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**Dealt with on their Merits? The Treatment of Asylum Seekers in the UK
and France**

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by

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ABSTRACT

This study examines the treatment of asylum seekers in the UK and France. The need for such a study arises from the apparent contradiction between, on the one hand, the commitment of EU states to give protection to people fleeing persecution (they are all signatories to the 1951 Refugee Convention) and, on the other, the increasingly restrictive policies on asylum adopted by those same states. In order to understand asylum-seeker perspectives I interviewed asylum seekers in the UK, though not in France due to my increasing deafness, and I interviewed stakeholders in both countries who could give me both official and asylum-seeker perspectives. Documentation was provided by asylum seekers and their supporters, NGOs in the field and government sources. I find that the restrictive agenda of the two states has undermined their commitment to the Refugee Convention as they place asylum policy in the context of immigration controls rather than of protection. Consequently, in both countries a discourse develops, laws are made and practices arise which undermine the right to asylum and deny protection to many who need it.

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In France, Véronique Njo, who had worked for the official asylum agency OFPRA, introduced me to two people at opposite ends of the asylum spectrum: François Brun, a supporter of the sans-papiers, and Philippe Bolmin, an official of the Appeals Commission for Refugees. Both agreed to be interviewed and both kept in touch, giving helpful information and advice, as well as voicing their opinions, by email.

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The responsibility for what follows, however, is mine alone.

ABBREVIATIONS

Abbreviations used in the UK

AIT: Asylum and Immigration Tribunal

API: Asylum Policy Instructions

ASU: Asylum Screening Unit

BIA: Border and Immigration Agency (part of the Home Office)

BID: Bail for Immigration Detainees

CIPU: Country Information and Policy Unit

CRE: Commission for Racial Equality

ECHR: European Convention on Human Rights

ECRE: European Council on Refugees and Exiles

HOPO: Home Office Presenting Officer
(appearing before a tribunal)

IAP: Inter-Agency Partnership

IAS: Immigration Advisory Service

IAT: Immigration and Appeals Tribunal
(predecessor of the AIT)

ICAR: Information Centre about Asylum Seekers
and Refugees

ICESCR: International Covenant on Economic,
Social and Cultural Rights

ILPA: Immigration Law Practitioners'
Association

IMF: International Monetary Fund

IMIK: Islamic Party in Iraq

IND: Immigration and Nationality Directorate
(predecessor of the BIA in the Home Office)

IOM: International Organization for Migration

IPPR: Institute for Public Policy Research

IRC: Immigration Removal Centre

IRO: International Refugee Organization

IWCP: Iraqi Workers' Communist Party

KDP: Democratic Party of Kurdistan

LDSG: London Detainee Support Group

LSC: Legal Services Commission

MSF: Médecins sans Frontières

NAM: New Asylum Model

NASS: National Asylum Support Service

NCADC: National Coalition of Anti-Deportation
Campaigns

NGO: Non-Governmental Organisation

PAIH: Positive Action in Housing

PUK: Patriotic Union of Kurdistan

RDS: Research Development and Statistics
(section of the Home Office)

SEF: Statement of Evidence Form

UNHCR: United Nations High Commissioner for
Refugees

WB: World Bank

Abbreviations used in France

ANAFÉ: Association Nationale d'Assistance aux Frontières pour les Étrangers

APRF: Arrêté Préfectoral de Reconduite à la Frontière (deportation order)

APS: Autorisation Provisoire de Séjour (temporary residence pass)

ARV: Aide au Retour Volontaire (voluntary return scheme)

ATA: Allocation Temporaire d'Attente (temporary state benefit)

CADA: Centre d'Accueil des Demandeurs d'Asile (accommodation centre)

CESEDA: Code de l'Entrée et du Séjour des Étrangers et du Droit d'Asile (the law relating to immigration and asylum)

CFDA: Coordination Française pour le Droit d'Asile (French NGO)

CFDT: Confédération Française Démocratique du Travail (trade union close to the PS)

CGT: Confédération Générale du Travail (trade union affiliated to the PCF)

CNCDH: Commission Nationale Consultative des Droits de l'Homme

CNDA: Cour Nationale du Droit d'Asile (previously CRR)

CRA: Centre de Rétention Administrative (detention centre)

CRR: Commission des Recours des Réfugiés (now CNDA)

DOM-TOM: Départements d'Outre Mer-Territoires d'Outre Mer

FN: Front National (racist, far-right political party)

LICRA: Ligue Internationale Contre le Racisme et l'Antisémitisme

MRAP: Mouvement contre le Racisme, l'Antisémitisme et pour la Paix

OFPRA: Office Français de Protection des Réfugiés et Apatrides (the agency dealing with asylum applications)

ONI: Office National d'Immigration

PAF: Police aux Frontières

PCF: Parti Communiste de France

PS: Parti Socialiste

RPR: Rassemblement Pour la République (political party of the right)

SONACOTRA: Société Nationale de Construction pour les Travailleurs

UDF: Union pour la Démocratie Française (political party of the right)

UDR: Union des Démocrates pour la République (political party of the right)

INTRODUCTION

Protection or exclusion?

I identify the problem to be addressed in this research in the following terms. The asylum policies of European Union (EU) states have become increasingly restrictive over the past two decades and those states justify their restrictive policies on a number of grounds, including alleged abuse of the asylum system by those seeking to circumvent legal immigration controls, the perceived need to limit numbers on economic grounds, fears that social cohesion may be threatened, that the state's resources will be drained, and the need to defend the country from terrorists. But the same states also claim to take seriously their obligations under the Refugee Convention and other international instruments, including the European Convention on Human Rights. I want to know, therefore, whether the asylum policies and practices of two EU states (the UK and France) enable them to fulfil their obligations, under the Refugee Convention, to protect victims of persecution and uphold the right to asylum, or whether those states undermine that right through an increasingly restrictive agenda which prioritises immigration control over protection. It seemed important to look at individual states, for EU policy reflects the interests and preoccupations of its member states and I chose two of them. I chose the UK and France because I am familiar with both of them: I was born in the UK and have a good knowledge of UK politics and society; I lived in Paris from 1990 to 1995 and understand something of France from that experience. I also chose France because, while it is broadly similar to the UK, it has a different approach to questions of immigration, ethnic minorities, integration and citizenship, and I wondered if that might lead to different outcomes in asylum policy.

In terms of broad similarities, both countries are relatively stable liberal democracies; both were early industrialisers and have similar economic systems and socio-occupational structures; both had large empires and lost them in the years following the Second World War; both were countries of immigration after the war because of their need for labour in the task of post-war reconstruction and both received immigrants from their colonies and former colonies. Moreover, their colonial histories were likely to be factors in their response both to the early post-war immigrants and to the later asylum-seeker arrivals.

The differences between the two countries on questions of immigration are that the UK has adopted a multicultural approach which recognises ethnic minorities within society and seeks to manage them through race-relations policies and legislation; the French reject race and ethnicity as categories of identification and the aim of the state is rather to assimilate immigrants into French society and culture – in the words of Noiriel, to turn “immigrants into Frenchmen [sic]” (1996:xxviii). At the outset I wondered whether one approach might better enable fulfilment of Refugee Convention obligations than the other. Ultimately I found outcomes in both countries to be similar. Their common experience of empire had engendered a discourse which resulted in racist immigration controls and discrimination in both countries in the decades following the Second World War. The details of how that has happened in each country are different (chapters 2 and 3) but the end product remains. In the years when asylum became an issue, the perceptions which created “Fortress Europe” (1.7) helped to keep such a discourse alive and update it. So a narrative quickly developed about asylum seekers which categorised them as economic migrants in disguise (4.2, 4.5, 5.3.1) and therefore a “security problem” for EU states (1.7). Hence the restrictive agenda and prohibitive asylum procedures examined in this study.

The examination of the two systems rests on a critical review of academic and policy literature, as well as original empirical research. The latter consisted of in-depth, qualitative and transcribed interviews with refugees in the UK and relevant stakeholders in both countries. My original intention to interview refugees in France foundered on my increasing deafness, which made conducting interviews with French respondents too difficult. Thus, although I interviewed three French stakeholders, my account of the French system lacks the testimony of refugee participants which is part of my account of the UK system. Nevertheless, I believe I provide enough evidence of how the French system works to make the account worthwhile.

Structure of the thesis

I start with an overview of the history of refugee protection in the modern world. Then, after looking at policy on immigration and race in each country since the Second World War (chapters 2-3), I examine each system in its national context (chapter 4), seeking to show how asylum seekers are treated, and what it is like to negotiate the asylum process, in each country (chapters 5-9). I look at procedures and practices, from the original application for asylum through to the asylum interview and the decision-making process,

and on to rights of appeal and the final stage (for refused asylum seekers) of detention and deportation. I also look at issues of accommodation and support during the process and legal representation. In chapter 10 I review the evidence for the restrictive agenda, discuss whether there is any justification for it and suggest the broad lines of an alternative.

CHAPTER 1

REFUGEE PROTECTION IN THE MODERN WORLD

1.1 Introduction

In this chapter I provide some background to the issue of refugees, with particular reference to the current sense of crisis on the question in the states of the European Union. I emphasise the fact that refugees are not voluntary migrants but are forced to flee their own countries (1.3). I outline the history of refugee protection from the early twentieth century through to the end of the Second World War and the experience of the Cold War (1.4), and then describe the increase in refugee numbers following the collapse of the Soviet and East European regimes. I then discuss how debt and the imposition of structural adjustment programmes affected the Third World and helped to increase the flow of refugees (1.5). I show how the EU states saw increasing refugee flows as a crisis for themselves and began to construct Fortress Europe. I discuss the Refugee Convention and its interpretation by the office of the United Nations High Commissioner for Refugees (UNHCR) (1.10.1-1.10.2), as well as the standards set up by the EU for the treatment of refugees (1.10.3). Finally I briefly indicate some of the contradictions present in the asylum policies of the UK and France (1.11). I begin, however, with the words of refugees themselves as they describe their experience of fleeing their home countries to find shelter elsewhere.

1.2 Refugee voices

When I was about the age of seven, it was either grow up fast or die fast. Growing up fast is realising there's no time for playing ... If I would act childish and went playing outside then you could have two sisters and one brother dead ... you see little kids outside playing around and getting shot ... We moved out at night. There were guys waiting for you right outside the door. So we moved out at twelve o'clock at night when everybody's sleeping and it's quiet. Loaded up, us and a couple of other families who wanted to move. There was nothing we could talk about. We were all afraid, all quiet. We just kept clothes and food. So we just left the house almost full. – Muhiddin Abu, Somalia

My house in Somalia ... well, it was right in the centre where everything was happening ... one time we were eating dinner ... it was just really calm, my Mom is telling a story ... and out of nowhere this bullet comes like, flying by, and scrapes my sister's hand, you can still kinda see the scar there. – Naima Margan, Somalia

The military attacked our village at night. We were all sleeping. Suddenly there was the sound of gunfire and I ran outside. My parents were not around. Many people were killed in front of me. I ran away ... and joined a group of people that were fleeing ... In the group I saw my uncle ... I asked him if he knew where my parents were, but he said don't worry about your parents, we'll find them, but right now we need to find a safe place. I didn't know if my parents were alive or dead. I just thought at least I was safe with my uncle. – John Makol, Sudan¹

Sometimes the special units disguise themselves as guerrillas and speak to us in Kurdish. But we aren't fooled. My friend replied in Turkish. They may kill you and say you were a terrorist, or they kill you and say the terrorists did it. Either way, they kill you. You can't win. – Rêso, a Kurd from Turkey²

These refugee voices represent the flesh and blood behind the statistics provided on refugees by governments, international organisations and other agencies across the world. According to the 1951 Refugee Convention (the primary international benchmark for the treatment of refugees), a refugee is someone who,

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, or 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 (*Convention & Protocol* 1996:16).

But the mandate of the United Nations High Commissioner for Refugees (UNHCR) includes “asylum seekers, refugees, internally displaced people, returned refugees, and stateless persons”; thus, at the beginning of 2004, there were 17,084,100 people “of concern” to UNHCR (*Refugees by Numbers* 2004:1, 2).

¹ All the above quotations available at <http://www.beyondthefire.net>

² Author interview, cited in Mouncer (2000), p. 37.

1.3 Forced to flee

Asylum seekers and refugees are not voluntary migrants but have been forced to flee. It takes a lot to make people leave their homes, and most, even under severe pressure, do not do so. Amongst the poor – a category of people usually thought most likely to become immigrants into Europe – “the overwhelming majority stay at home” (Harris 2000). Most people who move either do so within their own country (becoming, in legal terms, internally displaced persons) or, if they do cross borders (thus becoming refugees), stay in the same region. Their attachment to home, the costs of travel, the demands of family and, often, a political commitment to change in their country all prevent further movement and, having reached a place of safety, they may immediately start planning to return. Indeed, such planning

can start even before they have abandoned their homes. In Rwanda, for example, it is reported that many refugees buried tools in the ground and hid their supply of seeds when they left for Tanzania and Zaire, so that they would have access to some basic agricultural inputs if they were able to repatriate in the near future (UNHCR 1997:150).

Only a minority cross continents or reach the wealthy developed countries of Western Europe.

In 1999, “[c]onflict and systematic human rights violations were the root cause of most displacements” (Loescher 2001:3). In 2001, the *British Medical Journal* listed some of the experiences likely to have been endured by those who had managed to reach the UK and apply for asylum. They included (Burnett & Peel 2001: 486):

... massacres and threats of massacres, detention, beatings and torture, rape and sexual assault, and witnessing death squads and torture of others; being held under siege, destruction of homes and property and forcible eviction, disappearances of family members or friends; being held as hostages or human shields; and landmine injuries.

Abdul Rashid, a 17-year-old asylum seeker from Afghanistan, described his experience (Oxfam 2000):

My father [had] a tobacco shop. At one o'clock he came back from the shop to have a meal with my mother and my sister. I was at school but I could hear all the fighting. At two o'clock I came home and saw what had happened. My whole street had been destroyed. There was nothing left. No father, no mother. My home was finished. When I saw this I fell to the ground. I was in hospital for one month. I couldn't speak at all – I couldn't even make a sound. After one month I started to speak again, very, very slowly. It is still difficult for me to speak.

Yet in the current climate of opinion in Western Europe, the forced nature of refugees' migration is hardly taken seriously. The more or less steady growth in numbers of refugees worldwide in recent years has created a sense of crisis and led to restrictive policies towards refugees both at EU level and at the level of individual states. Such policies seem to conflict with the principles of the Refugee Convention.

1.4 Refugee protection to the end of the Cold War

The Refugee Convention is based on “the principle that human beings shall enjoy fundamental rights and freedoms without discrimination” (*Convention & Protocol* 1996:15). We are not intended to take this as mere rhetoric, for the preamble to the Convention appeals to two foundation documents of the post Second World War world as authorities: the United Nations (UN) Charter and the 1948 Universal Declaration of Human Rights. These rights include the right to life, liberty and security of the person; the right not to be subjected to torture or cruel, inhuman or degrading treatment or to arbitrary arrest; and the right to seek and enjoy asylum in other countries. All these rights are universal – they come bearing no distinction due to race, colour, gender, language, religion or opinion, and no distinction based on country of origin. Moreover, the Convention arose out of the UN's “profound concern for refugees” and its desire to achieve “the widest possible exercise of these fundamental rights and freedoms” by refugees (*ibid.*). The Convention's principles are supported and reinforced by the EU, which in turn sets its own standards: the Tampere European Council 1999 reaffirmed the EU's “absolute respect of the right to seek asylum”, the importance of “ensuring that nobody is sent back to persecution”, and aimed at minimum standards for refugee reception and protection (Tampere 1999, para. 13).

The Refugee Convention was born halfway through a century which had already seen a number of refugee crises. Refugee numbers rose in the years following the First World War and by 1926 Europe had 9.5 million refugees, most coming from Russia in the wake of the 1917 revolutions, the subsequent civil war and the rise of Stalinism, and many coming from Italy after the fascist takeover in 1922. Fear in face of these numbers “contributed to a rush to erect protective barriers”, but it was also increasingly clear that “there were special international migrants who urgently needed protection and assistance” (Zolberg et al.1989:18). In 1921 the League of Nations established the post of “High Commissioner on Behalf of the League in Connection with the Problems of Russian Refugees in Europe”. It was seen as a temporary post. But the High Commissioner’s office could not confine itself to the Russians and, as authoritarian nationalism grew in an increasingly unstable Europe and the Great Depression of 1929 began to bite, refugee assistance began to look like a permanent feature of the international landscape.

After the Nazis came to power in Germany in 1933, a steady stream of mainly Jewish refugees fled Germany and the countries under its occupation. During the Second World War it is estimated that some 30 million Europeans were displaced. At the end of the war, “eleven million survivors were outside their country and in need of assistance” (ibid.:21), and this in a Europe marked by hunger, starvation and disease. On 26 January 1946, *The Economist* predicted that “the poor urban populations of Europe ... are all condemned to go hungry this winter” (cited Armstrong et al. 1984:22). The article quoted the prediction of the Director-General of the UN Relief and Rehabilitation Administration that, in Warsaw alone, “ten thousand people will die of starvation”. In Hungary, he said, “deaths from famine may reach a million”; in Austria “in some towns ... there is already starvation”. The article identified other “plague spots” – “Northern Italy, the Ruhr, Berlin and most large towns in Germany”. This “bare recital”, *The Economist* warned, did not cover “those grisly companions of starvation – tuberculosis, dysentery, typhoid and typhus, rickets – nor the appalling figures for maternal and infant mortality.”

Nevertheless, by means of various ad hoc measures, and with the experience of “relief and refugee” administrations set up during the war, the refugees began to be settled. In 1946 the International Refugee Organization (IRO) was established to deal with “the last million” (Zolberg et al. 1989:22). Again, its existence was seen as temporary.

But as the IRO’s task neared completion it became clear that the issue of refugees would not go away. The Cold War between the Communist East and the capitalist West made

Europe a major theatre in that war, with refugee flows moving from East to West. So when UNHCR replaced the IRO in 1949 its focus, like its predecessor's, was on Europe, and the Refugee Convention was created under its auspices in 1951. During this period, Western Europe seemed to have no problem in accepting refugees. "In the receiving countries of the West", notes UNHCR, "anyone arriving from the Soviet Union or one of its allies was automatically granted some form of asylum; no detailed scrutiny of their reasons for leaving was felt necessary" (UNHCR 1993:8-9). The reason was simple: refugees had become

important symbols in the ideological rivalry of the Cold War. "Escapees" who crossed over to the West "voted with their feet" and represented a significant political and ideological asset for the West (Loescher 2001:7).

But things would change. In the short term it became clear that the primary focus on Europe could not be maintained for long. The decisive shift came with UNHCR's decision to give assistance to Tunisia and Morocco as they coped with refugee flows from Algeria during that country's war of independence with France (1954-62). With this decision behind it, the organisation's focus moved increasingly towards the Third World, where "[v]iolent decolonization, as well as post-independence civil strife and warfare in Africa, generated vast numbers of refugees" (Loescher 2001:9). As the Cold War itself spread to the Third World, with East and West vying for influence among the newly independent countries, "by the 1980s virtually all of the UNHCR's activity occurred in the developing world" (ibid.:10).

1.5 Refugee protection after the Cold War

In the longer term the Cold War would come to an end – but refugee flows did not. The overthrow of the East European Communist regimes and the collapse of the Soviet Union created fears in Western Europe of an influx of immigrants from the East. The economic crises arising from the Soviet Union's collapse led to the creation of 1.2m refugees and internally displaced persons (Hayden 1998:165); the break-up of Yugoslavia led to war and ethnic cleansing from Croatia to Kosovo and, between 1992 and 1995, 2.7m people were displaced as a result of the war in Bosnia-Herzegovina (Stubbs 1998:192). But the increase

in refugee numbers was not confined to these areas. In 1999 the *World Refugee Survey* counted 35 million displaced people worldwide (cited Loescher 2001:3).

Much of the increase during this period was due to the collapse of regimes which had been supported by one or other side during the Cold War and which were now cynically abandoned, leading to the “international marginalization of previously strategic areas in the developing world” (Suhrke 1997:232). But the real problems for the Third World originated even earlier than this – and the Western states were deeply implicated in their genesis. For the high levels of lending to the Third World by the developed countries in the mid 1970s stopped when the recession of that decade began to bite, leaving Third World countries with a debt crisis. By the 1980s, intervention by the International Monetary Fund (IMF) and the World Bank (WB) was seen as a solution. But Hewitt argues that such interventions “appear to have hindered rather than helped the situation” (Hewitt 1996:233). According to the South Commission,³ the stabilisation and structural adjustment programmes imposed by these institutions had the aim of achieving “a quick, short-term improvement in the balance of payments” (cited *ibid.*:234) and the primary concern was to safeguard the interests of international commercial banks. But, the Commission argued, the programmes “did not provide for sufficient external financial support to permit adjustment to occur and endure” and they were “generally shaped by a doctrinaire belief in the efficacy of market forces and monetarist policies” (cited *ibid.*). This last marked a shift from the Keynesian economic perspectives of high government spending and state intervention to a neoliberal approach which reduced the role of the state, controlled the money supply and relied on the market to allocate resources. Thus, within this context, structural adjustment meant “cuts in public spending and changes in relative prices [which] had devastating effects on vital public services like health and education, with especially harmful consequences for the most vulnerable social groups” (cited *ibid.*). Now the declining ability of states to provide subsistence and their increasingly repressive response to protest led to social disintegration, war and “wholesale escape abroad” – an increase in the flow of refugees (Zolberg et al. 1989:44).

³ The South Commission was established in 1987 in the wake of the non-aligned summit meeting of 1986. It consisted of prominent individuals from the Third World (the South), from different backgrounds and of different political persuasions. Its chair was former Tanzanian president Julius Nyerere. It was regarded as a moderate voice on Third World issues.

1.6 Crisis in the EU

Despite the involvement of the developed states and their institutions in creating these disasters, the EU states saw the situation primarily as a crisis for themselves rather than for the refugees. Their response was to seek ways of excluding refugees from their borders. The context for this is to be found in the EU integration project – “the inclusion of all the most wealthy capitalist nation states in a single European market” (Miles & Thränhardt 1995:5) and four factors which accompanied it. First, “[t]he fact that European integration was in full swing when the Cold War unexpectedly ended led to increased uncertainty as to the identity of Europe” (Delanty 1995:141), for the enemy against which Europe had defined itself for four decades had disappeared and a new definition was needed. Secondly, European business and European politicians were facing the realities of competition with an increasingly dominant US. Thirdly, they had to contend with “the emergence of the assertive capitalisms of East Asia” (Marfleet 1998:80). The rapidly developing economies of South Korea, Taiwan, Hong Kong and Singapore were hailed in the West as “miracles” of economic development. But although they were described as “tigers” by their admirers, they were also called “dragons” – a word containing undertones of apprehension on the part of those who faced their competition. Fourthly, the integration agenda was meeting opposition, which came both from the far right and from mainstream national politicians. The EU has always been an association of nation states and

the national ideologies of member states have long been premised upon ideas about the distinctiveness of each vis-a-vis “rival” European entities. Hence the EU has itself been a forum for competition between politicians of member states who wish to prove their vigour by championing specific national agendas around all manner of issues – exchange rates, agricultural quotas, fishing rights, commercial standards, military relations (Marfleet 2001:79).

Marfleet argues that the resulting cynicism and chaos have proved to be “fertile ground for the extreme right, which has viewed the Union as an arena for the assertion of popular national projects” (ibid.). Right-wing parties attempted to arouse popular hostility towards European national or regional groups which they claimed were privileged by the EU or parasitic upon it. “An integrated Europe”, notes Delanty (1995:142-3),

was commonly felt not to be a “unified” Europe simply because as a free-trading bloc it is too small to provide each of its member states with equal access to markets. An integrated Europe would inevitably benefit a privileged select group of states ... with high unemployment in greatly disadvantaged peripheries.

Mainstream national politicians were worried about the extent to which the far right were able to mobilise electorates around these ideas.

These questions were being raised at a time when “[s]ocial democratic parties were undergoing a rapid loss in electoral appeal, the conservative parties were finding it increasingly difficult to solve a major crisis in capitalism, unemployment was reaching an all-time high and recession had set in” (ibid.:141). The EU states’ response was to pursue a European identity with the potential to encourage racism. A crisis developed, involving economics, politics and issues of national identity. Marfleet argues that the need to legitimise the integration project led to “an urgent exploration of ‘Europeanness’ – of notions of Europe that can be a basis for identification with the EU” (2001:79-80). This would not mean a denial of national loyalties but “a pan-continental identity which can contain conflicting nationalisms” (ibid.:80). For Delanty, “Europe” then becomes a kind of metanarrative, “a transcendent point of unity beyond the nation state [with] the power of social integration” (1995:145). What, then, of immigrants, including asylum seekers, who come from outside the EU? We shall see how in the decades following the Second World War, both in the UK (chapter 2) and France (chapter 3), immigrants who came to work faced racism and discrimination. It seems that history is now repeating itself in the context of asylum, for what emerged from the search for European identity was Fortress Europe.

1.7 Fortress Europe

European integration is usually described in terms of free movement and open borders but integration is about exclusion as well as inclusion. Liberalisation allows citizens of the EU to move freely within its borders, and this is not seen as a threat to the security of the Union or any of its member states – on the contrary, it is essential to the EU’s free-market priorities. But people on the peripheries of the EU are indeed seen as threatening, and immigration to Europe, especially from the Third World, has thus become a “security problem” (Huysmans 1995:53). After 1989 and the collapse of the Communist regimes, there were worries about how to justify the continued role of the security agencies, so

crucial during the Cold War. Now, in the context of EU integration, their position seemed assured as Europe became preoccupied with immigration from beyond its borders (Geddes 2000:26). Harris (1995:85) highlighted the new insecurity felt by politicians and officials in the EU, noting that at one stage

upwards of a dozen intergovernmental bodies were examining the issues involved, and there were over one hundred ministerial and official meetings on the question [of immigration]. All this suggests a society so insecure, so vulnerable, that a handful of foreigners ... can overturn it.

Yet this perceived crisis in Europe was no crisis at all compared with that in the Third World. Castles and Miller (1998:91) spell out the facts: by 1995, there were 2.6 million refugees in the developed countries of Europe, N. America and Oceania. There were five million in Asia, 6.8 million in Africa:

Iran had 2.2 million refugees and Pakistan 1.1 million, mainly from Afghanistan. Some of the world's least developed areas had huge refugee populations: 1.7 million in Zaire, 88,300 in Tanzania, 727,000 in the Sudan and 553,000 in Guinea. It is still the poorer countries which bear the brunt of the world refugee crisis.

1.8 Stemming the flow

1.8.1 Schengen and Dublin

The EU states remained in crisis mode and continued to tighten restrictions on asylum seekers' entry. Much of this took place within the framework of the Schengen border system. The process which established the Schengen Convention had begun as early as 1985 but it was not fully achieved and implemented until 1996. It gave effect, on the one hand, to the abolition of the EU's internal border controls and, on the other, to the strengthening of its external borders, thus dealing with the "security problem". All the EU states signed up to it except Ireland, Denmark and the UK, the latter because it was even more hard line on border controls than its partners: it insisted on retaining its own controls over anybody travelling to Britain from within the EU. By 1999, however, having achieved an opt-out on this basis, the UK was participating fully in other Schengen activities, many of which show a preoccupation with areas of illegality: they include the Schengen

Information Service (SIS) (a computerised database through which information on prohibited immigrants, wanted persons and stolen vehicles is exchanged); sanctions against airlines, shipping companies, etc., carrying asylum seekers without travel documents; and analysis of intelligence on organised gangs of people smugglers. While these are legitimate concerns, their effect is to shift the focus of asylum policy away from the realities of forced migration on to lawbreaking and criminality. As Mitchell and Russell argue (1996:60-61), the SIS is one element in a package which will “enhance considerably the effectiveness of the policing of migrants and asylum seekers across Europe” and in the process be “liable to criminalise arbitrarily, without adequate means of defence, an increasing number of economic and political migrants”.

The 1990 Dublin Convention created another obstacle for asylum seekers: it specified that an asylum application must be made in the first EU country of arrival. If you apply in the UK, for example, but you have passed through France, you may be refused or sent back to France to be dealt with. It is no defence to explain that you were in the hands of a courier and had no control over your destination; that you have friends or relatives in the UK but do not know anybody in France; that you have some knowledge of English but not of French. Further, under the Dublin Convention, if your application is refused in one EU country it will automatically be refused in all others. This goes against the usual interpretation of the Refugee Convention, i.e. that it requires every signatory state to consider all applications for asylum made on its territory.

1.8.2 Visas

Visa requirements are used in an attempt to prevent migration at source. Hayter shows that, since the mid 1980s, it has been the practice of EU states to impose visas at times of refugee-producing emergencies in different parts of the world and thus avoid their obligations under the Refugee Convention. In 1985 the UK put visa restrictions on Sri Lankans after persecution of Tamils had intensified, Belgium imposed visas on the main refugee-producing countries in 1986, Sweden and Norway on Chileans in the late 1980s, and Denmark on Romanians in 1989, the year that the UK did the same to Turkish nationals after a particularly virulent round in the Turkish government’s persecution of the Kurds resulted in an increase in asylum claims. In 1991 France imposed transit visas on eleven refugee-producing countries: not only could people from these countries not disembark in France, they could not even pass through as transit passengers without visas.

In 1994, when refugee numbers from Sierra Leone and Côte d'Ivoire were increasing, the UK imposed visas – and did the same to Colombia in 1997. In March 1998, when 56 Kosovans had claimed asylum at Heathrow airport after landing as transit passengers, the UK invented a new kind of transit visa, the direct airport transit visa (DATV), to prevent such claims being made. DATVs were subsequently “applied to 14 other countries, including Turkey, Iran, Iraq, Somalia, Sri Lanka and Ethiopia” (Hayter 2000:75).

1.8.3 Casting doubt and policing abroad

Outside this legal framework, the EU states have used two main procedures in order to keep people out. First, they routinely cast doubt on asylum seekers' accounts of their experiences. This passage from a UK Home Office letter (cited Asylum Aid 1999:1), rejecting an asylum seeker's application, is an example of the practice:

You state that the men drove you to a place one and a half hours away and told you to run before they opened fire on you. The Secretary of State ... considers that if the men had intended to kill you they would have done so straight away rather than give you a chance to escape.

Secondly, the EU states try to prevent people fleeing persecution in the first place by sending airline liaison officers not only to transit countries, where refugees in flight often stop before moving on, but also to refugee-producing countries themselves. They turn away people who have no documents and those whose documents they decide are false (Hayter 2000:85, 98). Such collaboration with oppressive regimes in the persecution of their people undermines the right to asylum.

1.9 Anti-terrorism legislation

The attacks on the World Trade Center and the Pentagon on 11 September 2001 led to security becoming an even higher priority in the US and Europe and impacted on all migrants, including asylum seekers. New legislation was enacted in several European countries, with worrying consequences for civil liberties and the right to asylum. The UK government enacted the Anti-Terrorism, Crime and Security Act 2001 but found itself in trouble in 2004 when

the House of Lords declared the indefinite detention without charge of foreigners suspected of involvement in international terrorism under powers requiring a derogation from [the European Convention on Human Rights] to be discriminatory and disproportionate in nature and incompatible with the rights guaranteed by the Convention (Gil-Robles 2005:6).

The government allowed the relevant provisions to expire and did not renew them. However, the Prevention of Terrorism Act 2005 also generated concerns. Ben Ward of Human Rights Watch argued: “First we had indefinite detention, now we have curfews and tagging – but still without trial. That hardly counts as progress. The government refuses to acknowledge a basic truth: punishment without trial is unacceptable, no matter what” (*Human Rights News*, 16 March 2005).

1.10 Standards and human rights

Where does this leave the Refugee Convention, the Universal Declaration of Human Rights and other international standards relating to the treatment of refugees? Most states argue that restrictive laws and procedures are necessary in order to exclude “unsubstantiated” claims and identify terrorist suspects and that their obligations under the Convention are fulfilled in the protection of “genuine” refugees. This may not breach the Convention. But we shall see that the restrictive asylum regimes in the UK and France undermine, rather than guarantee, the right to asylum.

1.10.1 Interpreting the Convention

Questions also arise about the Refugee Convention itself. For although, in principle, it seems to establish the primacy of refugee protection, in its detail and in practice it has proved to be ambiguous and open to a variety of interpretations. So although UNHCR “advocates that governments adopt a rapid, flexible and liberal process” when dealing with asylum applicants because it recognises “how difficult it often is to document persecution” (UNHCR 2003:2), its interpretation of the Convention contradicts this stance. In its definition of a refugee, the Convention’s reference to persecution “for reasons of race, religion, nationality, membership of a particular social group or political opinion” (*Convention & Protocol* 1996:16) suggests the possibility of group persecution and a

collective refugee experience. But, when interpreted by UNHCR, the definition turns out to be based on a concept of persecution in which the burden of proof falls on the individual asylum seeker. Thus people “who apply for refugee status normally need to establish individually that their fear of persecution is well-founded” (UNHCR 2003:3), i.e. they must provide evidence that it is not just their social group, members of their political party or people who share their religion or ethnicity who are in danger but themselves as individuals. A “flexible and liberal process” becomes less likely as governments demand this rigorous standard of proof.

Discussions about whether to adopt a collective or an individual definition of persecution had taken place before the Convention was drafted. Even before the IRO had been set up concerns were expressed that a broad or collective definition would end up “multiplying the number of refugees *ad infinitum*” (Vernant 1953:6-7). State officials at the time were resisting Sir John Hope Simpson’s 1939 definition of a refugee as someone who “has left his former territory because of political events there ...” (cited, Zolberg et al. 1992:21). This remained a live issue: the author of a UNHCR-sponsored study in 1953 pointed out that “the mere fact that a man has left his country solely because political events there were not to his liking does not suffice to confer on him the status of refugee” (Vernant 1953:6). The solution was to stipulate “persecution” as the key criterion and put the burden of proof on the shoulders of the asylum seeker: “the political events which in the country of origin led to his departure must be accompanied by persecution or the threat of persecution against himself or at least against a section of the population with which he identifies himself” (ibid.:7). In the end, the Refugee Convention, as interpreted by UNHCR, put the burden of proof on the individual asylum seeker.

1.10.2 UNHCR

Ambiguities between text and interpretation should not come as a surprise: UNHCR is the creation of the UN member states and continually finds itself under pressure from these states, especially the most powerful and the largest donors. Loescher reminds us that there has “hardly ever been a time in the UNHCR’s history when governments’ foreign policies or strategic interests did not affect their stance towards the Office [of the High Commissioner]” (2001:6). During the Cold War, “American leaders considered refugee policy too important to permit the United Nations to control it” (ibid.:7). Today’s pressures are different, but they are just as strong. During the last decade and a half, under pressure

from states, UNHCR has shifted its attention from local integration projects, educational programmes and the promotion of refugee participation to an emphasis on repatriation as the preferred solution to the refugee problem. It does, of course, say that repatriation should be “wholly voluntary”, that it should take place “in conditions of safety and dignity” and that UNHCR is against “repatriation under duress” (UNHCR 1997:147). Nevertheless “governments everywhere were also becoming more restrictionist and were exerting pressure on the UNHCR to encourage and promote the return of refugees to their home countries as quickly as possible” (Loescher 2001:17). This pressure was successful. Loescher cites the return of refugees from Bangladesh to Burma, and from Tanzania and former Zaire to Rwanda and Burundi, as “illustrations of situations in which the UNHCR cooperated with host governments to return refugees home before conditions had become safe” (ibid.:17). UNHCR cooperation with the UK government in the repatriation of Albanian Kosovans after the 1999 Kosovo war is another example. The repatriation was against the advice of all the relief agencies in the area, a House of Commons committee and the Refugee Council in the UK (Mouncer 2000:58).

The evidence is that, although UNHCR has managed, at different times in its history, to achieve some autonomy, it has little political authority of its own. But, as Loescher points out, it does have “considerable moral authority and legitimacy” and there is “no other UN agency where values and principled ideas are so central to the mandate and *raison d’être* of the institution or where some committed staff members are willing to place their lives in danger to defend the proposition that persecuted individuals need protection” (2001:1). In other words, they are seriously committed to the human rights principles referred to in the preamble to the Convention.

1.10.3 EU standards

There are also questions to be raised about EU standards. The 1999 European summit of heads of state or government at Tampere, Finland, set out a framework for EU policies and legislation on asylum and immigration in the light of the Amsterdam Treaty, which came into force the same year. The Treaty established the need to have binding minimum rules in these areas and Tampere promised much and was seen by the European Council on

Refugees and Exiles (ECRE⁴) as “an important watershed” in refugee protection (ECRE 2004:7). The Tampere Presidency Conclusions affirmed (Tampere 1999):

- the “absolute respect of the right to seek asylum” (para 13)
- the need to ensure that nobody is sent back to persecution (para 13)
- the need for “a more vigorous integration policy” (para 12)
- the EU’s commitment to “an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity” (para 4).

But the first phase of negotiations on the Tampere principles (the five years to 2004) was seen by ECRE as disappointing. It described the intergovernmental negotiations of these years as driven not by the spirit of Tampere but “by most European governments’ aim to keep the number of asylum seekers arriving as low as possible and by their concerns to tackle the perceived abuses of their asylum systems” (ECRE 2004:3). The emphasis on the need to combat illegal immigration has been “to the detriment of ... adequate safeguards for refugee protection”, to the point that “the act of seeking asylum in Europe has effectively been criminalised” (ibid.:4). ECRE tries to be positive: “Recognition of the 1951 Refugee Convention within EU legislation as the standard of reference reaffirms its continuing relevance as the instrument of refugee protection”; the fact that all EU states are required to grant asylum to those who qualify under the Convention and to grant subsidiary protection to others is also positive, as is the recognition that non-state actors may also be agents of persecution. But for ECRE the record of this first phase of negotiations is almost unrelieved bad news, since “[t]he ‘absolute respect of the right to seek asylum’ ... has been totally undermined” (ibid.). After five years, access to fair and efficient asylum procedures across Europe was not guaranteed, since member states had given themselves rights of derogation from the very few safeguards that had actually been agreed. Integration was often undermined by denial of financial and other support and by the fact that people with subsidiary protection had fewer rights than those with full refugee status. ECRE concluded that “the last five years represent a missed opportunity to focus on the protection and

⁴ ECRE is a network of refugee-assisting non-governmental organisations. Its aim is to promote the protection and integration of refugees in Europe.

integration of refugees rather than deterrence, and to set standards in line with international refugee and human rights law” (ibid.:3). In the negotiations, the EU member states

pursued their narrow national agendas at great cost to refugees and to the building of a fair and efficient European protection system. This took place in a generally deteriorating public climate of growing hostility towards asylum seekers and refugees, and widespread irresponsible media reporting compounded by a lack of political leadership at national level (ibid.:3).

ECRE thus reminded governments of the principles they had signed up to but found easy to forget.

1.11 Contradictions

At a time when the UK and France were both claiming success for their different approaches, their responses to Europe’s “asylum crisis” negated such claims. A new generation of immigrants was arriving and was being met with hostility, discrimination and racist stereotyping. In the UK, there was self-congratulation after the Macpherson Report on the Stephen Lawrence case (2.16) led to the government’s undertaking to make race-relations legislation applicable to the police, the prison system and the immigration service. Home Office minister Paul Boateng was optimistic about the future. In the past, he said (*Race Card*, 7 November 1999),

there was a real question as to whether or not Britain was ever going to be a multiracial, multicultural society. You still, in the old days, got the impression that some people felt that it was all a bad dream and one day they would wake up and all the black folk would be gone ... repatriation was on the agenda. That’s no longer the case. We *are* a multiracial society. The question now is the extent to which we make a success of it.

At the same time, however, the Immigration and Asylum Act 1999 had taken asylum seekers out of the social security system and denied them the right to cash benefits. It was the first of New Labour’s asylum, immigration and nationality statutes and, in contrast to Boateng, Labour MP Diane Abbott compared the stance of the Blair government

unfavourably with the approach of an earlier leader of the Labour Party (*Race Card*, 7 November 1999):

Hugh Gaitskell would be shocked to imagine a Labour government ... putting forward immigration and nationality legislation of the character that we are currently putting forward, but that's how much things have deteriorated since the sixties.

France's contradictory moment came after the rise of the *sans-papiers* movement in 1996. The *sans-papiers* (people without residence permits, work permits, passports and other ID-related papers) received wide publicity in 1996 when a group of *sans-papiers* collectives and their supporters organised demonstrations, occupations and hunger strikes to draw attention to their plight and support their claims for regularisation. These events raised public awareness of the *sans-papiers* and helped to produce something of a backlash against right-wing anti-immigrant views. When France's multi-ethnic football team won the 1998 World Cup, it was seen as "embodying the very spirit and achievement of French ideas of citizenship and integration" (Favell 2001:xvii). Yet during this period the French state was also engaged in an exercise of national protection and of exclusion. As the state denied basic means of support to the minority of "illegals" who were asylum seekers, *Le Monde* reported that the *collège des médiateurs*, set up to solve the problem, had deplored administrative practices which hid their attacks on the right to asylum behind "excessive demands for proof of persecution ... completely impossible [for its victims] to provide"⁵ (cited Noiriél 1998:viii).

