that UNHCR and other bodies might afford him. In fact, under special circumstances UNHCR can and does go beyond the mandate. For example, agreements with governments to deal with returnees have been made, and UNHCR has been invited to supervise or otherwise aid nationals who in every sense, except that they are inside their own countries, are refugees. The High Commissioner has extended his 'good offices' to displaced populations in Southern Sudan, Angola, Cyprus and Lebanon. More remarkably, UNHCR, through the local office, helped imprisoned Chileans to escape their country and thus become eligible for refugee status and consequent assistance. Because of the greater breadth of UNHCR's mandate, together with the delay in ratification of conventions and protocols, and individual reservations made, both Convention and mandate refugees can co-exist in a given country within a given time.

**(a) Stateless Persons:** A separate Convention concerning Stateless Persons was ratified by those countries party to the 1951 Convention in 1954. A Stateless Person may, for example, be a victim of territorial re-alignment and not necessarily qualify under the 'well-founded fear of persecution' clause of the 1951 Convention. (Those residents of Uganda expelled by Amin who had neither British nor Ugandan passports were Stateless Persons but also qualified as refugees.) There is yet a further group of refugees, the subject of much legal and political discussions: the *de facto* refugees who are similar in every respect to *de jure* refugees, but are excluded from the latter category by reason of not having crossed a national border, or are rejected as being eligible for Convention status by the host country in which they reside. In this group are those who still have their national passports, for example emigres from some Latin American countries or Greek nationals from and in Cyprus; exiles; 'crypto refugees' – a term used by many agencies to describe refugees 'hidden' in other alien categories such as foreign students unwilling to return due to the fear of political persecution; and draft evaders, conscientious objectors and deserters. For these individuals, their status only becomes apparent when they need to renew a passport or work permit or when they are summoned to return to their country of origin. Many of these people, though eligible, may be reluctant to apply for Convention status as it may affect the safety of relatives in the country of origin, or they may fear future discrimination because of the refugee classification, or, in the event that the application is unsuccessful, added retribution on return to the country of origin. Many would-be refugees also apparently fear 'denationalisation' as passports have to be deposited when an application is made. This last fear is persistent, widespread but unfounded. A refugee normally retains his nationality until he is deprived of it by his native country or when he voluntarily applies for citizenship in his country of asylum.

**(b) Convention Refugees:** The key protection afforded a Convention refugee in international law is the right to seek asylum and the guarantee that he shall not be forcibly repatriated. However, the expulsion of aliens is equally a sovereign right of States. In practice, therefore, the rights of a Convention refugee only apply once he or she has been granted asylum permanently. Temporary

asylum does not usually entitle a refugee to the full social and economic benefits embodied in the main provisions (set out below) of the 1951 UN Convention:

- (i) Treatment as accorded to nationals of the Contracting State;
- (ii) Treatment as accorded to nationals of the State of habitual residence of the refugee;
- (iii) The most favourable treatment accorded to nationals of a foreign country;
- (iv) Treatment as favourable as possible and in any event not less favourable than that accorded generally to aliens in the same circumstances.

The Convention rules that travel documents should be issued, that the individual has the right to move within the country and to travel abroad (implying, of course, that upon return to his country of asylum there will be no question as to his right of entry), and that he be eligible to work and earn a living wage, or if necessary receive payment from the State for himself and his family, that his children be educated and eligible for educational grants, and if necessary that he and other adult members of this family have access to counselling services and language instruction. Finally, after a certain period, the Convention refugee is eligible to apply for citizenship and this should be granted both to him and his family. The Convention also provides that the individual has access to the courts of law and when outside the country of asylum he be treated as a national of the host country.

**(c) De Facto Refugees:** The *de facto* refugee group explicitly excludes, by international consensus, illegal migrants, or migrant workers in search of better living standards. But the growing populations of migrant workers from less developed countries to more wealthy nations often constitute yet another anomalous crypto-refugee category.

*De facto* refugees may have certain legal and social disabilities when compared to Convention refugees, depending on the laws and procedures of the host country. For example, there are certain restrictions on employment and access to benefits such as language classes or vocational training often crucial in gaining jobs, and problems are encountered at secondary and higher levels of education. For example, a scholarship may require a recommendation from the country of origin, usually not forthcoming. Most pertinently, *de facto* refugees are not always fully protected from *refoulement*.

A UNHCR spokesman has pointed out that refugee rights are no more than the human rights widely recognised in the world today. The European Commission of Human Rights has used Article 3 (prohibition of inhuman or degrading treatment) as a means of protecting refugees from deportation or *refoulement* and governments have generally accepted (except Switzerland) this extension of the Convention. Perhaps the Convention reflects more particularly the attitude of the world in 1950 when it was drafted, and the European bias implicit in the terms of the Convention which may no longer apply.

But there still seem to be two clear benefits in certain countries in being a Convention as opposed to a *de facto* refugee. One is the right to subsidised education, and the other – far more important, but astonishingly tortuous – is the question of protection under the non-repatriation clause. It is only in rare cases that Convention status is conferred *prior* to arrival at a port of entry, as it was for example on the Boat People. Normally the status is conferred after asylum and thus forcible repatriation *can* occur with refugees who are eligible for the Convention status. The discrepancy between the spirit and practice of international rulings on refugees is clearly illustrated here. Theoretically any person who fulfils the criteria of the Convention *is* a refugee. In practice, he or she can only benefit from that status once it has been recognised by a potential country of asylum. This anomaly often leads to the 'refugee in orbit' syndrome. The individual who presents himself at a port of entry is refused admission and put on a flight back to his port of exit which may not be his country of origin, where once again he is refused entry and shuttled away again.

There is another bitter twist concerning the spirit of the Convention and the practice; the rule of first country of asylum implies that refugee status shall cease to be held if the individual has been offered or has received protection in *any* other country other than his own. Thus Malaysian government officials refused entry to

Vietnamese refugees on the grounds that the latter had reached the Malayan peninsula via mainland China, and that within the terms of the Convention, China, as the first country of asylum, should keep them. Even more Kafkaesque and ironic are those cases where individuals are imprisoned in one country awaiting further official enquiries and then refused entry to the country of choice by virtue of having 'enjoyed' asylum elsewhere. There are serious dangers for the refugee who spends 'too long' in transit. The concomitant legal contradiction is that no country party to the Convention is obliged to comply with the terms of the Convention unless and until asylum has been granted. Finally, any nation can denounce the Convention (Article 44) at a year's notice at which time it becomes null and void. It is, therefore, of the utmost importance to examine the procedures recommended by UNHCR for the determination of refugee status and, in turn, the policy and machinery within countries for the same process.

## 5. UNHCR RECOMMENDATIONS TO GOVERNMENTS

Briefly, the UNHCR recommendations to governments suggest the following basic requirements: that the competent official (i.e. at the port of entry) receive clear instruction for dealing with cases which might come within the terms of relevant international instruments, and, in particular, that the official act in accordance with the principle of *non-refoulement*; that there be a clearly identified single and central authority to which all potential cases could be referred; that the applicant be given all the necessary assistance, such as interpreters to present his case; that if recognised as a refugee, he should be so informed and given certification to this effect and that if not recognised he should be given reasonable time to submit an appeal. Finally, in all cases, it is recommended that the individual be allowed to remain in the country where he presents himself pending a fuller enquiry – i.e. in no case where there is the slightest possibility of refugee status, should he be repatriated or sent to a former transit country.

How far these recommendations are put into practice is difficult to know. In the United Kingdom, asylum-seekers quite often complain about poor treatment from immigration officers, especially when they do not speak English. The authorities have now responded to these criticisms by giving all asylum-seekers guaranteed access to advice from the UK Immigrants Advisory Service.