1.12 Conclusion

We have seen how refugees are migrants who have been forced to flee their home countries to seek refuge abroad (1.3), and how refugee protection became a permanent feature of the international scene during the twentieth century (1.4). We saw how, during the Cold War, refugees from the Communist East were welcomed in Western Europe (1.4). When the Cold War ended, however, refugee flows increased – both from the former Communist states and the Third World (1.5). A sense of crisis then developed in the EU states and they

⁵ ...exigence exorbitante de preuves de la persécution ... radicalement impossibles à fournir.

began to set up barriers against asylum seekers (1.6-1.8) and this undermined the right to asylum. UNHCR insistence that the burden must be on individual asylum seekers to prove their case (1.10.1) also undermines that right, contradicting UNHCR's own plea for a "flexible and liberal" asylum process (1.10.1). We saw that EU standards on the treatment of asylum seekers were themselves undermined by the EU states' aim to keep asylum arrivals as low as possible (1.10.3). Finally, in terms of the two countries studied here, I suggested that the response of the UK and France to the perceived asylum crisis contradicted their commitment to protection under the Refugee Convention.

In chapter 2 I examine the history of immigration in the UK after the Second World War, when large-scale immigration began in the context of post-war reconstruction.

CHAPTER 2

IMMIGRATION AND RACE IN THE UK SINCE THE SECOND WORLD WAR

2.1 Introduction

The British race-relations approach to immigration, race and citizenship is called by the French the “Anglo-Saxon model” (primarily a reference to the UK and the United States) and contrasted sharply with their own model of republican citizenship (see chapter 3). The term “Anglo-Saxon model” seems to assume that certain principles and a theory lie behind the UK approach. While these are not absent, I argue that its successes and failures need rather to be understood in the light of its pragmatic origins. I argue that its failures can be traced to an original failure by politicians to counter racism in British politics and society. Its successes, on the other hand, may be traced to the determination of the ethnic minorities themselves and the anti-racist movement to fight for equality. I begin this history, however, at the end of the Second World War, where we find a contradiction between an acknowledged need for workers and concerted attempts by the state to exclude black and Asian people from the UK’s colonies and former colonies. We will examine the racism which underlay these attempts, the way the state overcame a number of obstacles to racist immigration controls and the discrimination which followed under governments of the left and the right. We will examine the race-relations approach to immigration and the contradiction at its heart and the weaknesses of the liberal agenda set out by Roy Jenkins. We will see how racism continued to thrive as well as the successes of the struggle against it by its victims and their supporters. We will then see how racist notions were revived in the context of asylum.

2.2 Reconstruction

The task of reconstruction in the UK after the Second World War was massive and daunting: many workers had been killed in the fighting and much of the country’s infrastructure and industry had been destroyed in the bombing. Moreover, the government

was committed to social change, for the people had demanded not just victory but a better world. The politicians remembered how the First World War had been followed by the Russian Revolution and Quintin Hogg (later Lord Hailsham) warned the House of Commons in 1943 that “if you do not give the people social reform, they are going to give you social revolution” (Philo, G. (undated), p.2). As Hobsbawm notes (1995:161):

Nobody dreamed of a post-war return to 1939 ... as statesmen after the First World War had dreamed of a return to the world of 1913. A British government under Winston Churchill committed itself, in the midst of a desperate war, to a comprehensive welfare state and full employment.

2.3 *Civis Britannicus sum*

Such a project would require much work and many workers, and the story of how the job was eventually done is usually told in terms of the willing recruitment of black and Asian workers from the colonies and ex-colonies to augment the labour force. As more and more colonies achieved independence, imperial rhetoric about British rule over an empire “on which the sun never sets” gave way to a Commonwealth rhetoric used by both the Labour and Conservative parties for many years following the war. Labour leader Hugh Gaitskell told his party conference in 1961 (*Race Card*, 24 October 1999):

I believe with all my heart that the existence of this remarkable, multiracial collection – association – of independent nations, stretching across five continents, covering every race, is something that is potentially of immense value to the world.

More specifically, in 1954, Henry Hopkinson, Conservative minister of state at the Colonial Office, declared (cited Hayter 2000:44) that colonial subjects’ right of free entry into the UK was

not something we want to tamper with lightly ... We still take pride in the fact that a man can say *civis Britannicus sum* [I am a British citizen] whatever his colour may be and we take pride in the fact that he wants to and can come to the mother country.

Indeed, for at least a century no distinction had been made between citizens of the British Empire regarding their right to enter Britain. The reasons for this were economic and political: from the middle of the nineteenth century “the economic imperatives of the free flow of goods, labour and services within the Empire enhanced the feeling that such distinctions were likely to be detrimental to broad imperial interests” (Spencer 1997:53). In the post-war period Britain wanted to foster good relations with the newly independent countries in order to keep a foothold, particularly in terms of economic power, in the regions of the world it once ruled. These were the realities which underlay the softer talk of the Commonwealth and the continued right of free entry into Britain for all its members – and it was against this background that the British Nationality Act 1948 was introduced. Carter et al. argue that its purpose in defining UK and Colonies citizenship was not to reaffirm rights of free entry but to “curb colonial nationalism” (1993:57). Nevertheless, within this context, the Act did confirm those rights.

2.4 “... we cannot force them to return ...”

The post-war reality, however, proved to be very different from the rhetoric. The 1945 Labour government attempted from the beginning to limit the number of black and Asian Commonwealth and colonial citizens allowed into the country. It resorted to administrative methods of control, many of doubtful legality and most of them secret. The government’s first action was to ensure the early repatriation of the black workers who had been urgently recruited from the colonies during the war. It also set about discouraging them from returning. This was true in the case of about a thousand Caribbean technicians and trainees recruited to work in war factories in Merseyside and Lancashire. In April 1945 an official at the Colonial Office had minuted that, because they were British subjects, “we cannot force them to return” – but it would be “undesirable” to encourage them to stay (Spencer 1997:39). The Ministry of Labour managed to repatriate most of them by the middle of 1947. Then, in order to discourage them from returning, an official film was distributed in the Caribbean

showing the very worst aspects of life in Britain in deep mid-winter. Immigrants were portrayed as likely to be without work and comfortable accommodation against a background of weather that must have been filmed during the appallingly cold winter of 1947-8 (ibid.:32).

2.5 Redistribution of labour and recruitment from Europe

But the need for labour remained and the government tried to solve the problem in two ways – neither of which involved importing labour from the colonies. First, it tried to increase labour mobility within the existing population and, secondly, it imported labour from Europe.

A Ministry of Labour report (Harris 1993:16) had predicted before the end of the war that there would not be sufficient mobility of labour within the country to face the challenges of the post-war world. Workers would have to be more willing to move into sectors where they were needed most. Virtually no one could be excluded, for everyone had to be part of the reconstruction project, even the unskilled and those “below normal standards” (ibid.). In 1947 the government issued an invitation for people to go to their local labour exchanges to register themselves. Some incentives (in the form of Ministry of Labour hostels and training) were provided, plus the threat of prosecution (ibid.:18-19). The presenter of the radio programme *Can I Help You?* entered into the spirit of the government’s intentions: “The hope is ... to comb out from plainly unessential [sic] occupations people who could be better employed; and to get the genuine drones in all classes to earn their keep ...” (ibid.:17). Attlee had hoped that this project would provide what he had identified as the “missing million” workers (ibid.) but six months later only 95,900 of the “drones” had responded (1993:17-18). Moreover, one source of home-grown labour had hardly been tapped in this exercise: women, essential during the war, were now told to go back to the home and make way for the men returned from battle. There were still sectors where women might work (e.g. textiles) but, as Harris notes, “their ability to do so was greatly hampered by the reluctance of the government to maintain the war-time level of crèche provision” (ibid.). Thus an important source of labour was largely excluded.

In the case of immigration from Europe, the government set up Operation Westward Ho in 1947 in order to recruit labour from four sources: Poles in camps throughout the UK, displaced persons in Germany, Austria and Italy, people from the Baltic states and the unemployed of Europe (ibid.:19). It was partly knowledge of this recruitment which inspired pleas to the British government from the governors of Barbados, British Guiana, Trinidad and Jamaica. Each of these territories was suffering from high unemployment, with consequent discontent among their populations, and the governors wrote to London arguing that Britain could solve its own problem and theirs by accepting these workers into the UK. In response to this, an interdepartmental working party was set up which decided

that there was no overall shortage of labour after all. Spencer records that the working party's minutes display "entirely negative attitudes to colonial labour" (1997:40):

One senior official at the Ministry of Labour expressed the view that the type of labour available from the empire was not suitable for use in Britain and that displaced persons from Europe were preferable because they could be selected for their specific skills and returned to their homes when no longer required. Colonial workers were, in his view, both difficult to control and likely to be the cause of social problems.

2.5.1 "... the object is to keep out coloured people"

Opposition to black and Asian immigration continued throughout the next decade, with successive British governments seeking to justify legislation to control it. Hayter observes that the delay in introducing the legislation "was caused by the difficulty of doing so without giving the appearance of discrimination" (2000:46). There is no doubt, however, about the racist nature of the intent to do so. From 1948 onwards various working parties and departmental and interdepartmental committees were set up to report on the "problems" of accepting black immigrant workers into the UK. All of them were created in the hope of providing evidence that black immigrants were bad for Britain. There was the "Interdepartmental Working Party on the employment in the United Kingdom of surplus colonial labour", chaired by the Colonial Office; the Home Office based "Interdepartmental Committee on colonial people in the United Kingdom"; the "Cabinet Committee on colonial immigrants"; and the one that really gave the game away: the "Interdepartmental Working Party on the social and economic problems arising from the growing influx into the United Kingdom of coloured workers from other Commonwealth countries".

Committees reported, cabinets discussed their findings and much correspondence passed between ministers and departments. Lord Salisbury (Lord President of the Council and Leader of the House of Lords) wrote in March 1954: "It is not for me merely a question of whether criminal negroes should be allowed in ... it is a question of whether great quantities of negroes, criminal or not, should be allowed to come" (Carter et al. 1993:65). Lord Swinton, secretary of state for Commonwealth relations, saw a difficulty and wrote to Salisbury (Spencer 1997:64): "If we legislate on immigration, though we can draft it in non-discriminatory terms, we cannot conceal the obvious fact that the object is to keep out

coloured people.” In the case of the “old Dominions” (i.e. the “white” Commonwealth – Canada, Australia, New Zealand), he noted a “continuous stream” of people coming to the UK “in order to try their luck; and it would be a great pity to interfere with this freedom of movement” (ibid.:67). Moreover, such interference would undermine the strong ties of kith and kin between the UK and the “white” Commonwealth. Swinton also believed that those strong ties would be further weakened by the development of a large “coloured” community in Britain – declaring that “such a community is certainly no part of the concept of England or Britain to which people of British stock throughout the Commonwealth are attached” (ibid.:67-68). “Swinton held the view strongly”, wrote Spencer, “that immigration legislation which adversely affected the rights of British subjects should be avoided ‘if humanly possible’ and if it did become inevitable it was better for the legislation to be overtly discriminatory than to stand in the way of all Commonwealth citizens who wished to come to Britain” (ibid.:68).

2.6 Obstacles to racist controls

2.6.1 The Commonwealth connection

It was not just concern for the “white” Commonwealth which made governments delay legislating for controls until 1961. The UK’s relationship with the Commonwealth as a whole was also a factor. In a period of decolonisation and the building of Commonwealth institutions, UK governments trod carefully. For example, openly discriminatory legislation “would jeopardise the future association of the proposed Federation of the West Indies with the Commonwealth” (ibid.:82). Politicians tried to persuade governments in the Caribbean and the Indian subcontinent to control the flow of migrants at source. They had some success in India and Pakistan, but not in the Caribbean. In 1958 Sir Henry Lintott, Deputy Under-Secretary of State at the Commonwealth Relations Office, advised caution on the question of legislation. There had been calls for immigration controls in the wake of the Notting Hill riots (provoked by extreme right-wing groups). Sir Henry advised that in these circumstances immigration controls would imply that “the British people are unable to live with coloured people on tolerable terms” (ibid.:102):

This could be immensely damaging to our whole position as leaders of the Commonwealth which, in its modern form, largely draws its strength from its multi-racial character. If, therefore, strong pressure develops for the introduction of

legislation to control immigration, I would hope that some way could be found to delay action and to permit passions to cool.

These arguments were supported not only by many in the Conservative Party in the mid 1950s but by the Labour Party too. In 1958 Arthur Bottomley spoke for the Labour front bench against legislation to control immigration (cited Foot 1968:251):

The central principle on which our status in the Commonwealth is largely dependent is the “open door” to all Commonwealth citizens. If we believe in the importance of our great Commonwealth, we should do nothing in the slightest degree to undermine that principle.

With a House of Commons majority of only fifteen, the Conservative government was vulnerable. Similar considerations had applied in January 1955 when Home Secretary Gwilym Lloyd George presented his ideas for restrictive legislation to the cabinet. The cabinet judged that “such a bill would not obtain the full support of the Conservative Party and would be opposed in the House by the Labour opposition and outside the House by the Trades Union Congress” (Spencer 1997:76).

2.6.2 *The working party evidence*

Another obstacle to immediate legislation was the fact that the working parties set up to provide evidence of the “undesirability” of black immigrants failed to do so. They described “coloured women” as “slow mentally” and said that their “speed of work” was unsatisfactory. They claimed there was “a disproportionate number of convictions for brothel keeping and living on immoral earnings” among West Indian men and made references to “the incidence of venereal disease among coloured people” (*Race Card*, 24 October 1999). But they failed to make the case for immigration legislation. The committee with the specific mandate to investigate “social and economic problems” relating to “coloured workers” must have been a particular disappointment. In August 1955 the committee’s draft statement went to the cabinet. The allegation of a high incidence of venereal disease was included here – but only as a “suggestion”. The author of the report admitted that there were no figures to support the claim (Spencer 1997:78). Spencer summarises the committee’s findings (*ibid.*):

Although “coloured” immigration was running at the rate of about 30,000 a year ... even those arriving most recently had found jobs easily and were making “a useful contribution to our manpower resources”. Unemployment ... could not be regarded as a problem, nor could undue demands on National Assistance or the National Health Service ... The immigrants were for the most part law-abiding except for problems with [cannabis] and living off the immoral earnings of women. Though the immigrants had not been “assimilated” there was no evidence of racial tension and it was apparent that some “coloured” workers in the transport industry had made a favourable impression.

The same was true of the working party’s reports between 1959 and 1961. “Viewed objectively”, writes Spencer, “the reports of the Working Party consistently failed to fulfil the purpose defined in its title – to identify ‘the social and economic problems arising from the growing influx of coloured workers’. In the areas of public order, crime, employment and health there was little noteworthy to report to their political masters” (1997:119). Moreover, the Treasury, when asked whether black and Asian immigration benefited the economy, “gave the clear advice that on economic grounds there was no justification for introducing immigration controls: most immigrants found employment without creating unemployment for the natives and, in particular by easing labour bottlenecks, they contributed to the productive capacity of the economy as a whole” (Hayter 2000:48).

But, in the end, the working party managed to construct an argument for controls: “‘Assimilability’ – that is, of numbers and colour – was the criterion that mattered in the end” (Spencer 1997:118). Between 1959 and 1961 there were large increases in the numbers of blacks and Asians entering the UK. At the beginning of the period there were around 21,000 entries a year; by the end they had risen to 136,000 (though much of this last figure may have been due to the fact that the government had signalled its intention to introduce legislation and larger numbers had decided to come in order to “beat the ban”). Working party officials compensated for their inability to find existing problems by predicting that they would arise later (ibid.:119):

Thus in February 1961, whilst it was admitted that black immigrants were being readily absorbed into the economy, [officials predicted] “it is likely to be

increasingly difficult for them to find jobs during the next few years". Further, it was doubtful if the "tolerance of the white people for the coloured would survive the test of competition for employment".

There would be "strains imposed by coloured immigrants on the housing resources of certain local authorities and the dangers of social tensions inherent in the existence of large unassimilated coloured communities" (ibid.:118). The working party recommended immigration controls. It was "prepared to admit that the case for restriction could not 'at present' rest on health, crime, public order or employment grounds" (ibid.:120) but

[i]n the end, the official mind made recommendations based on predictions about ... future difficulties which were founded on prejudice rather than on evidence derived from the history of the Asian and black presence in Britain.

Now there was just one obstacle impeding the introduction of controls.

2.6.3 *Public opinion*

One of the government's worries about introducing legislation had been the uncertainty of public opinion. Racist stereotyping in the higher echelons of government could also be found among the general population. Bruce Paice (head of immigration, Home Office, 1955-1966), interviewed in 1999, believed that "the population of this country was in favour of the British Empire as long as it stayed where it was: they didn't want it here" (*Race Card* 24 October 1999). It is true that hostility towards black people existed throughout the 1950s, and in 1958 the tensions turned into violent confrontation. In Nottingham and in the Notting Hill area of London there were attacks on black people, followed by riots, orchestrated by white extremist groups (Favell 2001:103). After these explosions racist violence continued but became more sporadic, ranging from individual attacks to mob violence (Fryer 1984:380). Nevertheless, for much of this period governments had not been confident that public opinion would be on its side when it came to legislation on immigration control. In November 1954 the colonial secretary wrote a memorandum expressing the hope that "responsible public opinion is moving in the direction of favouring immigration control". There was, however, "a good deal to be done before it is more solidly in favour of it" (cited Carter et al. 1993:66). In June 1955 cabinet

secretary Sir Norman Brook wrote to prime minister Anthony Eden expressing the view that, evident as the need was for controls, the government needed “to enlist a sufficient body of public support for the legislation that would be needed” (cited *ibid.*). In November 1955 the cabinet recognised that public opinion had not “matured sufficiently” and public consent, conclude Carter et al., “could only be assured if the racist intent of the bill were concealed behind a cloak of universalism which applied restrictions equally to all British subjects” (1993:68).

2.7 Mission accomplished

By 1961 the cloak was in place, and a Bill could be prepared. Home secretary R.A. Butler donned the cloak in a television interview: “We shall decide on a basis absolutely regardless of colour and without prejudice,” he told the interviewer. “It will have to be for Commonwealth immigration as a whole if we decide [to do it]” (*Race Card*, 24 October 1999). He removed the cloak, however, when he explained the work voucher scheme at the heart of the Bill to his cabinet colleagues (cited Hayter 2000:47):

The great merit of this scheme is that it can be presented as making no distinction on grounds of race or colour ... Although the scheme purports to relate solely to employment and to be non-discriminatory, the aim is primarily social and its restrictive effect is intended to, and would in fact, operate on coloured people almost exclusively.

The Bill passed into law and became the Commonwealth Immigrants Act 1962.

2.8 Plus ça change ...

Labour had opposed the 1962 Act throughout its passage through parliament – largely because it regarded the Act as incompatible with the Commonwealth ideal. Moreover, such principles were apparently non-negotiable: “I do not care whether or not fighting this Commonwealth Immigration Bill will lose me my seat”, declared MP Barbara Castle, “for I am sure that the Bill will lose this country the Commonwealth” (Hayter 2000:46). The speech against the Bill by the Labour leader, Hugh Gaitskell, was admired even by some on the Conservative benches. Yet, once Labour had won the 1964 election, the new government set about making the Act even more restrictive.

2.8.1 Pressures

Why should this have been so? There was pressure on the government from Whitehall. Bruce Paice had argued hard over the years for immigration controls. Even in retirement he was unable to conceal his contempt for the immigrants who came and the politicians and civil servants who allowed them to come for so long. “How on earth people got the money to come here from places like West Africa and Barbados I’ve no idea”, he said in 1999 (*Race Card*, 24 October). “They never seemed to earn anything when they were there, and most of them I think didn’t make much effort to earn anything much when they were here either.” He had tried to persuade senior officials that the solution was a simple one:

I remember going to see Sir Arthur Hutchinson, Deputy Secretary, and I said all that was really needed was to give me the same powers about British subjects as I had about aliens. And he said in effect, “Oh, don’t be silly,” he said, you know, there couldn’t be any question of such a thing.

In 1962 Paice had his way: Commonwealth immigrants now had to queue with “aliens” for permission to enter. “The fact that I might be influencing, for good or ill, the lives of other people”, he later commented, “was to me just one of those things. It didn’t cost me any sleepless nights. Somebody has to do this kind of job, and I was quite happy to do it” (*ibid.*, 24 October 1999).

There was also pressure from public opinion. When the debate on the Act began, support for immigration controls stood at 76%. But the Labour Party’s campaign against the Bill changed the situation: by the end of its passage through the House of Commons, support for controls had fallen to 62% (Jenkins 1999). It looked as though a strong campaign had changed people’s minds. Nevertheless a majority of 62% was still a majority – and Labour had to think of the next election. In fact, even before the Bill was passed, there were signs that Labour’s commitment to the rights of free entry and settlement of Commonwealth citizens was less than firm. During the third reading of the Bill, Labour frontbencher Denis Healey hinted that controls might be necessary in the future (Hayter 2000:46). After Gaitskell’s unexpected death the new leader, Harold Wilson, gave a further hint of change. While opposing the renewal of the Act in November 1963 he nevertheless told the House of Commons: “We do not contest the need for control of Commonwealth immigration into

this country” (Foot 1968:252). When the election came in 1964 the Labour Party manifesto declared (ibid.:254):

Labour accepts that the number of immigrants entering the United Kingdom must be limited. Until a satisfactory agreement covering this can be negotiated with the Commonwealth, a Labour Government will retain immigration control.

2.8.2 *Smethwick*

If this was the case before the election, tighter controls became inevitable after it. Labour’s shadow foreign secretary, Patrick Gordon Walker, had lost his seat in Smethwick, in the West Midlands, to a Conservative, Peter Griffiths. One of the slogans daubed on walls during the campaign became notorious in British electoral history: “If you want a nigger for a neighbour, vote Labour.” Griffiths denied being the author, but added: “I would not blame anyone who said that ... it was a manifestation of popular feeling” (Foot 1970:68). Smethwick, like many similar inner-city areas, suffered housing shortages and other problems, due not to immigrants but to policy failures both at national and local levels. But Griffiths blamed immigrants – and Gordon Walker blamed the Conservatives for letting so many into the country (*Race Card*, 24 October 1999). At an election meeting in Birmingham, Wilson did manage to identify the real issue (Hayter 2000:50):

There is a very real problem of overcrowding which the Government has neglected. We are not having this immigrant question used as an alibi for the total Tory failure to handle the problems of housing, slums, schools and education in this country.

However, after the election the government set about tightening the controls.

2.8.3 *Collapse*

The Conservatives had enforced the Act fairly loosely – Commonwealth relations had to be managed and public opinion had to be nurtured. Once Labour gained power in 1964, however, restrictions were increased. From September work vouchers were only issued to people with firm job offers or specific skills. Such a policy favoured whites, as the working party in 1961 had suggested it would (Spencer 1997:116). Vouchers granted were limited to

8,500 a year in 1965. Restrictions on dependants included “nephews and cousins and children over 16” (Spencer 1997:135-6):

In future, dependants would be expected to produce either an entry certificate or appropriate documents to establish identity at the port of entry. This was the origin of the system of entry control which saw the posting – to those Commonwealth countries that were sources of immigration – of Entry Control Officers whose job was to validate evidence of identity and issue entry certificates.

During the ensuing period of Labour government, restrictions became tighter, to the point that in 1969 *The Economist* declared that Labour had “pinched the Tories’ white trousers” (cited Hayter 2000:51).

2.9 Race relations

Beginning with these controls, the rest of the 1960s saw the development of a new approach to race and immigration in the UK: the race-relations approach. This was tacitly supported by the Conservatives, who were also worried by the uncertain consequences of the racial hatred stirred up at Smethwick. Conservative frontbencher Robert Carr saw the consensus between the two parties as “a marriage ... of convenience – not from the heart” (*Race Card*, 24 October 1999). Labour insisted that its liberal credentials were intact because the approach’s emphasis on integration was the key to social peace, the mark of a “civilised society”. But (crucially, and to justify the tightening-up of the Act) it would have to include immigration controls if it was to be successful. In 1965 Home Office minister Roy Hattersley expressed it thus: “Integration without control is impossible, but control without integration is indefensible” (cited Favell 2001:104). When Roy Jenkins became home secretary in 1966 he laid out his policy stall in a speech which was to become a foundation text for the new approach. He emphasised the integration side of Hattersley’s equation, defining it both negatively and positively (cited, *ibid.*):

I do not regard [integration] as meaning the loss, by immigrants, of their own national characteristics and culture. I do not think we need in this country a “melting pot”, which will turn everyone out in a common mould, as one of a series of carbon copies of someone’s misplaced vision of the stereotyped Englishman.

He defined integration positively as “cultural diversity, coupled with equality of opportunity in an atmosphere of mutual tolerance”, and added: “If we are to maintain any sort of world reputation for civilised living and social cohesion, we must get far nearer to its achievement than is the case today.” Here was the moral, political and social justification for his liberal agenda and the multicultural society that would evolve from it.

There was, however, a contradiction at the heart of the approach which has dogged it ever since: it is inconsistent to claim to want to celebrate cultural diversity in society on the one hand and discriminate against black and Asian immigrants on the other. Thirty-four years later Roy Hattersley admitted as much: “If your immigration restrictions are too repressive you encourage bad race relations rather than encourage contentment and satisfaction, because you *are* saying, ‘We can’t afford any more of these people here’, and the implication is that there is something undesirable about these people” (*Race Card*, 31 October 1999). The truth is that race relations policy was not the result of high principle (as suggested by Gaitskell’s opposition to the 1962 Act or by Jenkins’s exposition of his liberal agenda) but of the complete abandonment of principle after 1964. After Smethwick “the government panicked”, explained Barbara Castle. The tightening-up of restrictions by Labour was done “out of political cowardice, not political conviction” (*ibid.*). So the whole liberal project had its origin in a surrender to racism.

This helps to explain the weakness of the first Race Relations Act in 1965 and the inadequacies of the second in 1968. The 1965 Act prohibited “incitement to racial hatred” but did not cover discrimination in housing and employment, did not contain criminal sanctions against those who discriminated, and did not apply to the police. Sivanandan described it as “a half-hearted affair which merely forbade discrimination in ‘places of public resort’ and, by default, encouraged discrimination in everything else: housing, employment, etc.” (cited Fryer 1984:383). Moreover, the Race Relations Board, set up under the Act to provide for a conciliation process to deal with discrimination in public places, sent the wrong message: “To ordinary blacks,” Sivanandan argued, such structures “were irrelevant: liaison and conciliation seemed to define them as a people apart who somehow needed to be fitted into the mainstream of British society – when all they were seeking was [sic] the same rights as other citizens” (cited *ibid.*). The ineffectiveness both of the Act and the Board is summed up by Hayter (2000:35):

The first person to be charged under this Act was Michael X, a black militant. When Duncan Sandys, a prominent Tory MP, attacked a government report on education by stating that “The breeding of millions of half-caste children will merely produce a generation of misfits and increase social tension”, the Race Relations Board was unable or unwilling to prosecute him.

The 1968 Race Relations Act went further by bringing employment and housing into its ambit, but its inadequacies were apparent (Hayter 2000:35):

The Act introduced fines on employers who were found to discriminate on the grounds of race, and compensation, but not reinstatement, for the people discriminated against ... but the enforcement powers of the Race Relations Board remained weak.

Moreover, the anti-discrimination provisions still did not apply to the police. Jenkins had faced opposition from the police when discussing the first Act and in 1968 the new home secretary, James Callaghan, bowed to similar pressure (*Race Card*, 31 October 1999).

The year 1968 also saw the passing of another Commonwealth Immigrants Act.

2.10 The Kenyan Asians

The Kenyan Asians who came to the UK in 1967-68 were never called refugees but, effectively, that is what they were. Their presence in Kenya was part of colonial history and their departure a result of the decolonisation process in East Africa. After independence in 1963 Kenya adopted a policy of Africanisation: in the civil service, Africans had to be rapidly promoted; in private firms, Africans had to be employed at worker and management levels. At the time of independence Asians had been offered Kenyan or British citizenship, and many of them chose British. But the 1967 Trade Licensing Act in Kenya made it illegal for non-citizens to trade in rural or outlying urban areas and in a wide range of goods, and many Asians were forced out of business. Many turned to Britain for help. In 1963 the Conservative government, though fresh from passing the first Commonwealth Immigrants Act, reassured the Kenyan Asians that their UK citizenship was secure. In March 1968 the Labour government, though fresh from declaring its liberal agenda, cancelled this

agreement and passed a new Commonwealth Immigrants Act which removed their UK citizenship.

2.11 Racist pressures

There were, of course, the usual pressures on the government from Whitehall and diplomatic sources to take such action. Eric Norris, high commissioner in Kenya, had long ago decided that he did not want to see Asians settling in Britain. In 1955, returning by ship from his stint in the diplomatic service in Pakistan, he looked down to the ship's lower deck (*Race Card*, 24 October 1999) and saw

a lot of these immigrant families ... and some of these children came out on to the deck, squatted and defecated, you know. Well, that's what they did, you know, they went outside the house ... and there they – that was the sort of problem we were having to deal with.

Now, in 1968, Kenyan Asians were protesting outside his office in Nairobi, demanding that British promises be kept. "They all had a touching faith", he later said scornfully, "that we would honour the passports that they'd got" (*ibid.*).

There were also pressures from political sources. A campaign had been launched by Tory MPs Duncan Sandys and Enoch Powell to keep the Kenyan Asians out. Sandys told the Conservative Party Conference in 1967, "We are determined to preserve the British character of Britain. We welcome other races, in reasonable numbers. But we have already admitted more than we can absorb" (*ibid.*). Beyond the Conservative Party the far right National Front – whose preoccupations were with white British identity and the repatriation of black and Asian immigrants – were also stirring in the same pot. The government could have resisted these pressures with arguments similar to those it had deployed against the 1962 Act. The broadsheet press, churches and students opposed the campaign against the Kenyan Asians and could have been called in aid. But the government gave in to the pressure. The Act was passed in 72 hours and rendered the Kenyan Asians' passports worthless. All UK passport holders were subjected to immigration controls unless they could claim a parent or grandparent born, naturalised or adopted in the UK. The Act also introduced new restrictions on the entry of Commonwealth citizens' families.

2.12 From capitulation ...

The government was following the logic of its original surrender to racism after 1964. Many years later James Callaghan, home secretary in 1968, suggested that the racist campaign had carried more weight than potential complaints from the Commonwealth about the Act: “I wasn’t unaware of the difficulties that would arise [about Britain’s reputation abroad] but there were problems here [at home]. We had to balance those problems” (*Race Card*, 24 October 1999). In cabinet he argued on the basis of the Jenkins race-relations policy: if race relations can only work alongside strict immigration controls, the government had no choice but to introduce the Act. “We must bear in mind”, he wrote in a memo to the cabinet, “that the problem is potentially much wider than East Africa. There are another one and a quarter million people not subject to our immigration control ... At some future time we may be faced with an influx from Aden or Malaysia” (Hayter 2000:53).

This second capitulation to a racist campaign had serious repercussions on the future course of policy in terms both of immigration and race relations. The Act did not satisfy the racist right – it spurred them on to demand more. Enoch Powell not only called for an end to black and Asian immigration and for subsidised repatriation but, in lurid terms, predicted an apocalyptic future if his advice went unheeded. In April 1968 he declared (cited Hayter 2000:54):

We must be mad, literally mad, as a nation, to be permitting the annual inflow of 50,000 dependants who are for the most part the material of the future growth of the immigrant-descended population. It is like watching a nation busily engaged in heaping up its own funeral pyre ... As I look ahead I am filled with foreboding. Like the Roman, I seem to see “the River Tiber foaming with much blood”.

Favell argues that this speech led to the success of the liberal race-relations agenda, taking the Labour and Conservative parties into a new consensus on immigration and race relations which, in the years ahead, would establish “a core set of legislation that has provided the basis for all further progressive social developments, and which despite occasional voices of dissent from the right, has never been in danger of being rescinded” (Favell 2001:106). This was because both parties saw the dangers of anti-immigrant violence and reaction that Powell might stir up and were fearful that bigger conflicts might

be ignited and threaten the unity of the “United Kingdom”. He argues that the resulting consensus may have saved that unity in the dangerous 1970s, which saw “British politics torn by fundamental conflicts over devolution, Northern Ireland and open class warfare; nobody in the mainstream really wanted to add race and immigration to the boiling pot” (2001:106).

The reality, however, was that after Powell’s intervention the immigration-control side of the equation dominated and the party leaders intensified the competition between them on the question. Conservative leader Edward Heath said that Wilson had not “got a grip on the situation as far as fresh immigrants are concerned” and that therefore good race relations were impossible. Wilson in turn confirmed his commitment to controls in terms almost as apocalyptic as Powell’s (*Race Card*, 31 October 1999):

If we were to have an open door to them at the end of the day, then it would mean such an influx that our social services, our housing, our whole environment in some of our big towns and cities would be congested and overloaded, to the point where it would be impossible to carry out one of the most difficult problems any country’s had to do in recent times, and that is to assimilate the immigrants among our own population.

2.13 ... to defeat

Powell promoted and provoked racism, not consensus. Following his speech there were many racist attacks on individuals, and the National Front gained recruits: “In many areas,” according to Fryer, “Asians and West Indians now went in daily fear of their lives” (Fryer 1984:385). In one Southall factory, records Hayter (2000:54), “where members of the white workforce had, as in some other British factories, campaigned to keep out black workers, fascist sympathisers were emboldened by Powell’s speech to carry out violent attacks on shop stewards sympathetic to Asian workers.” Dockers and Smithfield market porters demonstrated outside parliament in support of Powell.

Labour leaders gave no equivalent help to anti-racism. Foot argued (1970:142) that

[t]hey had gone about their race relations work quietly and in private, without seeking to disturb the public. They had met in the Home Office, or in the homes of

committee chairmen to plan their next housing association or English language class.

But Powell had set out deliberately to disturb the public and when he had finished (ibid.:143),

the liberals in race relations discovered that they had no army to confront Powell's. They could muster a large number of letter writers to *The Times* ... but the Labour Party did not contemplate calling a demonstration to counter the pro-Powell demonstration of dockers.

In 1970 Labour lost the general election. There were several reasons for this defeat. First, faced with economic problems, the government began to reduce its support for companies like Upper Clyde Shipbuilders (UCS), which had been created in 1967 to save jobs on the Upper Clyde and maintain it as a shipbuilding area. In 1969, however, the government told the UCS workers that the only way to save the firm was through "considerable reductions in manpower ... and higher productivity" (Adams 1993:301). Secondly, the government set out proposals for trade union reform which would reduce union power in the workplace, and this provoked unease and division in the labour movement. One government minister saw a link between workers' fears and insecurity and the support of some of them for Powell. Taking a phrase coined by Wilson during the 1964 election, the secretary of state for technology, Anthony Wedgwood Benn, asked (cited ibid.:300-301):

What is "the white heat of the technological revolution"? It's the unemployment of the miner ... who's burnt by the blowtorch of technological change, because you don't need mines, you've got nuclear power. Go to the docks where containerisation will reduce the demand for labour, and the white heat of the technological revolution is the docker going to the House of Commons to support Enoch Powell one week and Jack Dash [a Communist trade union organiser] the next.

Thirdly, many within the Labour Party and many of its natural supporters were disappointed by its performance over the Kenyan Asians and the race issue. Hayter argues that eventually there was some recognition in the party that "the rushed introduction of the

1968 Commonwealth Immigrants Act had set back Labour's attempts to improve race relations, and that its unexpected defeat ... might have had something to do with its failure to counter Enoch Powell" (Hayter 2000:55). In 1961 the Labour campaign against the Commonwealth Immigrants Bill began to change minds; in 1968 the inadequate response of Labour to racist pressures encouraged racism.

Favell's claim that Powell's speech produced a consensus which led to liberal reform is highly questionable. He is right to say that Jenkins's "ideas by themselves would have been insufficient to pull through any kind of reform" (2001:104). Indeed, speed with which Labour surrendered again to racism demonstrated that the liberal agenda was a totally inadequate tool for dealing with it. But anti-racist ideas gained ground, not because an orator had conjured up disorder and forced politicians into a consensus at the top, but because the victims of racism themselves fought back (2.15).

Meanwhile, the Conservatives, in government between 1970 and 1974, passed the Immigration Act 1971, which gave preference to white, and further restricted black and Asian, Commonwealth immigrants. They passed no balancing race-relations legislation.

2.14 The Immigration Act 1971

The 1971 Act created two new categories of citizens: patrials and non-patrials. Patrials were mostly white (British or Commonwealth citizens born or naturalised in the UK or having a parent or grandparent who was). They were not subject to controls. Non-patrials were mostly black or Asian and were subject to controls. The Act brought "new permanent primary migration from the Indian sub-continent, the Caribbean and Africa to the United Kingdom finally to a halt" (Spencer 1997:143). In addition "[c]ategory A and B vouchers, allowing residence and family reunion, were finally abolished and replaced by temporary work permits which gave neither the right of permanent residence nor the right for the workers' families to enter" (Hayter 2000:54). The Act came into force on 1 January 1973. The UK joined the European Economic Community on the same day and Hayter comments (2000:55) that as a result

200 million people were to have the right freely to enter and to settle in Britain. Although concern was expressed in some quarters that this might lead to an overwhelming invasion of Spanish and Portuguese waiters ... there was virtually no populist or racist opposition to this innovation.

The commitment to immigration control was now virtually fulfilled; the commitment to good race relations was lagging sadly behind.

2.15 Responses to racism

Racist immigration rules continued into the 1970s, as did discrimination and police harassment of ethnic minorities. Parties of the far right began to gain ground, but anti-racist groups and black defence organisations, together with campaigns against discrimination, racial attacks and police harassment, also grew – and this proved to be crucial to bringing about change. For although Labour governments were in power between 1974 and 1979, and a Race Relations Act was passed in 1976, the immigration rules remained in place and the Act, while addressing a number of issues concerning discrimination, still left the race-relations institutions more reactive than proactive and, crucially, did not include the police in its scope.

In terms of the immigration rules Clare Short (private secretary to immigration minister Alex Lyon in 1974) has described the problems faced by Asian men who wanted their families to join them in the UK (*Race Card*, 31 October 1999):

... as the racist atmosphere had grown up in the country, [with] allegations of ... people coming in wrongly – more and more hurdles and checks had been put into the system, and it became an encapping system that really put families through hell to prove that they really were the children and the wife of the man.

The result was a 21-month waiting list for applicants from Pakistan. Alex Lyon tried to help individuals, but he was sacked for his pains. Campaigns and protests grew, drawing attention to the way the system worked and especially to the tests inflicted on women to establish their virginity or their patterns of childbirth. Anwar Ditta fought a successful six-year campaign for her children to be brought from Pakistan to live in the UK. She described the tests on her as “abuse by consent” (ibid.). Such public pressure not only ensured the end of the tests but raised public awareness about the issues.

In terms of police harassment some of the worst abuses were committed as the police applied the “sus” laws – section four of the Vagrancy and Street Offences Act 1824. This section allowed them to stop, search and arrest individuals “on suspicion” of “loitering with

intent” to commit an offence. The police were using these powers mostly against young blacks and Asians, making assumptions about them simply because they were black. Hayter notes that in 1979 Home Office research “found that a black person was 15 times more likely to be arrested under the ‘sus’ laws than a white person” (2000:35). In 1982 the deputy chair of the Police Federation, Basil Griffiths, explained his philosophy: “There is in our inner cities a very large minority of people who are not fit for salvage ... the only way in which the police can protect society is quite simply by harassing these people and frightening them so they are afraid to commit crimes” (ibid.:36). A campaign to abolish the “sus” laws was mounted by the black community and gained widespread support. Paul Boateng was a lawyer at the time and argues that “the great strength of the Scrap Sus Campaign was that it came from the grassroots experience of a group of black women in Lewisham, and came in time to embrace black people, white people, churches, political parties ...” (*Race Card*, 31 October 1999). Abolition was resisted both by the Home Office, who “refused to accept that the sus law was either inherently discriminatory or being used in a discriminatory way” (ibid.), and by the Metropolitan Police. But after four years of campaigning the pressure forced Margaret Thatcher’s Conservative government to repeal the laws in 1981 and campaigner Mavis Best had no doubt that “the credit must go to the black community for this, and no one else” (ibid.).

The black community had been fighting its corner on many issues during these years: demanding an end to discrimination and marginalisation, and demonstrating against the racist, far-right National Front. In the 1980s, inner city riots in London, Birmingham, Manchester, Liverpool, Newcastle and Bristol drew attention to disadvantage in housing, education and employment, as well as to continued police harassment. Yet in the words of Wally Brown, an activist from Toxteth, Liverpool, “The Thatcher government did very little in actually putting in real jobs, improving the housing, improving the quality of life for people in Toxteth” (*Race Card*, 31 October 1999). As for police harassment, Paul Boateng warned in 1983 that, in spite of a change of police rhetoric at the top, “the impact of policing ... remains completely unaltered: the same abuses occur, the same tensions exist, and indeed there’s a growing alienation and bitterness” (ibid.). The 1980s also saw black Labour candidates elected to parliament, and local councils (mostly Labour) adopting anti-racist policies in their areas.

2.16 Stephen Lawrence and institutional racism

When racists murdered black teenager Stephen Lawrence in London in 1993 his family fought hard for an enquiry – which was eventually set up in March 1998 and chaired by Lord Macpherson. The Macpherson Report was published in February 1999 and found that the Metropolitan Police had, during its investigation of the murder, shown itself to be “institutionally racist”. This meant, according to Imran Khan (the Lawrence family’s solicitor) that

we are dealing not with individual prejudice but with power. That power is derived from racist laws, constitutional conventions, judicial precedents, institutional practices – all of which have the sanction of the state and the blessing of our establishment (Khan 2003).

In the wake of the report, the government passed the Race Relations (Amendment) Act 2001, which finally applied race-relations law to the police. There was a feeling that a real change had taken place in British race relations: the Macpherson enquiry was “a kind of truth commission in which official acknowledgment was finally given to the evil of racism which had been perpetrated for years on the black communities of this country” (ibid.).

But it was not enough. First, in spite of anti-discrimination laws, watchdogs (such as the Commission for Racial Equality – CRE), numerous councils for community relations and a statutory duty for public authorities “to promote race equality” (Duty 2005), racism, discrimination and disadvantage have not been eliminated. According to the CRE in 2005, members of ethnic minorities were still more likely to be stopped, searched and arrested, to be victims of crime (including racial offences), and were disproportionately represented in the prison population (Criminal Justice 2005). Ethnic minorities are more likely to be in poor housing and live in deprived areas (Housing 2005). Members of ethnic minorities showed higher levels of unemployment, had lower incomes and a worse position in the labour market than whites and this was due, in part, to “substantial levels of racial discrimination” (Labour Market 2005). Secondly, even as the 2001 Act was being passed and celebrated, the asylum laws introduced to cope with the perceived “asylum crisis” told a different story – a story of racism revived, and aimed at the new asylum seekers.

2.17 Asylum legislation and rules

Asylum seekers were not mentioned in the various immigration measures during the post-war period until the Immigration Rules 1980. Under these rules, asylum claims were to be assessed in accordance with the 1951 Refugee Convention. While this might seem a positive development (refugees being treated as a special case), developments in the mid 1980s suggest the emergence of policymaking based once more on a major contradiction: the UK recognised its international obligations to refugees but undermined those same obligations by means of regulations, procedures and legislation. So visa restrictions were imposed on nationals of countries producing high numbers of refugees (see 1.7), and by 1996 there were 105 such countries. Moreover, in 1987 the Immigration (Carriers' Liability) Act imposed fines of £2,000 on airlines and ferry operators for every passenger without valid travel documents. This impacted heavily on refugees, since the urgency of flight, and fear of the authorities in their countries of origin, meant that many refugees lacked such documentation.

The Asylum and Immigration Appeals Act 1993 and the Immigration Rules 1994 follow the same pattern. The Act incorporated the 1951 Refugee Convention into UK law and established certain rights of appeal. Yet this acknowledgement of Refugee Convention obligations and the apparent attempt to establish a fair process for meeting them ran alongside measures which undermined such commitments. First, the rights of appeal were themselves limited by the Act – indeed, the most important limitation was imposed simply on the basis of the home secretary's opinion: "... if the Secretary of State has certified that, in his opinion, the person's claim is without foundation" no appeal is available beyond the Special Adjudicator (AIAA 1993, Sch 2, para 5(1)). Special Adjudicators "do not have to be legally qualified" (Burgess 2001:169) but their judgment is final. They may refer a case back to the home secretary for reconsideration, but if he reaffirms his opinion there is no further appeal. After the 1993 Act the balance between meeting obligations and avoiding them shifted towards avoidance. Hayter notes that the Act "was followed by an unprecedented increase in rates of refusal, from 14 per cent in the six months before the Act to 72 per cent after it, while the granting of Exceptional Leave to Remain ... fell from 76 per cent to 22 per cent of decisions" (2000:76). The restrictions and penalties increased under the Asylum and Immigration Act 1996, which extended the grounds for fast-tracking applications, abolished the right of appeal against removal to another EU country, introduced a list of "safe" countries, many of them of doubtful safety (including India,

Pakistan, Romania and Nigeria – protests led to the removal of Nigeria). It removed the right to welfare benefits for those seeking asylum after entry and those pursuing an appeal, and it introduced sanctions on employers hiring anyone who did not have permission to work in Britain.

Although the Labour opposition had opposed the 1996 Act when it was introduced, once the party had won the 1997 election the government prepared even more restrictive legislation. Labour's retreat from opposition to the 1996 Act mirrored its retreat from opposition to the 1962 Act, and happened for the same reason – the fear of losing votes. Hayter argues that the attitude of Labour politicians towards asylum seekers “parallels their attitude to criminals: Labour must demonstrate that it can be tougher towards them than the Tories were, and so remove one of the perceived electoral assets of the Tories” (2000:79). So the post-1997 legislation, regulations and other measures continued the restrictive trend begun by the Conservatives:

The Immigration and Asylum Act 1999 This Act set the tone for Labour's asylum policy into the new millennium. It “gave extensive new powers to the home secretary and extended police powers to search, arrest and detain asylum seekers” (Sales 2007:148). It also introduced a duty on registrars to “report suspicious marriages” (IAA 1999, s. 24) and a penalty of £2000 on lorry drivers for every passenger without documents (*ibid.*, s. 32). The Act separated asylum seekers from mainstream welfare provision, setting their support levels below those of the mainstream and introducing the compulsory “dispersal” of asylum seekers to allocated areas across the country, with accommodation provided on a no-choice basis. This system was to be managed by a new government agency, the National Asylum Support Service, which took over the direct role previously occupied by local authorities. It then subcontracted work both to them and to private housing providers and voluntary agencies. We will see (5.3.1) how these changes were driven by the primary aims of deterrence and restriction.

The Nationality and Immigration Act 2002 This Act is best known for section 55, under which people who have not managed to apply for asylum within three days of arrival in the UK may be refused all financial support and accommodation and thus left destitute. Although the government claimed that this measure was only

aimed at certain illegal categories, increasing numbers of asylum seekers fell foul of it and it is seen by many of them, and by many agencies, as a measure aimed at deterring applications (section 55 is dealt with in more detail below, 5.3.2).

The Act as a whole, writes Sales, set out “to segregate asylum seekers further from mainstream society and to promote their speedy removal” (Sales 2007:149). It provided for induction and accommodation centres where asylum applicants would be housed while their claims were being processed (NIA 2002, s. 16), and where their children could be educated outside the mainstream education system. Sales noted that the establishment of accommodation centres was prevented by local campaigns against them (Sales 2007:149), but the aim of detaining most asylum applicants remained. The 2002 Act reflected the aims of the government, set out in its preceding White Paper (*Secure 2001*), to speed up appeals, set target figures for the deportation of refused applicants and facilitate an increased rate of removals (ibid.:65-66). With these ends in mind, the government announced a 40% increase in removal centre capacity (ibid:66). Indeed, detention – including detention of children – was to play a significant role in the UK asylum system in the following years. On 24 September 2005, according to Home Office figures, there were 1,695 asylum detainees in the UK; 75 of them were under 18 (*Asylum Statistics*, 3rd quarter 2005:10). A 2005 report by the charity Save the Children estimated that “around 2,000 children are detained with their families every year for the purpose of immigration control”, the length of detention ranging from seven to 268 days (Crawley & Lester 2005:viii).

Asylum and Immigration (Treatment of Claimants) Act 2004 Section 8 of this Act (see in more detail below, 6.5.13) made failure to produce a valid passport an offence (and by doing so arguably contravened Article 31 of the Refugee Convention), raised doubts about the credibility of applicants who fail to claim asylum when passing through a “safe” country or who fail to answer certain questions to the satisfaction of Home Office caseworkers or other officials. Section 9 excluded families with children from benefit if, after their final refusal, they failed to make arrangements to leave or volunteer for the government’s voluntary returns programme. Families would then face destitution and their children could be taken

into local authority care (see below, **8.8**). Section 26 of the Act reduced asylum seekers' rights of appeal and their access to the higher courts (see below, 7.2.1).

NAM and the Immigration, Asylum and Nationality Act 2006 In 2005 the government announced a Five Year Strategy for Asylum and Immigration (*Controlling* 2005), including the New Asylum Model (NAM). New procedures would speed up the asylum process, involving shorter timescales, early “segmentation” of applicants into categories before the details of their cases were fully known, and an even wider use of detention. The Refugee Council was concerned that these changes would have a negative impact on the ability of asylum seekers to recover from trauma and prepare their cases, on their chances of adequate legal representation (Briefing NAM 2007, para. 4.2 (i)) and on their access to appeal procedures (ibid., para. 6.2), and it criticised the potentially arbitrary nature of “segmentation” (ibid., para. 4.2 (iii)). Moreover, refugee status would no longer be permanent but would now be “granted on a temporary basis to be reviewed after five years in relation to the safety of the country of origin” (Sales 2007:151). The Refugee Council was concerned that people would be placed “in limbo, unable to rebuild their lives for fear of having their refugee status withdrawn” (Briefing IAN 2006:3). Much of this did not require new legislation but was implemented by means of Home Office rules and other instruments. Where legislation was needed it was provided in the Immigration, Asylum and Nationality Act 2006.

The UK Borders Act 2007 The bill which was to become the UK Borders Act 2007 was announced to parliament before many of the provisions of the 2006 Act had come into force. As its title perhaps suggests, it emphasised the negative aspects of immigration and asylum. The Queen's speech of 15 November 2006 announced that “A bill will be introduced to provide the immigration service with further powers to police the country's borders, tackle immigration crime, and to make it easier to deport those who break the law” (cited Sales 2007:151). The press release on the day of the bill's presentation to the House of Commons explained that these powers would include powers of arrest and detention and, in the context of asylum, powers to “arrest those they believe to have fraudulently been acquiring asylum-

support, and to exercise associated powers of entry, search and seizure.”¹ The UK Borders Act made no reference to the UK’s Refugee Convention obligations to give protection within its borders to those who needed it.

Sales concludes (2007:152) that, under both Conservative and Labour governments, asylum policy has continued

to treat asylum seekers with suspicion, as a risk to society rather than as people themselves at risk. Policy has therefore aimed at excluding them from developing connections with mainstream society in order to remove them as easily and speedily as possible.

2.18 Conclusion

These developments are consistent with the history we have explored in this chapter. We saw discrimination against ethnic minorities from the beginning of the post-war period (2.4-2.5), with a determined attempt to “keep out coloured people” culminating in the Commonwealth Immigrants Act 1962. We saw how Roy Jenkins’ “liberal agenda” was weakened by fear of electoral defeat: Labour’s capitulation to racism undermined its race-relations approach, creating a contradiction between immigration controls and the claim to want to celebrate cultural diversity, and encouraged right-wing politicians like Enoch Powell to demand more concessions (2.9-2.12). On the positive side, we saw how ethnic minorities fought for equality and against discrimination and racism and how Stephen Lawrence’s murder and his family’s campaign for an enquiry led to race-relations law being applied to the police for the first time. Discrimination and inequality continued, however, and in the asylum legislation of the 1990s onwards racism was revived (2.17).

By 2003 Imran Khan believed that Labour’s commitment to anti-racism had “been neutralised by the most racist asylum and immigration legislation this country has ever seen” (Khan 2003). In chapters 5-8 we will examine the asylum process based on that legislation. We turn first, however, to France, which has a similar history under its “republican citizenship” approach.

¹ Home Office press release, 26 January 2007.

CHAPTER 3

IMMIGRATION AND RACE IN FRANCE SINCE THE SECOND WORLD WAR

3.1 Introduction

The French have not adopted a race-relations agenda, for they see “the institutionalisation of ‘race’ as a sure way to separate people into distinct communities rather than ‘integrate’ them, leading to divisions within society ... rather than cohesion based on individuality, irrespective of origin” (Silverman 1992:3). The French way is not to recognise ethnic minorities but to “nationalise” them, deny ethnic identities, and “turn foreigners into Frenchmen [sic]” (Noiriel 1996:xxviii). I examine issues of immigration in France against this background, and begin, as in the case of the UK, with France’s need for labour after the war, emphasising the strong opposition to the idea that France’s colonies and former colonies should be sources for such a labour force (3.3). I explore arguments that took place about ethnic selection and questions of French national identity and how, when the needed immigrants began to arrive, they were treated as temporary labour and marginalised in French society (3.4-3.6). I argue that immigration controls were introduced not for economic reasons but because of notions of race, culture and “ethnic balance”, including claims that non-European immigrants could not easily assimilate into French society and that there were “thresholds of tolerance” for the French which should be recognised and used to limit numbers (3.12-3.13). I describe the rise of protest against racism by its victims and their supporters (3.14) and the eventual passing of an anti-racist law (3.15). I show how the use of immigration controls contradicted the measures to promote integration (3.14) and that these contradictions have fed racism and encouraged the far right (3.17.2). I argue that the restrictive agenda on asylum has gained ground in the first decade of the twenty-first century and that President Sarkozy’s policies hark back to earlier arguments about the “non-assimilability” of certain immigrants and the claimed need for “thresholds of tolerance” (3.26).

3.2 Recovering from Nazi occupation

UK politicians of all parties emerged from the war able to talk of victory over Nazi Germany and appeal to national pride. The French were deeply divided. The years of Nazi occupation and the collaborationist regime at Vichy were, says Taïeb, “the dark years ... a paroxysm of xenophobia and anti-Semitism”¹ (1998:63). The shadow cast by them was long – a book published in 1994 questioning President François Mitterrand’s role during the Vichy regime forced him to defend his record in a high-profile television interview. In the decade following the war the leadership of the influential Movement Against Racism, Anti-Semitism and for Peace (MRAP) “was much more sensitive to what it perceived as a post-Vichy rebirth of anti-Semitic sentiments” (Bleich 2003:119) than to problems of discrimination against the newly arriving post-colonial immigrants.

3.3 A need for labour

On 19 October 1945 the restrictive immigration measures of the Vichy period were repealed. The French government estimated that France would need 1.5 million immigrant workers over five years to help with the post-war reconstruction of France. Some even talked of three million, and the new president of France, General Charles de Gaulle, spoke of the need for “twelve million babies within ten years”² (Taïeb 1998:64). Apart from the specific post-war situation, France had had a “demographic deficit” for years. Taïeb puts it down to “a certain Malthusianism and to losing wars”³ (1998:37). Certainly, “[s]ince the beginning of the nineteenth century, France was progressively overtaken by other countries in terms of the size of its population ... From 1900 to 1939 the population of France had grown by only 3% compared with 72% in the United States, more than 30% in Germany and Italy, more than 20% in the United Kingdom”⁴ (ibid.). However, the way France had tried to solve this problem meant that post-war policy would, as in the UK, ignore the female population as a source of labour.

¹ ... les années noires ... paroxysme de la xénophobie et de l’antisémitisme.

² ... 12 millions de bébés en dix ans ...

³ ... un certain malthusianisme et aux pertes des guerres.

⁴ Dès le début du XIXe siècle, la France est progressivement dépassée par d’autres pays du point de vue de l’importance de sa population ... De 1900 à 1939, la population française n’avait augmentée que de 3% contre 72% aux Etats-Unis, plus de 30% pour l’Allemagne et l’Italie, plus de 20% pour le Royaume-Uni.

3.3.1 *Pronatalism*

Between the wars pronatalist ideas heavily influenced policy. Pronatalists were strongly nationalist, believing that a low birth rate would “lead to the military and national decline of France” (Pedersen 1993:359). The French had to be made to produce babies (“il faut faire naître”). This would be done by incentives where possible and coercion if incentives failed. During the Vichy regime coercion dominated. Pronatalist arguments were directed first at men. Nothing a man could do, argued Fernand Boverat, was more important than procreation: a man “must know that all the accomplishments of his work, courage and genius will be inadequate to honor his name if, at the time when the fate of the land is tied to a recovery of the birthrate, he fails in the duty of transmitting life” (cited *ibid.*:362). The arguments put to women emphasised the joys of motherhood and relied on “dubious medical evidence to argue that repeated childbearing improved women’s health” (*ibid.*:364). Boverat regarded childless married women as lazy, frivolous and parasitical upon society (*ibid.*).

Pronatalism was influential across the political spectrum from the late 1920s. After 1934 its influence grew, with the Chambers of Commerce endorsing “family-based suffrage, the restriction of divorce, repression of abortion, and the return of mothers to the home” (*ibid.*:370), and the French cardinals appealing for more births in 1939. “This chorus”, writes Pedersen (*ibid.*), “turned pronatalism into ‘common sense’.” Under Vichy, birth control and abortion were banned and women were kept out of state employment. After the liberation de Gaulle continued Vichy’s single-wage allowance, which during the occupation had helped the wives of prisoners but which now privileged families with a male wage earner and a dependent wife. This changed only slowly over the next 30 years.

3.3.2 *End of empire*

There was another source of labour which France could tap: like the UK, France had an empire. Like the British, the French were facing decolonisation – which at first they strongly resisted: “Initially, their instinct was to hold on to everything”, writes Vadney (1992:99). “Everything” included “12 million square kilometres, with a population of 64 million individuals, and we may speak of ‘a France of a hundred million inhabitants’”⁵ (Yacono 1994:3). As a result of this reluctance to let their empire go, the French “became

⁵ ... 12 millions de kilomètres carrés, peuplé de quelque 64 millions d’individus et on peut parler de « la France de cent millions d’habitants ».

involved in a series of disastrous wars” (Vadney 1992:99) and the war with Algeria ended by “destroying the fourth republic and unsettling the early years of the fifth ...” (Hayward 1973:249). In the end France bowed to the inevitable and managed to secure its interests through wide-ranging agreements with most of its ex-colonies, as well as keeping some as overseas departments of France (*départements d’outre mer (DOM)*) and some as overseas territories (*territoires d’outre mer (TOM)*) – collectively known as DOM-TOM. The DOM are run as if they were departments in metropolitan France and their inhabitants are French citizens. The TOM have some autonomy but are run by a French administrator. All these areas, whether colonial, independent or DOM-TOM, were possible sources of labour for France in its drive towards post-war reconstruction. As in the UK, however, the idea met with immediate resistance.

3.4 Ethnic selection

Before the war the demographer Georges Mauco had suggested an assimilationist immigration policy using ethnic criteria. This was based on the idea that there were “degrees of assimilability among foreigners depending on their origin – whether national, religious or racial”⁶ (Weil 2004:17) and Mauco argued that such criteria should be used in the selection of candidates for naturalisation. “This racist policy”, says Weil (*ibid.*), “triumphed under the Vichy regime.”⁷ Mauco himself showed his true colours under that regime (*ibid.*:215), advocating “‘a totalitarian government ...’, as well as a ‘fascist revolution’, a third way between liberal democracy and communist revolution.”⁸ He believed that the ethnic characteristics of Russians, Armenians and Jews “made them, in the growing order, more and more unassimilable”⁹ (*ibid.*). But these ideas did not disappear after France’s liberation: in 1945 de Gaulle elevated Mauco to the post of secretary general of the High Commission on Population and the Family. Once installed, he “proposed allowing the entry of populations he considered assimilable: 50% north Europeans, 30% south Europeans and 20% Slavs”¹⁰ (Taïeb 1998:64). De Gaulle himself agreed (cited Noiriél 1988:39):

⁶ ... degrés d’assimilabilité des étrangers selon leur origine – nationale, religieuse ou raciale ...

⁷ Cette politique raciste triomphe sous le régime de Vichy.

⁸ ... « un gouvernement totalitaire ... », ainsi qu’une « révolution fasciste », troisième voie entre la démocratie libérale et la révolution communiste.

⁹ ... les rendent, dans l’ordre croissant, de plus en plus inassimilables ...

¹⁰ ... propose de faire venir des populations qu’il considère comme assimilables : 50% d’Européens du Nord, 30% d’Européens du Sud et 20% de Slaves.

Ethnically speaking, it is appropriate to limit the influx of Mediterraneans and Orientals who have, for half a century, profoundly modified the French population. Without going so far as to use a rigid system of quotas, as in the United States, it is desirable that priority be given to the naturalisation of Nordics (Belgians, Luxembourgers, the Swiss, the Dutch, the Danish, the English, the Germans, etc.). One may envisage a proportion of 50% for these elements.¹¹

This proposal for ethnic selection is shocking and, at first sight, puzzling. It is shocking because France had just been liberated from Nazi occupation. The Nazis' notions of racial purity had led to deportations, concentration camps and gas chambers. That de Gaulle and Mauco still saw ethnic selection as an acceptable way forward seemed to suggest that France's elite had learned nothing from this period. The proposal is puzzling because, as Silverman notes (1992:19), the French Revolution "is commonly seen as the triumph of a new concept of the nation":

Armed with the enlightenment concepts of reason, will and individualism, the Revolution established the nation as a voluntary association or contract between free individuals. This concept of the nation triumphed over the other major model for the formation of modern nations, that of ... a predetermined community bound by blood and heredity.

3.5 "What is a nation?"

De Gaulle's racially based programme seems to contradict a text regarded as "the basis of a real national consensus"¹² (Noiriel 1988:27). In his lecture on "What is a nation?" delivered at the Sorbonne in 1882, Ernest Renan asked what it is that makes a nation, and he explicitly rejected race as a contender. He argued that both the British and the French came from varied origins. In the case of the French, they "are neither Gauls, Franks nor Burgundians. They came out of the great boiling pot presided over by the king of France, in

¹¹ Sur le plan ethnique, il convient de limiter l'afflux des Méditerranéens et des Orientaux qui ont depuis un demi-siècle profondément modifié la composition de la population française. Sans aller jusqu'à utiliser, comme aux Etats-Unis, un système rigide de quotas, il est souhaitable que la priorité soit accordée aux naturalisations nordiques (Belges, Luxembourgeois, Suisses, Hollandais, Danois, Anglais, Allemands, etc.). On peut envisager une proportion de 50% pour ces éléments.

¹² ... l'objet d'un véritable consensus national.

which the most diverse elements fermented”¹³ (Renan 1928:296). So we are not talking zoology when we talk about the nation: “... we don’t have the right to go round the world feeling people’s skulls, then taking them by the throat, saying, ‘You are of our blood; you belong to us!’”¹⁴ (ibid. 297). To be human is more than this – “there is reason, justice, truth, beauty, which are the same for everyone”¹⁵ (ibid.). Thus the nation exists not because of race (or religion, or language, or geography) but through “consent, the clearly expressed desire to continue with the common life. The existence of a nation is ... a daily plebiscite, just as the existence of an individual is a perpetual affirmation of life”¹⁶ (ibid. 307-8).

So the nation is based on reason and will, and it seems to preclude ethnic selection. But Mauco’s original proposals in 1932 were also based on Renan’s text. Renan appeals not just to reason and consent but to a common ancestral past, “[a] heroic past, a past of great men, a glorious past”¹⁷ (Renan 1928:306). The nation is not just a daily plebiscite – it is “a soul, a spiritual principle”¹⁸ (ibid.). “The worship of ancestors is the most legitimate worship of all; our ancestors have made us what we are”¹⁹ (ibid.). Mauco suggests that if race is necessarily excluded as a category the nation’s soul may still be threatened by immigration: “The influence of foreigners from the intellectual point of view, although not clearly discernible, manifests itself especially as the opposite of reason, care, and a sense of balance and finesse which characterises the French people” (cited Silverman 1992:23). He suggests, says Silverman (ibid.), “that the superiority of the French compared with foreigners lies not in any crude biological difference but in cultural and intellectual differences”. Silverman argues that “in the history of modern France the tradition of biological racism has probably been less prominent than that of a national/cultural racism” (ibid.:21). We should be clear, however, that the latter is no less venal than the former. Hayward describes as “cultural self-confidence” the French conviction that “just as she had assimilated the many diverse peoples that made up metropolitan France, she could convert

¹³ Le Français n’est ni un Gaulois, ni un Franc, ni un Burgonde. Il est ce qui est sorti de la grande chaudière où, sous la présidence du roi de France, ont fermenté ensemble les éléments les plus divers.

¹⁴ ... on n’a pas le droit d’aller par le monde tâter le crâne des gens, puis les prendre à la gorge en leur disant : « Tu es de notre sang ; tu nous appartient ! »

¹⁵ ... il y a la raison, la justice, le vrai, le beau, qui sont les mêmes pour tous.

¹⁶ ... le consentement, le désir clairement exprimé de continuer la vie commune. L’existence d’une nation est ... un plébiscite de tous les jours, comme l’existence de l’individu est une affirmation perpétuelle de vie.

¹⁷ Un passé héroïque, des grands hommes, de la gloire ...

¹⁸ ... une âme, un principe spirituelle.

¹⁹ Le culte des ancêtres est de tous le plus légitime ; les ancêtres nous ont fait ce que nous sommes.

any people in the world into French citizens” (1973:248). He cites Boissy-d’Anglas, in 1794, in similar vein (*ibid.*):

“The Revolution was not only for Europe but for the Universe ... There can only be one right way of administering: and if we have found it for European countries, why should [the colonies] be deprived of it?”

Thus the French justified empire in terms of a “civilising mission”. But this “soft” racism had a hard core: in Algeria, for example, where French rule was “at its most oppressive” (Clayton 1994:25), the Algerians had no effective political representation, were heavily exploited and many of them were impoverished. They became in everyday parlance “the dirty race”²⁰ (*ibid.*:25-26). In practice, throughout the empire, “[t]he promise of equality through integration proved to be a hollow mockery” (Hayward 1973:249). So there seems to be little practical difference between “crude biological” racism and “cultural” racism.

3.6 Regulation attempted

It was against this background and the proposals of de Gaulle and Mauco that the ordonnance of 2 November 1945 (which set the legislative framework for immigration and residence) established the Office National d’Immigration (ONI) under the auspices of the ministry of labour. Ethnic selection was strongly opposed by many and had been the subject of a bureaucratic struggle within government, particularly between Mauco and his High Committee on Population and the Family on the one hand and the ministry of justice and Pierre-Henri Teitgen, of the Bureau du Sceau, on the other. The Bureau dealt with naturalisation matters. In the end Mauco lost the battle over ethnic selection for naturalisation (Weil 2004:220-227). Teitgen managed to have decision-making moved away from the High Committee and integrated into the work of the ministry of justice. Mauco’s defeat, however, did not mean an end to ethnic selection. Though the ordonnance of 2 November did not mention ethnic selection by name, its aim, writes Silverman, was “a carefully monitored build-up of a new workforce, operating principally according to the criteria of ethnic and cultural ‘balance’, assimilation and national cohesion” (1992:39). It created residence permits (*cartes de séjour*) of varying lengths – one year; one to three

²⁰ La sale race.

years; 10 years (automatically renewable) – and instituted “a selection process in which Europeans would be encouraged to settle permanently whilst non-European immigration would be on a temporary contract basis” (ibid.:80).

In the end this ethnic selection by stealth failed. It failed, however, not because Mauco and his ideas had finally been defeated – they had not, as we shall see – but because, as events unfolded, France had little choice but to accept a wide range of immigrant workers. For one thing, European labour was slow to respond: de Gaulle’s favoured “Nordics” preferred the US or Canada; the Italians increasingly stayed at home to help with Italian industrialisation; recruitment in the Baltic states mostly failed; and “if the French economy still recruited Italians ... and more and more Spanish workers, this was not enough”²¹ (Taïeb 1998:65). Furthermore, the immediate needs of the employers could not be met under this scheme. The procedures which employers in search of foreign labour were required to follow were lengthy and complicated. In theory the scheme ensured a monitored immigration policy to meet specific economic needs; in practice, far from getting a reasonably quick fix, employers found themselves enmeshed in bureaucratic delays, with little chance of getting workers when they needed them. The consequence was that, instead of immigration increasing to a level capable of dealing with the task of reconstruction, the total immigrant population rose by a mere 1.3% annually between 1946 and 1954 and the number of foreigners in France actually fell from 4.2% to 3.6% (Silverman 1992:46).

However, the ONI was funded by the needy employers themselves and they soon discovered that direct recruitment was quicker and cheaper. For one thing, they could tap a source which needed no ONI regulation: Algerians were French nationals from 1947, possessing rights of entry and residence. But although immigration from Algeria rose (by 32.5% annually) it was still not enough and, from the 1950s, “employers and the state encouraged a massive immigration of labour – preferably single men, contrary to the wishes of some demographers – certainly through negotiations between states but also by illegal means”²² (Taïeb 1998:65).

²¹ ... si l'économie française recrute toujours des Italiens ... et de plus en plus d'Espagnols, cela ne suffit pas.

²² ... le patronat et l'État encourageant l'immigration massive de main-d'œuvre – plutôt des célibataires contrairement aux vœux de certains démographes –, certes par des négociations d'État à État mais aussi de façon clandestine.

3.7 The desperate search for labour

The carefully state-regulated immigration regime slowly collapsed and economic needs were clearly in the driving seat. Talk of “good elements” which might provide a long-term increase in the population was muted as employers sought labour indiscriminately – encouraged by the ministry of labour, “who saw immigration as a temporary phenomenon responding to conjunctural requirements and not in competition with the domestic workforce” (Silverman 1992:39). So “it was by lorry- and coach-load that certain car industry employers went searching for Portuguese and Moroccan labour right up to the start of the 1970s”²³ (Taïeb 1998:66). Many people arrived in France with tourist passports and stayed to work. Many arrived without documents, encouraged by the practice of retrospective regularisation. Employers sent representatives abroad to recruit labour – “in Morocco, crowds of would-be migrants awaited visits from Félix Mora, the representative of the coalmining industry”²⁴ (Blanc-Chaléard 2001:62).

This promiscuous recruiting looks like good news – since it contradicted the racist assumptions of ethnic selection – but the reality was that racism, whether biological or cultural, had not disappeared in the rush to reconstruct France. Throughout this period immigrant workers were seen through a single lens: they were needed – and were exploitable and expendable because they were foreign. Their social needs were hardly considered, “social policies targeted on immigration were virtually non-existent”²⁵ (Taïeb 1998:66) and no thought was given to their integration into French society.

3.8 Housing

Housing illustrates these points. For the most part, the state did not involve itself in the housing of immigrants. True, it created SONACOTRAL²⁶ in 1956 to build hostels for single, male, temporary Algerian workers; true, this soon became SONACOTRA, with a mandate covering all foreign workers, as the government attempted to combat the activities of unscrupulous landlords. But in reality the hostels (many of them in the city centres) contained only a small proportion of the foreign population. Instead housing, like

²³ C’est par camions ou autocars entiers que certains recruteurs de l’industrie automobile vont chercher des Portugais, des Marocains, et cela jusqu’au début des années 1970.

²⁴ ... au Maroc, les foules de candidats au départ attendent les visites de Félix Mora, l’envoyé des Houillères.

²⁵ ... les politiques sociales ciblées sur l’immigration sont quasi-inexistantes ...

²⁶ Société Nationale de Construction pour les Travailleurs Algériens.

recruiting, was largely in the hands of the employers – “in keeping”, argues Silverman (1993:51),

with the idea that the social aspects of the immigrant’s life are subsumed within his economic function. A sort of feudal or plantation logic underpinned the relationship between employer and foreign worker.

The French state gave priority to France’s economic needs and enabled the recruiting of workers to meet them – but it did not consider the housing needs of immigrant workers as its major responsibility. The result was probably predictable: in the period following the First World War, Paris had been “surrounded by a real belt of unsalubrious and unhygienic dwellings ... where hundreds of thousands of immigrants from far and wide were crammed together”²⁷ (Noiriel 2002:30). Now, after the Second World War, the notorious “shanty towns” (bidonvilles) were constructed around Paris and on the outskirts of all the big industrial cities of France.

A selection of some of the larger bidonvilles (figures published by Granotier in 1970) gives an idea of the numbers involved. In the Paris region there were 9,937 people in Nanterre, 4,803 in St Denis, 14,025 in Champigny. In northern France there were 3,800 around Lille and 1,500 around Caen. In the south there were 7,006 living around Marseille, 2,203 around Toulon and 1,662 around Nice (cited Noiriel 2002:31). While some native French also lived in these areas, other figures (also from Granotier) suggest that the shanty towns represented the marginalisation from mainstream France of much of the immigrant population: 92.2% of the population of the shanty towns across France were from immigrant groups; only 7.8% were native French. The two largest single groups were the North Africans (42.1%) and the Portuguese (20.6%) (cited Blanc-Chaléard 2001:69). This was in a period when “the [national] building programme was making decent flats available to the majority of French people for the first time”²⁸ (ibid.). Immigrants, by contrast, “seemed then like symbols of social deprivation”²⁹ (ibid.:68).

²⁷ ... encerclée par une véritable ceinture de logements insalubres ... et dépourvus d’hygiène, ou s’entasse des centaines de milliers d’immigrants de toute provenance.

²⁸ ... le mouvement de construction offre pour la première fois des appartements décentes à la majorité des Français.

²⁹ ... s’apparaissent alors comme les symboles de la misère sociale.

Blanc-Chaléard shows that a whole range of people – trade unionists, sociologists, Christian activists – had serious concerns at “the social distress in which immigrants lived”³⁰ (2001:69). Articles and enquiries highlighted the problems experienced by immigrants. Television documentaries raised wider public awareness about conditions in the shanty towns, as did film director Jean-Luc Godard in his film *La Chinoise*, which showed the shanty town at Nanterre in its opening sequence (ibid.).

3.9 Work

Working life also illustrated the marginalisation of the immigrant population. “The majority of tasks that needed performing”, notes Silverman (1992:44), “called for a very specific type of labour force, one that would, above all, be mobile, have no particular skills or qualifications and could easily be made redundant ...” Immigrants typically found themselves in the lowest-paid jobs: in agriculture (as seasonal workers) and in the service sector (in hotels and restaurants). “[T]he mining, metalworking and chemical industries”, writes Blanc-Chaléard (2001:68), “were dependent even more than before on the immigrant contribution. The semi-skilled and unskilled workers of the car industry ... represented close to 20% of the immigrant population in 1970.”³¹ But the building industry took the largest share: “inseparably associated with the building site, the immigrant constructed the France of motorways and housing schemes”³² (ibid.).

The unions might be expected to play a positive role here, although Witohl de Wenden points out that in 1956, after France had signed an immigration agreement with Spain, the Communist group in the National Assembly declared that the “introduction of [foreign] workers was not in keeping with the ‘interests of our country’” (cited Silverman 1992:173, n. 3). It is true that the CGT – the union affiliated to the Communist Party of France (PCF) – had declared its solidarity with immigrant workers from North Africa and was trying to recruit immigrants. Nevertheless the left had an ambivalent attitude towards immigration. Silverman observes that “[a] frequent analysis of the Left and trade unions was that immigration was responsible for the persistence of outdated economic practices and was therefore a bulwark against the modernisation of the French economy” (ibid.). This argument blamed the shortcomings of the French economy on the presence of foreigners

³⁰ ... la détresse sociale dans laquelle vivent les immigrés.

³¹ ... les mines, la métallurgie, l’industrie chimique dépendent plus qu’avant encore de l’apport immigré. Les OS et manœuvres de l’industrie automobile ... sont à près 20% des immigrés en 1970.

³² ... figure inséparable du chantier, l’immigré a construit la France des autoroutes et des HLM.

and thus “perpetuated a dangerous myth surrounding the presence and role of the foreign worker in France” (ibid.).

The social problems arising from the marginalisation of immigrants would be “ignored until the end of the 1960s or taken care of by charitable activities”³³ (Taïeb 1998:66). But during the 1960s there were signs that marginalisation was not inevitable: solidarity was possible between immigrant workers and French workers.

3.10 Emerging solidarity

Marginalisation into unskilled and menial jobs – what Blanc-Chaléard calls (2001:68) “exclusion by work”³⁴ – might have prevented solidarity with other workers. But other factors ran counter to such exclusion: during the 1960s the CGT and other unions were attempting, though with limited success, to recruit immigrants; there was considerable industrial unrest at the time and this also involved immigrants in the factories and in the mines. Although there was much disunity among the trade unions, which often led to inaction or defeat, there were also victories. The 1963 miners’ strike spread to all mining areas, and involved all the unions, after the government tried to conscript the miners into the armed forces “so that if the strike continued it would be in breach of military law” (Harman 1998:19). The dispute ended “with a 12.5 per cent wage rise and an extra week’s paid holiday” (ibid.). Moreover, many immigrants participated in the “events” of May 1968 – when student occupations and workers’ strikes almost brought down the French government.

3.11 The return of “ethnic balance”

By the late 1960s a new policy framework was emerging in which governments would once more seek to limit immigration on ethnic grounds. As we have seen, ethnic arguments had been ignored during the frantic rush to recruit labour to meet the immediate needs of employers. During the Algerian war (1958-62) “anti-Algerian sentiment ran high in Metropolitan France. It culminated in the violent October 1961 Paris marches that resulted in thousands of arrests and scores of dead and wounded” (Bleich 2003:116). Nevertheless, there was “panic among employers who ... feared a mass return home by Algerians”³⁵

³³ ... ignorées jusqu’à la fin des années 1960 ou prise en charge par l’action caritative ...

³⁴ L’exclusion par le travail.

³⁵ ... la panique chez les employeurs, qui craignaient ... un reflux des Algériens.

(Blanc-Chaléard 2001:61) and this pointed to contradictions between political and economic concerns, since “[f]or its part, the state did not like the idea of a growth in this immigration, which was too closely linked to the conflict”³⁶ (ibid.).

What particularly worried the French authorities following Algerian independence in 1962, however, was that immigration seemed to be changing in character: it was becoming family immigration, rather than the single-male immigration that could be accommodated in SONACOTRA’s hostels or hived off into shanty towns: in 1961 111,800 Algerians entered France, of which 9,000 were women and children; in 1963 there were 262,000 entries, of which 34,500 were women and children (ibid.:65). It was beginning to look like immigration aimed at settlement. This challenged the ethnic and racial notion that some immigrants (non-Europeans) should be temporary and others (Europeans) permanent. Sayad (2004:71) argues that

the classic distinction between “labour immigration” and “settler immigration” is, ultimately, no more than a disguised way of making ... a distinction between an “assimilable” immigration ... which will be rapidly ... transformed into a “settler immigration”, and an inassimilable immigration ... that can only be and remain ... a “labour immigration”.

France negotiated a number of agreements with Algeria to limit immigration into France. These agreements reflected a common interest between the two governments: the French government did not want permanent Algerian settlement in France – French prime minister Georges Pompidou had described Algerian immigrants as a “nomad population” (Blanc-Chaléard 2001:63), not necessitating the enactment of social policies since they were not a long-term element in French society; the Algerian government, while wanting to benefit from the remittances which Algerian immigrants sent back home, did not want to lose its population permanently to France.

3.12 Why controls?

As the 1960s progressed, however, it became clear that the French government was concerned not just about permanent family immigration but about all Algerian immigration.

³⁶ De son côté, l’État ne tient pas à voir se développer cette immigration trop liée au conflit.

In 1968, with rising public awareness of the social problems of immigrant communities, the government attempted to re-energise the ONI. In July it decided unilaterally to limit all further immigration from Algeria to 1,000 per month. It also abolished the practice of regularisation of unqualified workers and granted residence permits only to those who had already found a job. Although the new limit on Algerians proved to be a cut too far for the Algerian government (in December it persuaded the French to agree to 35,000 per year), these measures marked the beginning of a period not only of immigration restrictions but also of increasing controls over foreign workers already in the country. In 1972 Raymond Marcellin, the interior minister, and Joseph Fontanet, the minister of labour, produced the Marcellin-Fontanet circulars, which made regularisation dependent on possession of a one-year work contract and proof of decent housing. Non-fulfilment of these conditions meant expulsion. This was clearly an attempt to clamp down on illegal immigrants (“clandestins”).

The reasons behind these moves were not economic: the economic downturn linked, in part, to the oil crisis of the early 1970s was not yet a factor to be considered. When that crisis came, France responded by putting an end to immigration – but not until 1974. At the turn of the decade France still needed foreign labour and this was recognised, even celebrated, both by politicians and employers: the December 1969 issue of the *Revue Politique et Parlementaire* declared that, as an immediate economic resource, “foreign labour has clearly been an important factor in economic stability. We might even go so far as to regret the fact that ... this resource has not been even more substantial” (cited Silverman 1992:47). In 1970 the magazine *L’Usine Nouvelle* (*The New Factory*) praised immigrants’ flexibility (cited *ibid.*:47-48): immigrant workers “are extremely mobile, are willing to change firms and regions and, if needs be, go on the dole”. They “save on education costs (which are incurred by the country of origin)” and “often pay more in taxes than they receive in allowances”. Indeed, Fontanet himself declared in 1971 that “the need for foreign workers is crucial” (*ibid.*:48). So we must look elsewhere for the rationale behind the new restrictions and rules – and we find it in the racist discourse of “ethnic balance” and “ethnic selection”.

3.13 “Thresholds of tolerance”

Silverman (1992:73-78) cites three influential figures whose views were important to the change of policy: Corentin Calvez produced a report on “the problem of immigration” for

the Economic and Social Council; Michel Massenet was head of the population and migration section of the Ministry of Labour; Maurice Schumann was the minister of social affairs. They all agreed that immigration needed to be controlled. This was not because France had no need of an immigrant workforce: “nobody should underestimate”, wrote Schumann in 1969, “the economic and human value of immigration and the contribution of immigrants to the development of our country” (cited *ibid.*:76-7). It was the pattern of immigration, specifically the origins of the immigrants, which needed to be looked at: previous immigrants (Europeans) assimilated easily because of their “cultural proximity” to the French; recent immigrants (North Africans, especially Algerians) were “culturally distant” and could not easily assimilate. According to Massenet (cited *ibid.*:74), immigration had thus “ceased to be a natural phenomenon, that is to say a process which gives rise to a spontaneous adaptation. The problems that immigration poses to our society put at risk society’s future cohesion”. Calvez thought that Algerians would form themselves into a ghetto, an “unassimilable island” in France (cited *ibid.*:74). His report recommended that studies be undertaken on

the thresholds of tolerance which should not be exceeded in the areas of housing, schools and the workplace; that is, thresholds necessary to maintain a suitable social balance, founded on the proportionate levels of foreigners, and variable according to the ethnic group (cited *ibid.*:74-5).

Massenet seized on this idea and was ready to suggest some percentages (cited *ibid.*:75):

In a primary school class, the presence of more than 20 per cent of foreign children slows down the progress of all the pupils. In a hospital, problems of coexistence arise when foreigners represent more than 30 per cent of the number of patients. In a block of flats, it is not wise to go beyond the proportion of 10 to 15 per cent of families of foreign origin when these families are not accustomed to life in a modern environment.

The clampdown was clearly informed by these ideas. The government, however, did not bargain for the response it received from the immigrant communities: the invisibility of the victims was coming to an end.