The importance of determining refugee status has not escaped UNHCR, whose Executive Committee provides a set of carefully worded recommendations which do not, however, have legal status. For all the reasons mentioned so far, claiming refugee status is a hazardous business, fraught with uncertainty, bureaucratic delay and the general resistance often encountered by the individual. In most cases a would-be Convention refugee is confronted by officials at the port of entry. At this stage, if he or she is well-versed in international law and Convention terms, and is competent in the language of the potential country of asylum and able to present his case cogently and persuasively, he may well be successful in gaining temporary asylum while his case is considered. But how many refugees of this kind are there – possibly one in a thousand? More typically, the refugee is questioned by officials who may know little of the political, ethnic or other circumstances surrounding his departure from the country of origin; nor is it reasonable to expect that immigration officers be fully acquainted with the vagaries of persecution and degrees of danger in countries from which news is rarely reported.

The provisions of the Convention do not cover this crucial stage, and if refugee status is refused, the individual may have no right of appeal. Agency files also contain many cases where genuine refugees, in ignorance of a given country's procedures, have prejudiced their case by stating that they are tourists or students. A subsequent application for asylum may be weakened by having entered the country under false pretences.

It appears that refugees are more readily officially recognised if they are part of a massive movement, concentrated in space and time, well advertised by the media; if they are poor, hungry and victims of tangible personal pain and/or injury. The individual dissident seeking political asylum from the Soviet block is viewed sympathetically and nearly always attracts media attention especially should he or she be artistically accomplished. Political

asylum-seekers from other regimes, however, are often less newsworthy and *ipso facto* are in greater need of protection from the international community. Some categories of refugees are more rapidly recognised officially for many reasons, perhaps the two most common being the pressure of media or public opinion and a perceived political responsibility.

## 6. OFFICIAL RECOGNITION OF REFUGEE STATUS

On the evidence of actions rather than expressed policy, the true attitude of governments must be gauged from the fact that extremely few individuals are granted the asylum implicit in the United Nations Convention and Protocols. But there are some interesting exceptions; for instance, it is reported that the International Committee of the Red Cross in 1978 made contingency plans for 100,000 white Rhodesians when civil war was threatened, to facilitate their freedom of movement and promote easier and more rapid acceptance especially by Commonwealth countries.

Reactions to the Vietnamese 'boat people' were more typical. The British government initially expressed a fear shared by all potential host nations when procrastinating on a decision to offer asylum to those survivors picked up in the South China Sea by British ships. The dilemma faced by the British government in the very early stages of the boat people's exodus was whether or not those rescued should be offered asylum in the UK, or deposited at seaports of other countries who, in turn, would either accept or forcibly repatriate them. More extreme was the suspicion expressed at high levels in ASEAN countries that the exodus from Vietnam was in reality a subversive Communist policy calculated to de-stabilise the pro-Western nations of East and South-East Asia. Rumours circulated in the Western press concerning a Machiavellian plot to wreck the West's economy by inflicting upon it hundreds of thousands of asylum-seekers; the cost was compared to paying a modern equivalent of Danegeld. The solutions canvassed included persuading or even compelling the refugees to live on specially designated islands. Graham Greene wrote on the 'strange moral position' taken by Western governments: on the one hand they protest that the USSR will not allow emigration and at the same time Vietnam is castigated for allowing the Boat People to go. By mid-1979, the exodus of boat people increased until it was clear that a major international effort was necessary to avoid severe disruption to the many countries bordering the South China Sea. In response to this situation and the growing pressure of refugees in Hong Kong, the British Prime Minister took the initiative which led the UN Secretary General to call an international conference at Geneva in July 1979. At the conference, many countries agreed to accept quotas of refugees, the United Kingdom itself agreeing to an initial additional quota of 10,000.

It is obviously sensible to ensure that those refugees accepted have a good chance of integrating economically and socially either within an existing community of similar ethnic origins or into the British population as a whole. Such an approach, however, is in some sense contrary to the spirit of the Convention, in that selection is based on perceived effect on the host country rather than the degree of need of the individual refugee. A recent case illustrates the kind of trading that can occur. A family granted asylum as recognised refugees was precluded from entering the host country (Australia) when it was found that one member of the family was mentally retarded. Australia, like many other Contracting States has rigid health standards. The moral is that refugees are grudgingly granted asylum if they prove acceptable within the standards of a given developed country.

Even those nations (e.g. West Germany, Belgium, France) which recognise the distinction between immigrants and refugees and have special standing procedures, are only exceptionally prepared to admit the sick, old and unskilled; this in itself reveals a strong element of selection and, again, a breach of the spirit of the Convention. A lay observer could be forgiven for concluding that the acceptance of an individual as a refugee is the last possible resort and will only occur if there is sufficient public pressure as well as suffering on the part of the refugee himself. But government spokesmen throughout the developed world argue eloquently that they must guard the interests of their own population, their delicately poised economies must be sustained, and economic growth through productivity and control of social benefits must have priority. (The Boat People in Hong Kong provided a relatively

cheap, undemanding and docile labour force and for this reason were not entirely unwelcome at the beginning of the exodus from Vietnam.) Above all, democratic governments have to ensure that their electorate is satisfied. If this is the case, then inevitably refugees will continue to be perceived as dehumanised 'problems' rather than as families and individuals.

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## 7. PROCEDURES FOR THE ACCEPTANCE AND RESETTLEMENT OF REFUGEES

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In spite of all the reluctance – stemming variously from the view of refugees as constituting security risks, to the opinion held by some diplomats and officials that to accept refugees too readily or efficiently could well encourage other nations to expel their unwanted ethnic minorities (e.g. Tamils from Sri Lanka, or the Kurds from Iran and Iraq) onto the developed world – responsibility in varying degrees is assumed by many different organisations, official and unofficial.

**(a) Role of Contracting States:** Clearly Contracting States and, indeed, some which are not party to the Convention, do accept refugees but generally speaking only if there is considerable pressure to do so. That pressure frequently comes from the public and the media, but it comes more directly, if less openly, from the UNHCR and voluntary agencies.

**(b) Role of UNHCR:** UNHCR's mandate is specifically and carefully worded to emphasise its role of engaging the assistance of governments to accept refugees. Its powers of intervention are clearly limited publicly and officially, but the High Commissioner and his senior staff unceasingly negotiate the cause of refugees with governments of both member and non-member states. This role of negotiation and persuasion is a powerful one and can be remarkably effective, especially since a UNHCR presence is often acceptable to countries having large numbers of refugees, perhaps because this presence implies at least the possibility of large amounts of funding for relief and rehabilitation programmes. Conversely, the presence of voluntary agency staff who fulfil a more operational role in implementing programmes is not always as welcome and they are sometimes viewed as potential informers or critics. This situation has arisen in Uganda, where on more than one occasion Red Cross workers have been asked to leave the country after reports of human rights violations reached the international media. Similarly, in Djibouti, voluntary agencies have been obstructed in their efforts to prevent the *refoulement* of Ethiopian refugees.

Since UNHCR is not an operational agency in the sense that it permanently employs medical and other experts to deal with relief programmes, it necessarily contracts out this side of refugee assistance, channelling funds to governments, voluntary and other agencies, especially those which already have a presence in the target country. The major problems confronting any agency in a refugee crisis are *access* and *control*. UNHCR has earned the respect of other UN agencies for doing an effective job, and is extending its role of diplomacy, negotiation, pressure and fund-raising commensurate with the increasing numbers of refugees. It is emphasised time and again by UNHCR both in the Statute, in subsequent documents from that office, and in the speeches and reports of successive High Commissioners that the agency is an organisation and not a country; the responsibility for resettlement of refugees and durable solutions to their plight is in the hands of governments. UNHCR cannot grant asylum, cannot provide resettlement and even at times does not have access to information about the circumstances of refugee populations. Its role is one of advice, negotiation and fund raising, but because it is international in scope, and has funds at its disposal, and because of its long experience in formulating and developing refugee law, it can and does do much to provide solutions.