3.14 The beginnings of protest

There had already been signs that this might happen. For most of the Trente Glorieuses the immigrant communities had been more or less invisible and, writes Blanc-Chaléard (2001:71),

the majority of French people did not see the immigrants. Hidden in the shadowy zones of economic growth, immigrants felt this indifference as an additional denial of their dignity.³⁷

She quotes an Algerian immigrant on the relationship between the immigrants and the French:

We didn't like to be seen, we hated ourselves ... and, for their part, they didn't like to see us. They didn't like to know that we were there next door to them. They acted as if we did not exist.³⁸

In 1969, however, there were protest movements in SONACOTRA hostels against the deteriorating conditions; and in 1971 and 1972 “Moroccans launched two major strikes in the Pennaroya lead-processing factories and started a media campaign claiming the ‘right to live’” (ibid.:68). But the Marcellin-Fontanet circulars provoked the most wide-ranging protests yet – for the linking of residence permits with work permits affected not just new or prospective immigrants but every foreign worker: if you became unemployed you would be subject to deportation – however long you had lived and worked in France. There were immediate protests, which continued into the following year:

hunger strikes in Valence, Toulouse, Paris, La Ciotat, Lyons, Bordeaux, Strasbourg, Mulhouse, Lille, Nice, Montpellier, Aix-en-Provence and St. Étienne; a strike of 367 foreign workers in April 1973 at the Boulogne-Billancourt factory of Renault;

³⁷ ... les Français, en majorité, ne voient pas les immigrés. Cachés dans les zones d'ombre de la croissance, ces derniers ressentent cette indifférence comme un déni supplémentaire de dignité.

³⁸ Nous n'aimions pas être vus, nous détestions nous-mêmes ... Et, de leur côté, ils n'aimaient pas nous voir. On n'aimait pas savoir que nous étions là à côté d'eux. On faisait comme si nous n'existions pas.

sit-ins in offices by foreign workers; and numerous demonstrations and meetings in Paris (Silverman 1992:49-50).

There were some signs that more positive government policies might be pursued. First, the attention the media gave to the bidonvilles made them an increasingly sensitive political issue, and provision of basic services (water, post, social services) had begun as early as 1964. In January 1970, after five immigrant workers were asphyxiated in a fire at Aubervilliers on the outskirts of Paris, prime minister Chaban-Delmas “promised to eradicate all bidonvilles by 1973” (Silverman 1992:50). Secondly, in 1972 a law was passed which “at last allowed foreigners to become elected workplace representatives”³⁹ (Blanc-Chaléard 2001:70). Thirdly, in July 1972 France’s first anti-racism law was passed. But no fundamental change took place and it was the Marcellin-Fontanet circulars that really determined the response of the immigration movement: “the measures which aimed at integration through extending the rights of foreigners in the country seemed to be undermined by the new measures of control which often made the position of foreigners far less secure” (Silverman 1992:51). In fact, the French were encountering the contradiction present in the UK’s liberal agenda, expressed by Roy Hattersley (2.9): if you say you “can’t afford any more of these people here ... the implication is that there is something undesirable about these people.” This implication was present not only in the circulars but in the agreement with Portugal to accept 65,000 Portuguese workers in contrast to the attempt to limit Algerian immigration to 1,000 per month. Furthermore, Chaban-Delmas’s promise to abolish bidonvilles by 1973 was broken and by 1975 they had been partially replaced by “cities of transit”,

solid barrack-like structures with a minimum of comfort, but set apart from [French] urban residential space. This “lasting provisional arrangement” would constitute the life-setting of many children born of immigrants. The working groups put in place after 1965 to define overall policy were still stumbling when it came to housing⁴⁰ (Blanc-Chaléard 2001:70).

³⁹ ... permet enfin aux étrangers de devenir délégués du personnel ...

⁴⁰ ... baraquement en dur avec un minimum de confort, mais à l’écart de l’espace urbain résidentiel. Ce « provisoire qui dure » va constituer le cadre de vie de bien des enfants issus de l’immigration. Les groupes de travail mis en place pour définir une politique d’ensemble à partir de 1965 achoppent toujours sur la question du logement.

The “cities of transit” were indeed “provisional”, yet “lasting”. Taïeb points out that they “were supposed to accommodate [families] for two years; but some were there for 25 years”⁴¹ (1998:89, n. 34). These cities were to become the “banlieues difficiles” (“difficult suburbs”) of later years. So this period saw a real politicisation of the immigrant movement; it also saw an increase in racist attacks.

3.15 Racist attacks and an anti-racist law

Racism was a particularly sensitive issue in France. Since the Vichy period there had been several proposals for an anti-racism law. They came not only from the trade unions, the PCF and the MRAP coalition but from parliamentarians on the left and the right. Successive governments had resisted them, arguing that racism hardly existed in France – why, they asked, legislate against something that does not exist? “There are few traditions”, declared the French representative on the UN Security Council in 1964, “which are so much a part of the history of my country as the concept of equality between the races ... Everywhere where French laws and mores are the rule, there is no racial discrimination. It has not even been forbidden because it is not necessary to do so” (cited Bleich 2003:125-6). At the turn of the decade this fiction was becoming increasingly difficult to maintain among signs of rising levels of racism in France. Taïeb may be right to say that “[a]t the time, xenophobia was politically limited to a few tiny groups on the extreme right”⁴² (1998:67) but it is also true that, while some people were exposing and condemning the marginalisation of immigrants, others were blaming the victims. Silverman (1992:108) shows how the bidonvilles were described, in political discourse and in the media, in

a language which suggested that there was a correspondence between “underdeveloped” housing and “underdeveloped” people; “imported living conditions by an imported population” ... The phenomenon of the “bidonville” is detached from the surrounding political, economic and social context and located as a feature from the “Third World” which has no part in French society.

Certainly, the seven-year war with Algeria had kept alive the idea of

⁴¹ ... devaient les accueillir pour deux ans ; mais certain y sont restes vingt-cinq ans.

⁴² A l’époque, la xénophobie est politiquement limitée à quelques groupuscules d’extrême droite ...

the “Arab” throat-slitter and procurer of women, the stereotypes of the foreigner, which we had already used about the Italians in the nineteenth century. But [now] it was a question of former [colonial] “subjects”, recently become enemies⁴³ (Blanc-Chaléard 2001:71).

There were several violent racial incidents in 1967 and 1969. The violence increased in 1970 and 1971, mainly against Algerians, and the attacks included (Bleich 2003:130):

drownings, firebombings, shootings, and a lynching. The “affaire Djellali” of October 1971 focused high-profile attention on racism. Following the shooting [to] death of the fifteen-year-old Djellali Ben Ali in Paris, several thousand people marched against what was widely interpreted as a racist crime ...

Although the ministry of justice continued to claim that racism was not pervasive in France, Bleich shows that these incidents and protests and “the persistent lobbying of a host of actors” put pressure on the government to rethink its opposition to an anti-racist law: “Antiracist human rights groups such as the MRAP continued to argue for legislation, and were joined in July 1971 by the influential CGT and CFDT unions, which criticized the government for not acting on the existing Parliamentary proposals” (ibid.:130-1).

Moreover, 1971 was the UN’s International Year Against Racism, during which France signed the International Convention on the Elimination of All Forms of Racial Discrimination. Louis Odru, PCF deputy in the National Assembly, declared that the Communist group did not believe that French legislation was in conformity with the recently signed Convention. Within the governing UDR party “Alain Terrenoire openly questioned the government’s position” (ibid.:131). In the Senate, Gaston Monnerville of the International League Against Racism and Anti-Semitism (LICRA) declared, “if the Government thinks that French legislation is sufficient to protect ... victims of racial discrimination, it is wrong” (ibid.:132). France’s first anti-racism law was eventually adopted in July 1972, making racism a crime for the first time.

⁴³ ... l’« Arabe » égorgeur et proxénète, les stéréotypes de l’étranger, dont on usait déjà pour les Italiens au 19ème siècle. Mais il s’agit d’anciens « sujets », devenus récemment des ennemis.

The law did not, unlike the UK laws, establish race-relations institutions. Bleich (ibid.:136) describes the four essential elements in the law as passed. First, it amended the press law of 1881

to ban a wider variety of expressive racism,⁴⁴ criminalizing not only racial defamation, but also provocation to racial hatred or violence ... Second, it outlawed access racism⁴⁵ for the first time by inserting two articles in the criminal code, punishing the use of race as a criterion in hiring, firing, or provision of goods and services ... The third aspect amended the law ... to enable the state to disband groups that seek to provoke or to promote expressive, access or physical⁴⁶ racism.

Finally, it enabled human rights and anti-racist groups to be civil parties in prosecutions against racism.

The law did not, however, end racism. Racist incidents continued in various regions of France and in 1973 the murder of a tram driver in Marseilles by a mentally disturbed Algerian sparked a new wave of anti-Arab violence with the result that seven North Africans were murdered in Marseilles alone. The situation was so bad that the Algerian government began to fear for the safety of Algerians in France. Silverman notes that Algeria had had similar concerns in 1971 when “in twenty-five cases of violence the police did not proceed with investigations” (1992:174, n. 6). Now, one year after the passing of the anti-racism law, it was again concerned at “the unwillingness of the authorities to prosecute the perpetrators of racist attacks” (ibid.:52). On 19 September 1973, therefore, the Algerian government stopped all emigration to France. It was against this domestic and international background that President Giscard d’Estaing took office in July 1974.

3.16 From Giscard to Mitterrand

The immigration policies pursued by Giscard and his government were not new. They stressed controls plus integration and contained the contradictions inherent in such a package (2.9; 3.14). For this new government, however, immigration controls meant a

⁴⁴ In Bleich’s terms, “expressive racism is manifested through inflammatory statements or written expressions made against individuals or groups” (2003:9).

⁴⁵ Bleich: “Access racism involves discrimination in employment, housing, and provision of goods and services” (ibid.).

⁴⁶ Bleich: “... physical racism relates to attacks against persons or destruction of property motivated by racial hatred” (ibid.).

complete halt to all immigration into France. With the onset of economic recession, it is true, most West European countries had taken similar steps. The UK had done so in 1971 (2.14) – but had only stopped primary immigration, not family reunification. In July 1974, however, France stopped both at a stroke.

Nevertheless Giscard wanted to be seen as governing from the centre ground and he expressed concern about the social problems and inequalities encountered by immigrants. He paid a presidential visit to a Marseilles bidonville and not only supported the election of foreigners as workplace representatives but, in the law of 18 July 1979, gave them voting rights in the election of judges to the industrial courts (the Prud'hommes). In a speech on integration, again in Marseilles, he declared: “These immigrant workers who are a part of our national economic community must have a place that is worthy, humane and fair in the French society that I am trying to organise” (cited Silverman 1992:54). The government announced a programme of “insertion” – integration policies to be implemented largely through cooperation between the state and the municipalities, including more rights in line with those of French nationals, better housing, vocational training and other measures.

To the immigrant movement, however, this was once again an unconvincing performance, for alongside it ran not only the policy of bringing all immigration to an end⁴⁷ but also a determination to persuade immigrants already present (especially North Africans) to return to their countries. What amounted to a growing obsession with immigration controls, returns and expulsions was fuelled by rising unemployment – which reached one million in 1976. Lionel Stoléru, the secretary of state for foreign workers, “[took] as his own the old equation ‘too many unemployed = too many immigrants’ [and became] the politician of returns”⁴⁸ (Blanc-Chaléard 2001:75). Stoléru introduced the “aide au retour” – a grant of 10,000 francs for each volunteer returnee. There was a low take-up of this offer and one major reason was related to the very immigration controls the government saw as central to its policy:

⁴⁷ The government's determination to achieve this is shown in its efforts to ban family reunification. The 1974 attempt at a total ban was declared unconstitutional by the Council of State, and was then redefined and reintroduced with stringent conditions attached in 1976. Another attempt at a complete ban was overturned in 1977. (See Silverman 1992:53, 56; Blanc-Chaléard 2001:74; Taïeb 1998:69.)

⁴⁸ Reprenant à son compte la vieille équation : trop de chômeurs = trop d'immigrés, le nouveau secrétaire d'État Lionel Stoléru sera l'homme de la politique des retours ...

When the borders were open, some tens of thousands of foreigners returned home all the more easily since they would be able, if the need arose, to come back to France. With the borders closed, they thought twice⁴⁹ (Taïeb 1998:69).

With the failure of this scheme, the government planned, in 1978, “to impose [returns], hoping for 500,000 departures within five years – including children who had attained French nationality – that French workers would be able to replace”⁵⁰ (Taïeb 1998:69). This project also involved the removal of the right of immigrants to renew their residence and work permits. However, “[d]enounced by institutions at the very heart of the Republic (the Council of State and the National Assembly), by politicians of the right and left, [this proposal] collapsed”⁵¹ (Blanc-Chaléard 2001:75). Nevertheless, the government continued on its course almost undeterred. It introduced the Bonnet law of 1980, which tightened the rules of entry into France and extended expulsion orders to those found guilty of minor offences and those whose papers were not in order.

While these measures grew apace, the promised integration measures faltered. The programme to improve housing was underfunded and this meant that

there was little improvement in housing and many immigrants continued to live in sub-standard accommodation. Certain municipalities refused to house more than a certain number of immigrants in the name of the theory of the “threshold of tolerance” (Silverman 1992:55).

Silverman shows how most of the other programmes associated with integration were starved of funds and that even the creation of the Office of Cultural Promotion, dedicated to representing cultural diversity,

must also be seen against the background of continued social deprivation of immigrant communities, the persistence of inequalities between French nationals

⁴⁹ Quand les frontières étaient ouvertes, quelques dizaines de milliers d'étrangers retournaient chez eux d'autant plus facilement qu'ils pourraient éventuellement revenir en France. Avec la fermeture, ils réfléchissent.

⁵⁰ ... les imposer en espérant 500,000 départs en cinq ans – y compris des enfants devenus de nationalité française – que des travailleurs français pourraient remplacer.

⁵¹ Dénoncé au sein même des institutions républicaines (Conseil d'État, Assemblée nationale), par des hommes de droite comme de gauche, [ce projet] échoue.

and foreigners, and the evident lack of real will on the part of the administration to tackle these problems (ibid.).

Not surprisingly, protests, strikes, hunger strikes and demonstrations continued throughout the decade, including a strike of 15,000 residents of SONACOTRA hostels which lasted from 1975 till 1980.

3.17 Time for change?

In 1981 the political scenery changed. In the second round of the May presidential elections, Socialist Party (PS) candidate François Mitterrand became president of France, achieving 51.75% of the vote against Giscard's 48.25%. It was his third bid for the presidency. His aim, expressed in his slogan "changer la vie", was to "change the life" of France. But there was still a government of the right in the National Assembly, with legislative elections not due until 1983. The president had the power to dissolve the Assembly and call elections and, although for over a century the left had considered exercise of this prerogative an abuse of presidential power, "Mitterrand was happy to do it at once in order to secure a new majority for the Left" (Gildea 2002:215).

3.17.1 Reform begun

One month before the presidential elections Mitterrand had visited the hunger strikers in Lyons and, after the PS won the legislative elections, there was some expectation that the new government would include immigrants in its aim to "change the life" of France. Certainly, under the new regime, as Taïeb argues (1998:70), the discourse changed. The new government's intention under prime minister Pierre Mauroy was

to assert the rights and dignity of foreigners. Claude Cheysson, minister of exterior relations, talked about the debt owed by France to Algerian workers and the president ... made a "Third-Worldist" speech at Cancun (Mexico) with the intention of redefining North-South relations. The office of the secretary of state for immigrants launched a campaign on the theme "Living Together" which emphasised that immigrants enriched the country.⁵²

⁵² ... faire valoir les droits et la dignité pour les étrangers. Claude Cheysson, ministre des Relations extérieures, évoque la dette de la France vis-à-vis des travailleurs algériens et le président ... prononce à

In practice, too, there seemed to be signs of change – for example on the question of illegal immigrants. Their numbers had grown since the total immigration ban of 1974 – largely because, despite the ban, “employers continued to hire migrants who, for their part, continued to come”⁵³ (Blanc-Chaléard 2001:74). The new government decided that, while keeping in place the penalties imposed on employers who hired “clandestins”, it would also embark on a programme of regularisation. The result was that out of 150,000 applications 132,000 were accepted.

However, the new administration had not made a clean break with the past. For one thing, the old contradictions remained between a policy of integration and a hard line on controls and deportations. The law of 29 October 1981, notes Silverman (1992:60-1), “actually made the conditions for entry even more restrictive than the severe Bonnet law of 1980 ... whilst the number of expulsions rose from 2,861 to 8,482 between 1982-4 (and was 12,364 in 1986 ...)”. Thus the discourse had “radically changed”, in Taïeb’s words, but “policy [changed] more timidly”⁵⁴ (1998:70). Furthermore, economic and political pressures began to put enormous strains on the new government’s resolve to implement its wide-ranging reforms in most other areas of policy.

3.17.2 *Reform abandoned*

At the beginning “the pace of reform was frenetic”, writes Gildea (2002:215): the death penalty was abolished, a degree of autonomy was given to Corsica and

[a] whole battery of measures was taken at once to enhance social equality and reflate the economy by increasing consumption. [A] ... Tax on the Super-Rich was introduced. The “break with capitalism” took the form of the nationalization of two holding companies, nine industrial groups, and thirty-six private banks.

Such wholesale reform was to be short lived. For one thing, “[t]he strategy of reflation was called into question not only by galloping inflation, a balance-of-payments crisis, and

Cancun (Mexique) un discours « tiers-mondiste » qui entend redéfinir les rapports Nord–Sud. Le secrétariat d’État aux immigrés lance une campagne sur le thème « Vivre ensemble » qui souligne que les immigrés enrichissent le pays.

⁵³ ... les employeurs continuent d’embaucher des émigrés qui, de leur côté, continuent de venir.

⁵⁴ ... le discours change radicalement mais la politique plus timidement ...

budgetary deficit but by the constraints imposed by membership of the [European Monetary System] and the international trading community” (ibid.). At his inauguration ceremony Mitterrand had called in aid the memory of the socialist Popular Front prime minister of 1936, Léon Blum, and had laid a wreath on his grave. Thirteen months later his own prime minister was telling him to follow other industrialised countries and opt for deflation instead of reflation. “If not”, said Mauroy, “I shall be forced to quit, like Léon Blum” (ibid. 216). The aim of “reflation and socialism in one country”, as Gildea describes it (ibid.:217), was finally abandoned after the PS’s poor showing in the municipal elections of 1983 during which the extreme right, and racist, Front National (FN) received 10% of the vote. The new immigration policy was now predictably under threat: the government’s austerity measures and industrial restructuring were having an impact on the whole population, causing unemployment, strikes (many involving immigrants) and disturbances on the housing estates. They thus also fuelled arguments about immigration, identity and nation so dear to the FN. Taïeb argues (1998:70-1) that

all this combined to bring about the emergence of the extreme right, which did not hesitate to talk of the impending “Lebanonisation” of France – the Lebanon was then divided – and built its campaign on the equation “immigration = unemployment + insecurity”.⁵⁵

Even before the municipal elections the government had shown the fragility of its commitment to anti-racism. Pierre Mauroy had blamed a strike for prayer time at work on “religious and political groups whose action is based on criteria which have little to do with the social realities of France” (Silverman 1992:61). During the election campaign interior minister Gaston Defferre “prided himself on being ideally placed [as mayor of Marseilles] to expel immigrants and fight against delinquency (thus suggesting and reinforcing the association between the two ...)” (ibid.). The office of the secretary of state for immigrants produced a brochure as part of its “Living Together” campaign (*Living Together: the Immigrants amongst us*⁵⁶) but the government decided not to publish it.

⁵⁵ ... tout cela concourt à l’émergence de l’extrême droite qui n’hésite pas à parler de libanisation prochaine de la France – le Liban est alors déchiré – et construit sa campagne sur l’amalgame : immigration = chômage + insécurité.

⁵⁶ *Vivre Ensemble : les Immigrés Parmi Nous*.

When the FN's share of the vote reached 11% in the 1984 European elections the mainstream left could either condemn the rising level of racial attacks, and challenge the extreme right, or capitulate by trying for a consensus with the mainstream right. Like UK Labour governments in the 1960s (2.8) it chose the latter, emphasising the strict controls and integration measures inherited from Giscard. The controls side of this equation kicked in steadily over the next few years. The decree of 27 April 1984 reintroduced the "aide au retour" in all but name – restyling it as "aide à la réinsertion" – reinsertion, that is, into countries of origin and particularly aimed at workers made unemployed by the restructuring of industry. In December 1984 the government reintroduced controls on family reunification such that the legal right became "virtually meaningless" (Silverman 1992:62-3): "The measure required the member of the family already residing in France to show proof of adequate housing at a time when immigrants occupied the worst housing stock and were more likely to be unemployed or in low-wage jobs than the French". So much for equality of treatment between nationals and non-nationals.

The policy of capitulation to the right had several consequences. First, it "gave credibility to the idea that immigrants bore some responsibility for the crisis that France was going through"⁵⁷ (Taïeb 1998:71). Secondly, far from spiking the guns of the far right, it would instead "open up perspectives for the Front National"⁵⁸ (ibid.). The FN could argue that mainstream politicians of both left and right agreed with its arguments but were afraid to adopt its solutions. While the main parties played with the contradictions of control and integration, the FN maintained its "refusal to admit the possibility that immigrants might be assimilated into French society" (Gildea 2002:234). Whether it was the housing crisis, unemployment, rising crime or the undermining of French national identity (AIDS would later be added to the list), immigrants (specifically non-European immigrants) were responsible and should be repatriated. FN leader Jean-Marie Le Pen argued that "his enemies were the politicians of the established political parties, who failed to deal with these crucial issues, and the media, which waged a campaign of silence and vilification against him" (ibid.). The solution for France was to vote FN.

Thirdly, capitulation to the right caused embarrassment abroad for the government. As early as May 1982, under the supposedly liberal laws,

⁵⁷ ... va accréditer l'idée d'une responsabilité des immigrés dans la crise que connaît la France ...

⁵⁸ ... ouvrir des perspectives au Front national.

decrees concerning entry and residence rights led to such a large number of foreigners being refused entry that President Chadli of Algeria lodged a formal protest. Mitterrand was subsequently obliged to put an end to these excessively severe measures (Silverman 1992:60).

Now, with the introduction of “réinsertion”, based on negotiations with countries of origin, the countries concerned refused to play ball,

showing little enthusiasm for a project which encouraged a mass return of their own nationals at a time of economic hardship. This led to the scheme being introduced unilaterally by the French government (*ibid.*:62).

It was predictable that the government’s decision to abandon reform would strengthen the political right – indeed, the parties of the mainstream right were willing to do deals with the extreme right against the PS when they thought they could gain by it. During the 1983 municipals at Dreux, Normandy, the RPR and UDF parties operated a joint list with the FN, with the result that FN candidate Jean-Pierre Stirbois became deputy mayor. However, the rise of the FN and the government’s backtracking also helped to mobilise a large anti-racism movement: if the government would not stand up to the racists, the movement would.

3.18 “Touche pas à mon pote”

There were several high-profile demonstrations in the period 1983-5 and new organisations were formed, including SOS-Racisme, which had considerable success in anti-racist campaigns in schools and universities, and France Plus, whose aim was to achieve “beur” electoral candidates in all parties. “Beurs” were the descendants of Arab immigrant parents and, unless they declined it, automatically obtained French citizenship at the age of eighteen. The rise of the FN and the Mitterrand government’s abandonment of reforms were bad news for them: “trapped on forbidding estates, facing a high rate of unemployment, generally discriminated against, they were clearly not the equals of their French peers” even after attaining French nationality (Gildea 2002:168). In 1983 the singer Renaud wrote “Deuxième Génération”, a song about the most marginalised and deprived of

the beurs, putting these words into the mouth of “Slimane”, aged fifteen and living in the banlieue of La Courneuve (Renaud 1993:136):

Nothing to gain, nothing to lose
 Not even life
 I love only death in this life of shit
 I love what is broken
 I love what is destroyed
 I love above all everything that makes you afraid
 Pain and the night ...⁵⁹

In 1981 many beurs had taken part in hunger strikes at Les Minguettes, outside Lyons, and in 1983 were involved in organising a march from Marseilles to Paris under the slogan “For Equal Rights – Against Racism”. They “managed to extract from the government a new ten-year residence permit for foreigners, automatically renewable, instead of the current three-year permit” (Gildea 2002:168). The movement grew and SOS-Racisme sought to mobilise the youth of France to block the FN’s progress. The lapel badge in the shape of a hand, with the slogan “Touche pas à mon pote” (“Hands off my mate”), became a recognised symbol of the movement, which was supported by the singers Yves Montand and Renaud, and the comedian Coluche, among others. The movement persuaded Mitterrand to reconsider introducing votes for foreigners in municipal elections – a pre-election promise which had become one of the casualties of the capitulation.

Whether the movement could have persuaded the government to return to its apparent ideals of 1981 remains an unanswered question – for in 1986 the PS lost the legislative elections and the right returned to government. The reasons for this defeat were similar to the reasons for the 1970 defeat of the Labour government in the UK. Just as Labour had abandoned its support for important industries in response to economic pressures and made concessions to racism, disappointing its key supporters and encouraging the racist right

⁵⁹ J’ai rien à gagner, rien à perdre
 Même pas la vie
 J’aime que la mort dans cette vie d’merde
 J’aime c’qu’est cassé
 J’aime c’qu’est détruit
 J’aime surtout tout c’qui vous fait peur
 La douleur et la nuit ...

(2.10-2.13), so the Mitterrand administration abandoned its reforms, made concessions to racism, encouraged the FN and confused its own supporters. The result was the defeat of the left and the election of an RPR/UDF government which included Charles Pasqua as interior minister.

3.19 The first Pasqua law

Pasqua, writes Gildea, had “all the finesse of a New York cop” (2002:173). Defferre had implied a connection between immigration and delinquency (3.17.2); Pasqua made it explicit: his aim was “to fight illegal immigration and imported delinquency”⁶⁰ (cited Taïeb 1998:73). To that end the law of 9 September 1986 refused foreigners entry to the country unless they could show means of support, and reintroduced administrative expulsions (deportation without recourse to the courts), which had been abolished in 1981. In October 1986 “[t]elevision viewers were treated to the sight of 101 Malians being dragged onto a charter plane at Orly [airport]” (ibid:174). The word “charter” became notorious and inextricably linked with the interior minister. Pasqua also wanted to abolish automatic citizenship at eighteen for the children of immigrants. Under Pasqua’s proposal, they would have to apply for it and could be refused on grounds of “criminal record, immorality, or inadequate assimilation” (ibid.). This proposal, together with a provision for a loyalty oath to the Republic, was opposed by the anti-racism movement, including SOS-Racisme, and 100,000 students demonstrated against it in December 1986. It was also opposed by Mitterrand, who remained president in “cohabitation” with the new government of the right. The proposals were therefore put on hold and referred to a commission chaired by the vice-president of the Conseil d’État, Marceau Long.

There seemed little comfort for the left (or for the anti-racism movement) as the 1988 presidential elections approached. Pasqua claimed that the mainstream right had common values with the FN in “the defence of national identity”⁶¹ (Taïeb 1998:73). Prime minister and RPR presidential candidate Jacques Chirac did not deny the commonality, but sat, statesmanlike, on the fence: “France must”, he intoned, “be neither a mill nor a citadel”⁶² (cited ibid.). In the event, however, Mitterrand was re-elected and, for the second time,

⁶⁰ « ... lutter contre l’immigration clandestine et la délinquance importée ... »

⁶¹ « ... la défense de l’identité nationale ... »

⁶² « La France ne doit être ni un moulin ni une citadelle. »

dissolved the National Assembly, calling legislative elections which the PS won. “Cohabitation” was over.

3.20 Contradictions

One of the first tasks of the new government was to respond to the report of the Long Commission, which had reported in January 1988. While recommending an end to the automatic right to citizenship at eighteen, it rejected Pasqua’s proposal on the refusal of applications for nationality. The PS government decided to set out its own policy stall, which seemed to mark a change from Pasqua’s approach:

The expulsions of foreigners born in France were stopped and ... the residence permit was again renewable automatically and valid for ten years for the partners of French citizens, the parents of French children and people who had entered France under the age of ten or who had been resident for ten years⁶³ (Taïeb 1998:74).

The categories of people entitled to residence permits were broadened and foreigners appearing before residence commissions for renewal of their permits could have a lawyer present at the hearing. Nevertheless, argues Silverman (1992:66), the new government, under prime minister Michel Rocard,

perpetuated the same contradictions around integration and control that characterised the immigration policy of previous socialist administrations in the 1980s. The coupling of the terms “rigour” and “humanism” ... in the law of August 1989 on entry and residence rights for foreigners ... was indicative of the need to legitimise all decisions with this contradictory discourse.

That discourse continued through the 1980s and into the 1990s. Rocard talked of “[i]ntegration for those who are here legally ... but firmness against illegals”⁶⁴ (cited Taïeb 1998:75). Even the right to family reunification was not immune: “If [it] remains a

⁶³ Les expulsions d’étrangers nés en France sont supprimées et ... la carte de résident est à nouveau renouvelée quasi automatiquement et valable dix ans pour les conjoints mariés à des Français, les parents d’enfant français, et les personnes entrées en France avant l’âge de dix ans ou résident en France depuis dix ans.

⁶⁴ Intégration pour ceux qui sont régulièrement installés ... mais fermeté pour les clandestins.

right it will be subject to stricter conditions relating to accommodation and resources.”⁶⁵ Moreover, “[t]he right of asylum must not be abused.”⁶⁶ But, of course, “[a]s a counterweight to this repressive side, the government intends to make naturalisations easier and pursue the fight against exclusion ...”⁶⁷ (ibid.). Rocard, and his successor Édith Cresson, played integration to a left audience and controls to voters who might be tempted to vote for the mainstream right or the FN. They did not seriously counter either the racism of the FN or of the mainstream right. While Chirac, in 1991, comforted his own party and wooed FN sympathisers by talking of the “noise and smells”⁶⁸ of immigrants and of an “overdose of foreigners”⁶⁹ (ibid.), the government sent its usual mixed messages. This did not help immigrants or beurs: it often ruined “years of work in the difficult areas, infuriated [immigrant] associations and fed xenophobia”⁷⁰ (ibid.:76).

3.21 Headscarves

There had been a number of struggles for recognition of the right to practise Islam since the 1970s: in 1975 there was a rent strike by North Africans for the right to prayer rooms in SONACOTRA hostels; in 1982 Citroën car workers went on strike to get prayer time on their working shifts. In 1989, however, the headscarves dispute raised questions of religion, identity and the Republic as never before.

Three Muslim girls at a college in Creil (Oise) were refused entry into the school unless they removed their Islamic headscarves (foulards). They refused and were excluded from the school. The Republic’s schools, according to the principal, had an obligation to maintain their secular nature (la laïcité). Religious expression was allowed in private but in public institutions headscarves were seen as a form of proselytisation and could not be allowed. Once the question was raised it provoked a debate which has continued into the 21st century. In 2003, as President Jacques Chirac made his own attempt to ban headscarves in schools, Madeleine Bunting asked in *The Guardian* how “the clothing of schoolgirls [could] become an issue of such enormous symbolic weight that for 14 years it

⁶⁵ Si le regroupement familial reste un droit, il sera soumis à des conditions de logement et de ressources plus strictes.

⁶⁶ « Le droit d’asile ne doit pas être détourné. »

⁶⁷ Pour faire contrepoids à ce volet répressif, le gouvernement entend faciliter les naturalisations et faire progresser la lutte contre l’exclusion ...

⁶⁸ ... des « bruits et des odeurs » ...

⁶⁹ ... de « l’overdose d’étrangers » ...

⁷⁰ ... « ruinent » souvent des années de travail dans les quartiers difficiles, déclenchent la fureur des associations et alimentent la xénophobie.

has been the touchstone of a debate about the French constitution, about what it is to be French and how France should ‘integrate’ its ... Muslims” (Bunting 2003). Silverman suggests that the answer lies in France’s construction of its Republican principles which, in their relation to Islam, he summarises thus (1992:112):

Islam denotes religion whereas the secular Republic is beyond religion; Islam is a particularism whereas the secular Republic is neutral; Islam is obscurantist and anti-rational whereas the secular Republic is founded on the rationalist principles of the Enlightenment. It is therefore through “the school of the Republic” ... that children can be saved from the obscurantist particularism of religion.

This Republican arrogance had consequences: integration into the Republic had never delivered on its promises, since it left many beurs victims of discrimination and second-class citizens. Now, as a result of the headscarves affair, many Muslims judged that their religion and their identity were at risk and saw the need to defend them. The education minister in 1989 was Lionel Jospin. His attempt to solve the problem was unconvincing: on the one hand he ruled that the students should be allowed back in school; on the other he raised the spectre of the “Anglo-Saxon model of communities” against the “individual French model” and concluded that there was “no reason to change the French model” (Gildea 2002:175). In this discourse, the “French model” clearly had to be defended unequivocally, since the only alternative was the evidently discredited “Anglo-Saxon model”. Criticism of the current French approach was thus excluded and the headscarves issue remained a live one because important questions about Republican principles, national identity and the place of religion remained unaddressed.

3.22 Pasqua again

In 1993 the right won the legislative elections and Pasqua again became interior minister. The government linked immigration “to fraud, abuse of procedures and ‘the crisis of the suburbs’” (Taïeb 1998:76).⁷¹ It was time for a further dose of Pasqua laws. The laws of 24 August and 30 December included (ibid.:76-77):

⁷¹ ... aux fraudes, aux détournements de procédures et à la « crise des banlieues ».

- strengthened border checks
- random internal ID checks of “anyone suspected of being a foreigner” (Gildea 2002:175)
- restrictions on family reunification and the right to asylum
- abolition of automatic attainment of French nationality at eighteen for children born in France of foreign parents: nationality now had to be applied for
- denial of the right of asylum seekers’ to put their claims to the French authorities if the Schengen agreement and the Dublin Convention were deemed to apply to their case.

The Conseil Constitutionnel quickly declared null and void the provisions restricting the right to asylum, so Pasqua demanded that the constitution be changed. “François Mitterrand caved in”, writes Gildea (*ibid.*:176): “On 19 November 1993, France witnessed the sorry sight of deputies and senators gathering at Versailles to revise the constitution, limiting the rights of man in order to placate racist opinion.”

3.23 Asylum

Asylum became an important issue from the end of the 1980s. In the 1970s many of the “boat people” fleeing Vietnam and Cambodia sought asylum in France because of France’s historical colonial connections with Indo-China. Between 1975 and 1980 France accepted 110,000 of them. The number of refugees worldwide, moreover, was set to increase: those included in the remit of UNHCR rose from 2.4 million in 1975 to 27.4 million in 1995. As we have seen (1.5, 1.6), the rise in numbers during these years fed perceptions of immigrants as a threat and a “security problem” in the EU. Blanc-Chaléard (2001:86) argues that to the French, “in the context of the closure of borders to economic immigration, political asylum seemed like the only open door, from which came an unprecedented increase in [asylum] applications.”⁷² In 1989 PS prime minister Michel Rocard increased the resources of OFPRA, the agency responsible for dealing with asylum applications. But, in line with the perception that asylum was “the only open door” to economic migration, he also set about speeding up the asylum process and raising the percentage rate of refusals. In 1991 a law was passed preventing asylum seekers from

⁷² ... dans le contexte de fermeture des frontières à l’immigration économique, l’asile politique apparaît comme la seule porte ouverte, d’où une augmentation des demandes sans précédent.

working and in 1992 holding centres (zones d'attente), where asylum seekers were to be kept if they claimed asylum on arrival, were installed at a number of airports, including Roissy-Charles de Gaulle near Paris.

3.24 The sans-papiers movement

Many asylum seekers were involved in the sans-papiers movement, which first came to public attention in 1996. The sans-papiers are people with no ID documents, no residence or work permits and no prospects of obtaining any – they are, by official definition, “illegal people”. Their campaign is for regularisation and they reject the term “clandestins”, calling themselves instead “people without papers”. They are, in fact, in a kind of limbo from which there is no escape:

Foreigners who entered without contracts several years before, they nevertheless work in France and have formed attachments (are married to a French citizen or are parents of children born in France), which makes them “undeportable” and at the same time “unregularisable” (ibid.:87).⁷³

Asylum seekers are strongly represented in the movement. François Brun, a supporter of the sans-papiers, explains that, although asylum seekers have a temporary residence permit while their applications are being processed, once their application is refused they become sans-papiers, with no valid permit. So “a part, a good part [of the movement] are those ... who are called ‘failed asylum seekers’, who have applied and been refused.”⁷⁴

In March 1996, 324 sans-papiers, including 80 women and 100 children, occupied the church of St Ambroise in Paris. After four days they were evicted but then occupied the church of St Bernard. In August 1,500 police broke into the church, evicted them, detaining many, and that evening 20,000 people demonstrated in their support. Most of the sans-papiers were released and 103 were eventually given temporary papers; however, 19 of them were deported and two went to jail (Hayter 2000:144). Hunger strikes,

⁷³ Étrangers entrés sans contrat plusieurs années auparavant, ils travaillent pourtant en France et y ont lié des attaches (époux de Français, parents d’enfants nés en France). Ce qui les rend à la fois « non-expulsables » et « non-régularisables ».

⁷⁴ ... une partie, une bonne partie, sont des gens qui sont ... ce qu’on appelle les déboutés du droit d’asile, ceux qui ont fait demande et ceux qu’on a refusé ... [Research interview 17/8/2005.]

demonstrations, petitions and occupations continued, though in recent years the movement's activities have declined.⁷⁵

3.25 From Debré to Chevènement

In 1996 Jacques Chirac won the presidential election, with the right still in power in the National Assembly. In February 1997 the government introduced the Debré laws (named after the new interior minister) in the Assembly. They were cast in the mould of the Pasqua laws and included (Blanc-Chaléard 2001:87; Hayter 2000:145; Taïeb 1998:80):

- the abolition of the automatic renewal of 10-year residence permits
- the substitution of one-year permits for certain residents, making their situation precarious and potentially illegal
- an increase in surveillance measures, including the fingerprinting of all foreigners and raids on workplaces
- an obligation on anyone offering hospitality to foreigners to obtain prior permission from the town hall and report back when their guests had left.

These measures never became law. President Chirac dissolved the National Assembly on 21 April, called legislative elections, which the left won, and a new period of “cohabitation” began. The measures may not have survived in their original form in any case, since they had provoked widespread debate and opposition and large demonstrations against them. The campaign against the measures had opened with a petition by filmmakers calling for civil disobedience and there were “massive demonstrations which were joined by hundreds of celebrities who announced their intention of breaking the law” (Hayter 2000:145).

After the election Lionel Jospin became prime minister. As education minister he had given no clear lead during the headscarves affair (3.21); during the campaign against the Debré laws he again appeared ambiguous on immigration and the anti-racism movement: he did not want there to be, “on the one hand, those who are afraid of unemployment, ... of insecurity and who feel abandoned and, on the other, those who fight for human rights, struggle against racism and seem to abandon [these working people] or preach morality to

⁷⁵ Email from François Brun, 6 October 2005.

them.”⁷⁶ (cited Taïeb 1998:80). In his inaugural speech as prime minister, he announced a full review of “[t]he legislation on nationality, the law on foreigners and immigration” (cited *ibid.*:83) and an inter-ministerial commission, headed by Patrick Weil, was asked to prepare a report on all these issues. However, Jospin did not announce the repeal of the Pasqua–Debré laws. The Weil report was delivered in August and certainly contained a number of positive recommendations, many of which the government took on board in the Chevènement law of 11 May 1998 (named after the new interior minister). The law included measures (Taïeb 1998:83; Blanc-Chaléard 2001:88)

- to facilitate family reunification
- to widen the categories of people with full entitlement to residence permits, without the condition of previous legal status
- to create special permits for students, scientists and artists
- to include as refugees not only those who had been persecuted by the state but all those who had been involved in “action in the cause of liberty”⁷⁷. This partly answered the critics of the hurried 1993 change to the Constitution where this right was reduced to accommodate Schengen and the Dublin Convention (3.22).

Yet the Pasqua–Debré laws were not repealed and visa requirements remained, as did random police checks and the practice of armed escorts taking deportees to the border as in Pasqua’s time (3.19). Even the government’s willingness to begin regularisation of sans-papiers turned out to be two-edged: out of the 150,000 sans-papiers who responded to Chevènement’s invitation to apply, only around 75,000 were granted papers, and these were for only one year. Hayter describes (2000:145) how another 63,000,

most of whom had lived in France for many years, were refused and made subject to deportation. The Chevènement decree came to seem more like a trap than an offer, since the 63,000 had revealed their names and addresses and were faced with a choice of deportation or going back into hiding ...

⁷⁶ « ... d’un côté, ceux qui ont peur du chômage, ...de l’insécurité et qui se sentiraient abandonnés et, de l’autre, ceux qui se battraient pour les droits de l’homme, lutteraient contre le racisme et sembleraient abandonner [ces classes populaires] ou [leur] faire la morale. »

⁷⁷ ... action en faveur de la liberté ...

This regrettable outcome was a consequence of the insoluble contradiction between controls and integration.