A consideration of the nature of UNHCR's presence in various countries illustrates this participation in attempting solutions. As of March 1984, 94 countries were party to the 1951 Convention, and 93 were party to the 1967 Protocol. Only Monaco was a party to the former and not the latter. 27 countries were party to the OAU Convention of 1967. Amongst all these states the internal machinery for implementing the Convention and Protocol ranges

widely in relation to UNHCR. The UNHCR representative may be entirely responsible for determining refugee status and providing recommendations to the government on how it should consequently act (Belgium), or he may be accorded the role of what could be described as a 'troubleshooter' (United Kingdom). In between these two positions, the local representative may fulfil an advisory role, maintaining liaison with government departments and voluntary agencies. Those refugees who have been successful in their application for refugee status must then seek to qualify for admission under national legislation. Ideally the UNHCR will help at this stage, but can only do so if called upon or the local representative has some inkling that there is a problem. If the granting of refugee status is made difficult by immigration rules there is little opportunity for the individual to intervene.

**(c) Voluntary Agencies:** UNHCR relies heavily on voluntary agency support. The activities undertaken by voluntary agencies, some of which are government funded, are extensive and apply principally to the third, fourth and fifth stages of the refugee's journey:

- (i) Persecution and fear;
- (ii) Flight;
- (iii) Temporary asylum, for example, when populations are crowded into camps;
- (iv) Processing;
- (v) Resettlement in the country of asylum.

There is often a close and fruitful working relationship between governments, UNHCR and voluntary agencies. This relationship is especially important in the third of the stages listed above, as voluntary agencies are particularly flexible, can move quickly, and have a wealth of experience and expertise in the management of crisis situations. Relief and development organisations such as Oxfam, Save the Children Fund and Christian Aid have taken responsibility for many schemes to relieve the misery and potential death of thousands of refugees suddenly crowded together in a foreign country. Financially, such agencies depend on governmental, intergovernmental and public generosity. Assistance in the form of language classes, counselling and the guidance of refugees towards educational and employment opportunities is necessarily a less dramatic and more drawn out process, but is still crucial. Many countries which accept refugees delegate this responsibility to voluntary agencies. In the United States, for example, the sponsorship of refugee families is organised through church and community based organisations, members of which are able to supply a newly arrived refugee with a home and domestic requirements.

Many countries also have a wide range of specialised agencies which deal as far as they can with the last two stages of a refugee's journey. In the UK, for example, World University Service (UK) provides educational counselling and is responsible for the administration of a refugee scholarship programme. The UK Immigrants Advisory Service provides legal advice and representation to asylum-seekers, while the Ockenden Venture and Refugee Action are particularly concerned with the reception and resettlement of Indo-Chinese refugees. The activities of these and many other specialised agencies are coordinated through the British Refugee Council, which participates in the European Consultation on Refugees and Exiles. In this way, an effective network of assistance and support has been built up. In recent years, the British Refugee Council and its member agencies have become increasingly aware of the need to encourage the participation of refugees themselves in the provision of assistance. Consequently, the Council has begun to implement a programme of community development. This is designed to assist in the many refugee-based organisations in London and elsewhere to develop their own counselling and welfare facilities. Such organisations are also able to provide individual refugees with the sense of attachment and cultural identity which uprooted people are often denied.

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## 8. THE LIMITATIONS OF INTERNATIONAL LAW

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Previous sections of this report have examined at some length the role of international law in protecting the human rights of refugees and asylum-seekers. At this point, however, it is necessary to register a note of caution, and to explain why the protection of

refugees through a body of definitive, binding and enforceable law is an ideal that is yet to be achieved:

1. International legal instruments such as the 1951 UN Convention, the 1967 Protocol and the 1969 OAU Convention are primarily designed to protect and assist individuals once they have been forced to leave their country of origin and to seek safety elsewhere. They cannot, therefore, do anything to prevent the root causes of refugee exoduses: persecution, repression, discrimination, war and natural disaster.
2. Not all states are party to the international instruments designed to protect refugees. In Eastern Europe and Indo-China, two important areas of refugee movement, the Convention and Protocol have been accepted only by a small number of states. Only just over half of the countries of Africa are party to the OAU Convention.
3. Although nearly two-thirds of the world's states have acceded to the Convention and Protocol, eight states have made reservations restricting their obligations to persons who became refugees as a result of events occurring in Europe before 1 January 1951.
4. Like the vast majority of international instruments, the Convention and Protocol are open to differing interpretations and are not ultimately enforceable. Although the Convention and Protocol are designed to protect the rights of *individuals*, they are entered into by *states*, sovereign entities which do not accept external interference in their domestic jurisdiction and which are prone to put self-interest before humanitarian considerations.
5. The Convention and Protocol are limited in scope. Their principal purpose is to provide refugees with certain legal rights and to guarantee them access to social and economic rights such as employment, housing and education. The Convention and Protocol cannot guarantee the psycho-social welfare of refugees, and in many poorer parts of the world cannot guarantee their material well-being. Moreover, the Convention and Protocol deal strictly with individuals who have crossed or who are seeking to cross a state border. As such, they can do nothing to protect the rights of the many millions of people displaced within their own countries.
6. Even when asylum-seekers have crossed a border and been recognised as refugees by a host government, their safety cannot necessarily be guaranteed. In Lebanon, for example, Palestinian refugees have been massacred by militiamen, while in Angola, Namibian refugee camps have been attacked by South African armed forces. It has also proved extremely difficult to guarantee the safety of Vietnamese boat refugees in the Gulf of Thailand, where they are subject to murderous attacks from pirates.
7. Finally, it is not possible to legislate against host community hostility towards refugees. In Sudan and Pakistan, for example, massive refugee influxes have had an adverse impact on the local economy and environment, and produced conflicts between the newcomers and the indigenous population. Such conflict is not confined to the underdeveloped world – refugees in France, Germany and the UK also find that their human rights are infringed by the racism and xenophobia of both government officials and the general public.

Despite these limitations, it would be wrong to conclude that international law offers no protection to asylum-seekers and refugees. A growing number of states have acceded to the Convention and Protocol, incorporated all or part of these two instruments into their domestic law, and even accepted a diminution of their sovereignty by allowing the UNHCR to play a part in the determination of refugee status. There is little doubt that even when states ignore an instrument to which they are party, they would prefer to conceal this fact from their own citizens and external observers. In this situation, voluntary organisations and the media have an important role to play, exposing violations of these instruments when they take place and embarrassing those states which fail to observe agreements into which they have entered voluntarily. Finally, like many international instruments, the UN Convention and Protocol and OAU Convention have an inspirational role to play, drawing international attention to one of the world's most pressing issues and setting standards that states might strive to attain.

## 9. IMPLEMENTATION AT NATIONAL LEVEL: THE UNITED KINGDOM

Having examined the international legal instruments governing the rights of refugees and asylum-seekers, this report now examines in detail how those instruments are implemented and supplemented with domestic legislation in one country, the United Kingdom, so that both positive and negative lessons may be studied.

The UK is party to all the principal conventions relating to refugees. While the Convention and Protocol Relating to the Status of Refugees are not formally incorporated into British domestic law, requests for asylum are considered within the framework of Immigration Rules which specifically refer to these two instruments: 'Leave to enter will not be refused if removal would be contrary to the provisions of the Convention and Protocol Relating to the Status of Refugees'. All applications for asylum in the UK are referred to the Home Office Immigration and Nationality Department for decision. Asylum-seekers who are already in the country in another capacity can apply directly to the Home Office, whereas asylum-seekers who arrive at a port of entry must initially approach an Immigration Officer. Illegal entrants such as stowaways and people with forged documents can be automatically deported. However, once such an entrant has requested asylum or expressed a fear of returning to their own country, it is the responsibility of the Immigration Officer to examine the case to establish the *prima facie* validity of the request. The results of the interview are passed to the Immigration and Nationality Department for consideration and initial decision by officials. All asylum-seekers are guaranteed access to the United Kingdom Immigrants Advisory Service, which has a special Refugee Unit that receives financial assistance from UNHCR. Normally, asylum-seekers are not accompanied by a friend or legal advisor when interviewed by the Immigration and Nationality Department or Home Office.