3.26 Into the new millennium

Since 1998 the restrictive agenda on asylum has steadily gained ground in France. The law of 10 December 2003 marked the introduction of a major package of reforms which, by increasing the complexity of administrative and legal procedures, introducing “safe third country” and “safe country of origin” procedures and shortening deadlines and timescales made it more difficult for asylum seekers to lodge their claims and have them fully and fairly examined (see below, 4.5). The reforms, accompanied by a discourse which saw most asylum seekers as economic migrants posing as refugees, marked a move from a procedure based on rights to a procedure based on constraints (*Réforme* 2007:2). The use of the concept of a “safe country of origin” and the introduction of subsidiary protection are examples of how the changes often worked to the detriment of asylum seekers: the “safe” countries often proved less than safe (see below, 9.4.3.2) and subsidiary protection – unlike territorial asylum, which it replaced – was only granted for a year at a time, could be withdrawn and was granted at very low rates (see below, 4.6.1). There has been an increasing use of priority procedures, with their tighter deadlines, where decisions are often made without the benefit of an asylum interview (see below, 9.5.3). Asylum seekers may now lose their chance of being heard even on appeal due to the appeal commission’s power to refuse applications by order (*ordonnance*), i.e. on documentary evidence only, without a hearing (see below, 9.6.4). The state has increased its control and surveillance of asylum seekers by making financial support dependent on accepting a place in a reception centre (see below, 9.4.4.1). Governments have set deportation targets, a practice which arguably compromises the objectivity of the decision-making process (see below, 9.7.1).

As in the UK (see below, 4.3.1), the negative discourse which accompanied the laws, decrees and circulars on which these policies were based set asylum firmly in the context of law-breaking and criminality (see below, 4.5). Dominique de Villepin, interior minister in 2004, instructed the *préfectures* (local police headquarters) to be more diligent in checking asylum applications, particularly the addresses of applicants, in order to prevent them moving from one area to another in search of a more flexible *préfecture* (Zappi 2004:1), and to this end *préfectures* had to harmonise their procedures. This was part of “the fight

against illegal immigration”,⁷⁸ which now had to become an “absolute priority”⁷⁹ (ibid.). Stricter checks should operate on accommodation certificates, a more stringent pursuit of “fraud” was required as well as of networks of traffickers (ibid.). The regularisation of *sans-papiers* (3.24) was not to be used as a concession to end a “trial of strength”⁸⁰ with the *sans-papiers* pressure groups (Zappi 2004:1). Instead, *préfectures* should ban collective action on the part of such groups and take immediate action against occupations and hunger strikes: “the first hours or the very earliest days of such events are decisive”, de Villepin told a meeting of French prefects (cited ibid.).

Such a discourse operated on immigration policy in general. In 2007, Nicolas Sarkozy, the new right-wing president, set out his policy aims to Brice Hortefeux, his minister for immigration, integration, national identity and co-development, in a letter which laid down the terms of Hortefeux’s “mission”. Although Sarkozy made passing reference to the benefits of immigration, he presented it mainly as a dangerous business, a threat to the cohesiveness of the Republic, something to be “controlled” and “managed”. “Our country”, he said, must only accept “foreigners to whom a job can be given, who need training in France or who meet the needs of its economy”⁸¹ (Sarkozy 2007:2). He insisted that immigration “must be compatible with our capacity to receive them and with our broad social equilibrium” (ibid.:1), thus seeming to hark back to the “thresholds of tolerance” and “assimilability” arguments of previous years (3.13), as did his insistence that one of the criteria for acceptance would be that of “geographical origin” (Sarkozy 2007:2): “Our country”, he declared, “cannot accept that foreigners who do not respect our values and who have no willingness to integrate should be permitted to settle in France” (ibid.).

A parliamentary bill based on this mission statement was adopted by the *Assemblée Nationale* in October 2007. Some of the most controversial provisions related to proposed immigrants under the right to family reunion (Projet 2007:1):

- an evaluation would be made of their knowledge of the French language and “of the values of the Republic”⁸² while they were still in their country of origin. If they did

⁷⁸ ... la lutte contre l’immigration clandestine ...

⁷⁹ ... priorité absolue ...

⁸⁰ ... épreuve de force ...

⁸¹ ... des étrangers auxquels [la France] peut donner un travail, qui ont besoin de se former en France ou qui répondent à ses besoins économiques.

⁸² ...des valeurs de la République ...

not pass the tests, a further evaluation would take place after a two-month training course

- proposed immigrants from certain countries (a list to be established by decree) would be expected to undergo DNA tests to prove their identities as relatives of family members already in France
- parents already resident in France whose children are granted entry would have to sign a contract agreeing to a training course on the rights and duties of parents in France. Failure to fulfil the contract may result in withdrawal of benefit and residence permits.

The most contentious of these provisions was the DNA test. The tests “would not be compulsory but there are fears that applicants who do not take them would have their cases rejected (Sandford 2007:1). Hostility to the tests came not just from the opposition parties of the left but also from the right-wing governing party itself (the Union for a Popular Movement (UMP)). A few days before the law was adopted one unnamed member of the government declared that the tests were “contrary to our values” and that “frankly I could not do Hortefeux’s job” (Contestation 2007:1). They were, however, introduced for a trial period, to end on 31 December 2009. But Eric Besson, the new immigration minister appointed in January 2009, had strong reservations about the tests (Van Eeckhout 2009:1). In February he set up a feasibility study, then another after he judged that the conclusions of the first were “unsatisfactory” (ibid.). He then concluded that a decree to apply the law could not be issued because the senate’s modifications and amendments had rendered the measure unworkable (ibid.). In September 2009 he announced that he would not sign the decree to apply the measure because no means had been put in place to guarantee the confidentiality of the genetic material submitted by applicants (Van Eeckhout 2009:1). Besson at first seemed to favour a delay of one or two years before implementation, but he later declared that his preferred option was to “give it up altogether ... because in the end it serves no purpose other than to bring the image of France into disrepute” (*France 24* 2009:1).

So at the end of the decade France was still sharply divided by questions of immigration and race. Yet, 11 years before, there had been hopes that such divisions might be overcome.

3.27 “Black-Blanc-Beur”?

In the summer of 1998 there were claims that France had entered a new phase in its history, when it would be able to see itself as a diverse society, “a France”, in the words of Harlem Désir, “rich in all its children whatever their origin” (cited Gildea 2002:177). France’s multi-ethnic football team had won the World Cup and it seemed that the country had experienced a catharsis. Chirac and Jospin watched the match in the stadium and, on Bastille Day two days later, Chirac “hailed his country’s victorious team ... as a beautiful image of France and of the strength of its multiracial society” (BBC News 1998). Discrimination, division and racism belonged to the past: philosopher Alain Finkielkraut, until then a strong supporter of assimilation, declared that “from now on *métissage* [mixed race] is the message. France has nothing other to offer as a project than the vision of her own composition: the formula ‘Black-Blanc-Beur’ replaces the old integration model, and diversity replaces culture” (cited *ibid.*).

However, the catharsis turned out to be little more than an emotional spasm and France’s social harmony has proved very fragile indeed. Le Pen came second in the first round of the 2002 presidential elections and in 2005 rioting broke out in the banlieues of France. The riots began in Clichy-sous-Bois when two boys, aged 15 and 17, died climbing an electrified fence while fleeing the police. They spread throughout France, with petrol bombs being thrown and cars set on fire. Interior minister Nicolas Sarkozy called the protesters “scum” (*la rocaille*), but it became clear that Clichy was a catalyst for protesters with a range of grievances about discrimination, marginalisation, racism and inequality. “It’s unfortunate”, Nadir, from Aubervilliers, told the newspaper *Le Monde* (Bordenave & Kessous 2005), “but we have no choice.”⁸³ According to sociologist Eric Macé (cited Baudry & Mazzorato 2005), among the causes of the riots were “the highest unemployment rates in Europe, racist discrimination and growing urban marginalisation and, since the beginning of the 1990s, a stigmatisation of the youth of the working-class suburbs which makes them appear foreign to French society and constructs them as a menace ...”⁸⁴

The fleeting hopes of 1998 seem foolish in this light. Zinedine Zidane, the football hero who scored two out of the three goals against Brazil, is no longer an icon to beurs. He came

⁸³ « C’est malheureux, mais on n’a pas le choix. »

⁸⁴ ... un chômage des jeunes le plus élevé d’Europe, des discriminations racistes et des relégations urbaines aggravées et, depuis le début des années 1990, une stigmatisation des jeunes des banlieues populaires qui les fait apparaître comme étrangers à la société française, qui les constitue en menace ...

from the Marseilles bidonville of La Castellane but today “[h]is image is too pure”, one of the fans of the Paris-Saint-Germain (PSG) football team told *Le Monde* (Hussey 2006):

He is afraid to say what he is, that he is a beur ... like the rest of us. And to say the truth about what it is like to be an Arab in this society.

The stands at PSG’s ground are the scenes of what Hussey calls a

civil war ... between two sets of supporters. These are the predominantly white “Boulogne Boys” of the Boulogne Stand (who are alleged to have far-right links) and the mixed-race and Arab fans ... who gather on the Auteuil terraces (ibid.).

Football did not heal the social divisions of France.

3.28 Conclusion

We have seen that French governments after the war sought to limit immigration from their colonies and former colonies, amidst arguments about ethnic selection (3.4-3.6). When it became clear that such immigration was needed for post-war reconstruction immigrants were recruited by employers but regarded as temporary and they were marginalised in French society (3.7-3.9). Despite claims that distinctions on grounds of race are not made in the Republic, notions of ethnic selection, assimilability and thresholds of tolerance were raised repeatedly in the years that followed (3.11-3.13). As in the UK, contradictions arose between ideas of integration and immigration controls (3.14), and the concessions made to racist arguments have fed xenophobia and encouraged the far right (3.17.2). As in the UK, protests by immigrants and the anti-racist movement have led to some changes in policy (3.10; 3.14; 3.18) but, as the “headscarves” dispute (3.21) and the sharp debates around the DNA tests (3.26) showed, the problem of racism in France has not yet been resolved and many of the latest arguments are around the question of asylum.

In chapter 4, I will examine the contexts in which asylum policy operates in the UK and France and outline the systems they have put in place for the assessment of asylum claims.

CHAPTER 4

CONTEXTS AND SYSTEMS

4.1 Introduction

In this chapter I examine the contexts in which asylum policy operates in the UK and France and outline the systems they have put in place for the assessment of asylum claims. I begin by noting that asylum policy has become part of general immigration policy in both states and show how it is increasingly guided not by protection concerns but by economic and security imperatives, and I suggest that the freedom allowed by the Refugee Convention to individual states in determining refugee status has left a negative mark on the asylum processes of both countries (4.2). I show how both asylum policymaking by governments and the political discourse across party divisions in both countries focus on immigration controls rather than protection for victims of persecution and thus undermine the right to asylum (4.3; 4.5). I then outline the forms of protection, the frameworks of decision-making and the asylum processes of each country (4.4-4.6). I identify the key stages in asylum seeking and emphasise the traumatic nature for refugees of the experience of persecution and flight (4.7).

4.2 Protection or control?

The purpose of the Refugee Convention remains the same as it was at its inception: to provide a framework for the protection of victims of persecution. However, the economic and political fears outlined in chapter 1 (1.6-1.9) have led to asylum policies being placed in the context of immigration controls rather than of protection. The rising number of asylum seekers in the 1980s and 1990s was seen in the UK “as evidence of an ‘asylum problem’ by those seeking further controls [and asylum] became a key element in immigration control during the 1990s” (Sales 2007:145).

In France (Bousquet 2006:3),

[a]s in most other European countries, confusion between the phenomenon of migration as a whole and the specific problem of refugees has reigned in people's minds and in the media for several years, but equally it has reigned in national policies. The specific question of asylum is not taken into account in an independent and appropriate fashion but vanishes into the general migration policy of the state, a policy guided above all by economic and security imperatives.¹

Bousquet spells out the consequences: "This absence of a distinction between migration policy and asylum policy leads to a tightening of the asylum system as a whole via the reinforcement of strategies designed to curb immigration"² (ibid.). This undermines the right to asylum, since asylum seekers are subjected to immigration controls rather than offered the protection that states parties undertake to offer when signing and ratifying the Convention.

UNHCR and the Refugee Convention allow states considerable freedom to establish asylum procedures to suit themselves. The UNHCR *Handbook* explains that it "does not deal with questions closely related to the determination of refugee status, e.g. the granting of asylum to refugees or the legal treatment of refugees after they have been recognized as such" (*Handbook* 1992, para. 24). Indeed, surprisingly, "the granting of asylum is not dealt with in the 1951 Convention or the 1967 Protocol" (ibid., para. 25). Although determination of refugee status is mentioned in Article 9 of the Convention, it

is not specifically regulated. In particular, the Convention does not indicate what type of procedures are to be adopted for the determination of refugee status. It is therefore left to each Contracting State to establish the procedure that it considers most appropriate, having regard to its particular constitutional and administrative structure (ibid., para 189).

¹ Comme c'est le cas dans la plupart des pays européens, l'amalgame entre le phénomène migratoire dans son ensemble et la problématique spécifique des réfugiés règne depuis plusieurs années dans les esprits et les médias mais également dans les politiques nationales. La question spécifique de l'asile n'est pas prise en compte de façon indépendante et appropriée, mais elle est noyée dans la politique migratoire générale de l'État, politique guidée avant tout par des impératifs économiques et sécuritaires.

² Cette absence de distinction entre politique migratoire et politique d'asile conduit au durcissement du système d'asile dans son ensemble *via* le renforcement des stratégies destinées à freiner l'immigration.

Not surprisingly, procedures “vary considerably” between states, some using informal arrangements, some using general immigration procedures, others establishing specific refugee-status determination procedures (ibid., para. 191). In 1977, therefore, UNHCR recommended that “procedures should satisfy certain basic requirements ... which reflect the special situation” of refugees (ibid., para. 192) and went on to outline such requirements – e.g. what is required of immigration officers, the need for interpreters, access to UNHCR representatives, interviewing techniques, questions of credibility, rights of appeal (ibid., paras 192-204). They are, however, only recommendations and have no legal force: simply “an attempt has been made to define certain principles that ... have proved useful” (ibid., para. 220) and “it is hoped that [they] may provide some guidance” (ibid., para. 223). The writers of the *Handbook* clearly hope that these principles will be followed and note that the High Commissioner for Refugees “has always pleaded for a generous asylum policy in the spirit of the Universal Declaration of Human Rights” (ibid., para. 25). Unfortunately, the freedom of action allowed in relation to procedures has left a more negative mark on the asylum processes examined in this study.

4.3 The UK context: tough laws and secure borders

We have seen how people fleeing the Stalinist states were assumed in the West to have a right to protection (1.3). In the UK, indeed, following the Soviet invasion of Hungary during the 1956 uprising, the Conservative government was criticised for not welcoming more refugees: Conservative MP Peter Kirk argued that “[i]n this extreme situation we should have said that the gates of Britain are wide open to any Hungarian who wanted to come” (Kushner & Knox 1999:245). Yet hardly any politician in the mainstream parties across the EU would use such language today.

The refugee experience today, however, likewise arises from the experience of persecution. In August 2000, for example, the top four originating countries for applicants in the UK were Iraq, Iran, Somalia and Afghanistan (*Asylum Statistics*: August 2000):

- in Iraq, according to the UN Commission on Human Rights that year, there were “systematic, widespread and extremely grave violations of human rights” (cited Boukhari 2000), and arrests of political opponents by the ruling parties in the autonomous region of Iraqi Kurdistan were documented by Amnesty International, as were continued reports of political killings (*AIR* 2001:133)

- in Iran a clampdown on freedom of expression that year led to the arrest and imprisonment of scores of journalists, writers and human rights activists; there were reports of physical and psychological torture and the continued detention of hundreds of political prisoners (*AIR* 2001:129-30)
- in Somalia there was no effective government, no central judicial or police system, and there was war in the south between clan-based militias in which large numbers of civilians were being killed (*Atlas* 2002:202; *AIR* 2001:217-9)
- in Afghanistan arbitrary detention, torture and forced displacement were taking place in the context of the war between Taliban and anti-Taliban forces. Women were suffering oppression and abuse, did not have freedom of movement and were banned from education and employment. Moreover, the neighbouring states of Iran, Pakistan and Tajikistan had closed their borders to Afghan refugees (*AIR* 2001: 25-26).

There were 840 applications from Iraq, 615 from Iran, 595 from Somalia and 475 from Afghanistan – a total of 2,525, just over 39% of the total number that month of 6,430 (*Asylum Statistics: August 2000*). Accounts of abuse, persecution and flight in such circumstances should be taken seriously and that is what the UK claims to do as a signatory to the Refugee Convention: “The United Kingdom has a proud tradition of providing a safe haven for genuine refugees”, the Home Office claimed in 2005 (*Brief Guide* 2005:1). “We give all applications for asylum a fair hearing in accordance with our obligations under the Convention”. Consequently, “each claim is assessed on its own merits” (*ibid.*:2). However, these assurances are weakened by a discourse which focuses on reducing the number of entrants and increasing deportations.

4.3.1 *The virtues of restriction*

Announcing the asylum figures for the second quarter of 2004, immigration minister Des Browne boasted that there were “fewer asylum applications in the whole of the last three months than for the single month of October 2002” (*Downing Street* 24/8/2004). This “success” had been “achieved by bringing in tough new legislation to tackle abuse and cut delays, securing our borders, rolling out detection technology and UK immigration controls to foreign soil ... introducing fast-track processing, ending in-country appeals for nationals

of safe countries and bringing in new visa regimes” (ibid.). Pride is taken in restricting applications, not in granting protection to victims of persecution. Reforms of the asylum system over recent years have concentrated almost exclusively on tightening controls. In March 2001, for example, the Immigration and Nationality Directorate (IND)³ announced its priorities for the next financial year. Two of them would place asylum firmly in the context of criminality: new intelligence-led efforts by the Anti-Crime Squad to prevent the trafficking of refugees; and the creation of 1,800 new detention spaces. Others included a deportation target of 30,000 asylum seekers in the following 12 months and measures to “encourage voluntary returns” (*Asylum Reforms* 2001:1-2). Home secretary Jack Straw briefly acknowledged his Refugee Convention obligations (“Our long-term strategy is to provide protection for those fleeing persecution ...”) but quickly returned to his main concern (“... while deterring unfounded asylum claimants”) (ibid.: 6).

The rationale behind this approach is broadly that, since primary immigration is now at an end following the immigration controls that began in the 1960s (2.8), the only route into the UK is through the asylum system. Hence the increase in numbers and the need to reduce them. On this reading, most asylum seekers have not been persecuted but come here for “economic” reasons (to find work or claim benefits), and they apply for asylum in order to avoid legal immigration controls. Not surprisingly, mainstream political parties now compete electorally to demonstrate which of them is “toughest” on asylum. The Conservative government laid claim to being the toughest in the 1990s, when the Labour Party opposed its 1996 Asylum and Immigration Act. Home secretary Michael Howard declared in 1995 (*Race Card*, 7 November 1999) that the UK was

seen as a very attractive destination because of the ease with which people can get access to jobs and to benefits. And while, for instance, the number of asylum seekers for the rest of Europe are [sic] falling the number in this country are [sic] increasing [and] only a tiny proportion of them are genuine refugees.

Social security secretary Peter Lilley told the Conservative Party Conference in 1995 (ibid.):

³ The body within the Home Office responsible for making initial decisions on asylum claims until 2005, when it was replaced by the Border and Immigration Agency (BIA).

Genuine political refugees are few. The trouble is our system almost invites people to claim asylum to gain British benefits. That can't be right – and I'm going to stop it. Britain should be a safe haven, not a soft touch.

The Labour government elected in 1997 soon abandoned its pre-election liberal stance and took on the mantle of toughness: Home secretary Jack Straw announced that his aim was to ensure that “there will be less of an incentive for the bogus people to come here” (*Guardian Unlimited*, 9 February 1999). The phrase “bogus asylum seekers” had usually been associated with the Conservatives and they continued to use it: party leader William Hague claimed in April 2000 that, “for bogus asylum seekers, this government has turned Britain into the biggest soft touch in the world” (Barkham 2000). In May the Conservative manifesto for the local council elections asserted: “Labour has made this country a soft touch for the organised asylum racketeers who are flooding the country with bogus asylum seekers” (ibid.). For its part, the Labour government tried briefly to revive its liberal image: Alistair Campbell, the prime minister's official spokesperson, declared that “[t]he prime minister would never, ever allow the Labour Party to use that unpleasant, unfortunate phrase ...” (ibid.). Nevertheless a similar concept found its way into Labour's asylum legislation: section 24 of the Immigration and Asylum Act 1999 lays down procedures to be followed by registrars who suspect that a marriage they have been asked to formalise may be a “sham” marriage (IAA 1999: s. 24).

This approach means that all asylum seekers are treated as suspect and leads to the measures of control and criminalisation described above, since the fault is said to lie with asylum seekers. Yet governments cannot prove their allegations of fraudulent claims, apart from citing their own refusal rates and the falling numbers of applicants. But the rate of successful appeals against refusal, the numbers of people who “disappear” – or “abscond”, in the government's criminalising discourse (cited *Appeals* 2004:15, n. 32) – rather than return to their countries of origin and the reports of arrests, torture or murder after enforced returns suggest that this argument is unsafe. The UNHCR *Handbook* recommends a safer approach in the examination of asylum claims which sees the process of ascertaining the facts as a responsibility shared between the examiner of the claim and the asylum seeker, with the examiner adopting a positive approach to the asylum seeker's account of his or her experience (*Handbook* 1992, paras 196,199). This is particularly important in the case of countries where human rights are known to be abused. One participant in this study – ND1

from Sudan – fled to the UK “because Janjawid [militias supported by the Sudanese government] came for my village. And they want to kill me ... All my family is died – killed by Janjawid.”⁴ After the refusal of his asylum claim he told the Home Office: “I don’t want to go to Sudan. I know if today I went to Sudan I be killed.”⁵ It is true, as the UNHCR *Handbook* states, that “[i]t is a general legal principle that the burden of proof lies on the person submitting the claim” (*Handbook* 1992, para 196). But, given the recent history of Sudan, another approach might have been safer in ND1’s case than imposing a burden of proof: the UNHCR *Handbook* (para. 204) argues that

it is hardly possible for a refugee to “prove” every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt.

4.3.2 *Returned to danger*

For some people, claiming asylum is itself a dangerous act. In 2005 a Zimbabwean asylum seeker won an appeal “on the basis that as a result of having claimed asylum in the UK in the first place, he had a ‘well-founded fear of persecution’ if he returned to Zimbabwe” (*Unsafe* 2005). During court hearings in 2007 relating to the safety of returns to Zimbabwe, the Refugee Council’s concern was that “it has become clear how little is known about what happens to returnees and how difficult this is to establish” (*Monitoring Proposal* 2007:4). Yet Home Office minister Baroness Scotland told the House of Lords in 2006:

Where we refuse a claim and the Asylum and Immigration Tribunal dismisses any appeal we ... consider that it is safe for that individual to return. This is one of the reasons why the Home Office does not routinely monitor the treatment of individuals once removed from the UK (cited *ibid.*).

The Home Office does not routinely monitor; it does, however, routinely remove. In its policy review for 2006 it announced its intention to “substantially expand our work to enforce our immigration laws, including removing those who are not entitled to be here, and to encourage and ensure compliance with those laws throughout the immigration

⁴ Research interview, 22 May 2007.

⁵ *Ibid.*

system” (cited *ibid.*). Thus, despite repeated claims by successive governments to be committed to the Refugee Convention, the evidence suggests an emphasis on immigration controls rather than on protection for the victims of persecution.

4.4 The UK system

4.4.1 Different forms of protection

Refugee status If the BIA decides that your claim of persecution meets the requirements of the Refugee Convention you will be granted refugee status, having “the same social and economic rights as UK citizens” with “full access to medical treatment, housing, education and employment” (*Brief Guide* 2005:2). You will also have the right to “apply for official support, known as benefits” (*Leave to Remain* 2008). Before 2005 refugee status was permanent and called indefinite leave to remain. Since 2005 refugee status has been temporary, reviewed after five years in order to establish the current situation in your country of origin. This is when you can apply for indefinite leave to remain. If it is granted your refugee status will be permanent, with no further reviews of conditions in your country of origin. But if the BIA decides that there has been “a significant and non-temporary change” in your country of origin “such that [you no longer have] a well-founded fear of persecution” (*Refugee Leave* 2006:9-10), your refugee status will be ended and you must “volunteer” to leave. If you do not, you will be deported.

Humanitarian protection This category of protection, together with discretionary leave (see below), replaced exceptional leave to remain in 2003. If it is granted you will be allowed to work and have access to welfare benefits. If the BIA decides that you are not entitled to refugee status on the grounds of persecution, it may grant humanitarian protection if it believes that “you are at serious risk to life and person arising from the death penalty, unlawful killing, torture or inhuman or degrading treatment or punishment” (*Humanitarian Protection* 2005, paras 2.2-2.4), i.e. if Article 3 of the European Convention on Human Rights (ECHR) applies to your case. The difference between this and persecution appears to be that to qualify as a refugee you must have been persecuted for “Convention reasons” (1.1) and the treatment meted out to you must have been “sufficiently systemic” to amount to persecution (*Humanitarian Protection* 2005, para 2.4). From 2003 to 2005 humanitarian protection was granted for up to three years; since 2005, it has been for up to five years. At the end of that period you may apply for indefinite leave to

remain, which, subject to “background, character and conduct checks”, should be granted if you are still considered to be at risk in your country of origin, but if the BIA believes that you will no longer be at risk your humanitarian protection will be ended and you will be deported.

Both humanitarian protection and discretionary leave represent a reduction in the right to protection: “These categories of leave”, declared the IND in early 2005, “will be used more sparingly than exceptional leave was” (*Brief Guide* 2005:2). The Asylum Policy Instruction (API) on humanitarian protection, which guides the practice of BIA interviewers and other officials making decisions on individual cases, makes this intention clear. Reference is made to the case of *Kacaj* (2001), where the judges, while recognising that someone may have been persecuted for a reason other than a “Convention reason”, found it “difficult to envisage a sensible possibility that a breach of Article 3 could be established where an asylum claim failed” (cited *Humanitarian Protection* 2005, para 2.4). The API agrees: the treatment or punishment required to trigger humanitarian protection is in a “narrow category” of actions and “few cases are likely to fit this description” (*ibid.*). In the light of this advice, “used more sparingly” seems an understatement. Certainly, in the period April to June 2003 (humanitarian protection was introduced on 1 April 2003) humanitarian protection and discretionary leave, taken together, were granted, in initial decisions, to 7% of asylum applicants (compared with 19% in the previous quarter). The rate rose slightly to 9% by the first quarter of 2004 but by the third quarter of 2007 it was still only 12%. Refusal of all protection continued to be high in each of those quarters – 86%, 88% and 71% respectively – and grants of refugee status continued to be low, at 7%, 4% and 17% respectively (*Asylum Statistics* 2003-2007).

Discretionary leave If you are not given refugee status or humanitarian protection you will be considered for discretionary leave. This could happen where deportation would breach ECHR Article 8 concerning your right to respect for private and family life. It may also happen because your medical condition or the “severe humanitarian conditions” in your country of origin would mean that deportation would breach your ECHR Article 3 rights (not to suffer inhuman or degrading treatment). If it is granted you will be allowed to work and will have access to welfare benefits. If this sounds like a liberal approach, the caveats and reservations under this category, as under humanitarian protection, break the illusion: for medical cases, we find that “[t]he threshold for inhuman and degrading

treatment ... is extremely high and will only be reached in truly exceptional cases involving extreme circumstances” (*Discretionary Leave* 2005, para 2.2). Indeed, ordinary caseworkers are told that they cannot grant discretionary leave in medical cases on their own initiative: “Where it is proposed to grant leave under this category the case should be referred to a senior caseworker” (*ibid.*). With regard to “severe humanitarian conditions”, the API is sceptical that they would trigger a grant of discretionary leave – “[t]here may be some extreme cases (although such cases are likely to be rare)” – so once again “[w]here it is proposed to grant leave under this category the case should be referred to a senior caseworker” (*ibid.*).

Finally, while it is accepted that there may be “other cases where removal would breach the ECHR” (*ibid.*, 2.3), they too are thought to be few and far between. Thus a removal might “give rise to an ECHR breach” other than of Article 3 or Article 8 (*ibid.*, para 2.3), but “[it] will be rare for removal to breach another Article of the ECHR without also breaching Article 3 and/or Article 8” and cases “should be referred to a senior caseworker for approval” (*ibid.*). Outside of such cases, and the case of unaccompanied children, “[t]here are likely to be very few other cases in which it would be appropriate to grant discretionary leave to an unsuccessful asylum seeker” (*ibid.*, para 2.5). Thus although “there remains scope to grant discretionary leave where individual circumstances ... are so compelling that it is considered appropriate to grant some form of leave”, there is even more scope for discretionary leave to be “used more sparingly” than exceptional leave to remain.

4.4.2 *Objective decision-making: some observations*

In the UK the initial decision to grant or refuse asylum is taken within the Home Office – before 2005 by the IND, after 2005 by the BIA. All UK governments claim that decisions are made on a fair and objective basis. In 2007 home secretary Jacqui Smith wrote that BIA officials “carefully consider all asylum and human rights claims on their individual merits in accordance with the United Kingdom’s obligations under the 1951 UN Refugee Convention and the European Convention on Human Rights (ECHR), using objective and published information.”⁶ Nevertheless, the fact remains that decisions on asylum claims are

⁶ Letter to Rt. Hon. Alan Johnson MP, 7 November 2007. I had requested Alan Johnson, my local MP, to ask the home secretary a number of questions arising from an answer given by Geoff Hoon, government chief

taken by the very minister and government department responsible for the increasingly restrictive asylum policy described above, with its emphasis on abuse, crime, detection technology and deportation targets, and this arguably compromises the objectivity of the decision-making process. The government's answer to this seems to be based on the training given to BIA staff and the asylum seeker's eventual access to an appeals process: caseworkers and immigration officers are "trained to act under the 1951 Convention" (*Brief Guide* 2005:2); there is a "right of appeal to the independent Asylum and Immigration Tribunal (AIT) and, if appropriate, onwards to the Court of Appeal."⁷ Rights of appeal are seen as an important safeguard because of the assumed independence of the judiciary. So government ministers seek to reassure their critics by telling them that

in many cases the final decision whether to grant asylum or other appropriate form of protection, in effect, will be taken by the AIT or sometimes a higher court. As well as considering appeals against individual decisions, the AIT also periodically issues "Country Guidance" determinations that provide guidance for future Tribunals on the approach they should adopt in similar cases. These then feed into the development of country specific asylum policy ...⁸

Thus the AIT in particular plays an important role in ensuring fair decision-making. Yet there are problems at the appeal stage and I examine the way the AIT operates and the reliability of its conclusions in chapter 7.

4.4.3 *Outline of the asylum process*

The UK asylum process broadly involves:

- a preliminary screening interview, when your identity and country of origin is established, typically at your port of arrival
- a main asylum interview, when you will be asked why you have applied for asylum, usually conducted at asylum screening units (ASUs) in Croydon or Liverpool
- a letter granting or refusing refugee status/humanitarian protection

whip in the House of Commons, during *Question Time* on BBC-1 on 20 September 2007. This letter was her reply.

⁷ Ibid.

⁸ Ibid.

- an appeal process in the case of refusal of refugee status, humanitarian protection or discretionary leave
- deportation if your final appeal is refused.

This broad outline of the asylum process holds true both under the system as it existed prior to 2005 and under the New Asylum Model (NAM), which came into full operation in 2005. None of the participants in this study was dealt with under NAM. NAM is, however, consistent with the government's restrictive agenda. Broadly, it speeds up the process and tightens restrictions and its effect has been to erode further the right to asylum and I take account of NAM in the course of this study.

4.5 The French context

Official discourse in France proclaims the French commitment to the right to asylum. Its history is often traced back to 1793 when the Constitution declared the Republic's readiness to grant asylum to "foreigners banished from their country for the cause of liberty", with the nineteenth century seen as a "liberal" period for refugees (Le Pors 2005:12, 13). In the twentieth century, however, France's commitment was not so clear.

The growing number of refugees in Europe in the aftermath of the First World War prompted attempts to restrict them (1.4). Le Pors notes, however, that France "gave a welcome to the Russian populations fleeing the Bolshevik Revolution"⁹ (2005:19) and that, "[e]qually, the arrival of a workforce demanding little was welcome after the haemorrhage of the 1914-18 war"¹⁰ (ibid.). But the Great Depression of 1929 led to xenophobia against refugees who were "held responsible for all the social ills"¹¹ of the time (ibid.). After 1933, when Hitler came to power in Germany, France became less willing to sign agreements to protect refugees and introduced tighter border controls and stricter conditions of residence. Moreover, "[c]ontrary to tradition, the [French] public authorities disgraced themselves by interning German, Spanish and Polish refugees, some of whom were handed over to the German authorities during the Occupation"¹² (ibid.). Since many of them were Jewish they were handed over to become victims of the Nazi Holocaust. Nevertheless, and despite the

⁹ ... accueille favorablement les populations russes fuyant la révolution bolchévique.

¹⁰ L'arrivée d'une main-d'œuvre peu exigeante apparaît également la bienvenue après l'hémorragie de la guerre de 1914-1918.

¹¹ ... à l'origine de tous les maux sociaux.

¹² À l'encontre de la tradition, les autorités publiques se déshonorent en internant des réfugiés allemands, espagnol, polonais, dont certains sont remis aux autorités allemandes pendant l'Occupation.

ambiguities on immigration and race described in chapter 3, France ratified the Refugee Convention in 1954 and its 1967 Protocol in 1971.

Those ambiguities continued to dog policy-making in France and, as we have seen (3.16), France halted both primary immigration and family reunification in the 1970s. It could not, however, easily renege on its obligations under the Refugee Convention. Nevertheless, a political discourse developed which began to accuse asylum seekers of “using the [Refugee Convention] to avoid immigration laws”¹³ (Noiriel 2002:15). From the mid 1980s the growing number of refused claims reflected “the increasingly restrictive attitude of OFPRA”¹⁴ (ibid.).

Decourcelle claims that “legislative reforms at the expense of foreigners are a French national sport”¹⁵ (2005:139). “With each change of government, and sometimes several times under the same government, they cannot resist adopting a new barrage of measures against immigrants and refugees”¹⁶ (ibid.). One of the most recent and far-reaching of these reform packages was introduced in 2003. In the words of the Coordination française pour le droit d’asile (CFDA),¹⁷ the law of 10 December 2003, “starting from the position that most [asylum] claims were unfounded and that, in their great majority, people claiming refugee status were simply economic migrants, put in place a legal arsenal aimed at identifying the alleged ‘false claimants’”¹⁸ (*Réforme* 2007:1).

This presumption of guilt was not new: since the 1980s a distinction had been drawn between “genuine” and “false” refugees in France, between “political refugees” and “economic refugees”, between “nice” and “fraudulent” asylum seekers¹⁹ (Decourcelle 2005:142). In 1998 the director of OFPRA described the work of the agency: “A difficult job ...: in all that is carried along in the flow of the river [we must] search tirelessly for the

¹³ ... d’utiliser la Convention de Genève pour détourner les lois sur l’immigration.

¹⁴ ... l’attitude de plus en plus restrictive de l’OFPRA. (OFPRA is the agency responsible for dealing with asylum applications (the Office français de protection des réfugiés et apatrides – the French Office for the Protection of Refugees and Stateless Persons)).

¹⁵ Les réformes législatives sur le dos des étrangers sont en France un sport national.

¹⁶ A chaque changement de gouvernement, parfois plusieurs fois pour un même gouvernement, on ne peut s’empêcher d’adopter de nouvelles rafales de mesures contre les immigrés et les réfugiés.

¹⁷ The French Coordination for the Right to Asylum. CFDA coordinates about 20 organisations with the common goal of defending and promoting the right to asylum and the status of refugees in the context of the 1951 Refugee Convention and the 1948 Universal Declaration of Human Rights.

¹⁸ La loi du 10 décembre 2003, partant du postulat qu’une majorité des demandes n’étaient pas fondées et que, dans leur grande majorité, les personnes qui prétendaient au statut de réfugié n’étaient que des migrants économiques, a en effet mis en place un arsenal juridique visant à écarter les prétendus « faux demandeurs ».

¹⁹ « Vrai »/« faux » ; « réfugiés politique »/« réfugiés économique » ; « gentils »/« fraudeurs ».

gold nuggets of the Geneva Convention, the political refugees”²⁰ (cited *ibid.*:143). Gold nuggets, by definition, are rare.

In 2002 the government realised that OFPRA’s resources were insufficient to deal with the numbers applying. The government set itself two tasks: to shorten the process and reduce the numbers. OFPRA’s budget was increased, more staff were recruited and a major programme of clearing the backlog of cases was undertaken. Speed was of the essence, since President Chirac had ordered that the asylum process should now take no more than a month, not two, three or even four years as had been the case in the past. There were, on the one hand, bonuses for individual staff members calculated according to the number of dossiers examined and, on the other, threats of non-renewal of contracts for those who failed to meet their quotas (*ibid.*:147-8). Meanwhile, asylum seekers continued to arrive:

During the year 2003, France examined 52,000 new claims for refugee status, to which must be added around 25,000 claims for territorial asylum [see subsidiary protection, 4.6.1], putting France in the lead among the countries of Europe. For the government there was no pride to be taken in this classification, quite the contrary. This number of asylum seekers was perceived as a millstone and even a disgrace, a proof of laxity compared with France’s European partners who managed, by means of radical measures, to reduce the number of new refugees²¹ (*ibid.*:146).

The government, however,

deliberately started a process of massive rejection of asylum claims, which operated to restrict the flow ... In the year 2003 alone, OFPRA refused nearly 60,000 claims, of which around 90% were confirmed on appeal by the Appeals Commission, an overall rejection rate of 85.2%, a historical record²² (*ibid.*:148).

²⁰ *Métier difficile ... : dans le flux que charrie la rivière, chercher inlassablement les pépites d’or de la Convention de Genève, les réfugiés politiques.*

²¹ Pour l’année 2003, la France a eu à examiner 52.000 nouvelles demandes de statut de réfugié, auxquelles il faut ajouter 25.000 demandes d’asile territorial, la plaçant ainsi en tête des pays européens. Pour le gouvernement, il n’y a aucune fierté à tirer de ce classement, bien au contraire. Ce nombre de demandeurs d’asile est perçu comme un boulet et même une certaine honte, une preuve de laxisme vis-à-vis des homologues européen qui ont réussi par des mesures radicales à faire baisser le nombre de nouveaux réfugiés.

²² ... a délibérément engagé un processus de rejet massif des demandes d’asile qui fonctionne à flux tendu ... Rien que pour l’année 2003, l’OFPRA a prononcé près de 60.000 décisions de rejet, dont environ 90% ont été confirmées en appel par la Commission des recours, soit un taux de rejet global de 85,2%, le record historique.

The law of 10 December 2003 “profoundly changed the procedure surrounding the right of asylum”²³ (*Réforme 2007:2*). The reforms represented a move “from a *procedure based on rights* to a *procedure based on constraints*”²⁴ (*ibid.*). For CFDA, the state sought “to prevent foreigners from lodging asylum claims by means of increasingly complex administrative and legal procedures”²⁵ (*ibid.*). For Decourcelle (2005:148),

[t]he latest package of reforms ... increases ... the difficulties of examining an asylum claim, and this quite clearly in the name of the sacrosanct hunt for “false” refugees. It is still the same logic: administrative procedures which pile up in order to filter the “good” asylum claims. The examination process has since reached such a high degree of complexity that controlling it is more and more beyond even the administrators who have been given the job of applying it, and arbitrary and abusive practices multiply as a result.²⁶

There are now more special procedures which, if you are subjected to them, speed up the processing of your claim (*Réforme 2007:2*), e.g. “priority” procedures for those whose claims are deemed “fraudulent” or “abusive”, “safe country of origin” procedures and “safe third country” procedures. Timescales and deadlines in general within the process have been shortened, and human rights commissioner for the Council of Europe Alvaro Gil-Robles noted that “although until 2003 France was known for the length of its waiting periods during the asylum process, the serious shortening of deadlines introduced by the law raises questions about the quality of the speeded-up process”²⁷ (Gil-Robles 2006:57).

²³ ... a profondément modifié la procédure encadrant le droit d’asile.

²⁴ ... d’une *procédure de droit* à une *procédure de contrainte* (original italics).

²⁵ ... empêcher les étrangers de déposer une demande d’asile par le biais de procédures administratives et juridiques de plus en plus complexes.

²⁶ La dernière réforme ... augmente ... les difficultés pour faire examiner une demande d’asile, cela bien évidemment au nom de la sacrosainte chasse aux « faux » réfugiés. C’est toujours la même logique : des procédures administratives qui s’empilent pour filtrer les « bonnes » demandes d’asile. Le processus d’examen a depuis franchi un tel degré de complexité que sa maîtrise échappe même de plus en plus aux administrations chargées de l’appliquer, multipliant du coup les pratiques arbitraires et abusives.

²⁷ ... alors que jusqu’en 2003, la France était caractérisée par la longueur des délais de traitement de la demande d’asile, le fort raccourcissement introduit par la loi soulève des interrogations quant à la qualité du traitement accéléré.

He also noted, and deplored, the fact that “the stricter idea of asylum, as currently practised in France, risks contravening the rights of genuine asylum seekers”²⁸ (ibid.:51).

4.6 The French system

4.6.1 Different forms of protection

As in the UK, there is more than one form of protection available to asylum seekers in France.

Refugee status If OFPRA decides that your claim meets the requirements of the Refugee Convention or the right to constitutional asylum allowed for in the French Constitution, you will be given refugee status and a 10-year residence permit, renewable as of right, which includes permission to work and the right to most welfare benefits. The same status and rights are given to your spouse so long as you were married before you applied for asylum or, if you were married after applying, you have been married for at least a year and still live together. Constitutional asylum relates to the right to refugee status for “everyone persecuted for their action in the cause of liberty”.²⁹ During the arguments about the second Pasqua laws (3.22), which reduced the rights of asylum seekers to have their cases heard in France, the Conseil Constitutionnel declared that one consequence of the provision in the Preamble to the Constitution was that all asylum seekers had the right to be heard. The subsequent changes to the Constitution to accommodate Pasqua marginalised this constitutional right but under the 1998 Chevènement law it was rehabilitated and is now one form of protection on offer in France. However, even before the second Pasqua laws, constitutional asylum “existed for a long time without great practical consequences”³⁰ (Ségur 1998:118). It is now sometimes considered in the context of “subsidiary protection” (Le Pors 2005:53), a lower, less used and less secure category of protection and this practice seems to negate the purpose of constitutional asylum.

Subsidiary protection Under the 1998 Chevènement law, you could be granted “territorial asylum” if it was considered that you did not meet Convention requirements for refugee

²⁸ ... la conception plus stricte de l’asile, actuellement pratiquée en France, risque de contrevenir aux droits des véritables demandeurs d’asile.

²⁹ ... à toute personne persécutée en raison de son action en faveur de la liberté (line 4 of the Preamble to the 1946 Constitution).

³⁰ ... est longtemps demeurée sans grande portée pratique.

status but that nevertheless your life and liberty were threatened in your country of origin or that you were in danger from inhuman or degrading treatment contrary to ECHR Article 3. In the 2003 asylum reforms, territorial asylum was replaced by subsidiary protection. It could be granted if OFPRA considered that, while not meeting Convention requirements, you would be in danger in your country of origin of suffering the death penalty, torture or other inhuman or degrading treatment or, as a civilian, that you faced “a serious direct and individual threat against [your] life or person because of generalised violence resulting from ... armed conflict”³¹ (*Guide* 2005:5). Subsidiary protection carries the right to work. The same status and rights are given to your spouse, with the same conditions as for refugee status (see above).

However, subsidiary protection is granted at very low rates: OFPRA granted it to only 84 people in 2004, 0.74% of the total granted some form of protection (Bousquet 2006:11-12). It is also a very insecure form of protection: it is granted for only one year, then renewable for another year and so on. But renewal “may be refused at each expiry date if the circumstances justifying protection cease to exist or undergo a sufficiently profound change”³² (*CESEDA*³³ 2008, art. L.712-3). Thus insecurity and uncertainty play a large part in the lives of its beneficiaries.

4.6.2 *Objective decision-making: some observations*

4.6.2.1 *OFPRA*

OFPRA is the agency which decides whether to grant refugee status or other protection, or to refuse asylum altogether. It is deemed to have financial and administrative autonomy (Le Pors 2005:25) and to be independent of government (Decourcelle & Julinet 2000:71) – evidence of its credibility, according to its defenders. Unfortunately, that independence has always been questionable. Until 2004 it was under the supervision of the ministry of foreign affairs, its director a ministry official appointed by the government for a period of three years and having the title “ministre plénipotentiaire”, the highest rank in the diplomatic corps (*ibid.*:72). Since 2004 two government departments have been sharing supervision of OFPRA, so that it is now, writes Bousquet (2006:9),

³¹ ... une menace grave, directe et individuelle contre [votre] vie ou [votre] personne en raison d’une violence généralisée résultant d’une situation de conflit armé ...

³² ... peut être refusé à chaque échéance lorsque les circonstances ayant justifié l’octroi de la protection ont cessé d’exister ou ont connu un changement suffisamment profond.

³³ *Code de l’Entrée et du Séjour des Étrangers et du Droit d’Asile*, the law relating to the entry and residence of foreigners and the right to asylum.

a hybrid administration, placed under the supervision of the ministry of foreign affairs [and] the interior ministry. Although charged with implementing the 1951 Geneva Convention on refugees and given civil status and financial and administrative autonomy, this body is frequently accused by refugee support groups of being under the strong pressure of its supervising ministries and of being too sensitive to the government's migration policy concerns.³⁴

In fact, its “financial and administrative autonomy” is doubtful, given that its budget comes by way of a government grant, which it shares with the CRR.³⁵ Moreover, OFPRA's autonomy may be compromised in another respect: since holders of the office of director are members of the diplomatic corps, they are likely either to be on their way to a diplomatic post abroad or fresh from finishing a stint at an embassy, possibly in a refugee-producing country. Decourcelle and Julinet (2000:72-73) suggest that relationships entered into during Michel Raimbaud's time as French ambassador to Mauritania may have influenced his decision-making as director of OFPRA in 2000. Writing in the OFPRA report for the year 1999, he mused: “It is ... difficult to understand ... the influx of Mauritians (786) who often refer to an old crisis of eleven years ago, the impact of which has largely ceased”³⁶ (ibid.:73). Decourcelle and Julinet comment: “Political detainees and the victims of slavery who continue to expose the racist authorities in Mauritania will surely grow in number”³⁷ (ibid.).

4.6.2.2 Appeals

If OFPRA refuses refugee status, or the more temporary “subsidiary protection”, the asylum seeker may appeal to the CRR. Its president is a member of the Conseil d'État, the

³⁴ ... une administration hybride, placée sous la tutelle du Ministère des Affaires étrangères [et] le Ministère de l'Intérieur. Bien que chargé de mettre en œuvre la Convention de Genève de 1951 sur les réfugiés et doté de la personnalité civile et de l'autonomie financière et administrative, cet organisme est fréquemment accusé par le milieu associatif de subir la forte pression de ses ministères de tutelle et d'être trop sensible aux tendances de la politique migratoire décidées par le gouvernement.

³⁵ The CRR (Commission des recours des réfugiés), an administrative court set up to hear refugees' appeals against OFPRA decisions, is now the Cour nationale du droit d'asile (CNDA), but is still widely referred to as the CRR and I have retained this title throughout.

³⁶ Il est ... difficile de comprendre ... le flux des Mauritiens (786) qui se réfère souvent à une crise vieille de onze ans dont l'impact a largement cessé.

³⁷ Les détenus politiques, les victimes de l'esclavage qui continuent de dénoncer le pouvoir raciste mauritanien apprécieront sûrement ...

highest administrative court in France, and is appointed by the Conseil d'État's vice-president. Thus we might expect the CRR to be independent of government and of OFPRA itself. However, several factors make this a questionable assumption: the CRR has a common budget with OFPRA, a grant provided by the government; many of the CRR's staff are supplied by OFPRA; and the CRR's judges' panels include an assessor appointed by the Administrative Council of OFPRA, representing the ministries sitting on that Council – foreign affairs, the interior, social affairs, justice, economics and finance – and the office of the prime minister (Decourcelle & Julinet 2000:78; Le Pors 2005:25). Although the judges' panels also include a UNHCR representative, the point is well made by Decourcelle and Julinet that “[t]his situation inevitably creates links of dependency between the CRR and OFPRA, whose decisions [the CRR] is supposed to judge objectively”³⁸ (2000:78). Moreover, since appeals before the judges' panels are appeals against decisions originally made by OFPRA, the presence of OFPRA assessors on the judges' panels “goes against an elementary principle of law that ‘no one may be a judge and a party [in a case] at the same time’”³⁹ (ibid.). The question of the independence of OFPRA and the CRR is especially relevant in the light of the restrictive agenda in France.

4.6.3 *Outline of the French asylum process*

The asylum process in France broadly involves:

- arrival: if you ask for asylum at your port of arrival, you will stay in a holding area (zone d'attente) until the Interior Ministry decides whether to grant you entry. If it decides to do so you will be given a safe-conduct pass to take to a préfecture (police headquarters)
- application at the préfecture for temporary permission to stay in the country as an asylum seeker. This permission will take the form of a pass – autorisation provisoire de séjour (APS) – and a form to complete which you will send to OFPRA
- the presentation of your application to OFPRA, including the completion of a form and an interview
- an appeal to the CRR if you are refused by OFPRA

³⁸ Cette situation crée inévitablement des liens de dépendance entre la Commission des recours des réfugiés et l'OFPRA, dont elle est censée juger objectivement les décisions.

³⁹ ... déroge à un principe élémentaire de droit qui proclame que « nul ne peut être juge et partie à la fois ».

- an appeal to the Council of State (Conseil d'État) if you are refused by the CRR.

4.7 Key stages in asylum seeking

I identify six key stages in the experience of seeking asylum which apply to both countries:

1. Persecution and flight.
2. Reception and screening.
3. Dispersal, support and accommodation, detention in some cases.
4. Main asylum interview and initial decision.
5. Appeals.
6. Deportation, in the case of refusal.

I combine the two experiences of persecution and flight. Persecution is the reason for flight and is usually a protracted experience involving several traumatic events. I give examples from among the UK participants in this research but the point is true for asylum applicants in both countries. Many participants said that war (in most cases some form of civil war) was at least one of the reasons that made them flee. Others cited ethnic persecution as a cause of their flight. Many had lived in fear of their lives (either from government agents, rival political parties, militias, gangs or simply the conditions of war) and many had known their own family members killed, some of them discovering their bodies.

Many undertook long and difficult journeys to escape, most not knowing their final destination, though some knew they were going to Europe. Many had no travel documents and made their way by lorry or car, sometimes walking for large stretches of the journey. They were typically accompanied by agents (traffickers), often describing them as “mafia”, whom they or their relatives or friends had paid to get them to safety. Many had false passports – again supplied by agents, who accompanied them on the journey by plane or boat. The agents typically confiscated the passports before the end of the journey and then disappeared. Some people travelled on regular flights with their own passports.

The stress and trauma of both persecution and flight feed into the experience of the asylum process itself and both should be given due weight by officials and others during the asylum process. Shaw and Witkin (2004:6) explain that

[o]n arrival, asylum seekers may be suffering from illness or injury resulting from events or conditions in their own country, or their hazardous journey to the UK. Some will be suffering psychological distress after the death, torture or “disappearance” of family members.

Moreover, as UNHCR reminds each state party to the Refugee Convention (*Handbook* 1992: para. 190),

an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own.

Four examples follow, from the top four originating countries in August 2000 mentioned above (4.3), of how the stresses of persecution and escape are likely to be combined on arrival. All four were participants in this study.

Iraq

Many Iraqi Kurds fled at this time because they were victims of the rivalry between two political parties in the Kurdish Autonomous Zone of Iraq: the Patriotic Union of Kurdistan (PUK) and the Democratic Party of Kurdistan (KDP). S1 was one of them. He had originally been a member of the KDP but in a complicated series of events, during which he joined the Communist Party, he became a target not only of the KDP and the PUK but also of the Islamic Party (IMIK). His father was murdered by the KDP and his brother by IMIK, and during the latter attack S1 was shot in the leg. He fled Iraqi Kurdistan in 1999.

He did not know his exact destination, “just I would like to stay Europe country ... I knew the Europe country look after people”.⁴⁰ He went to neighbouring Iran, then to

⁴⁰ Research interview, 24 July 2006.

Turkey, where he paid an agent for a place in a lorry with five or six other people. After eight days in the lorry he arrived in the UK and immediately applied for asylum.

Iran

FS3 and his wife FS4 arrived in the UK in September 2000. They were members of a political party banned by the Iranian regime. FS3 had been arrested and tortured after a student demonstration in 1999. In detention, “I was frequently slapped, kicked and beaten; my hands were burnt with cigarette ends ... My body got used to beatings, but I could not cope with shouting, cries and screams of other victims. It affected my mental state.”⁴¹ Nevertheless, in 2000 he helped to organise another demonstration. The demonstrators were attacked and FS3 fled. He later learned that other members of his party had been arrested and one had been killed. FS3 and FS4 went into hiding and, after threats to FS4’s father, were advised by their party leader to leave the country. An agent provided them with false passports and they travelled to Turkey, where they hid for six days. They then travelled by lorry for two days to an unknown country, where they were again given false passports and put on a flight to the UK.

Somalia

OH1 left Somalia in 2002. The civil war had resulted in her losing her home, and most of her possessions had been burned: “Everything they stole. Whole house is stole. Somebody is living in our house.”⁴² The journey to safety was arranged by an agent. OH1 travelled, with her two-year-old son, by car, plane and ship. She did not know her destination until the last leg of her journey, when the agent told her he was taking her to England.

Afghanistan

MS1 was a high school headmaster in Afghanistan under the Taliban regime and left in 2001. His teaching had come to the attention of the authorities and he had been arrested twice. His father and brothers were also teachers and kept school books in the house. But the Taliban burned many school books – indeed, “everything burned in Afghanistan, including my degree, including my passport.”⁴³ In the end drastic action was needed to

⁴¹ FS3’s witness statement, 22 April 2004, paras 9, 10.

⁴² Research interview, 17 January 2007.

⁴³ Research interview, 13 October 2006.

preserve the books for the future: “So what we did finally, we dig a big hole in the ground and we save those ... books.”⁴⁴ Nevertheless he ended up in prison. With the help of a friend he escaped from prison and left the country.

He had no idea where to go, except that “I would be happy to come to any European country: I mean, free countries ... I’d like to live in a freedom country”.⁴⁵ With the help of another friend, he paid an agent and left his family behind. He travelled with other people – in a plane, in cars, buses, trains and, finally, a lorry. They travelled mostly at night, the cars had blacked-out windows and most of the time he did not know where he was. In the UK the police stopped the lorry on the road from Dover to London and the passengers were discovered and arrested. It was only then that he realised he was in the UK.

Conclusion

I have suggested that both the UK and France see asylum policy as part of immigration control rather than as part of a duty to protect victims of persecution and that policymaking follows a restrictive agenda increasingly guided by economic and security imperatives (4.2). I have argued that this approach to asylum is made easier by the freedom allowed by the Refugee Convention to individual states in their determination of refugee status (4.2). I have shown how political discourse criminalises asylum seekers and puts their claims under suspicion and that this facilitates a restrictive asylum process which sets out not to protect but to reduce numbers, deport failed asylum applicants and discourage others from applying (4.3; 4.5). This approach downgrades the duty of both countries, as signatories to the Refugee Convention, to protect victims of persecution, and thus undermines the right to asylum. I show that the limited interpretation and use of humanitarian protection and discretionary leave (UK) and subsidiary protection (France) likewise undermine the right to asylum (4.4.1; 4.6.1). I also suggest that the decision-making processes in both countries are compromised in terms of objectivity by being too closely linked to government (4.4.2; 4.6.2). Finally I link the experiences of persecution and flight, and argue that the effects of the combined trauma of these experiences should be taken into account by officials in both countries during the asylum process.

⁴⁴ Ibid.

⁴⁵ Ibid.

We now turn to the question of what it is like to seek asylum in each of the two countries chosen for this study. In chapters 5-8 I deal with the experience of seeking asylum in the UK, looking at each stage of the process in the context of the procedures in place. In chapter 9 I examine the experience of seeking asylum in France.

CHAPTER 5

SEEKING ASYLUM IN THE UK: EARLY STAGES

5.1 Introduction

In this chapter I examine the reception and screening process, noting how delays, lengthy procedures and the conduct of the screening interview make it a stressful process, in which the traumatic experience of persecution and flight is often ignored (5.2). I examine the system of providing accommodation and financial support and argue that its aims are deterrence and immigration control rather than protection (5.3), and that therefore it undermines the right to asylum. I show how the denial of support under section 55 of the Nationality, Immigration and Asylum Act 2002 and the lack of asylum screening units across the UK leave people destitute and unable to access the asylum process. I look at the growing use of detention within the UK's fast-track system and argue that these processes ignore the needs of asylum seekers, facilitate their removal and likewise undermine the right to asylum (5.3.5).

5.2 Reception and screening

Both under the system in place until 2005 and under the New Asylum Model, procedures may vary according to whether the application is made on arrival or some time afterwards (an "in-country" application). Most of the sample in this study applied at their port of arrival, where they had a "screening interview" the same or the following day. The screening interview is not presented by the Home Office as a major event. It is an "initial" interview whose purpose is simply to "screen applicants to establish their identity and nationality with interpreters present if necessary" (*Brief Guide* 2005:1). It is, according to the European Migration Network, "a brief screening interview [for asylum seekers] in order for the Immigration and Nationality Directorate (IND) to verify their identity as far as possible, take their fingerprints and provide them with evidence that they have made an application" (EMN 2005:4). "At this stage," the Refugee Council explains, "you should not be asked to give details about why you wish to apply for asylum" (*Information* 2003:1). If

you have no resources and nowhere to stay, you will also be able to apply for financial support and accommodation.

This should be good news. I have suggested that recently arrived asylum seekers are likely to be experiencing the combined stresses of persecution and escape (4.7). BIA immigration officers should be aware of the need for sensitivity in their dealings with asylum seekers. They have special instructions for dealing with children, victims of torture, people who have been traumatised, mentally disturbed claimants and potential suicides (API – *Interviewing* 2006, para 15). Yet asylum seekers often describe a long and stressful screening process.

5.2.1 *Queues, delays and ID procedures*

The stress often begins before the interview itself. OH9 applied on arrival and had to wait alone in a room “all the night, until the morning ... I was on a chair. And I look – no one sit with me.”¹ OH13, his wife, and five children aged between five and 14 years, arrived during the Christmas holiday 2004: “It was round evening time ... there was not enough staff and ... around 18 hours – all night I was there – no bed, no chairs ... because there was full, so we were on the floor.”² OH7 applied in country some time after her arrival. She went to Croydon with her two small children at 6 a.m., queued all day and left without an interview: “At the end of the day they say, ‘No more today, come back tomorrow.’”³ The first day was particularly stressful: “You sit like this [folds arms] and – you understand? – you are not happy. Because you are think what they – what they do? They say you ‘OK’? Or they refuse you?” She was worried to such a degree that she was sick and they threatened to remove her from the building. Not wanting to return to the back of the queue she managed to recover her composure. On the third day she got an interview.

Once begun, the process is a long one partly because of the ID procedures involved: the asylum seeker’s details and photograph are included on an application registration card (ARC) together with their fingerprints, taken “to guard against fraud and multiple applications” (*Brief Guide* 2005:1). The ARC is then issued to the asylum seeker and serves as an identity card. The applicant often has to wait for lengthy periods as this process unfolds. MS1 was kept in a room at Heathrow airport: he was “not allowed to go outside –

¹ Research interview, 19 January 2007.

² Research interview, 19 January 2007.

³ Research interview, 18 January 2007.

it is around ten hours ... During this ten hours they interviewed me ... they needed to check my luggage, taking fingerprints, taking photograph for the ID.” S7 thought that his interview and the ID preparation together took about six hours.

5.2.2 Screening interview

The screening interview itself is not likely to be brief or free of stress. The thirteen-page form to be completed by the interviewer during the interview provides a possible 67 questions for a main applicant to answer. They cover the applicant’s identity and country of origin; details about their journey to the UK; their education; their most recent employer; their children (including those left behind, with their addresses and telephone numbers); and the family’s “immigration history”.

Some questions inevitably lead to stress: after the questions, “Which airline did you travel with?” and “What was the flight number?” the applicant is asked, presumably in the absence of a passport: “What name did you travel under?” Under Article 31 of the Refugee Convention, arrival with no passport, or a false passport, should not generally be a problem: “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who ... enter or are present in their territory without authorisation ...” (*Convention and Protocol* 1996:31). The interviewer, however, has instructions to threaten a penalty: “If the applicant’s explanation is not credible they must be warned that the Secretary of State finds their answer incredible and that this may affect their application for NASS⁴ support” (*Screening Form* 2004:5). This odd reference to the secretary of state – who does not yet know of the existence of the asylum seeker – seems to be a device for applying the Nationality, Immigration and Asylum Act 2002, s. 57, which provides for “an application [for NASS support] not to be entertained where the Secretary of State is not satisfied that the information provided is complete or accurate or that the applicant is co-operating with enquiries ...” (NIA 2002, s. 57). On the face of it, this instruction and this application of section 57 appear to breach Convention Article 31.

There may be other causes of stress during reception and screening. Interviewers may express scepticism, or make accusations or threats to asylum seekers. OH1’s interviewer refused to believe anything she said: “He said, ‘Why I believe you it’s your name, or it’s

⁴ National Asylum Support Service – the Home Office directorate responsible since 2000 for providing support and accommodation for asylum seekers. In 2006 NASS ceased to exist as a directorate but the acronym is still often used to refer to the part of BIA which administers support to asylum seekers.

your birthday, or it's your country?' And 'I can't believe it's your child – maybe you take another [person's] child?'"⁵ OH7's interview, conducted through an interpreter, was quite long: "When I finish, interviewer say, 'You are liar, you are not telling me the truth. You not come from Africa – you come from Europe.' He say they send me a letter, and he say, 'If I got your fingerprints, you and your children, I ...' – what is it? – 'I send you to jail.'" She commented: "I think I become crying."⁶

Interviewers may also go beyond the stated parameters of a first interview, ignoring the combined stresses of persecution and escape. S6's journey from Iran took at least three weeks. He had travelled in lorries, walked through the night, slept in rubbish bags during the day and finally arrived at Dover in a lorry with seven other people. On the road out of Dover, as the agent had instructed, they banged on the side of the lorry to attract the driver's attention, were let out and the police called. S6's interview took place three days later: "They asked me a lot of questions about 'Why you're coming to this country? How you coming? In which way? Why? What's the problem?'" Contrary to the notion of a brief screening interview which takes account of vulnerability and stress, they asked him in detail why he wanted asylum. The point of this first interview was, he was sure, that "you should be try to give your idea, your life, your history and you should be explain for them '[this] happen to me, I have documents for to show you [that] my speaking is right.'" He did so as best he could under the circumstances. But "after that, they didn't believe [me]." The interviewer said, "We don't believe you have these problems [in Iran]", and said he had come for "money", not because of persecution.⁷

5.3 Dispersal, accommodation and subsistence

If you are considered "destitute" – i.e. without "adequate accommodation or support for [yourself] and [your] dependants for the next 14 days" (*Treatment* 2007:24) – you are entitled to "emergency accommodation", which may be in a hostel, a hotel or a reception/induction centre. This temporary accommodation is provided under the Asylum and Immigration Act 1999, s. 98, and once your asylum application has been processed you will be moved to accommodation in a UK town or city designated as a "dispersal" area. You cannot choose your destination, and your accommodation too is provided on a "no-

⁵ Research interview, 17 January 2007.

⁶ Research interview, 18 January 2007.

⁷ Research interview, 23 August 2006.

choice” basis (*Brief Guide* 2005:1-2) under section 95 of the Act. The package also includes entitlement to subsistence payments “at 70% of the income support level for adults and 100% for children” (*Treatment* 2007:25). Since July 2002 asylum seekers have not been allowed to work. If you have waited for an initial decision on your claim for 12 months you can apply for permission to work but there is no corresponding right to apply if your appeal or its result is delayed.

If you make an in-country claim you have to do so at one of the two asylum screening units (ASUs) in the UK – at Croydon or Liverpool. If you are living with family or friends and wish to continue with that arrangement you may still be eligible for the subsistence payment. Yet, in spite of the provision of accommodation and cash, I argue that the system sets out to deter asylum seekers rather than welcome them.

5.3.1 From “ad hoc” provision to “burden-sharing”

Between 2000 and 2006 “section 95 support” was organised by NASS. The creation of NASS took place under Labour’s Asylum and Immigration Act 1999 and the government presented it as necessary in order to “rationalise” an “uncoordinated system” (*Operational Reviews* 2002, paras 1.1.2, 1.1.3):

Prior to 2000, asylum seekers were supported in an ad hoc and uncontrolled way. Those who declared their asylum application at their port of entry were eligible for income support, housing and council tax benefit. Other destitute asylum applicants were supported by local authority social services departments.

The “rationalised” scheme, however, seemed to have deterrence, rather than protection, as its aim. It was constructed on “twin pillars” (*ibid.*:1.1.3): the “dispersal” of asylum seekers across the country without any choice of destination; and the provision of vouchers, exchangeable at designated supermarkets, instead of social security benefits. The “dispersal” of asylum seekers was declared to be an attempt to “relieve the pressure” on London and the south-east “through ‘burden sharing’” (*Sales* 2007:148). But Sales argues that the primary aim of dispersal was in fact deterrence, citing home secretary Jack Straw’s preface to the government’s 1998 White Paper, which “suggested that the new arrangements were needed to ensure that ‘genuine asylum seekers’ were not left ‘destitute’ while minimising ‘the attractions of the UK to economic migrants’” (*ibid.*). Indeed, Straw

put the emphasis on deterrence and controls throughout the eight short paragraphs of his preface (*Fairer* 1998:3): there were, he said, “genuine” applicants, but they often “suffered, whilst abusive claimants and racketeers have profited” and “[t]he cost to the taxpayer has been substantial and is increasing” (para. 2). He complained of “too many avenues of appeal” and proposed “a single appeal right ... including removal arrangements” (para 3), promising “increased effort to enforce immigration controls so that those who are refused understand that they must go” (para. 4). He had “no doubt that large numbers of economic migrants are abusing the system by claiming asylum” and that “[m]odernising our controls and simplifying our procedures will help to tackle that problem” (para. 5).

It is certainly the case that from its outset, whatever the need to rationalise the previous system, dispersal did not operate in a rational way and could only add more stress to the already stressful experience of applying for asylum. Kenny Hamilton (then director of the Scottish Refugee Council) described the system of reception in Glasgow as it operated in 2001:

A bus a day disgorges passengers at the reception centre at 6.30 am. We meet the bus, but there’s no warning given about how many are coming. NASS gives single individuals an address for accommodation but people in a group don’t get an address. NASS should send a list of names, but the system operates in a haphazard fashion. So you see what’s available and offer it. NASS is mainly interested in getting people into the dispersal system and off their hands.⁸

Dispersal “often took place to areas without existing communities of fellow nationals” (*Sales* 2007:148) or any history of large-scale settlement of ethnic minority communities, such as Hull and Glasgow. Before dispersal began, Hull had been a city “which was effectively ... almost monocultural” (*Craig et al* 2004:9, n. 9). Kenny Hamilton said that Glasgow “always had minority communities to some extent (e.g. Pakistani), but Glasgow is overwhelmingly ‘white’”.⁹ It was often the case that “no preparatory development work had been undertaken to help local agencies or the settled population prepare effectively for their arrival” (*ibid.*). The consequences “have been disastrous on occasions with racist assaults and murders” (*ibid.*). In Glasgow in 2001 Haitham Saada was beaten up “by a 40-

⁸ Interview with me for article (unpublished) in November 2001.

⁹ *Ibid.*

strong mob ... outside his flat with baseball bats and bottles and was hospitalised with severe head and facial injuries, and broken ribs”¹⁰ and Firsat Dag was murdered on the Sighthill housing estate (*Journalists’ Guide* 2003:37).

Vouchers had been used before. The previous Conservative government had introduced Regulations which removed all social security benefits from in-country applicants and those appealing against a refusal of their asylum claim. But a Zairean asylum seeker challenged the Regulations in court, where Lord Justice Simon Brown deplored the “state of utter destitution” that asylum seekers were being forced into: “[this] uncompromising draconian policy contemplates a life so destitute that to my mind no civilised nation can tolerate it” (cited Hayter 2000:106-7). After several court cases the government reluctantly provided some relief in the shape of vouchers. The vouchers attracted strong criticism: their value was about 70% of income support levels; they could only be exchanged at designated supermarkets; they were exchangeable for a limited range of goods which varied between supermarkets; they were issued in fixed amounts and no change could be given against them; and they tended to stigmatise asylum seekers. Sales describes how “[c]heck-out operators were empowered to check eligibility and ensure that purchases did not include banned items such as cigarettes and alcohol, thus introducing an element of moral surveillance and exposing asylum seekers to racist abuse from other customers” (2007:147). The Refugee Council saw vouchers as “stigmatising, humiliating and degrading” (cited Hayter 2000:110). In 2000 a Labour government would extend them to all asylum seekers.

Evidence that deterrence – and thus immigration control – was the aim of the policy came from the home secretary himself. In a press release announcing the Labour government’s 1998 White Paper, which prepared the way for the 1999 Act, Jack Straw declared that his aim was to “minimise incentives to economic migration by separating support for asylum seekers from the main benefits system and providing accommodation with no choice about its location.” (*Future* 1998:1). In the White Paper itself the argument for vouchers is presented solely in terms of immigration control, with no reference to the UK’s obligations to protect refugees. The government had considered “the relative advantages and disadvantages of cash-based support and provision in kind [i.e vouchers]” (*Fairer* 1998, para. 8.20) and, although cash support “is administratively convenient, and

¹⁰ Ibid.

usually ... less expensive”, decided on vouchers because “this is less attractive and provides less of a financial inducement for those who would be drawn by a cash scheme” (ibid.). The government even argued that the scheme was good for asylum seekers themselves. Sales (2007:148) cites a Home Office document¹¹ which claimed that

“those who are genuinely fleeing persecution” would “not be overly concerned about whether that support is provided in cash or in kind, nor about the location in which they are supported.” ... Official thinking was that “genuine” refugees would be prepared to undergo a temporary period of hardship since the process would weed out “bogus” claimants, thus making their own position morally stronger.

Since then dispersal has remained, though vouchers have all but disappeared: most agencies and NGOs, including charities, churches and asylum support groups, were united in condemnation of them and now only refused asylum seekers on “section 4 support” under the Immigration and Asylum Act 1999 (for people who, for a variety of reasons, cannot be returned immediately to their country of origin) receive vouchers, which are exchangeable at post offices. Cash support, however, still amounts to only 70% of income support: as of April 2008 a single income support claimant aged 25 or more received £60.50 per week; a single asylum seeker of the same age received £42.16 per week.¹² Moreover, asylum seekers do not have access to the premium payments available to income support claimants, e.g. premiums for dietary needs, additional heating costs and disability (Craig et al 2004:89).

5.3.2 *Obstacles to receiving support: section 55*

Section 55 of the Nationality, Immigration and Asylum Act 2002 allows refusal of NASS support to an asylum seeker if “the Secretary of State is not satisfied that the claim was made as soon as reasonably practicable after the person’s arrival in the United Kingdom” (NIA 2002, s. 55 (1) (b)). The government’s original assumption was that claims should be made immediately on arrival at the port of entry. But in December 2003, after several legal

¹¹ *Asylum Seekers Support: an information document setting out proposals for the new support scheme for asylum seekers in genuine need and inviting expressions of interest from potential support providers* (1998), IND, London.

¹² Department of Work and Pensions: Income Support rates as at April 2008 (<http://www.jobcentreplus.gov.uk>); BIA: current support amounts as at April 2008 (<http://www.bia.gov.uk>).

challenges intended to test the meaning of “as soon as reasonably practicable”, the government announced that the phrase meant “within three days” (*Treatment* 2007:30). But applicants would “have to provide a credible explanation of how they arrived in the UK” (*Hungry* 2004:11). There is no right of appeal under the section, although judicial review, on the grounds of procedural error or breach of ECHR Article 3, is possible (*ibid.*).

The section 55 measures were not contained in the White Paper which preceded the publication of the Bill (*Secure* 2001) but were introduced at a late stage in the House of Lords, with the House of Commons allowed only thirty minutes to consider them (*Hungry* 2004:9). Parliament’s Joint Committee on Human Rights was concerned that section 55 would lead to violations of Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (right to an adequate standard of living), ECHR Article 3 (right to be free from inhuman and degrading treatment) and ECHR Article 8 (right to respect for private and family life) (cited *Treatment* 2007:30). Home secretary David Blunkett had assured Labour MPs that the provisions would only target illegal workers, overstayers, people making multiple asylum applications and students with expired visas (*Hungry* 2004:9) and “[t]he House of Lords was also assured that these new measures would be enforced with caution so as to protect applicants with good reason to delay” (*ibid.*). However, once in operation, the impact of section 55 on asylum seekers coming within its scope was devastating (case studies, *ibid.*:18-19):

- Aman’s agent abandoned her at a bus stop; she went to a police station and from there by train to Croydon that same evening. The ASU office was closed, so she slept in the street and went for an interview the next day. She was refused NASS support: “I eat food at the Refugee Council in Brixton Monday to Friday, and on Saturday and Sunday I eat at Queen’s Park in Croydon. I sleep outside Migrant Helpline [a support agency] since one week. [They] gave me a blanket and sleeping bag. It closes at 11 pm, so I sleep with others outside. I’m afraid. I don’t sleep much.”
- Jamal slept rough for two nights and found his way to Croydon. He was given emergency accommodation but then evicted when his NASS application was refused. He slept outside the Refugee Council offices and they gave him blankets: “I haven’t washed myself in a month – I had my first shower yesterday. I never have

enough food ... the weather is cold and it's raining all the time. I feel scared." Then the final irony: "A few nights ago two people asked me for money and threatened to beat me."

Both these examples suggest that the "credible explanation" demand imposes what amounts to a burden of proof.

Problems encountered as a result of section 55 refusals are (ibid.:23)

- street homelessness
- hunger
- unhygienic conditions
- overcrowding
- inability to keep in touch with legal representatives or keep appointments – including Home Office interviews – due to lack of funds
- lack of essential items
- unmet special needs.

Dwyer quotes a nurse who dealt with patients not eligible for support because of section 55 (Dwyer 2005:631):

A couple of weeks ago I had an eight-month pregnant woman who was destitute. She couldn't get social services to take her on as a pregnant woman, in relation to the unborn child, and NASS were saying that she'd not applied for support in enough time. So obviously that had massive implications for her.

In an exploration of housing issues in relation to dispersed forced migrants, Dwyer and Brown (2008) cite an example of an asylum seeker made destitute because of section 55, who told them (ibid.:212):

To be honest sometimes, depending on the weather conditions we just find something to see us through to the next morning ... just find a corner to sleep in ...

At one stage it was terrible, very cold in the night and we didn't have enough to cover ourselves and it was traumatic. All night you are shaking, you are trembling.

A Coventry Refugee Centre worker described one case: a “visibly war-wounded” man refused support and “sent out into the icy streets” (*Hungry* 2004:23). “We were able to get him an injunction after two weeks,” added the worker. “During this period I had to go to Kurdish shops and restaurants asking people if they would take him into their homes.”

The Home Office makes the assumption that everyone knows the rules about applying for asylum and should therefore obey them. In 2006 ND1, a participant in this study, was abandoned by his agent and slept rough in Glasgow for a week. He was arrested, then interviewed by a Home Office official. Asked why he had not applied for asylum before, he replied: “I don't know about asylum because I am not traveller – I didn't travel in my life to any country, also I didn't leave my village to go to other places.”¹³ Lord Joffe, a former refugee, would sympathise with ND1. During the 2002 debate on section 55 he told the House of Lords (Lords *Hansard*, 17 October 2002, cols 996-7):

This clause is based on the premise that refugees know that they need to apply for asylum. It would astonish [noble Lords] to learn that ... [i]t does not occur to many refugees until a considerable time after they arrive here that they need to [do so]. When I came to this country as a refugee 35 years ago, I thought that I would be welcome – as a lawyer, I ought to have known better. I did not know that in the United Kingdom, which was regarded as the one country that would be totally sympathetic to one, refugees needed to go through a process of applying for asylum. Many refugees still assume today that they do not need to do anything other than get to this country ... Obviously, once [they] have been here for some time, almost all of them will learn otherwise.

ND1 learned otherwise. He was refused NASS accommodation and continued to sleep rough until the Glasgow support group Unity found him accommodation.

In 2003 NASS screened 14,755 applicants under the section 55 provisions. 9,415 (64%) were refused NASS support, and refusals increased by more than 50% between the second

¹³ Research interview, 22 May 2007.

and third quarter of the year (*Asylum Statistics* 2003). Legal challenges were made and by October 2003 “section 55 cases amounted to a quarter of all the judicial review cases lodged in the High Court and 800 cases were being processed” (*Treatment* 2007:30). The courts were under heavy pressure. Judges, however, were not inclined to declare destitution in itself a breach of ECHR Article 3. In Lord Justice Bingham’s view, “[a] general public duty to house the homeless or provide for the destitute cannot be spelled out of Article 3” (cited *ibid.*:31). But they were concerned that section 5 cases were, in the words of Mr Justice Maurice Kay, “clogging up the processes of the Administrative Court” (*Hungry* 2004:12) at a rate of 60 applications a week. In the end, Lord Justice Bingham brought matters to a head in the 2004 *Limbuela* case: “I have no doubt”, he said in his judgment, “that the [Article 3] threshold may be crossed if a late applicant with no means and no alternative sources of support, unable to support himself, is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life” (cited *Treatment* 2007:31).

So the Home Office “revised its procedures” under section 55 (Briefing Section 55 2004:1). Section 55 assessments would now be made on the basis of the screening interview, not a separate section 55 interview; and a new NASS Eligibility and Assessment Team (NEAT) would make the decisions (*ibid.*:2). Apart from these purely procedural changes, the Home Office told the Joint Committee for Human Rights “that since the *Limbuela* judgment, it does not refuse support under section 55 to anyone who does not have some alternative source of support available, including overnight shelter, adequate food and basic amenities” (*Treatment* 2007:31). Yet little seems to have changed: section 55 has not been repealed and the Home Office continues to assess applications for support on the basis of its criteria, notably that you must show you applied for asylum within three days and you must give a “credible” account of your arrival; it is still “being used to refuse cash-only support claims from applicants with accommodation (such as staying with friends)” (*ibid.*). Indeed, the Inter-Agency Partnership (IAP)¹⁴ considers that “the continued application of section 55 for subsistence-only claims potentially breaches ... ECHR Article 3 and ICESCR Articles 9 and 11” (cited *ibid.*). Moreover, ND1’s account indicates that destitute applicants are still being refused both accommodation and cash support and,

¹⁴ The Inter-Agency Partnership comprises six agencies: Migrant Helpline, Refugee Action, the Refugee Arrivals Project, the Refugee Council, the Scottish Refugee Council and the Welsh Refugee Council. It was formed in 1999 and in 2000 was contracted by NASS to provide advice, support and emergency accommodation to newly arrived asylum seekers and ongoing support to asylum seekers living in dispersal accommodation.

according to ICAR,¹⁵ section 55 remains a “primary” cause of destitution among asylum seekers (*Destitution* 2006:3). The 2007 Joint Committee report notes that although, according to Home Office statistics, “there has been a considerable reduction in the number of asylum seekers refused support under section 55” since the *Limbuela* judgment, there were still 895 such refusals during 2006 (*Treatment* 2007:31).

In the House of Lords in 2002 (Lords *Hansard*, 17 October 2002, col. 995) Lord Judd argued that

what matters is that every single person who is entitled to asylum gets it. What matters, therefore, is the case for asylum, not an administrative consideration of when an application was lodged or from where, whether it was a suitable place administratively for the Home Office, and so on. The issue is the merit of the case before us. If we lose sight of that, we have lost sight of the whole principle of commitment to asylum.

The evidence suggests that the intention behind section 55 is to deter refugees from applying for asylum in the UK and that it is part of a policy to control immigration rather than to fulfil the UK’s Refugee Convention obligations. As such it undermines the right to asylum.

5.3.3 *Obstacles to receiving support: ASU provision and availability*

The fact that there are only two ASUs in the UK – one in Liverpool and one in Croydon – both with limited opening hours (9 am to 1 pm) is another cause of destitution and an obstacle not only to obtaining support but to entering the asylum process at all. Destitute asylum seekers are unlikely to reach an ASU quickly. They are, in the words of the agency Refugee Action¹⁶ in its evidence to the Joint Committee on Human Rights, “abandoned in the towns and cities where their agent has left them, with no means to get to Liverpool or Croydon ... [They] are likely to be tired and confused, traumatised by [persecution] and by the journey to the UK” (*Treatment* 2007:27). Those who find their way to a police station are usually no better off, for “although Home Office best practice advice is that

¹⁵ Information Centre about Asylum Seekers and Refugees, an independent information and research organisation based at City University, London.

¹⁶ Refugee Action is a charity working with refugees and asylum seekers in the areas of reception, resettlement, development and integration, providing advice and support in 11 regions across England.

Immigration Officers should make every effort to attend to people ... at a police station ... they are usually only able to do so for the most vulnerable applicants” (ibid.). According to Refugee Action, the police rarely allow people to wait in the police station and “those who are not attended to by an Immigration Officer are routinely turned onto the streets” (ibid.).

Refugee Action believes that the difficulties encountered in trying to reach an ASU increase “the likelihood of clients disappearing without engaging in the asylum process” (ibid.). It recommends that the package of emergency accommodation and travel to an ASU provided to vulnerable groups should be given to all single asylum applicants (ibid.: 27-8). IAP argued before the Joint Committee that “the limited geographical presence and opening hours make it difficult to lodge a claim” (ibid.:27) and the Committee recommended government provision of “locations for claiming asylum and support throughout the UK” (ibid.:28).

5.3.4 Accommodation

NASS subcontracts its duty to house destitute asylum seekers both to the public sector (local authorities) and the private sector (including registered social landlords). Pauline Brown, ESOL guidance officer at Hull College of Further Education, says that when Hull became a dispersal area in 1999 the city received only 250 asylum seekers; one year later there were over a thousand: “In the early days, we had no infrastructure, no real knowledge, and we had to sort it out [and] learn on the hoof ... There were plenty of greedy landlords around in this situation and it was important that accommodation was done on a contract basis.”¹⁷ Nevertheless, in 2007, looking across the UK as a whole, the Joint Committee on Human Rights found “evidence that the quality of section 95 accommodation is unsatisfactory and falls short of the Article 8 ECHR right to respect for home, family and private life” (*Treatment* 2007:35). As early as 2001, one year after NASS was established, FS1 was sent to Hull, where “they found us house to live ... Well, those houses were very poor ... houses – I don’t think nobody live in those areas.”¹⁸ In 2003 S7 spent his first year in Hull in a house with seven people: “I don’t like, because, you know, seven people live in one house – very busy.”¹⁹ The Scottish Refugee Policy Forum’s evidence had described “a very poor level of accommodation in Scotland, where asylum seekers were housed in tower

¹⁷ Research interview, 12 May 2006.

¹⁸ Research interview, 13 October 2006.