Decisions on asylum-applications are normally made by Home Office officials. In exceptional cases, or where a Member of Parliament makes representations on behalf of the applicant, the papers are put before the appropriate Minister of State. Until 1984 there were two forms of status which could be granted to asylum-seekers: asylum with refugee status, and asylum without refugee status. Persons in the former category were considered to meet the criteria of the Convention and Protocol. Persons in the latter category were those who did not meet these criteria, but who nevertheless had compelling reasons for not returning to their country of origin. The government has now decided to abolish this distinction and to grant refugee status to all successful applicants. Refusal of an asylum application normally results from the Home Office's conclusion that the asylum-seeker's fear of persecution is not well-founded. Notice of an appeal against refusal must be given to the Home Office within 14 days of the negative decision. Asylum-seekers are given a right to appeal only if they applied for asylum before their official leave to stay in the UK expired. In many cases asylum-seekers whose applications for refugee status have been refused may be permitted to stay exceptionally, outside the Immigration Rules. Such people with 'exceptional leave to remain' have no guarantee against *refoulement*, and should conditions change in their country of origin, they may be required to qualify for residence otherwise under the Immigration Rules. Quota Refugees, such as the Chileans admitted between 1974 and 1979 and the Indo-Chinese admitted since 1978 need not make a formal application for asylum; they are automatically granted asylum and recognised as Convention refugees on arrival.

As a rule, permission to remain in the UK is granted for 12 months, then for a subsequent period of three years. After four years, a refugee can apply for permanent residence. Those granted asylum with refugee status can apply for a Convention Travel Document, which permits re-entry to the UK. Naturalisation is granted at the discretion of the Secretary of State, and refugees can apply to become British citizens after five years of residence in the country. For an application to be successful, the applicant must be 'of good character', have a reasonable knowledge of English and intend to reside in the UK. There is no appeal against refusal.

## 10. THE RIGHTS OF ASYLUM-SEEKERS IN THE UK

In the United Kingdom the legal rights of asylum-seekers and refugees are determined primarily by the Immigration Rules and Nationality Act. Other rights are determined by other legislation and administrative practice. Sections 10 and 11 of this report examine the social and economic rights granted to asylum-seekers and recognised refugees.

**(a) Reception and Housing:** No reception facilities are made available by the government for asylum-seekers, nor does the government take special measures to make housing available. The

provision of housing in the UK lies with local housing authorities, housing associations and the private sector. United Kingdom legislation forbids racial discrimination with the result that any person lawfully admitted to the country with housing needs is entitled under the law to equal treatment irrespective of race.

Obtaining secure housing is a serious problem for the asylum-seeker. The majority of those who approach the British Refugee Council are single people living in private hotels and hostels in Central London. The problems which they face during this period are of isolation in terms of language and contact with members of their own national group, difficulty in adjusting to life in a strange society and a lack of security over their accommodation. Alternatives to this form of accommodation lie in the private rented sector, and in housing provided through housing associations or through local authority departments.

Traditional *private rented accommodation* has been in decline for many years. Measures have been taken in recent legislation to loosen the restrictiveness of housing legislation as well as to create opportunities for letting on a guaranteed security of tenure basis for short periods. However, it remains the case that private accommodation to let is generally in short supply, is in many cases expensive, or, where cheap, is also liable to be in poor condition. The amount of housing available through *housing associations* in different parts of the country is variable. Housing associations are important providers of accommodation for single people of working age and some of the larger associations specialise in providing accommodation for people who have no local connection with the area where they wish to reside. Many of the more locally based associations do, however, give nomination rights to local authorities or to referral agencies with the result that, lacking the advantage of a local connection, an individual asylum-seeker might find it difficult to gain access to such housing without help. In this connection it is worth noting that both the British Refugee Council (BRC) and Ockenden Venture are referral agencies for housing association property. *Local authority housing* is normally allocated to those registered on an authority's waiting list. Practically all authorities give preference to local people. The authorities have a statutory duty, however, to provide accommodation for homeless people in certain defined categories of priority need. This means that homeless asylum-seekers who come to Great Britain with dependant children or elderly or disabled dependants could apply to a local authority for housing and single people who successfully applied for dependant and vulnerable members of their families to join them could also expect to obtain accommodation in this way. As for asylum-seekers, however, it would be understandable for an authority to offer only a temporary form of accommodation and to defer seeking a more permanent solution, especially the letting of a secure tenancy of its own housing stock, while the legitimacy of the applicant's entry to the United Kingdom remained in doubt. Moreover, some hard pressed authorities in London to whom asylum-seekers have applied have sometimes found it necessary to call upon other authorities with available housing to assist in rehousing; this may add to the families' isolation. For similar reasons some authorities have resorted to placing families in hostels or hotels for longer periods prior to permanent housing than would normally be considered acceptable. All these pressures exist to a greater degree in London than elsewhere.

At present BRC has access to approximately 150 flats per year via housing associations and a 'one-off' quota of 50 council flats from the Greater London Mobility Scheme. Except in exceptional circumstances these flats are offered only to people who have been in poor quality rented accommodation for more than 18 months. These arrangements benefit, therefore, only a minority of asylum-seekers and refugees seeking help. In their efforts to ease the problems, BRC, with the support of the UNHCR and a local authority, has established two *reception centres* which provide a secure and supportive 'first base' for a limited number of asylum-seekers and their families. If successful, the BRC hopes that it will bring to an end the present dependence on bed and breakfast hotels.

**(b) Employment:** People seeking asylum are not permitted to take employment and are therefore reliant for financial support either on their own resources or on the State Supplementary Benefit Scheme.

**(c) Education:** Legislation imposes a duty upon local authorities to make available tuition for those of compulsory school age (i.e. 5 to 16 years) which will enable *all* children to take advantage of the full range of educational opportunities available. Thus all children including those of asylum-seekers must attend school and any who do not have a working knowledge of English must be provided with appropriate language help. Beyond compulsory school age provision is made by the local education authority according to its perception of local needs, priorities and the resources available. Classes may be available for language education, for general education, for lower level technical subjects and for courses leading towards training for the professions. Persons in the pre-asylum stage where they have the financial resources can apply for and be accepted for all these courses. Some courses of further education attract maintenance grants. These may be either mandatory or discretionary. Mandatory awards are generally only available for designated advanced courses of education e.g. a full-time first degree course of a university, teacher training or higher diploma level. Such awards are not available to an individual until refugee status has been conferred. Supplementary Benefit Regulations permit the individual (pre- and post-recognition of status) who has been resident less than 12 months and who needs to learn English to help equip himself for employment to follow a short course while still in receipt of benefit. Also a number of local authorities reduce or waive fees for their courses in English as second language.

**(d) Social Security:** The main social security benefit to which people newly arrived in Great Britain from abroad may be entitled is supplementary benefit, which has neither a residence nor a contribution test. Entitlement is however, affected by immigration status and people who are admitted on condition that they do not enter employment and/or become a charge on public funds will not normally be entitled to ordinary supplement benefit payments. It is recognised, however, that there may be exceptional circumstances in which payment may be appropriate and provision for such circumstances exists within the Urgent Cases Regulations.