¹⁹ Research interview, 23 August 2006.

blocks awaiting demolition and essential repairs were not carried out” (ibid.). In 2008, after being refused accommodation for two years, ND1 was finally housed in a Glasgow tower block: on the day he moved into his ground-floor flat, a man was murdered several floors above and his body landed outside ND1’s window.²⁰

At another level, asylum seekers cannot always be sure that they will not be moved from their current accommodation, and when they are moved this may have detrimental effects on other aspects of their lives. The Scottish Refugee Policy Forum told the Joint Committee that “asylum seekers were subjected to frequent moves which interrupted their children’s education and public examinations and made it more difficult for them to integrate into the community” (*Treatment 2007:35*). In its information to asylum seekers on accommodation, the BIA seems to warn that such moves are likely to happen: “We provide different housing at different stages of your application process” (*Accommodation 2007*). Yet, as the Joint Committee pointed out, “[s]uch moves conflict with the UK’s obligations under the EU Reception Directive, Article 14 (4) of which provides that member states shall ensure that ‘transfers of applicants from one housing facility to another shall only take place where necessary’” (*Treatment 2007:35*).

In the 2004 research by Craig et al, asylum seekers in Sheffield and Wakefield tended to express dissatisfaction with housing in the private more than in the public sector (2004:69):

Considerable concern was expressed that NASS did not exercise any kind of effective quality control over the housing stock into which asylum seekers were housed; much of it, particularly in the private sector, was said to be in poor condition and respondents felt that NASS should inspect it and ensure that it reached nationally benchmarked quality standards before allowing it to be used.

Most asylum seekers in that research were “generally satisfied with their housing” (ibid.) and this holds true in this study. Nevertheless, the Joint Committee considered that “in some cases the quality and terms of accommodation provision under section 95 of the 1999 Act interferes with the rights of asylum seekers and their children to respect for family and home life under Article 8 ECHR, and the right to adequate housing under Article 11 ICESCR” (*Treatment 2007:35*).

²⁰ Telephone conversation with ND1, 13 June 2008. Facts later confirmed by a Unity support group worker.

5.3.5 Detention

Asylum seekers may be detained “at any stage during the asylum procedure” (*Information* 2003:2). The government does not publish annual figures on numbers in detention, but publishes a quarterly “snapshot” of people in detention on a given day. Thus, “on 26 March 2005 ... 1,625 asylum seekers were in detention” (Casciani 2005). It also publishes annual figures on the number of people leaving detention: in 2005 “16,805 asylum detainees left detention during the course of the year, of which 59% were removed from the UK. The remainder were given temporary admission or released on bail” (*Treatment* 2007:69). There are no figures for length of detention. Using official figures for 2003 and 2004, Amnesty International estimated “that 27,000 people who had at some stage sought asylum were detained in 2003 and, similarly, that upwards of 25,000 individuals were detained in 2004, some possibly just overnight, some for prolonged periods of time” (*Seeking* 2005:43). Detention is mostly associated with “removal” (deportation) after the refusal of an application (see chapter 8) but we are concerned here with detention in the early stages of the asylum process. Several Immigration Removal Centres (IRCs) “hold asylum applicants who are at the beginning rather than the end of the asylum process and whose claims are considered suitable for ‘fast-track’ asylum processing” (*Treatment* 2007:69). Home Office figures do not show how many are detained at this early stage. Fast-track procedures began at Oakington IRC, which opened in 2000 (*Fit?* 2008:55). Harmondsworth IRC began its fast-track operation in 2003 and Yarl’s Wood in 2005 (*Treatment* 2007:72). The fast-track procedure is key to the New Asylum Model (NAM), with the Home Office aiming at the outset to process 30% of cases in this way as a first target (*ibid.*).

The setting of such targets seems to contradict the use of criteria, since targets need to be met regardless of other considerations. Nevertheless, criteria remain and those for early detention are much the same under NAM as under the old system. Detention may be used “to prevent absconding, to establish identity, to remove people ... at the end of their case and for the purposes of making a decision on a claim for asylum that is deemed to be ‘straightforward’ and therefore ‘capable of being decided quickly’” (*Seeking* 2005:38, citing the BIA’s *Asylum Process Manual*). This last reason is usually given when you have come from a country designated by the government as “safe”.²¹ The *Manual* also stipulates

²¹ The Nationality, Immigration and Asylum Act 2002 provides for a list of “safe” countries from which your asylum or human rights claim is deemed to be “clearly unfounded” unless you can persuade the secretary of state that it is not. There are 17 countries currently on the list: Albania, Bolivia, Brazil, Bulgaria, Ecuador,

establishing “basis of claim” as a reason for using detention (cited *ibid.*:38, n. 66), which seems to make the criteria for using detention very broad indeed. Nevertheless, another manual, the *Operational Guidance Manual*, states that detention will “only be used as a last resort” (cited *ibid.*:4).

The objections to detention at this early stage in the asylum process are broadly around the timescales involved, the vulnerability of many of the detainees and the strong pressures to make the timetables work. In 2003 the Inspectorate of Prisons deemed that the timescales used for processing fast-track detainees were “inappropriate for full consideration of complex cases” (cited *Fit?* 2008:56). This is even clearer under NAM conditions, where “an applicant is interviewed on the second day of detention, served a decision on the third day and is given two days to appeal” (*ibid.*:55). A study of the fast-track process at Harmondsworth IRC in 2006 by Bail for Immigration Detainees²² concluded that “the system is too fast to be fair” (Oakley & Crew 2006:5). Some of the figures certainly suggest unfairness and an unlikely success/failure ratio (*ibid.*:10):

Estimates based on an analysis of published statistics for 2005 show that over the year, approximately 1500 men were detained for fast tracking at Harmondsworth. Fewer than 20 were recognised as refugees and granted asylum and none were granted discretionary leave or humanitarian protection. In the first three months of 2006, of the 330 initial decisions made at Harmondsworth, 99% were refused and 1% granted.

Perhaps not surprisingly, testimony to the Joint Committee “raised concerns about the quality of decision-making and procedural safeguards within the detained accelerated process” (*Treatment* 2007:72), and there are problems with legal representation on such short timescales. There was also evidence that “torture victims were regularly detained for fast-track purposes because asylum seekers were not asked about their claim or about their

Ghana (males only), India, Jamaica, Macedonia, Moldova, Mongolia, Nigeria (males only), Romania, Serbia, South Africa, Sri Lanka, Ukraine.

²² BID is a registered charity set up in 1998 to challenge immigration detention in the UK. It seeks to secure the release of asylum seekers and migrants from detention, makes free applications for the release of detainees and provides information to enable them to make their own applications. It encourages legal representatives to make bail applications for their clients, undertakes research and publishes *The Best Practice Guide to Challenging Immigration Detention*.

health at the screening interview where the decision to detain was made” (ibid.) and doubts were expressed “about the ability of victims of sexual violence to disclose the full extent of their experiences whilst detained in the fast-track process” (ibid.). Children can be detained but the Children’s Commissioners told the Committee that they “see no justification for detaining children on arrival in the UK for the purely administrative matter of processing their families’ asylum claims” (ibid.:77). Finally, there is pressure to make the timescales work. A duty solicitor told the Independent Asylum Commission (*Fit?* 2008:57):

The Home Office fight [sic] tooth and nail to keep to the timetable of the detained fast-track system, but this compromises the integrity of the system. There is a culture of inflexibility in the fast-track system which leads to vulnerable asylum seekers ... being denied protection. The detained fast-track process is a gateway to injustice.

Detention at this stage ignores the combined stresses of persecution and flight suffered by asylum seekers on arrival (4.7). There are also concerns about their treatment once they have been placed in the IRC. The Inspectorate of Prisons and a number of NGOs have raised concerns about treatment (cited *Fit?* 2008:58), including:

a lack of recreational activities, overcrowded accommodation, mistreatment by centre staff, long periods kept in cells, lack of privacy, visiting restrictions, limits on making and receiving calls, an absence of 24-hour medical provision and no provision to deal with serious illnesses.

The experience of CC4 illustrates some of these concerns.²³ She had escaped from prison in Côte d’Ivoire, was smuggled to the UK and applied for asylum at Croydon the day after her arrival. After her screening interview she was detained at Oakington IRC because “I didn’t have any passport at all, I didn’t have any tickets – nothing. That they told me. I say, ‘OK’ – I didn’t know ... what is detention.” CC4 cried as she described Oakington. “I will never forget ... Inside it’s like prison.” She had no solicitor and was not given any opportunity to find one: “You just stay there and they ask you the questions. They can’t

²³ Research interview, 18 April 2007.

believe you and they tell you, ‘You have to go back to Ivory Coast.’” She slept in a room with 12 other women with “toilets downstairs – we have to go down every time.” One member of staff was helpful and took her to the medical centre when she was unwell. The rest of the staff “were not friendly”:

They just came – one day, I remember, just came – and I was feeling very, very bad and they told me, “You have to go downstairs for the TV room.” I said, “No, I’m not well now, and I want to be here.” [The warder shouted:] “I said go down to the TV room NOW. What you do?” I said, “Please, I want to sleep, I’m not feeling well.” She said, “No, you have to go down.” And she take me downstairs.

It seems clear that the speeding-up of the process does not facilitate protection. It does facilitate the removal of applicants and can best be understood as part of a policy to subsume asylum under immigration control. As such it undermines the right to asylum.

5.4 Conclusion

We have seen how queues, delays and lengthy ID procedures, together with the conduct of the screening interview itself, may turn what should be a “brief”, initial process into a long and stressful experience for vulnerable asylum seekers. We have seen how the dispersal of asylum seekers across the country and the provision of no-choice accommodation and low levels of financial support have deterrence as their aim and undermine the right to asylum. I have argued that refusing NASS support under section 55, the lack of ASU provision and the use of fast-track procedures and detention have more to do with controlling immigration and deterring applicants than with the UK’s obligations under the Refugee Convention. Thus the procedures, regulations and legislation undermine the right to asylum at this early stage in the process.

In chapter 6 I examine the asylum interview and the initial decision-making process.

CHAPTER 6

SEEKING ASYLUM IN THE UK: MAIN INTERVIEW AND INITIAL DECISION

6.1 Introduction

The main asylum interview is the moment when asylum seekers get the chance to explain the reasons for their application to the Home Office caseworker who will make the initial decision on their claim. In this chapter I examine the main issues arising at this stage of the process, including the problems of legal representation at the main asylum interview, and the consequences for asylum seekers of the limits to legal aid introduced in 2004. I show that the timescales under the New Asylum Model (NAM) deny asylum seekers a fair hearing. I look at problems arising in the provision of interpreters and at the need for gender-specific interviewers. I critically examine the way that country reports are compiled, used and presented and look at the way that “credibility” issues are used to justify refusal of asylum. I argue that the restrictive agenda makes refusal an objective of the asylum process at this stage, and that the priority given to a negative search for contradictions and inconsistencies in asylum-seeker accounts of their experiences undermines the right to asylum.

6.2 No chance to explain

In 2000 PB1¹ had no complaints about the screening process in Dover. The interview was short: “They just say, ‘Where you come from?’ And they just organise everything to us from NASS.” Then, tired after the long journey from Iraq, he settled into his emergency accommodation at a hotel in Margate. He remembers that “We were very happy with that at that time because, you know, you hopeless and [someone says], ‘We will try to sort your problem out.’ ... It was a really nice beginning, actually.” But the main interview, in early 2001, was a difficult and puzzling experience: “They wouldn’t let me explain – they didn’t give me a chance to explain all my problems.” Yet, according to the Home Office,

¹ Research interviews, 25 July 2006, 24 August 2006.

decisions on asylum are “based on the details given at interview, and also sometimes in writing via a Statement of Evidence Form (SEF)” (*Brief Guide* 2005:1). PB1 had completed his SEF on time and was ready for the interview. But when he tried to go into detail, “they just – they say, ‘No, we are not going to listen to you. We have just to ask you a few questions and you have to say yes or no – nothing else.’”² So when the interviewer asked PB1 if he had specifically chosen the UK as his destination, he simply answered, “No.” His detailed answer would have been that he wanted “my life be saved: I can find this [in] all the European countries, because there is the democracy, and there is the human rights, in all of the countries.” He would have explained that in the back of the lorry he knew his destination was Europe but he didn’t know which country – “Sometimes people want to go somewhere else, but [the driver] just take you back to his country.” But he was not able to give those answers. Interviewers “also compare what you say during your interview with what you have written down on your SEF form” (*Information* 2003:2) and should give you a chance to explain any apparent inconsistencies (Henderson 2003, paras 1.11ff). Not so in PB1’s interview, where the interviewer had the SEF but described a different approach and procedure: PB1 didn’t need to give details because ““your case [is] already in front of us – we [will] look at it after.””³ Three weeks later his application was refused – a wrong decision, for when he appealed against the refusal the judge “just gave me a chance to explain all my case and my problem” and granted PB1 indefinite leave to remain (ILR). But that was more than a year later, a year of unnecessary anxiety.

6.3 Waiting for interview

The period of waiting for the Liverpool or Croydon interview is a stressful period for asylum seekers, during which they will have a number of other things on their minds. They will be settling into the community to which they have been “dispersed”. They will need to learn about local amenities like post offices, GPs’ surgeries, schools, further education colleges, the police and services provided by the local council. Parents will be concerned to get their children into a local school; adults may want to join English classes. Some of this information may be given by local accommodation providers, including the local council; some will be given by asylum support groups in the area. Staying with family or friends who can contribute their experience and local knowledge may make the process easier.

² Ibid.

³ Ibid.

Nevertheless all this will be happening while waiting for the interview – and that will add to the stress. One thing most people will need to do quickly is find a solicitor.

6.4 Legal representation

Legal representation is essential at this stage. The main asylum interview is, explains the Home Office (*Your Asylum Interview* 2007),

your only chance to tell us why you fear return to your country. You must be able to satisfy your [interviewer] about who you are and the country you are from. This is your opportunity to provide evidence of what you say and any papers you have to support your application.

Unfortunately the Home Office does not believe that you need a solicitor at your interview. This is because “[w]e give all applications for asylum a fair hearing in accordance with our obligations under the [Refugee] Convention” (*Brief Guide* 2005:1) and “[w]e make decisions on asylum claims based on the detail given at interview” (ibid:2). So “[a]pplicants may bring a legal representative to the interview if they wish, but we do not consider it necessary” and if the representative does not attend “we will proceed without them” (ibid.). Moreover, the Home Office “will not normally postpone your interview to give you more time to get legal advice or representation” (ibid.). Despite this, before 2004 you could get legal aid for your solicitor’s attendance at your interview. Since 2004, however, the Legal Services Commission only funds attendance at interview if you have been detained as part of a fast-track process, if you have “mental incapacity”, if you are a minor, if you are to be interviewed under the Police and Criminal Evidence Act or if you are considered to be a threat to national security (API – *Asylum Interview* 2007:45; Shaw & Witkin 2004:48, n.11).

This fits with the government’s view that “in the majority of cases, attendance by a representative at interviews with the Home Office is unnecessary, of no benefit to the client and a waste of public funds” (HCL Research Paper 03/89 2003:15). Home Office-commissioned research and the BIA’s Asylum Policy Instructions (APIs) for caseworkers and interviewers show how this approach permeates the interview process. The research indicated that caseworkers generally believed that, while solicitors could help to ensure that SEFs were completed correctly and within the deadline, “the role of representatives in

interviews did not make a contribution towards the process or the decision” (*Role* 2005:7, 14). Interviewers are instructed that “[t]he legal representative’s role is to observe the interview” (*API – Asylum Interview* 2007:41) and the following “procedural statement” is made before it begins: “I would ask your legal representative ... not to interrupt during the course of the interview. If they wish to make any comments they will have the opportunity to do so at the end of the interview” (*ibid.*:19).

There are several arguments against this approach. First, immigration and asylum law, in its international and national aspects, is complex and asylum procedures are complicated. UNHCR’s *Handbook on Procedures and Criteria* gives advice to asylum decision makers. Its section on the “interpretation of terms” alone takes up paragraphs 35-110 to discuss the meaning of words, phrases and concepts contained in the Refugee Convention (e.g. “well-founded”, “fear”, “persecution”). Other relevant international instruments may come into play, especially if your claim does not fit strict Convention grounds for refugee status, and your solicitor will be alert to this and give appropriate guidance. In terms of UK asylum law, since the Asylum and Immigration Appeals Act 1993 there have been six separate statutes, several regulations and statutory instruments and many changes in procedure. Moreover, not only can a solicitor guide you through this complexity in preparation for the interview but, at the interview itself, would be able to ensure that the interviewer follows appropriate procedure. The Home Office research cited above (*Role* 2005:14) found that solicitors see their role as

- supporting the applicant in feeling comfortable and open in answering the interviewer’s questions
- checking that all of the facts relevant to the claim are mentioned and any inconsistencies between the statement submitted and anything said at the interview are dealt with at the time of the interview
- checking that the Home Office interpreter has interpreted correctly
- ensuring that errors in recording do not lead to inconsistencies between what is said in the interview and the interview notes.

In 1998 the government undertook to “examine whether there is a need for the better provision of information for asylum applicants after interview on the availability to them of

legal advice” (Fairer 1998, para 8.10). Asylum Aid found it “impossible to imagine any valid reason why legal advice should become necessary only *after* the interview, which is the crucial part of the whole asylum process” (Still No Reason 1999:67).

Secondly, the burden of proof rests on the asylum seeker (1.10.1), and this in a context where political discourse characterises asylum as a means to avoid immigration controls and regards asylum seekers as abusers of the system (4.3.1). Resulting laws and procedures seek to deter claims and make asylum part of the process of immigration control. No matter how much UNHCR may plead for a “flexible and liberal process” (UNHCR 2003:2) or for giving asylum seekers the “benefit of the doubt” (Handbook 1992:204), this context disadvantages them, and legal help – before, during and after the interview – is essential. Thirdly, asylum seekers are disadvantaged compared with suspects in criminal investigations, who have an established right to demand legal representation at interview. The asylum process, by contrast, cannot be held up for want of a solicitor. But Asylum Aid argues that the consequences of losing an asylum claim are not just in “the difference between prison and freedom; they may involve life as well as liberty” (Still No Reason 1999:68-9). Fourthly, the timescales under the New Asylum Model (NAM) make it even more difficult to amass the evidence for your claim.

So it is important to find a solicitor. Most asylum seekers do this through networks of friends or family, through local voluntary asylum support groups, who have lists of local solicitors, or through local council asylum support teams. Accommodation providers may include information about where to get legal advice in their “welcome packs” (as in Hull⁴) but this is not always the case. Indeed, according to research in Sheffield and Wakefield neither the private accommodation provider nor the council “appeared to offer information on where asylum seekers could receive legal help/advice” (Craig et al. 2004:54). The Home Office provides minimal information (addresses, telephone numbers, etc.) about the Community Legal Service, the Refugee Legal Centre, the Immigration Advisory Service and the Refugee Council but such generalised information has little meaning at this stage and asylum seekers, as they settle in, typically turn to friends, family and voluntary organisations for more practical help. Many, of course, find good solicitors in this way. Some, however, fall into the hands of incompetent or unscrupulous lawyers who handle cases carelessly or charge for their services instead of offering legal aid. CC3’s solicitor

⁴ Research interview with Pauline Brown, ESOL Guidance Officer, Hull College of Further Education, 12/5/2006.

lost his file at an early stage: “They took – what’s call it? – all my paperwork and ... they lost my file. It was a very difficult experience.”⁵ At a later stage, and with a new solicitor, the barrister chosen to represent him at his appeal against refusal suddenly announced that CC3 would have to pay between £800 and £1,200 for his services. This was impossible for CC3, who was not allowed to work. He told the barrister the only way he could pay would be if he won his appeal and found a job: “[The barrister] said to me, ‘No, here is zero, everything is money. If you want to pay, then pay. If you don’t want to pay, leave my office.’”⁶

So asylum seekers need protection from maverick lawyers. Since 2004, however, they have increasingly needed protection from government policy.

6.4.1 Legal aid

Asylum seekers have the right to legal aid if they do not have the resources to pay. But in April 2004 a maximum legal aid entitlement of five hours was set for the time allowed to prepare an initial application to the Home Office and any further funding had to be “merit-tested” by the Legal Services Commission: the Commission would only grant funding in cases where it estimated the chances of success to be more than 50%. In 2003 home secretary David Blunkett had argued that such a move was necessary because unscrupulous lawyers were helping asylum seekers to lodge “appeal after appeal with no prospect of success, all at taxpayers’ expense.” (*Asylum Measures* 2003:1) Before the changes became law, however, Amnesty International had predicted a negative impact on asylum seekers, warning that there was already “unequal provision of good quality legal representation around the UK and with the proposal to restrict publicly funded immigration and asylum work, many established solicitors might have to withdraw from this area of work” (Shaw & Witkin 2004:7).

The prediction came true. Refugee Action told the Joint Committee on Human Rights that “in every region in which it worked, specialist immigration solicitors had been forced to reduce capacity or close as a direct result of the cuts” (*Treatment* 2007:34). Refugee Action was “concerned that applicants who could have been granted refugee status are being refused and are unable to appeal” (ibid.). In Hull there are now no law firms specialising in immigration and asylum. Gary Power, who manages the 167 Centre, an

⁵ Research interview, 18 April 2007.

⁶ Ibid.

asylum support service in Hull, explained that “it really is a problem for us to find a solicitor now that will take on a case that gets legal aid funding.”⁷ The Centre has an agreement with a firm in Doncaster (60 miles away) to do weekly surgeries in Hull and a solicitor in Grimsby (30 miles away) takes Hull clients who are able to pay the fees. Amnesty International’s concerns when it made its prediction were about the human rights questions raised by the government’s policy; the government, on the other hand, was concerned about the financial costs of meeting its Refugee Convention obligations, erring in favour of cutting costs rather than ensuring representation at all stages of the asylum process.

6.4.2 NAM, the SEF and reduced chances of finding a solicitor

NAM timescales tend to reduce your chances of finding a solicitor before interview. If your country of origin is considered “safe”, the Home Office’s aim is an interview in three to five days; if you are in the detained fast-track category the aim is an interview in two to three days; in most ordinary cases the interview takes place within eight to twelve days. Moreover, the SEF has been discontinued under NAM. Solicitors and NGOs criticised the SEF procedure because of the short 10-day deadline for its completion, giving asylum seekers little chance to recover from their journey, find a solicitor or (since the SEF had to be completed in English) find help with the language. Missing the deadline also put them in danger of refusal on grounds of “non-compliance” with procedure. However, with a reasonable deadline the SEF would give them time to identify the relevant facts of their experience and the essence of their claim. Now, the Refugee Council observes, there is no time to recover, no period of preparation and reflection before having to disclose sensitive details of traumatic events, “no opportunity to provide written evidence in an SEF, and no guarantee that an asylum seeker will have seen a legal representative prior to his or her substantive interview” (Briefing NAM 2007:5).

So despite claiming to give all asylum seekers “a fair hearing” (*Brief Guide* 2005:1), the government restricts legal representation in this complex area of law. It justifies such restrictions by raising the spectre of angry taxpayers, feeding the prejudice already created by its public discourse on fraudulent claims (4.3.1). Its approach to legal representation can

⁷ Research interview, 4 July 2006.

be seen as part of a policy to deter asylum applications. It again places asylum policy in the context of immigration controls and undermines the right to asylum.

6.5 The main asylum interview and the refusal letter

At the interview, questions are asked in English, with the aid of an interpreter where necessary. The interviewer writes down the questions and answers on a form which, at the end of the interview, the applicant is asked to sign. The interview notes are no longer read back to applicants before signing, so they are being asked to sign an interview record, written in a language they do not understand, without being able to check its contents. Under NAM, if no solicitor is present the interview may now be recorded at the request of the applicant, who is then given a copy of the tape and of the notes. Several problems are associated with interviews:

- interpretation may be poor or in the wrong language, particularly when the language required is unfamiliar in the UK
- women may feel uncomfortable revealing details of abuse to a male interviewer
- interviewers may lack the skills to put applicants at ease or may ask questions in an insensitive manner
- they may fail to ask the sort of questions which would enable applicants to tell their story
- they may have an inadequate understanding of an applicant's country
- they may be aggressive or make accusations during the interview.

Some of these problems become evident during the interview itself (and might be remedied with a solicitor present). Some problems are not evident until the arrival of a refusal letter, when the pieces have to be picked up after the event.

6.5.1 Interpreters

The ideal situation is to have your own interpreter present who, while not allowed to replace the Home Office interpreter, may be able to identify and correct misinterpretations. OH8's solicitor found an interpreter for her and no problems arose.⁸ Most participants in

⁸ Research interview, 19 January 2007.

this study seemed satisfied with their Home Office interpreters, though some were unsure because, in the nature of things, they could not judge the standard of translation into a language they did not know. TR2 felt vaguely “unhappy with interpreter – because I said to her my story in Russian but what she said to [the interviewer] I don’t know ... Maybe she was good interpreter but for me maybe not enough good. I’m not sure because ... I didn’t understand.” Later, when reading the transcript of her interview, “I try to translate with my dictionary and I noticed some mistakes.”

Serious problems can arise if the interpreter speaks the wrong language or dialect. ND1 from Sudan explained to Home Office officials that he spoke two African languages, but not much Arabic. They insisted that, if he was really from Sudan, he would speak Arabic. In fact, only 51% of Sudanese speak Arabic and there are 100 other local languages (*Nations of the World* 2001:330). ND1 was given an Arabic interpreter. He understood only part of what was said and he could not reply: “[the interpreter] try to speak – many things I have to ask him ... I didn’t understand because it’s not my language ... Sometimes I try to describe with my hands.”⁹

6.5.2 Gender

RWRP¹⁰ research notes that the gender of the interviewer and the interpreter is important to many women asylum seekers, for

[m]any women have been abused by men. Coupled with a fear and distrust of authorities, this fact is likely to seriously inhibit the capacity of a woman to divulge details of her experiences to a male interviewer or through a male interpreter (*Spreading Good Practice* 2005, para. 5.20).

For these reasons, UNHCR guidelines are clear: “Claimants should be informed of the choice to have interviewers and interpreters of the same sex as themselves, and they should be provided automatically for women claimants” (*Gender-Related Persecution* 2002, para. 36:3). The Home Office does not follow this guidance, even though there is some awareness of the reasons for it in the APIs provided for caseworkers and others: the API on gender issues

⁹ Research interview, 22 May 2007.

¹⁰ The Refugee Women’s Resource Project was set up by the NGO Asylum Aid in 2000 to focus on the particular needs of women asylum seekers.

mentions trauma after sexual abuse, and the consequent fear, loss of confidence and self-esteem suffered by women, as well as lack of concentration, self-blame, shame and memory loss (API – *Gender Issues* 2006:12). The practice, however, is that “[i]f ... the claimant requests a gender specific interviewing officer or interpreter we should as far as possible¹¹ accommodate the request [but this] will be subject to operational requirements as it will not always be possible to provide a same sex officer” (API – *Interviewing* 2006:4). In other words, it depends on how many female officers there are and how many are on duty on the day.

Staffing levels have not made it easy for officers to follow UNHCR guidelines: at Yarl’s Wood Removal Centre, whose caseworkers “currently deal only with female claimants” (Ceneda & Palmer 2006:126), there were only two females out of six caseworkers in the fast-track system according to Robin Edwards, Home Office gender policy adviser, as late as September 2005 (ibid.:68). By February 2006 David Dunford, head of fast-track at Yarl’s Wood, was claiming that “the proportion of female caseworkers [there] had risen to half of all caseworkers in the Detained Fast-Track Process” (ibid.). Moreover, both Edwards and Dunford claimed that “they had no problems accommodating requests for female interviewers as they had enough caseworkers and would postpone an interview if necessary” (ibid.). This claim seems questionable: only 50% of caseworkers here are women and, although UNHCR guidelines stipulate that same-sex interviewers and interpreters “should be provided automatically for women claimants” (*Gender-Related Persecution* 2002, para. 36:3), Home Office APIs still allow “operational requirements” to interfere with their provision and thus do not require officers to fulfil the guidelines. Moreover, in their 2006 research, Ceneda and Palmer (2006:67) cited a witness from a women’s project who told them that

even when there’s a formal request on the file from a legal representative this ... is often blatantly disregarded ... So ... you can have an interview ... that even though it’s been clearly stated that part of the ... basis of this claim is to do with sexual violence ... there’ll be a male immigration officer and a male interpreter. ... I’ve never heard of a case where we’ve been involved where that’s been pointed out and the immigration officer has agreed to reschedule.

¹¹ Underlined in the original text.

A Kosovan woman whose solicitor was not funded for the interview requested a female interpreter and a taped interview. Neither was granted and she “felt that the [male] interpreter became hostile when she mentioned her history of sexual assault and [that he] made errors of interpretation” (ibid.:69). TR5 was told that she couldn’t ask for a female interviewer: “You can’t. They say to you – ‘This is the – your Home Office [interviewer]’ and ... you can’t ask [for a] woman, no.”¹² So it was difficult for her to talk about personal details:

It was really painful, you know? They ask you the questions. You can’t tell, you know, sometimes they ask you questions regarding your life ... You can’t explain [what] you’re feeling. Sometimes you are afraid. Because it is painful to tell to someone you don’t know.

Not surprisingly, this may lead to a woman concealing a significant part of her reason for seeking asylum: Ceneda and Palmer (2006:70) cite an Asylum Aid case study where lack of a gender-specific interviewer and interpreter “meant that the claimant did not disclose her experience of rape, which remained undisclosed even at initial appeal.” This clearly undermines the right to asylum.

6.5.3 Country reports: getting the information

Information on the country of origin of an asylum seeker is essential to the asylum process, for the Home Office needs “detailed, accurate and up-to-date information” if it is to “make an informed decision on an asylum claim” (Shaw & Witkin 2004:9). The Home Office therefore compiles country information on a number of refugee-producing countries, updating the top 20 countries twice a year. Until 2005 this was done by the Country Information and Policy Unit (CIPU) within IND. In 2005 country information was transferred to the Research Development and Statistics (RDS) section of the Home Office. This change was partly the result of criticism that a conflict of interest existed because the role of provider of impartial information and that of policy maker were undertaken by the

¹² Research interview, 16 November 2006.

same agency – although a simple move from one part of the Home Office to another is hardly likely to resolve that question.

Country reports are criticised in terms of their methodology, accuracy, reliability and the way they are used and presented. “As a general rule”, states one Home Office-commissioned study, “country officers do not undertake primary research” (Morgan et al 2003:13). Instead they rely on secondary sources, “[drawing] heavily on information collected, in the first instance, by academics, human rights organisations and journalists” (ibid.). While use of such material is a necessary part of gathering facts, “the use of secondary sources alone is potentially problematic”, leading to “information round-tripping” where “information becomes ‘valid’ as it is reproduced by different sources despite the fact that there may have been no clear investigation into its accuracy” (ibid.:13, 15). Even after the Home Office initiated a series of fact-finding visits to refugee-producing countries problems still arose: Henderson noted that the first two reports “appeared to lack any coherent methodology. They rely heavily on government sources, and non-governmental sources are not identified” (2003, para. 17.22). Research conducted by the Immigration Advisory Service (IAS)¹³ the same year found that “a significant amount of material in a number of CIPU Assessments was inaccurate, wrongly sourced and/or did not give information of key relevance to assessing asylum claims” (Carver 2003:7).

Sourcing is a perennial problem. The information in country reports “is not exhaustive”, warned the CIPU in 2000, but “it is sourced throughout [and] is intended to be used by caseworkers as a signpost to the source material”, most of which is “readily available in the public domain” (CIPU *Iraq* 2000:1). In 2007 the RDS agreed: reports provide “a brief summary of the source material ... For a more detailed account, the relevant source documents should be examined directly” (COI *Iran* 2007:1). Caseworkers wishing to examine source documents directly, however, may encounter difficulties. IAS found a poor standard of sourcing in the September 2003 country reports and in April 2004 it found that “sourcing is still not up to a satisfactory level ... and some Country Reports are as bad, or worse, than in April 2003” (IAS *Summary* 2004:7). Thus, contrary to the claim in para. ii of each report that “[a]ll information in the Report is sourced” (COI *Iran* 2007:1), some statements are “literally left without a source, others have been credited to a source which

¹³ The Immigration and Advisory Service is a charity providing legally aided representation and advice in immigration and asylum law as well as a non-profit fee-paying service. It publishes regular briefings and research.

does not give the relevant material as claimed” (*IAS Summary* 2004:7). In the Iran country report, “in sections five and six alone there are 35 mis-sourced statements and 12 unsourced statements” (*ibid.*:7). In the Angola report, “there are 27 mis-sourced statements” (*ibid.*). The Serbia and Montenegro report is “so badly sourced and edited as to raise serious doubts about the validity of the whole report” (*ibid.*) and an endnote to one paragraph states “no source found”. In the Nigeria report out-of-date material is used, but made to appear current by the simple expedient of changing the year of the source. So material attributed to the US Department of State report for 2003 was in fact “a direct quote from 2002 or 2001” (*ibid.*:8).

6.5.4 Country reports: a lack of balance

IAS research has consistently found a “lack of balance” in many country reports, which leads to a “positive gloss on the presentation” of the reports (*IAS Summary* 2004: 3). So in the case of Iran the writer of the report “appears unable to accept that human rights conditions have deteriorated” (*ibid.*:2):

Whilst ample information is given regarding the election of President Khatami and the reformists in 1997, 2000 and 2001, the Report gives barely any information with regard to the Majles [parliamentary] elections of February 2004 in which the conservatives won a landslide victory (following the disqualification of many reformist candidates). The Report repeatedly chooses to cite [more hopeful] UN sources from 1998 ... rather than using more up-to-date sources.

The resulting positive view of Iran was reflected in CC6’s refusal letter in 2004, which declared that since the election of President Khatami CC6’s claim of a lack of democracy in Iran was unfounded.¹⁴ CC6 had fled in December 2003 when, according to Amnesty International (*AIR* 2004:278), there were scores of arrests for political reasons, and

at least a dozen ... were detained without charge, trial or regular access to their families and lawyers. Judicial authorities curtailed freedoms of expression, opinion

¹⁴ Research interview, 20 April 2007.

and association ... scores of publications were closed, Internet sites were filtered and journalists were imprisoned.

In the case of the Eritrea report, IAS research in 2004 found that it included “two comments to the effect that the standard of human rights is better than under other military dictatorships found in neighbouring countries” (*IAS Summary 2004:2*). IAS comments that “this is not relevant information for a decision-maker trying to assess the protection needs of an Eritrean claimant. Information on the appalling detention conditions and torture and abuse by government forces would be better placed here.” On this point, Amnesty International had found that “[t]orture continued to be used against many recent political prisoners and as a standard military punishment” (*AIR 2005:103*). Moreover, the list of people treated in this way included forcibly returned asylum seekers: they were “beaten, tied hand and foot in painful positions and left in the sun for lengthy periods ... or were suspended from ropes from a tree or ceiling” (*ibid.*). OH13’s refusal letter contained a “positive gloss” on the Eritrean justice system: after rejecting his claim that he had engaged in serious political activity in Eritrea, his caseworker expressed the opinion that in any case, “if you were arrested upon your return Eritrea [sic] and charges were brought against you, it is considered that you would be arraigned before a properly constituted, independent court, have access to legal representation and be able to present evidence and cross examine witnesses.”¹⁵ Amnesty International, however, found that fair trials after arrest were not to be taken for granted in Eritrea in 2004, the year that OH13 fled the country (*AIR 2005:102*):

Hundreds of people were arrested for the peaceful expression of their opinions or religious beliefs. Political prisoners were held indefinitely without charge or trial, many incommunicado and in secret detention places.

6.5.5 Country reports: taking governments at their word

Where human rights violations by the authorities have taken place, Shaw and Witkin (2004:11) have identified a tendency in refusal letters to take at face value the official position of governments on human rights violations. Refusal letters assert that the accused authorities do not in fact condone such violations and have taken steps to put a protection

¹⁵ OH13’s “Reasons for Refusal” letter, 2005.

system in place. There is an API standard paragraph provided, with gaps to be filled in as required, to help caseowners refute claims on this basis and use country reports as evidence (cited *ibid.*):

You stated that the *[police/name of other body] [describe alleged actions]*. The Secretary of State considers that these are the random actions of a few rogue *[police officers/soldiers/individuals]* abusing their official position. The Secretary of State is of the opinion that such actions are not knowingly tolerated by the authorities of *[COUNTRY]* and that the authorities are able and willing to provide effective protection *[CITE CIPU REPORT]*.

A note explains how country reports should be used (*ibid.*:12):

NOTE: caseworkers should cite the particular paragraphs in the relevant CIPU report which leads *[sic]* them to believe that the police are not complicit and that prosecution is actively pursued.

Shaw and Witkin (2004:12) use an Algerian case in 2003 as an example. An asylum seeker complained of rape and torture in detention but the refusal letter stated that the secretary of state “does not accept that they are evidence of persecution within the terms of the United Nations Convention”, claiming that “the Algerian government does not condone such violations.” This claim was seen as justified because “[t]he Algerian government’s stated position and instances where members of the security forces have been arrested for such violations is *[sic]* set out in ... the current Home Office Country Assessment.” However, Amnesty International (*AIR* 2004:273) found that

[t]orture remained widespread [in 2003] and was facilitated by the continuing practice of secret and unacknowledged detention. People suspected of ... “acts of terrorism or subversion” were systematically tortured. Legal safeguards against torture and secret detention were not respected by law enforcement agents.

In these circumstances, to take the Algerian government’s “stated position” at face value is at best naïve and at worst life-threatening for asylum seekers. It should not be a practice

followed by the Home Office if it is mindful of its obligations under the Refugee Convention or ECHR.

6.5.6 Country reports: familiarity breeds contempt

There is evidence that some caseworkers feel that their experience relieves them of the need to consult country reports. Morgan et al (2003:40) noted:

Caseworkers may consider that they are already familiar with the country of origin information for a case, as they may have previously consulted the information in order to conduct an interview or deal with similar cases. In these circumstances, they may decide not to consult the relevant country information.

In the words of one caseworker interviewed (ibid.):

We build up our knowledge because I work on top asylum producing countries – Sri Lanka, Iran – so you don't tend to look at it after a while ... I have been here longer than most so I don't tend to use country information. The information [the Assessments] provide is so familiar we don't necessarily use any CIPU info.

Shaw and Witkin believe that this approach is worrying particularly because it does not take account of the “complexity of human rights situations in the two countries mentioned” (2004:11).

6.5.7 Country reports: lack of knowledge of political parties

PB1 and S1 both found themselves in the crossfire between the two main political parties in Iraqi Kurdistan and believe the Home Office's apparent lack of knowledge about these parties contributed to the initial refusal of both their claims.¹⁶ Home Office-commissioned research indicates that if country reports are deficient in information about political parties this part of the asylum claim may not be given sufficient consideration or any consideration at all. One caseworker told the researchers (Morgan et al. 2003:66):

¹⁶ Research interviews with PB1, 25 July 2006, 24 August 2006; Research interview with S1, 24 July 2006.

We need to know whether particular groups or political parties exist, but instead we are told to say that the Secretary of State is not aware of this group so therefore it is unlikely to be of interest to the authorities. But really they have no information on whether the group existed.

The Home Office then turns this ignorance into a denial of the asylum seeker's credibility. A Kurd from Syria was told in his refusal letter (cited Shaw & Witkin 2004:11):

The basis of your claim is that you fear persecution in Syria because of your political beliefs. You are a member of the Hergirtin. The Secretary of State is not aware that this party actually exists.

The adjudicator on appeal, however, accepted Amnesty International's evidence that "Hevgirtina Gel a Kurd li Sûriya ... was founded in 1975, and was then named Partya Dêmokratî Kurd a Cep li Sûriya. It has been known as 'Hevgirtina Gel' since 1980" (ibid.).

6.5.8 Credibility: "... detrimental to the credibility of your claim"¹⁷

Caseworkers frequently make "unreasonable and unjustifiable assertions about asylum applicants which cast doubt on the applicant's individual credibility" (Shaw & Witkin 2004:19). For Amnesty International this is part of "a negative culture of decision making, which is often based on 'catching applicants out' rather than investigating the substance of their claims" (ibid.). Questions of credibility range from minor discrepancies (dates, times, etc.) to major aspects of the asylum account. They may involve the timing of your departure, your means of travel or your motives for migration. The caseworker may question the plausibility of your own or other people's actions, mostly without any supporting evidence.

6.5.9 Credibility: from ignorance to refusal

In 2002 S1 claimed that the two main political parties in Iraqi Kurdistan (the KDP and the PUK) and the Islamic Party (IMIK) had targeted him because he was a member of the Iraqi Workers' Communist Party (IWCP). In dealing with the threat from IMIK, his interviewer

¹⁷ S1's "Reasons for Refusal" letter, 2003. This is a standard phrase used in refusal letters when the applicant's "credibility" is being questioned.

claimed that “the Islamic movement are [sic] not there any more” and that “all parties [in Iraqi Kurdistan] are working peacefully together”.¹⁸ But Amnesty International (*AIR* 2003:134) found that

[s]poradic fighting between the PUK security forces and members of the armed Islamic group, *Ansar al-Islam*, continued during the year. *Ansar al-Islam*, a merger between two armed groups – *Jund al-Islam* and a splinter group from the Islamic Unity Movement – was said to be behind a number of bomb attacks targeting PUK government officials and buildings.

The “Islamic movement” was clearly still there. But the interviewer’s wrong assessment of the situation was one of the reasons given for the initial refusal in S1’s case. Nevertheless S1’s case was a strong one: he managed to make a fresh claim and was finally granted asylum – but it took another five years of uncertainty and stress.