Where people already in Great Britain apply for refugee status or asylum, benefit to meet their daily living expenses is payable under the Urgent Cases Regulations provided the application for status has been made during the period of their limited leave to be in the country. Payments continue until the application has been decided. The Urgent Cases Regulations apply in a range of cases where a person has no normal entitlement to supplementary benefit. Payments made under these regulations are subject to more stringent conditions than other benefit payments. All the resources a claimant has available to him including any income or savings, or help from friends or relatives, are taken into account. For the first 14 days of a claim, payment is set at a lower level than normal; a person living in someone else's home for example, will receive no contribution towards their housing costs and only 75% of the rate normally allowed for food and other expenses: and a person in a hotel or in board and lodging accommodation will normally be paid the full cost of their board and any additional meals but will receive only 75% of the additional allowance paid to boarders to cover personal expenses. After the first 14 days, payment will be at normal supplementary benefit rates, although all resources will continue to be taken into account. Where an individual applying for asylum does so outside the period of their limited leave to remain in the UK or while otherwise illegally in the country, he/she is not entitled to any financial support under the regulations.

**(e) Health Care:** By law hospital services are available without charge to a person who has made a formal application for leave to stay as a refugee in the United Kingdom or who has been accepted as a refugee. As regards other medical services, there is nothing to prevent a refugee from making the same use of them as any other resident of this country. When refugees arrive under a special programme, efforts are made to ensure that they are taken on the list of local general practitioners as soon as possible.

**(f) Social Services:** As for social services, responsibility for responding to need lies with the local authorities and anyone pre- or post-recognition of refugee or asylum status is eligible for their help. Of necessity the help which they can provide (essentially for children, the elderly and the mentally and physically handicapped) must depend on the resources available to individual authorities and on their areas of priority.

## 11. THE RIGHTS OF RECOGNISED REFUGEES IN THE UK

The number of recognised refugees in the United Kingdom is not easily determinable. Some 200,000 Poles and 50,000 East Europeans were admitted between 1935 and 1950; 15,000 Hungarians in 1956, 5,000 Czechs in 1968, 3,000 Chileans between 1973 and 1979, almost 17,000 Vietnamese since 1975, plus a yearly flow of individual refugees admitted from all parts of the world (see Appendix I for further details).

No attempt is made by the government to monitor the experiences of particular refugee groups. However, refugees who arrived before 1970, almost all East Europeans, are believed in the main to be satisfactorily settled from an economic point of view. Very many have also achieved satisfactory social settlement, either within their own exiled community or within the host community, although inevitably a minority, particularly as they grow older, are not as fully integrated into the life of the community as they were in their home countries. Of those arriving since 1970 – 3,000 Latin Americans, 17,000 Vietnamese plus about 1,000 individuals per year from 50 countries – only a minority could as yet be said to be satisfactorily settled. Rates of unemployment are high and language skills still low among these more recent arrivals. Some still think of returning to their own countries or seeking settlement elsewhere, and may have no real desire to settle in the United Kingdom. The reasons are not hard to find, given the host community's continuing economic problems and the weakness of the refugee communities themselves, relatively small in numbers and widely dispersed, sometimes in quite small groups, around the country.

**(a) Reception:** For the ordinary flow of individuals seeking asylum or refugee recognition the UK government provides no reception accommodation. Where the government recognises that the scale of a particular influx of refugees can best be handled through a special programme, however, it can make special arrangements. Quite how these are provided has varied depending on the characteristics and size of the group concerned. Thus in the South American refugee programme in 1973-1979 government financial assistance was given to the refugee agencies to run a centre and later, as numbers fell, to pay for bed and breakfast accommodation, while in the Vietnamese refugee programme large and small centres were established around the country. These centres enabled the refugee agency staff to familiarise themselves with the settlement needs of each family, their employment potential and ties with any other families previously housed. The Vietnamese programme refugee also received any necessary medical care, an introduction to British culture and tuition in English language. A reduced reception capacity continues to be provided from government resources for those admitted after rescue at sea by British vessels; additionally, the refugee agencies run centres to receive family reunions, which also receive some government funding because of the unpredictable numbers coming from Vietnam through the Orderly Departure Programme.

**(b) Housing:** As explained earlier, central government takes no special measures to facilitate the housing of refugees. It is helpful, nevertheless, to distinguish between what has happened under the major refugee programmes and the more normal circumstances in which refugees settle in this country. In the Vietnamese refugee programme the government approached local authorities and housing associations, drawing attention to the particular problems of the Vietnamese and inviting housing offers. While the bulk of housing provided came from local authorities (perhaps 80%) a significant proportion was made available by the associations. Finding housing in the Vietnamese programme was, however, particularly difficult and the Joint Committee for Refugees from Vietnam (JCRV) which oversaw the programme pointed out, with a view to future programmes, that expenditure incurred in prolonged reception might have been better directed to providing incentives to local authorities to make housing available. This issue (and other arising from the Vietnamese programme) is being considered by the government.

In the more usual situation where there is no government programme the provision of housing and the problems are the same as earlier described for individuals at the pre-recognition stage although, of course, local authority doubts about the legitimacy of their settlement in the UK would have been removed.

**(c) Employment:** There are no restrictions in the employment legislation on the recognised refugee's right to work. Quite how particular refugee groups are coping in the present difficult economic climate with over 3 million registered unemployed in the United Kingdom must depend on a number of factors – their length of time in the community, their standard of education and professional background, their language ability, cultural norms and the strengths of their community.

The assumption is that refugees arriving before 1970 when expectations of employment were higher have found jobs. The position since 1970 has been more difficult and it cannot be expected that any group will have done particularly well. There have been two major programmes over this period, for South Americans and Vietnamese. Among Chileans who made up the bulk of the former intake, BRC estimates unemployment at around 50% of those available for work. They are aware, however, of a significant number of Chileans who are pursuing courses of higher education. As part of an investigation into the conduct of the Vietnamese programme, information was obtained about the refugees' previous occupational background and current employment situation. This indicates that less than 7% are of the professional managerial class. While 78% are recorded as skilled or semi-skilled, in terms of standard UK employment classifications, the skills which they possess are not easily transferred to the UK labour market. This occupational background together with lack of English and the generally difficult economic situation goes much of the way in explaining a level of unemployment of at least 80%.

All the services provided by the Manpower Services Commission (MSC) and the rest of the Department of Employment to help people both in and looking for work, are available for refugees. The MSC offers a number of courses and projects aimed at providing language training linked with skills training and work experience in order to prepare unemployed people for employment and to make them more attractive to potential employers. Under the Training Opportunities Scheme (TOPS) a limited number of English as a Second Language (ESL) courses focusing on language needs in employment are provided for ethnic minorities. Rules which normally apply to such courses that applicants be aged 19 and over on commencing a course and that in order to do so they must have been away from full-time education for at least two years, have been relaxed so that refugees are eligible as soon as they are accepted by the United Kingdom. For the Vietnamese, whose disadvantage is particularly great in terms both of lack of language and irrelevance in the west of much of their previous work experience, special courses have been run in areas where there are large numbers settled. To help those who are more widely scattered a pilot course has also started which will take Vietnamese from any part of the country.

There are also opportunities under the MSC's Community Programme (CP) and Voluntary Projects Programme (VPP). The former is designed to give people who have been unemployed for some time the chance to work with a level of payment on projects which benefit the local community. They are run by individual sponsors who are reimbursed by MSC. The British Refugee Council for example, is a sponsor and refugees benefit doubly by being themselves employed and being able to use their skills to help others in the refugee community. The Voluntary Projects Programme provides a wide range of voluntary opportunities for unemployed people of any age to do work which will be of benefit to themselves and the community. MSC makes funds available for previously unemployed people to organise particular projects; the volunteers who are unpaid retain their entitlement to statutory benefit. Again refugees can benefit. For example, Ockenden Venture, one of the refugee agencies involved in the Vietnamese programme, aims to use the project to improve job seeking for the Vietnamese and to look at self-employment and small business opportunities. VPP is also used to help volunteers provide language training for the Vietnamese and other refugees. These are the ways in which MSC schemes have been specifically used for the benefit of refugees. The voluntary sector and local communities have also played an important part in developing this assistance and support, but in the current economic climate, such initiatives can do little to improve the employment situation for most refugees.

**(d) Education:** It is worth distinguishing between the provision made in the government programme for refugees such as the Vietnamese and that ordinarily available to refugees accepted in

the UK. In the former, the government paid for intensive language education of Vietnamese adults and children during their stay in reception centres (on average 6 months). Additionally, the government funded an adult tutor training project which operated for a year and was aimed at improving the provision of English as a Second Language (ESL) tuition in areas where the Vietnamese were settled. It was recognised from the outset that the education which the Vietnamese received during their reception represented a bare minimum and recent research suggests disappointingly low levels in language attainment. To progress they will be reliant on educational provision made available by education authorities and on job training schemes.

Beyond the reception stage and the special government programme, the Vietnamese, like other refugees, are dependant on the education services. Their children attend school alongside other children, while the adults can take advantage of the classes available through local education authority colleges and Manpower Services Commission projects. As regards students awards, the government has sought as far as possible to enable them to benefit from the same arrangements as are applied to home students. Refugees have been exempted from the ordinary residence requirements (3 years in the country) for mandatory award entitlement and are eligible to receive a mandatory award for attendance on a designated course once refugee status has been granted. They are also eligible to receive a mandatory award even if they have to leave uncompleted a course of education overseas in the 4 years before entering the country. To do more than this, the government believes, would be to treat refugees more favourably than home students. In response to representations made by the British Refugee Council, the government has also granted home student status to asylum-seekers given exceptional leave to remain in the country.

**(e) Social Services:** As indicated earlier refugees are eligible for support from local authority social services departments and receive it, as does the rest of the population, according to the resources and priorities of individual authorities. Inevitably there may be difficulties for social services departments in dealing with refugees in terms of language, culture and their refugee experiences. The voluntary refugee organisations, therefore, play an important part in counselling refugees and advising the social services and other agencies on particular issues. The BRC, with the cooperation of other refugee organisations and the statutory services helps elderly refugees, some of whom may need psychiatric treatment, by providing home visits, short-term breaks or long-term sheltered accommodation. Ockenden Venture assist in this and additionally provide their own services of education and specialised medical care for unaccompanied refugee children, students, families and handicapped young people.

As part of the Vietnamese programme the government has funded refugee agency staff using English, Cantonese and Vietnamese speakers in part to provide advice to statutory and voluntary bodies on the background, needs and problems of the Vietnamese; to intervene where called on, by the Vietnamese, by local support groups or by statutory agencies, in various crises and near crises of the Vietnamese and their families; and to interpret (both language and cultural background) when called upon by courts, police, the health services, local authorities or local Department of Health and Social Security and Department of Employment offices. The government has also been persuaded of the merits of keeping Vietnamese unaccompanied minors together so that they benefit from being cared for with others of their own age and ethnic group and maintain stable relationships within their own culture. Homes operated by Ockenden Venture and Save the Children Fund for Vietnamese children accordingly receive government assistance.

## 12. REFUGEE RIGHTS IN THE UK: A CRITIQUE\*

Having described the legal and socio-economic rights granted to refugees and asylum-seekers in the UK, it is now possible to provide a critique of those rights.

**(a) Legal Rights:** In comparative terms, Britain has a generous tradition of granting asylum to the victims of persecution. Governments of all political persuasions have generally upheld the UN Convention and Protocol on Refugees, and in many cases have

granted asylum to people who do not fall strictly within the terms of those instruments. Nevertheless, some legal and administrative problems remain.

**(i) The Decision-Making Procedure:** Of great concern is the fact that the UK determination process is largely controlled by immigration authorities, whose overall responsibility to 'control the borders' may condition them to be enforcement minded and skeptical rather than impartial and sensitive to the special problems of refugees. Accurate decision-making is further jeopardized by the fact that determinations at the Home Office are based on a transcript prepared by a non-specialised officer, without the benefit of a personal appearance by the applicant before the decision-maker, and usually without the benefit of UNHCR input. Allegedly heavy reliance by decision-making officers on Foreign Office human rights information may benefit applicants of certain nationalities while working to the detriment of other nationalities.

**(ii) Reasons for Refusal:** Resolution (77) 31 of the Committee of Ministers of the Council of Europe (September 1977) includes amongst its provisions that 'Where an administrative act is of such a nature as adversely to affect his rights, liberties or interest the person concerned is informed of the reasons on which it is based.' Although the principles of natural justice do not, as yet, include the requirement that reasons should be given for decisions, there is a strong case to be made for the giving of reasons as an important element in administrative justice. The Home Office decision-making process is an administrative act: it is normal practice within the Home Office to give statements of reasons for refusal prior to an appeal against refusal of asylum or when a Member of Parliament has become involved and rarely in other instances. Often the reasons when they are given are inadequate and it is obviously difficult for an asylum-seeker or his representative to re-state an asylum case when the reasons for refusal are not known. Equally a statement of reasons could allow an individual to approach other countries or accept the Home Office decision. It is also likely that a full statement of reasons would both prevent future confusion and ultimately save time for all concerned.

**(iii) Right of Appeal:** Whether or not an asylum-seeker whose application is refused has a right of appeal depends on his immigration status at the time he made the application. There are therefore many people who fall outside this safeguard e.g. illegal entrants, overstayers, those recommended for deportation, those who have been refused an extension of stay in another capacity and who then apply for asylum, and people who arrive at a port of entry without entry clearance. This is perhaps the area of greatest discrepancy of treatment between asylum-seekers. As pointed out earlier, asylum-seekers are not always able to fall within the Immigration Rules and the right of appeal should not depend on them so doing. Whether or not a person is a genuine student or businessman is normally a matter of fact. Whether a person is a refugee is a matter of assessing what might happen to the person if returned to their country of origin. Agencies dealing with refugees believe it is the right of every asylum-seeker to have an independent hearing of an asylum claim when the Home Office do not agree with the individual that he has a well founded fear of persecution. It is recommended therefore that measures are taken to institute substantive rights of appeal for all asylum-seekers where an application is refused by the Home Office.

**(iv) Length of Time between Applications and Decision:** In many cases the length of time taken by the Home Office to reach decisions is excessive. One solution is for the Home Office to speed up procedures; but this cannot be guaranteed. However if all asylum-seekers are to be treated equally, given rights of appeal and detailed reasons for refusal other arrangements are possible. A time limit of six months could be made for deciding on asylum applications and if no decision is reached within that time the individual could then be given interim permission to remain, without restriction on employment, for six month periods. In this way straightforward, strong asylum cases, and also spurious applications, could be dealt with quickly and where there are genuine difficulties facing the Home Office in reaching a decision,

\* This section is abstracted from 'Refugee Status Decision-Making: The Systems of Ten Countries' by Christopher L. Avery, *Stanford Journal of International Law*, Vol. 19, No. 2 1983; and 'Refugees and Asylum-seekers: Proposals for Policy Changes', by Maureen Connelly, unpublished paper, UKIAS Refugee Unit, 1983.

for whatever reason, the delay would not be of such detriment to the individual. This latter point is important as often the lengthy asylum procedure and the lack of control over their own life has very serious effects on asylum-seekers who are already living with the trauma which caused them to become refugees.

**(v) Exceptional Leave to Remain:** As described in section 9 of this report, it is within the discretion of the Home Office to grant asylum-seekers exceptional leave to remain outside the Immigration Rules. This form of discretion can be applied in a number of ways: either as a decision to permit a specific number of a particular group entry to the UK (e.g. Ugandan Asians); as a decision to permit nationals of a particular country to remain on a temporary humanitarian basis because of events in their country of origin (e.g. Poles after 1981); or to permit individuals to remain because of their particular circumstances. Perhaps the main concern for those granted permission to remain exceptionally and where it is not leading to settlement is the question of how long should their stay be considered temporary and at what stage does it become permanent. It would seem just that if chaos, war or repression prevented a person from returning to their country for a number of years that they should be granted residency here and that when (if) the situation in their own country changes the choice of whether to go or stay is that of the individual.

**(b) Social and Economic Rights:\*** As the previous two sections of this report have indicated, there are many areas in which the social and economic situation of asylum-seekers and refugees in the UK could be improved. Many are currently living in substandard accommodation, and an even larger number are unemployed and have little immediate prospect of finding a job. Facilities for English language tuition are inadequate in most parts of the country, adding to the other difficulties that refugees experience in gaining access to further education and vocational training. The welfare benefits system is beyond the comprehension of most refugees (and British citizens!), and is too inflexible to cater for the special needs of asylum-seekers. More research is required into the needs of vulnerable groups such as elderly refugees and unaccompanied minors, and voluntary organisations working with refugees must be granted more stable forms of funding.

Tackling these problems is to some extent a simple question of political will. It is within the power of the government to commit more resources to the welfare of refugees, to amend rules and regulations where they act to the detriment of refugees, and to foster a climate of social opinion favourable to those who have sought asylum in the UK. Nevertheless, many of the problems confronting refugees are much more deeply rooted, and cannot be resolved simply through an injection of cash into relevant government departments and voluntary organisations. It is now quite clear that while earlier, principally East European, refugees have settled into the social and economic life of the UK, later arrivals such as the Vietnamese and Chileans have not. The difference is not difficult to explain. The refugees who arrived in the UK after the Second World War were reasonably educated, familiar with European cultural traditions and enjoyed support and advice from existing emigré organisations. They benefited from a high level of public sympathy, and were able to take advantage of the period of economic growth that existed in the 1950s and 1960s. In contrast, many of the more recent arrivals come from a different cultural tradition and have had to build up their system of community support from nothing. The recession has prevented their absorption into the British labour market, while the social climate has become hostile to new influxes of ethnic minorities from outside Europe. Some of the more recent arrivals, such as the Chileans, do not intend to stay in the UK, and will return to their homes if political conditions allow. This creates special problems, for while they may continue to identify with their own country and community, their children have been born in the UK and may regard themselves as British. Such issues and problems were evidently not considered in any systematic way when the decision to admit 17,000 Vietnamese and 3,000 Chileans was made. New arrivals were scattered throughout the country in an attempt to ease the pressures on

housing and social services, but this decision hindered the establishment of supportive refugee communities and left many refugees isolated and bewildered. This problem is gradually being resolved through a process of secondary migration into population centres such as London, Birmingham and Liverpool, raising new fears that refugee communities will become ethnic enclaves isolated from the wider society.

There is now an urgent need for a strategy that will resolve this dilemma and ensure that refugees can be satisfactorily accommodated within British society, both now and in the future. Such a strategy must meet three criteria. Firstly, it must ensure that refugees and asylum-seekers are reasonably housed, clothed, fed and counselled, especially in the initial stages of their residence in the UK. Secondly, it must give refugees access to the education, language tuition and vocational training which will allow them to compete for jobs or to become successfully self-employed. Finally, it must allow for refugees to maintain their cultural identity and to participate in the community organisations making a genuine contribution to the policymaking procedures of relevant voluntary agencies.

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### 13. CONCLUSION: THE REFUGEE DILEMMA

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In recent years, the nature of the world's refugee problem has changed quite dramatically. Between 1974 and 1982 there were a number of major refugee movements: from Ethiopia to the surrounding countries; from Afghanistan to Pakistan; from Uganda to Sudan and Zaire; from Poland to Western Europe; and from Lebanon to Syria. Since that time the growth in the world's refugee population has slowed down considerably, but serious issues remain to be tackled.

*Firstly*, there is an urgent need to provide stabilised refugee communities not with short-term emergency relief, but with the kind of assistance that will allow them to become part of prosperous and self-supporting societies. This is as important in the developed as in the underdeveloped world: the Ethiopian refugee living on Supplementary Benefit and housed in a Bed and Breakfast hotel in London is just as dependent as his compatriot in a Somali refugee camp. *Secondly*, there is an equally urgent need for the mechanisms of refugee protection to be strengthened. In many parts of Africa, *refoulement* has become increasingly common. In Lebanon, murderous attacks have been made on refugee camps. In Hong Kong, refugees have been placed in closed camps that are reminiscent of prisons, while in West Germany a policy of 'humane deterrence' has been implemented to keep new asylum-seekers out of the country. All of these situations are examples of the new mood of intolerance and xenophobia affecting many host countries. Without adequate protection, the large amounts of financial and material assistance currently provided to the world's refugees are of very limited value.

*Finally*, there is a need to perceive the 'refugee dilemma' in broader terms. Even with improved international laws, better mechanisms of protection and greater amounts of assistance, refugees would continue to experience the trauma and alienation of displacement. The practical decisions that most refugees are forced to take have enormous psychological implications. Should they leave their own country or remain and suffer from persecution, injustice and even torture? If they decide to leave, to which country should they go? If accepted, how should they begin to build a new life in exile? Should their children be encouraged to think of themselves as members of the host community? Should they return to their country of origin if political conditions permit? For the people who are confronted with such questions, the 'refugee dilemma' is not just of intellectual or even humanitarian interest – it is a question of survival.

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\* The issues raised in this section are examined more closely in 'The United Kingdom as a Country of Resettlement for Third World Refugees', by Clive Nettleton, *Refugee Report 1984*, British Refugee Council, 1984.

## APPENDIX I

### UNITED NATIONS REFUGEE ASSISTANCE STATISTICS

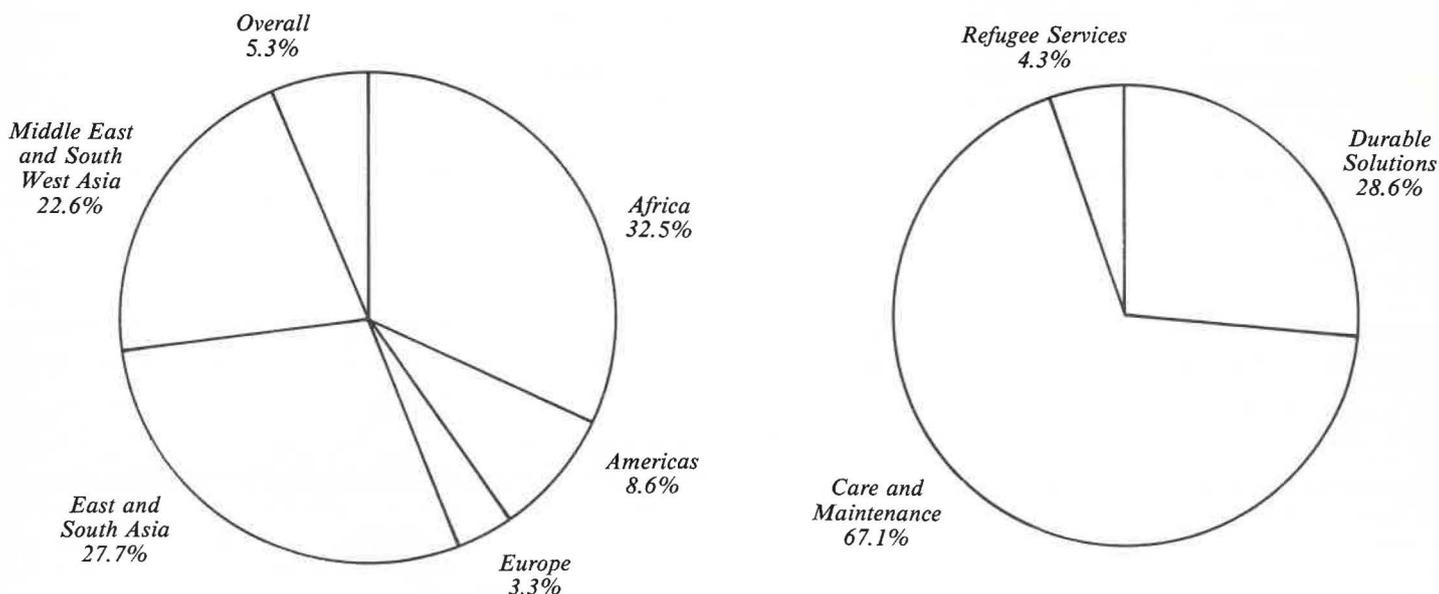
#### Major UNHCR Assistance Programmes, 1982

	(\$US)
Pakistan	93,978,000
Thailand	39,918,000
Somalia	32,340,000
Sudan	26,846,000
Zaire	16,395,000
China	11,269,000
Philippines	11,026,000
Cyprus	9,759,000
Malaysia	9,265,000
Indonesia	9,150,000

#### Major Contributors to UNHCR and UNRWA Programmes, 1982

	(\$US)	UNHCR	UNRWA	Total
USA	122,044,000	67,000,000	189,044,000	
Japan	46,267,000	11,468,000	57,735,000	
Sweden	14,390,000	10,413,000	24,803,000	
Germany (FR)	16,073,000	5,635,000	21,708,000	
Canada	14,825,000	6,487,000	21,312,000	
Norway	10,227,000	5,710,000	15,937,000	
UK	8,367,000	7,211,000	15,578,000	
Denmark	12,733,000	2,526,000	15,259,000	
Australia	13,853,000	902,000	14,755,000	
Netherlands	8,114,000	2,297,000	10,411,000	

#### Distribution of UNHCR 1982 Budget, by Region and Service\*



\* Total Budget: \$US371,576,000

#### Palestinian Refugees Registered with UNRWA, 1982

Lebanon	238,667
Syria	220,572
Jordan	506,200
West Bank	340,643
Gaza Strip	377,292
<b>Total</b>	<b>1,925,725</b>

#### Distribution of UNRWA 1982 Budget, by Service

	(\$US)
General Education	105,798,000
Basic Rations	35,434,000
Medical Services	15,521,000
Vocational & Professional Training	13,971,000
Supplementary Feeding	10,088,000
Sanitation	6,854,000
Hardship Assistance	4,552,000
Shelter	1,258,000
Common and Other Costs	40,050,000
<b>Total</b>	<b>\$ 233,526,000</b>

**APPENDIX II**  
**UNITED KINGDOM REFUGEE STATISTICS**

**Individual Asylum Applications in the UK, 1981-1983\***

	<i>total no. of asylum applications</i>	<i>no. granted asylum or refugee status</i>	<i>no. refused</i>
<b>1981</b>			
Europe	289	65	165
Africa	481	163	100
Middle East	1951	1333	398
Asia	125	40	77
Latin America	56	36	24
<b>Total</b>	<b>2902</b>	<b>1637</b>	<b>764</b>
<b>1982</b>			
Europe	697	79	221
Africa	830	246	181
Middle East	2531	1904	757
Asia	77	24	61
Latin America	34	8	14
<b>Total</b>	<b>4169</b>	<b>2241</b>	<b>1234</b>
<b>1983</b>			
Europe	215	24	337
Africa	1086	439	769
Middle East	1906	794	729
Asia	294	30	68
Latin America	61	20	33
<b>Total</b>	<b>3562</b>	<b>1407</b>	<b>1936</b>

\* Many of the applications on which decisions are made are held over from previous years. Some asylum-seekers whose applications are refused are allowed to remain in the country under the Immigration Rules.

**Resettlement of Indo-Chinese Refugees in the UK, 1975-1984**

	1975-9	1980	1981	1982	1983	Total
Vietnamese boat refugees	4,979	6,653	2,352	369	314	14,667
Vietnamese land refugees	164	11	7	—	3	185
Kampuchean	—	102	100	27	25	254
Laotians	—	44	24	3	22	93
Vietnamese orderly departures	44	77	394	200	844	1,559
<b>Total</b>	<b>5,187</b>	<b>6,887</b>	<b>2,877</b>	<b>599</b>	<b>1,208</b>	<b>16,758</b>

**Britain's Refugee Population**

<i>Nationality</i>	<i>Number*</i>	<i>Date of Entry</i>
Poles	200,000	1935-50
East Europeans	50,000	1935-50
Hungarians	15,000	1956
Czechs	5,000	1968
Chileans	3,000	1973-9
Indo-Chinese	17,000	1975-84
Iranians †	25,000	1979-84
Poles †	1,200	1981

\* All figures are approximate

† Many of this number have not been formally granted refugee status

**Individual Asylum Applications in the UK, 1981-1983**  
**Major Countries of Origin**

1981		1982		1983	
Iran	1589	Iran	2211	Iran	1669
Iraq	196	Poland	513	Ghana	554
Uganda	141	Ghana	385	Iraq	194
Poland	110	Iraq	236	Uganda	164
Ethiopia	100	Uganda	160	Poland	122
Pakistan	94	Ethiopia	73	Ethiopia	118
Afghanistan	91	South Africa	58	South Africa	63
Czechoslovakia	76	Czechoslovakia	57	Somalia	42
South Africa	72	Pakistan	56	Pakistan	29
Hungary	53	Libya	47	Sudan	29

## APPENDIX III

### A Comparative Evaluation of the Refugee Status Determination Systems of Ten Countries

<i>Stage or Component of the Process</i>	<i>At the Border</i>	<i>Initial Interview</i>	<i>Decision-Maker</i>	<i>Information Sources</i>	<i>Review</i>	<i>Role of UNHCR</i>
Countries with generally commendable practices		France	Italy France	Federal Republic of Germany*	France	Australia Canada Italy France
Countries with practices in significant need of improvement	Italy Sweden Switzerland United States	Australia Canada Sweden Switzerland United Kingdom United States	Australia Canada Federal Republic of Germany Sweden Switzerland United Kingdom United States	Federal Republic of Germany France Italy Sweden Switzerland Switzerland United Kingdom United States	Australia Belgium Canada Italy Sweden Switzerland United Kingdom United States	Federal Republic of Germany Sweden Switzerland United Kingdom United States

\* The information sources component of the FRG is evaluated as in need of significant improvement due to the general inadequacy of information sources throughout the system. The FRG system is rated as generally commendable due to exceptions such as the ZDWF and the Wiesbaden Administrative Court documentation centers.

From: Avery, C.L., *Refugee Status Decision-Making: The Systems of Ten Countries*, Stanford Journal of International Law, Vol 19, Issue 2, Summer 1983.

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Many of the **Minority Rights Group** Reports listed on the inside back cover of this report examine the plight of particular groups of refugees and displaced people. See especially No. 5 (*Eritrea and Tigray*); No. 11 (*Biharis in Bangladesh*); No. 19 (*Namibians*); No. 23 (*Kurds*); No. 24 (*Palestinians*); No. 29 (*Jehovah's Witnesses in Africa*); No. 30 (*Cyprus*); No. 40 (*The Western Saharans*); No. 51 (*Baha'is of Iran*); No. 52 (*Haitian Refugees in the US*); No. 61 (*Lebanon*); No. 62 (*Central America's Indians*); No. 66 (*Uganda and Sudan*).

The Office of the **United Nations High Commissioner for Refugees** publishes a large amount of written and audio-visual information concerning refugees. Its monthly magazine, *Refugees*, is available free of charge to subscribers. Contact UNHCR, Palais des Nations, 1211 Geneva 10, Switzerland. UNHCR also has local offices throughout the world.

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