6.5.10 Credibility: getting dates wrong

S1’s credibility was also questioned because he momentarily gave a wrong date:

You claimed [in your written witness statement] you were arrested on 20 May 1995 ... At interview, when you were asked the date you were arrested you stated you were arrested on 20 November 1995, you then corrected this and claimed you were arrested on 20 May 1995 and allege you were released on 10 November 1995. When asked what happened on 20 November 1995, you said you made a mistake, you stated it was the date your brother was killed, but not the year.¹⁹

There was nothing to cause suspicion here – S1 made a mistake about dates, then immediately corrected himself. During his interview with me, S1 explained:

I had said the wrong date: “What date your brother die?” Yeah? Because ... I been shot with my brother. After three days my brother die in hospital. They ask me which day you and your brother been shoot? And which day your brother die? And

¹⁸ Official transcript of S7’s asylum interview, questions 11 and 12.

¹⁹ S1’s “Reasons for Refusal” letter, para.15.

which day you run? Which day you leave your country. Is too many days, and I don't remember after four years all these dates.²⁰

At the time, the interviewer appeared to accept his correction of the date and moved on to other matters. In the refusal letter, however, she used his mistake to question his credibility when he had no opportunity to reply. She wrote:

The Secretary of State notes your confusion, at interview, when asked about your alleged arrest. He considers that to confuse significant dates as [sic] the date you claimed to have been detained (20/5/1995) and the date you allege your brother was killed (20/11/1999), some claimed four and a half years later, detracts from the overall credibility of your account.²¹

In their determined search for “discrepancies”, interviewers may use the slightest deviation regarding a date in order to construct a “reason” for refusal. OH13 was informed:

You have stated in your witness statement ... that you were arrested on 5/8/2004. It is noted however that in your substantive asylum interview you have alternatively claimed that you were actually arrested on 4/8/2004. These statements are inconsistent and in light of your lack of certainty about the date of the event which led you to leave the country in fear of your life, your account of this matter cannot be accepted as being true.²²

The same formula is used when questioning credibility about periods of time and in these cases, too, a small mistake may cost you dear. Shaw and Witkin (2004:21) cite a refusal letter of March 2001:

The Secretary of State also notes that there are significant differences between your various accounts, and that these cast doubts on the credibility of your claim. For instance, in your Statement of Evidence Form (SEF) you stated that you were in

²⁰ Research interview, 24 July 2006.

²¹ S1's “Reasons for Refusal” letter, para. 15.

²² OH13's “Reasons for Refusal letter, para. 23.

hiding at your friend's house for 4 days but in your Asylum Interview this was reduced to 3.

Amnesty International's comment (cited *ibid.*) was not only that this was a minor discrepancy but that it also concerned

a time period that would have been frightening and uncertain for the applicant, making a confusion over the exact number of days understandable. In addition, it is not explained here why the number of days in hiding is central to the applicant's claim for asylum in the UK.

6.5.11 Credibility: timing of departure

The question of the timing of the asylum seeker's departure from their country of origin is frequently raised. At his interview, A²³ described the Serb police's raids on his home in Kosovo, beginning in 1991. "Why did you leave it until 1999 before leaving Kosovo?" asked the interviewer.²⁴ The standard paragraph provided in the APIs for dealing with this in refusal letters (cited Shaw & Witkin 2004:28) reads:

Further doubts as to your alleged fear of persecution can be drawn from the fact that you did not leave [COUNTRY] until [DATE]. The Secretary of State holds the view that if your fear of persecution by the [] authorities was genuine you would have left [] at the earliest opportunity and the fact that you did not casts doubt on your credibility.

However, many reasons may govern the timing of a refugee's departure: the need to find an agent, raise funds to pay the agent (e.g. by selling property), obtain false documents. Even if the journey is through normal channels there will be family concerns which cause delay. Moreover, members of opposition groups committed to political change do not tend to give up their cause easily and may "maintain [their] activism, until it becomes untenable or their life and safety are at risk" (*ibid.*:29). But the Home Office is often unwilling to take this point seriously (*ibid.*):

²³ An asylum seeker from Kosovo. I knew him before I started this research.

²⁴ Asylum interview transcript, p. 7.

You claim to have first been detained in 1979 for four months, you also claim to have been detained in 1981, 1983, 1993 and 1997. You claim to have been kept in solitary confinement and tortured when detained. The Secretary of State has doubts as to your alleged fear of persecution from the fact that you did not leave Iran until 1999.

Similarly, an Ethiopian was told that, though arrested in January, he did not leave until May and that this “detracts from the truthfulness of your claim to be a genuine asylum seeker” (ibid.:28).

6.5.12 Credibility: assumptions about behaviour

Caseworkers often make assumptions about the behaviour of various people in the asylum account. They often express scepticism about the help given to applicants by friends, relatives or strangers:

The Secretary of State looks at the manner of your escape from hospital. You have stated that your cousin who also happened to be a doctor at the hospital helped you to flee. He is of the view that if your cousin had overheard that you were going to be killed, he would not have played a role in your escape which invariably [sic] would implicate himself (cited ibid.:24).

Similarly, CC4 was in prison in Côte d’Ivoire and had hospital treatment. A doctor helped her escape from hospital and arranged her journey to the UK. CC4 said that her interviewer was sceptical and asked her:

“Why these people help you come to the England? Did you know them? Why did they do that for you?” And I said, “I don’t know ... Maybe because the doctor in the hospital know my parents and they know everything [the authorities do] on my parents is wrong.”²⁵

²⁵ Research interview, 18 April 2007.

CC4 was eventually granted ILR. Not so OH13. He claimed that a sympathetic prison officer had given him painkillers after he had been tortured. According to the caseworker,

It is not accepted that those responsible for torturing you, to get you to give them information, would counteract their own work by medically treating you for injuries that they had themselves caused. Your account of this matter is therefore not accepted as being true.²⁶

6.5.13 Credibility: the government steps in

Caseworkers have always been free to raise credibility issues but they are now obliged to do so under section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004 (AIA 2004): “a deciding authority shall take account, as damaging the claimant’s credibility, of any behaviour” specified as such (s. 8 (1)). IAS describes section 8 as “a poorly conceived and damaging intervention” (Ensor 2006:1). It has created “a process of credibility finding that looks only for reasons of doubt” and sets out an “agenda of disbelief” (ibid.). Among the kinds of behaviour specified in section 8 as “damaging the claimant’s credibility” are

- failure to produce a valid passport (s. 8 (3) (a))
- production of an invalid passport as if it were valid (s. 8 (3) (b))
- destruction or disposal of a passport (s. 8 (3) (c))
- “failure ... to answer a question asked by a deciding authority” (s. 8 (3) (e)), e.g. an interviewer
- failure to claim asylum when passing through a “safe” country (s.8 (4)).²⁷

To take the first of these as an example: the offence of entering the UK without a passport was introduced by the 2004 Act, after a period of hostile government discourse towards asylum seekers, led by home secretary David Blunkett. One of the most common –

²⁶ “Reasons for Refusal” letter, 2005, para. 18.

²⁷ The *Asylum Instruction on Assessing Credibility in Asylum and Human Rights Claims* lists as safe all the EU member states plus Iceland and Norway. These are the countries to which section 8 applies: other countries (e.g. a country which has signed the Refugee Convention, including countries that border the asylum seeker’s country of origin) may also be counted “safe”, but “decision makers ... are not obliged to do so under section 8” (API – *Credibility* 2006:16).

and true – explanations for the absence of a passport is that the agent who supplied it demanded the passport back before the end of the journey – typically, in the case of a regular flight, after take-off but before landing. According to Webber (2003), traffickers take back the passports to avoid detection of their routes and methods. Blunkett claimed that this explanation was not true. Asylum seekers “destroy” their passports, he declared, because “traffickers tell them it’s their best chance of staying in the UK – by making fraudulent claims and making it difficult to remove them if their claims fail.”²⁸ In line with this philosophy, section 2 lays down that asylum seekers who arrive without a passport must “prove that they have a reasonable excuse” for not having one (s. 2 (4) (c)) and section 8 specifically requires the caseworker to raise it as a credibility issue. However, obeying the agent’s instructions is not counted as a “reasonable excuse” for “destroying” the passport unless you can show that “in the circumstances of the case it is unreasonable to expect non-compliance with the instructions or advice” (s. 2 (7) (b)). The API on credibility stipulates that this “excuse” will be counted as reasonable only in “exceptional situations”, such as in the case of “unaccompanied minors, the very elderly or ... people with mental disabilities” (API – *Credibility* 2006:15), or if “a document was destroyed or disposed of as a direct result of force, threats or intimidation, e.g. where an individual was forced at knife-point to give a document to someone else” (ibid.). No participant in this study offered such an extreme explanation: all those who travelled with false passports on regular flights in the company of their agent felt obliged to give them up when the agent demanded it. OH13 came with his family from Eritrea. His wife told her interviewer: “The passport I had was Sudanese but the agent took it away.”²⁹ OH7’s agent took her passport before the plane landed and then he disappeared.³⁰ OH9’s agent took her passport during the flight, disembarked when the plane landed at Rome and left her to travel on to Heathrow alone.³¹ There is, in fact, no need for “knife-point” threats: asylum seekers hand their passports back because, dependent as they are on their agents, they feel they have no choice but to obey.

“With section 8 [of the 2004 Act]”, writes Ensor,³² “the government has for the first time stepped into this [credibility assessment] process, requiring decision makers to take certain behaviours or actions to be ‘damaging to the claimant’s credibility’” (2006:1). He calls on

²⁸ Home Office Press Release PR 296/2003.

²⁹ Official Screening Research interview notes of her Research interview, provided by OH13.

³⁰ Research interview, 18 January 2007.

³¹ Research interview, 19 January 2007.

³² Senior research officer, Research and Information Unit, IAS.

decision-makers to “move beyond the agenda of disbelief set out in section 8, and examine instead the reality of the experiences faced by those who travel to the UK to seek asylum” (ibid.:3). With this in mind it is interesting that the API on credibility itself contains advice on good practice which, if followed, would go against the grain not only of section 8 but of all the examples of credibility assessment cited here. Decision-makers are told to consider facts which “go to the core of the claim” (API – *Credibility* 2006:8). They are told that findings should focus on “material facts that are serious and significant in nature” (ibid.) and that it is “generally unnecessary, and sometimes counter-productive ... to focus upon minor or peripheral facts that are not material to the claim” (ibid.). The evidence suggests, however, that this advice is frequently disregarded as the government’s restrictive agenda takes precedence over good practice.

6.6 The case of FS3/4

Many of the issues raised here about the interview, the initial decision-making process and the practices adopted by caseworkers are illustrated in the case of FS3 and FS4, a couple who participated in this research. In addition to their interview with me they provided me with FS3’s official asylum interview record, his witness statements, his refusal letter and his responses to it, as well as the eventual judgment of the Immigration Appeal Tribunal. I highlight this case because it provides an example, in a single case, of how the “agenda of disbelief” operates.

FS3 and FS4 came to the UK from Iran. FS3 applied for asylum, with FS4 as his dependant. He claimed that in July 1999 he had joined students at Tehran University (where he had previously been a student) to protest against attacks on them by the police and security forces during a demonstration the previous day (at which he had not been present), attacks which had led to the death of at least one student and the blinding of another. He claimed that he was arrested during the protest, then detained and tortured for a month. After his release he went back to running his manufacturing business but as a result of his experiences he began to support the aims of the unregistered political party Hezb-e-Mellat, finally joining it in 2000. On the first anniversary of the 1999 demonstration, a commemorative demonstration was held which was attacked by the police and security services, many students were beaten and arrested, at least one died and a senior party member disappeared. FS3 escaped arrest and the couple went into hiding. Their home was

searched, FS4's father was arrested for questioning, and FS3 and FS4 felt their lives were in danger. They decided to seek asylum abroad, arriving in the UK in September 2000.

FS3 filled in his SEF, had his interview, was given an initial refusal and went to appeal. We are interested here in the interview and the arguments leading to the refusal. I look at the stated grounds for refusal, relating them to the official interview record and FS3's first witness statement and noting the practices adopted by the caseworker.

6.6.1 "Incredible", "implausible" and no chance to answer

The attempt to undermine FS3's credibility begins at paragraph 5 of the refusal letter, where his presence at the students' protest and his account of it are questioned. His account is summarised as follows: "You say ... you went to have a look, and the security forces arrested you, and detained you for one month."³³ The caseworker then comments: "You were not a student at the university, therefore it is unclear from your narrative why you went to the [students' residence] the next day, nor is it clear why you were arrested."³⁴ The reasons in both cases, however, were quite clear from FS3's narrative. In his witness statement he explains that he went to the students' residence because he "sympathised with the students that were killed [at the previous day's demonstration]."³⁵ Moreover, he did not say he "went to have a look" but "I went ... to find [out] what was happening".³⁶ He is arguably describing an act of solidarity. Neither was there any mystery about the reasons for his arrest: he was arrested for protesting, like the other people taken away that day:

Q 22: Under what circumstances were you arrested?

A: I was arrested by the Hebezat Etalaet police which is the intelligence part of the police. I was arrested and taken away.

Q 23: Where were you and what time of the day was it?

A: I was at the students' residence in the university at about 10 o'clock in the morning.

³³ FS3's "Reasons for Refusal" letter, 2001, para 5.

³⁴ Ibid.

³⁵ FS3's first witness statement, para. 3.

³⁶ Main asylum interview transcript, 2001, answer to Question 21.

Q 24: Was anyone else arrested?

A: There were other people arrested.

Q 25: What were you doing when you were arrested?

A: Just looking.

Q 26: On what charges?

A: For taking part in the demonstration which took place the day before ...³⁷

Thus the caseworker not only misquoted FS3's words but dismissed his reasons and explanations without giving a single reason for doing so, and this when the Home Office country report itself acknowledged that "there are human rights abuses in Iran and membership of or even sympathy with opposition groups is actively put down by the authorities."³⁸ There was also specific evidence from Amnesty International, in the public domain at the time of FS3's asylum interview (AI Press Release 1999), about the first demonstration mentioned by FS3 and the increasing violence of the security forces in the days that followed. The caseworker should at this point have followed UNHCR guidelines, which advise caseworkers to use "all the means at [their] disposal to produce the necessary evidence in support of the application" in a shared "duty to ascertain and evaluate all the relevant facts" (*Handbook* 1992, para. 196). FS3's caseworker did not do so, and neither did he follow the alternative advice in the same paragraph:

[T]here may also be statements that are not susceptible of proof. In such cases ... [the asylum seeker] should, unless there are good reasons to the contrary, be given the benefit of the doubt (*ibid.*).

Instead, without any supporting evidence, the caseworker asserted:

³⁷ *Ibid.*, Questions 22-26.

³⁸ Cited by the adjudicator in the AIT "Determination and Reasons", para. 12, in FS3's case (2002).

You did not attend the demonstration, and were not a member of any political parties at that time. The Secretary of State considers that your account lacks credibility.”³⁹

Another example of such practice can be seen in paragraph 8 of the refusal letter, which refers to the events of July 2000. The caseworker deals with FS3’s account of that demonstration, mostly by reference to his first witness statement: “You say that the security forces told the demonstrators to gather in the University Gymnasium. You did not comply, but fled ...”⁴⁰ This was not surprising, for FS3 had explained that “the university gym ... was now under [the security forces’] custody.”⁴¹ But the caseworker then attempts to cast doubt on his account by raising a trivial point:

You then noticed that some members of the security forces were Arabic. As you fled, one of these Arabic gentlemen followed you. It is unclear from your account how you identified the origin of your pursuer. Your account is implausible.⁴²

A charge of implausibility should only be made in relation to a material fact – a fact which “goes to the core of a claim and is fundamental to why an individual fears persecution” (API – *Credibility* 2006:6). Whether or not some members of the security forces were Arabs does not seem to be a “material fact” on this definition. Moreover, the API states that any charge of implausibility must be “based on reasonably drawn, objectively justifiable, inferences” and “it is not enough to simply say that the event could not have happened” (ibid.:10). Furthermore, the caseworker’s doubt was raised only in the refusal letter: FS3 was given no inkling of it during the interview, and therefore no opportunity to answer it by expanding on his explanation. Yet the API on interviewing is clear: “If there is reason to doubt a certain element of a claim it is important that the claimant has the chance to address the points of contention ...” (API – *Interviewing* 2006, para. 2.2). If he had been given such a chance he might have explained, as he did in his appeal statement, that he had “noticed that only [a] few of the security forces members were speaking Farsi [the language of Iran],

³⁹ “Reasons for Refusal” letter, 2001, para. 5.

⁴⁰ Ibid., para. 8.

⁴¹ FS3’s first witness statement, para. 15.

⁴² “Reasons for Refusal” letter, 2001, para. 8.

the rest of them were using Arabic.”⁴³ As it was, he first learned of the caseworker’s doubts – and indeed his conclusion – from the refusal letter. FS3’s caseworker has used the category of “implausibility” inappropriately and then denied FS3 the chance of any reply, simply concluding, “Your account is implausible.” Such practices show no regard for the state’s Convention obligations and they undermine the right to asylum.

Another example of a credibility issue occurs at paragraph 9 of the refusal letter, where it is argued that FS3’s account of the arrest and disappearance of party members and of his fear for his own life could not be true because “[y]ou, personally, were not approached by the security forces.” There was, however, a good reason why they did not “approach” or arrest him: FS3 was in hiding. The security forces went to his home address⁴⁴ but he was not there. They told his father-in-law that “if he gave them my hiding place I won’t be executed ...”⁴⁵ FS3’s caseworker took no account of this, did not express any doubts during the interview and therefore FS3 had no opportunity to resolve them. By the time of the refusal letter it was too late and FS3 was simply informed that “[t]he Secretary of State ... doubts the credibility of your account.”⁴⁶

6.6.2 Taking a government at its word

FS3’s refusal letter provides an example of the tendency noted above (6.5.5) for the Home Office to accept assurances by governments that they do not condone torture. Torture is then attributed solely to individuals breaking the rules. In this scenario it is assumed that the government concerned would punish such individuals and protect their victims and that therefore a claim for asylum could not be substantiated on Convention grounds. In FS3’s case, the Home Office used a truncated version of this formula which did not even mention the Iranian government: FS3 described being beaten, kicked and burned with a cigarette end, and the refusal letter simply declared that “[t]he Secretary of State considers that the actions which you have described are in the nature and are the result of individuals abusing their official positions.”⁴⁷ No evidence is cited in support of this opinion.

⁴³ FS3’s second witness statement, para. 34.

⁴⁴ FS3’s first witness statement, para. 18; Asylum interview transcript, 2001, answer to Questions 56 and 58.

⁴⁵ Asylum interview transcript, 2001, answer to Question 57.

⁴⁶ “Reasons for Refusal” letter, 2001, para. 9.

⁴⁷ *Ibid.*, para. 6.

6.6.3 Lack of knowledge of political groups

We have seen how the Home Office’s lack of knowledge of political parties may lead to the refusal of an asylum claim (6.5.7). In his witness statement, FS3 claimed that “[i]n February 2000 I joined Hezb-e-Mellat Iran” and gave some details of its origins and history.⁴⁸ Both in this statement and in his interview he explained that there was secrecy about membership numbers both nationally and locally because of recent persecution, including the jailing of senior members and the assassination of its leader, Dariush Foruhar, and his wife in 1998. He explained the local party structure in the following terms: “I was in charge of five people. And five people like me had one boss. That was to keep it secret and if anyone got arrested the damage would be minimal.”⁴⁹ But FS3’s caseworker had no knowledge of the party, and unfortunately this ignorance became a plank in the rejection of FS3’s asylum claim: “There are several political groups in Iran, but this does not appear to be one of them. The Secretary of State therefore doubts the veracity of your statement.”⁵⁰ Amnesty International, however, describing the human rights situation in Iran during 1999 (AIR 2000:132), reported “the detention of four members of the *Hezb-e Mellat-e Iran*, Iran Nation Party” on charges of violence and “counter-revolutionary” activity. Moreover, within days of the demonstrations described by FS3, the International Secretariat of Amnesty International had publicly called on the Iranian authorities to grant “fundamental rights”, describing the violence by the security forces in the days following the first demonstration and noting: “According to other unconfirmed reports, two members of the Iran Nation Party (Hezb-e Mellat-e Iran), an unauthorized but tolerated opposition group, have also been arrested” (AI Press Release 1999).

6.6.4 Time of departure

We have noted that the Home Office uses the timing of an asylum seeker’s departure from their country to question credibility (6.5.11). FS3’s caseworker doubts his credibility because “you did not leave Iran until September 2000”.⁵¹ This ignores what Amnesty International calls “the enormity of the decision ... to leave [your] country of origin without hope of return” (cited Shaw & Witkin 2004:29). FS3 had explained at interview that he had not thought of leaving Iran until July 2000. Before then he hadn’t thought his life was in

⁴⁸ Witness Statement, para. 21.

⁴⁹ Asylum interview transcript, 2001, answer to question 8.

⁵⁰ “Reasons for Refusal” letter, 2001, para. 7.

⁵¹ “Reasons for Refusal” letter, 2001, para. 10.

danger, “I just realised that I had a record with them.”⁵² But after the July demonstration, when one of his friends was killed and another went missing, his house was raided by the police and his father-in-law taken in for questioning, FS3 and his wife went into hiding and a senior party member “advised me to get out of Iran if I could”.⁵³ Even then he hesitated: “I had a family in Iran, I had a lot of property in Iran, I did not want to leave. But I was frightened for my safety.”⁵⁴ None of this was unreasonable or slow. In the event he made the arrangements quite quickly – financial and travel arrangements, false passports – and left in September. Unfortunately, none of this impressed his caseworker, who insisted that his departure was tardy: “The Secretary of State holds the view that if your fear of persecution by the Iranian authorities were genuine, you would have left Iran at the earliest opportunity, and the fact that you did not do so casts doubt upon your credibility.”⁵⁵

6.6.5 Passing through a “safe” country

Failure to claim asylum when passing through a “safe” country is one of the “credibility” issues which caseworkers are obliged to address under section 8 of the 2004 Act (6.5.13). The caseworker raised this issue in FS3’s case but the accusation bore no relation to the facts. The caseworker set out the accusation in paragraph 11 of the refusal letter:

In your statement you claim that you travelled to Turkey then to the United Kingdom concealed in the back of a lorry. You would therefore have travelled through a number of European countries which are signatories to the 1951 United Nations Convention, and are therefore safe countries that are obliged to consider any asylum applications made upon their territory. There is no reason to believe that these countries would not fulfil their [Convention] obligations ... The fact that you failed to claim asylum [in one of these countries] therefore further reduces your credibility.

Unfortunately, the fact on which this conclusion is based is no fact at all. FS3 and his wife did not “travel to Turkey then to the United Kingdom concealed in the back of a lorry.” They arrived by plane:

⁵² Asylum interview transcript, 2001, answer to Question 45.

⁵³ Witness Statement, para. 39.

⁵⁴ Ibid.

⁵⁵ “Reasons for Refusal” letter, 2001, para. 10.

We entered the plane with passports provided by the agent. The passports were taken away from us by the agent’s representative at the Transit Hall of Stansted Airport, in the United Kingdom.⁵⁶

The agent had provided two sets of false passports. The first set was used for the journey from Iran to Turkey.⁵⁷ They then spent two days in a lorry, travelling from Turkey to “a country whose name I do not know” (ibid.). During those two days they did not get out of the lorry either for food or to relieve their bodily functions: “[W]e got on a container on a lorry. We were given a carrier bag for discharges (toilet, etc.) and protein food like chocolate.”⁵⁸ After that they boarded the plane. The caseworker knew that FS3 had arrived by plane, not only from FS3 himself at the main asylum interview but from the record of his screening interview. At best the caseworker’s accusation arose from a careless disregard for the details of FS3’s account. At worst, it derived from an eagerness to attach as many “credibility” issues to his case as possible under pressure from the government’s restrictive agenda.

6.6.6 Mistake or misrepresentation?

Paragraph 6 of FS3’s refusal letter deals with his detention and torture. Its main conclusion is found in its last sentence: torture in Iran is perpetrated by “individuals abusing their official positions”. The rest of the paragraph is little more than insinuation aimed at discrediting FS3’s account of his detention. None of it stands scrutiny. First, the caseworker writes:

You say that whilst in detention, you were beaten, kicked, and “a crazy person” burnt you with a cigarette. It is unclear whether the crazy person was a member of the security forces, or another detainee.

It is perfectly clear in FS3’s account that the “crazy person” was a member of the security forces. FS3 is telling a story of abuse by the authorities in the detention centre. It is clear

⁵⁶ FS3’s first witness statement, para. 21

⁵⁷ Ibid., para. 20.

⁵⁸ Asylum interview transcript, 2001 – answer to question 63.

that when he claimed that he had been “beaten up, kicked” and that “my face was swollen, with blood pouring out of my nose”⁵⁹ he was accusing the staff at the centre. When he claimed that he heard “the cry of others who were being tortured in other rooms”⁶⁰ and that he “could hear the cry and begging of other prisoners”⁶¹ he meant they were being tortured by the guards. When he said, “At the end a crazy person came and put his cigarette out on my hand”,⁶² the culprit was clearly a guard, not “another detainee”.

Secondly, the caseworker writes⁶³:

When I asked you how often you were beaten Q36 [question 36], initially you were unable to say, then you responded “4-5 hours”, during which your [sic] sustained a bloody nose, and eye.

The impression given is of a man who was uncertain of the story he wanted to tell, finally inventing an implausible four- to five-hour beating, from which he emerged with no more than “a bloody nose, and eye”. However, virtually none of the interviewer’s account is true. FS3 was perfectly able to answer question 36, and he did so immediately and appropriately – but it was not the question the caseworker claimed it to be:

Q36: Could you tell me how you were beaten?

A: Some of them punched me and some kicked me. My nose was bleeding and my eye. At the end a crazy person came and put his cigarette out on my hand ...⁶⁴

FS3 then replied immediately to question 37, which did ask how often he had been beaten. However, he did not claim to have been beaten for four or five hours but to have been beaten four or five times:

Q37: Could you tell me how often you were beaten?

A: I did not know from the day to the night. I would say about four or five times but I don’t know if it was day or night.⁶⁵

⁵⁹ FS3’s first witness statement, para. 4.

⁶⁰ Ibid.

⁶¹ Asylum interview transcript, answer to question 36.

⁶² Ibid.

⁶³ “Reasons for Refusal” letter, 2001, para. 6.

⁶⁴ Asylum interview transcript, 2001.

Paragraph 6 can be read as a misrepresentation of FS3's account of his detention or as the product of the interviewer's poor memory and his misreading of the interview record. But FS3's claim to have been tortured was an important part of his claim for asylum and should have been considered carefully, at length and in detail. Instead, his experience was discounted in a mish-mash of inaccuracies and unsustainable accusations.

Whatever view is taken of these and other inaccuracies in FS3's case – whether they are misrepresentations or mistakes – the restrictive agenda, which places asylum in the context of immigration control and makes refusal an objective of the asylum process, turns that process into a search for contradictions rather than an attempt to discover the truth, prioritises the burden of proof rather than the benefit of the doubt and turns the asylum interview into a confrontation between the caseworker and the asylum seeker. Yet the UNHCR *Handbook* describes not confrontation but cooperation between “the examiner” and the “applicant”. They have a shared responsibility (1992, para. 196):

Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application.

This shared responsibility precludes a negative search for inconsistencies and contradictions and instead demands from the examiner a positive approach to the asylum account (*ibid.*, para. 199):

... it may be necessary for the examiner to clarify any apparent inconsistencies and to resolve any contradictions in a further interview, and to find an explanation for any misrepresentation or concealment of material facts. Untrue statements by themselves are not a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case.

⁶⁵ *Ibid.*

Finally, “[i]t will be necessary for the examiner to gain the confidence of the applicant in order to assist the latter in putting forward his case and in fully explaining his opinions and feelings” (ibid., para. 200). Such an approach is consistent with a commitment to obligations under the Refugee Convention and ECHR and helps to uphold the right to asylum. The practices described above are not consistent with such a commitment, put the victims of persecution in danger and undermine the right to asylum.

6.7 Conclusion

I have argued that legal representation is essential at this stage of the asylum process, in particular at the asylum interview, but that restrictions on legal aid and reductions in timescales and deadlines are detrimental to asylum seekers’ chances of a fair hearing. I have argued that failure to provide gender-specific interviewers and interpreters makes it less likely that vulnerable and abused women will be able to explain their case, thus undermining their right to asylum. In the context of the main asylum interview where asylum seekers have their main chance to explain their reasons for applying for asylum, I have shown that there are problems in the decision-making process in the way country reports are compiled, presented and interpreted and in the way “credibility” issues are used in a negative search for contradictions and inconsistencies in asylum seekers’ accounts. I have argued that the restrictive agenda makes refusal an objective of the asylum process and that this undermines the right to asylum.

The asylum interview and initial decision is not the last stage for asylum seekers, for if asylum is refused they may have rights of appeal. I look next at the appeals process.

CHAPTER 7

SEEKING ASYLUM IN THE UK: APPEALS

7.1 Introduction

“[I]f an asylum or human rights claim is refused,” writes home secretary Jacqui Smith, “the claimant has a right of appeal to the independent Asylum and Immigration Tribunal (AIT), and if appropriate, onwards to the Court of Appeal.”¹ I look now at the appeals process. In this chapter, I chart the history of government attempts to restrict the appeal rights of asylum seekers, and I give an account of the changes proposed in 2003, most of which were incorporated in the Asylum and Immigration (Treatment of Claimants) Act 2004. I examine the merits test, which restricts the availability of legal aid, and the effect on rights of appeal of the increasing use of fast-track procedures. I critically assess the way country-guidance cases are established and applied and note how the appeals process is affected by poor Home Office decision-making at earlier stages in the asylum process. I examine two experiences of appeal which illustrate the flawed nature of the appeals procedures.

7.2 Asylum appeals: a history of rights reduced

Until 1993 asylum appeals were dealt with under the Immigration Act 1971. But in 1993 all asylum seekers were given a right of appeal to the Immigration Appeals Authority (IAA) under the new Asylum and Immigration Appeals Act. The appeal was heard by a single adjudicator, appointed by the Home Office, and if it failed the applicant could seek leave to appeal to the Immigration Appeals Tribunal (IAT), which comprised three members appointed by the lord chancellor. However, rights of appeal for asylum applicants have since been modified by five major pieces of legislation as part of government attempts to reduce the number of appeal applications (*Process* 2007:2). This has taken place in a context where, as Thomas (2006:1) notes, “the government has consistently argued that

¹ Letter to Alan Johnson MP, 7 November 2007. I had requested Alan Johnson, my local MP, to ask the home secretary a number of questions arising from an answer given by Geoff Hoon, government chief whip in the House of Commons, during *Question Time* on BBC-1 on 20 September 2007.

there is a culture of abuse of the appeal process by unmeritorious applicants who are only seeking to string out their cases for as long as possible in the hope that they can delay removal.” Rights of appeal against negative decisions in asylum cases “have been increasingly restricted over the last few years [and] as a result there are certain categories of asylum seekers ... unable to pursue an appeal within the UK” (*Process* 2007:6). These include:

- claims certified by the secretary of state as “manifestly unfounded”, usually because the country of origin is on the government’s list of “safe” countries (5.3.5)
- cases where the asylum seeker has passed through a “safe third country” and “failed” to apply for asylum there
- cases where the secretary of state certifies that the matters under appeal should have been raised in an earlier appeal
- cases where the applicant was granted leave to remain of 12 months or less.

7.2.1 Determined to restrict: the case of the 2004 Act

The government has been determined to change the appeals system in recent years. There have been four major Acts of parliament on immigration and asylum since Labour succeeded the Conservatives in 1997, and reforms have followed one another so swiftly that some have found it difficult to evaluate one batch before another has followed to replace it. The package of reforms to the appeals process proposed in 2003 for what would become the Asylum and Immigration (Treatment of Claimants) Act 2004 is a good example both of the trend to reduce rights and of the speed with which reforms follow upon one another. The Bar Council’s Law Reform Committee, in its evidence to the House of Commons Constitutional Affairs Committee, saw little justification for further reforms so soon after the 2002 Act, noting that “there has been no sudden crisis or change of circumstances since the enactment of the 2002 Act” (*Appeals* 2004, para. 22) and concluding that “[i]t would be premature to judge the final effectiveness of the 2002 appeal provisions” (*ibid.*). Mr Justice Ouseley, president of the IAT, wrote to the Constitutional Affairs Committee on the same theme, pointing out that “[n]obody yet has any real knowledge of the operation of the [current 2002] system” and that “[t]he proposed changes will be the third major set of reforms on this issue in the last few years” (*ibid.*, para. 21).

The proposals were on the table, however, the main ones being (a) the replacement of the two-tier appeal system (adjudicator hearing/IAT appeal) by a single-tier system (one right of appeal to a new Asylum and Immigration Tribunal (AIT)) and (b) increased powers to regulate unqualified legal advisers. This last change, at least, might have been seen as a positive move aimed at protecting vulnerable people from exploitation. Protection, however, did not seem to be the objective. In a joint press release, the Home Office and the Department of Constitutional Affairs (DCA) explained that the measures were part of a “crackdown on abuse” and aimed “to reduce the length of time and cost to the taxpayer of the current multi-layered appeals system which is open to abuse by unfounded asylum claimants and unscrupulous legal advisers” (*Asylum Measures* 2003:1). Home secretary David Blunkett explained that having

speeded up the beginning of the [asylum] process ... [w]e must now speed up the appeals process. Too often unscrupulous and unqualified legal advisers are encouraging claimants to lodge appeal after appeal with no prospect of success, all at taxpayers’ expense (ibid.).

Secretary of state for constitutional affairs Lord Falconer said that the proposal for a single-tier tribunal “represents the Government’s commitment to provide an appeals system ... that is not open to exploitation by unsuccessful appellants seeking to use the system to delay their removal” (ibid.:2). While the press release also included a more positive reference to the need for the tribunal to provide “consistency, quality, justice and fairness” (ibid.), the tone was predominantly negative, linking “unfounded asylum claimants” with “unscrupulous legal advisers” in a narrative which suggested a conspiracy of “abuse” which would eventually undermine the system’s credibility. David Blunkett pursued his theme of regulating “legal advisers who are simply giving advice on how to defraud the system” and added another proposal: “new restrictions on legal aid to stop money being wasted on groundless cases” (ibid.). The message was that abuse all round now warranted a further reduction in rights of appeal. Moreover, under the then current appeals system there was a chance of reaching the Court of Appeal, and even the House of Lords. Now the two secretaries of state issued a warning: “We are also looking at ways to restrict access to the higher courts” (ibid.:3). These themes continued in the consultation document itself: “The government is determined ... to safeguard the appeals system from misuse and protect the

credibility of the process”; a single-tier system was necessary because “[t]he current appeals system ... provides people with opportunities to abuse the system in order to cause delay or abscond” (cited *Appeals* 2004, para. 36).

This negative approach – based on assumptions about unfounded applicants, fraudulent solicitors and claims that the system was being milked and taxpayers robbed – informed all the proposals on appeals, whether it was for the single tier (one aspect of which, noted the Refugee Council, was the removal of “all scrutiny of tribunal decisions by the higher courts” (Briefing A & I Act 2004:9)), the regulation of legal representatives or the reduction in legal aid. People fleeing persecution, however, wanted protection and a measure of justice.

Was it possible to square this circle? On the question of moving to a single-tier process, the Constitutional Affairs Committee found no advantage in doing so unless there was an improvement in decision-making. This applied, first, to poor initial decision-making by the Home Office, which had consequences for the appeals process. The Committee cited Law Society evidence (*Appeals* 2004, para. 11) that “[t]he poor quality of initial decisions means that the hearing carried out before a special adjudicator is often the first proper factual assessment of the case” and that it was essential to improve the initial decision-making process before removing the second-tier of appeal. Secondly, improvements were needed in decision-making at the first (adjudicator) stage of the appeals process. The organisation JUSTICE² told the Committee (*ibid.*, para. 42) that the IAT’s role was vital in addressing first-tier adjudicator error, since “60% of appeals to the IAT result in the decision of the first-tier being reversed or reconsidered.” In these circumstances the abolition of the second tier of appeals would mean that “the approximately 60% of cases in which errors occur would simply go uncorrected and unaddressed.” The Committee recommended that “the removal of a formal tier of appeal should not be undertaken until ... there has been a significant improvement in initial decision-making and the rise in the number of successful first-tier appeals has been substantially reversed” (*ibid.*, paras 44-46).

Nevertheless the two-tier system was abolished by the 2004 Act. But in face of wide criticism (including a potential “full-scale rebellion” in the House of Lords (Watt 2004)) the government reluctantly conceded some access to the higher courts: “Where a decision is

² JUSTICE is an all-party, law reform and human rights organisation, aiming to achieve greater fairness, effectiveness and advancement of human rights in the legal system. JUSTICE works largely through policy-orientated research; interventions in court proceedings; education and training; briefings, lobbying and policy advice.

reconsidered and still refused”, explained the Refugee Council, “there is a right of appeal, on a point of law only, to the Court of Appeal” (Briefing A & I Act 2004:9). This happens, however, only after a complicated and questionable process: if your appeal is refused by the AIT you can ask for a “reconsideration” of the decision on the grounds that the judge had made an “error of law”, but this would not necessarily involve any rehearing of the substance of your claim. Moreover, you apply to the same body against which you are appealing (the AIT) and if it grants a reconsideration order it is the AIT again who does the reconsidering. If the AIT again rejects your case you can ask the High Court to order a review – again by the AIT – but only on the basis of the papers in the case: you will not have an oral hearing. Only after this procedure, which the Constitutional Committee objected to because it amounted to “tribunals exercising a supervisory jurisdiction over themselves” (*Appeals* 2004, para. 52), can you apply to the Court of Appeal. The Refugee Council feared that, while this possibility did retain “some element of judicial oversight”, “procedural and practical barriers will, in effect, undermine it” (Briefing A & I Act 2004:9). What seems clear in this tortuous process is the government’s reluctance to concede any access to the higher courts and its continued adherence to the prejudicial notions expressed in the joint press release.

The government’s determination to limit access to the higher courts can also be seen in the time limit set for appeal applications and in the merits test invented to reduce the chances of receiving legal aid. The time limit was wholly unrealistic: applications to the High Court had to be made within five days after an AIT refusal. There was criticism of the proposal from several sources, including the Law Society and UNHCR, and the parliamentary Joint Committee on Human Rights sceptically listed the tasks to be accomplished within the five days (cited *ibid.*:10):

An application for reconsideration will require the applicant’s legal representative to receive a copy of the decision, read it, marshal any necessary evidence (which may require a meeting with the applicant at which an interpreter might well be required), to draft the legal grounds of challenge, and to lodge the grounds at the High Court.

The Committee concluded: “We consider the five-day limit to be far too short for the right of access to the High Court and beyond to be practically effective” (*ibid.*). But the five-day limit remained.

The proposals on the legal aid scheme, too, were designed to reduce access to the higher courts. The government's original proposal was that legal aid should be granted on a "no win-no fee" basis, the tribunal itself making or refusing the award retrospectively. The government's hope was that this would discourage solicitors and barristers from taking cases unless they could be sure of success. The scheme was based on the notion that taxpayers' money was "being wasted on groundless cases" (*Asylum Measures* 2003:2) by asylum seekers and lawyers and it was intended to deal with both classes of offenders at a single stroke. But the government withdrew due to opposition, particularly from members of the House of Lords, who threatened to delay the Bill. The government, however, was later able to achieve the same result through its power to make regulations on legal aid. It promptly did so and invented the merits test.

7.2.2 *Determined to restrict: the merits test*

In order to do legal aid work a solicitor must have a contract with the Legal Services Commission (LSC).³ The LSC imposes cost limits on asylum work done – a threshold of five hours' work for the initial decision-making process and a limit of £1,600 for work on appeals – and applies a "merits test" to cases. The operation of the merits test means that the solicitor has to "consider what are the prospects of the appeal being successful." (Wilson 2005:8). If there is more than a 50% chance of success, the solicitor may take the case on a legal aid basis. If the outcome seems "unclear" or "borderline", the solicitor should refuse the case, except in very limited circumstances. If the assessment is that the chances are "poor", the solicitor should refuse the case in all circumstances (*ibid.*). Solicitors who first have to put their assessments to the LSC may have their request for funding rejected. Solicitors who, on their past record of successful appeals, can act on their own initiative will receive retrospective funding by order of the judge if the appeal is successful. If it is not, they will not be paid. If they continue to lose appeals their LSC contract may be in jeopardy – in the words of the LSC contract itself: "Persistent failure to apply the [merits test] criteria ... may lead to a contract sanction" (cited *ibid.*:4). Not surprisingly, "Many suppliers [solicitors] are not willing to take the risk" (*ibid.*:11). Moreover, not only does the LSC contract threaten "sanctions" on solicitors, its language also carries echoes of the government's negative assumptions about asylum seekers: where

³ The LSC is a public body sponsored by the Ministry of Justice and runs the legal aid scheme. The lord chancellor and the secretary of state for justice are accountable to parliament for its activities.

an application is made for an extension of time and legal aid, the contract warns that “[e]xtensions will not be granted where the client’s application is hopeless, vexatious or an abuse of process” (cited *ibid.*:11).

The government’s purpose here was to “filter out weak applications ... therefore lowering the costs of the appeals process” (*Process* 2007:16). In light of the concerns about poor decision-making and the bad practices described in chapter 6, the Home Office’s assessment of what is a “weak” case may not be the same as that of a tribunal judge, and therefore rights of appeal are important. Solicitors should not be asked to second-guess the outcome of appeals. The Constitutional Affairs Committee, in its report on legal aid, believed “the level of the test is ... set too high” (*Legal Aid* 2005, para. 31):

It might be acceptable for lawyers not to be paid if the case they brought was entirely without merit, or had never had more than a 50% prospect of success ... [But unless] a case is completely clear cut, it is difficult to see how lawyers will always be able to make an accurate assessment ... Lawyers considering whether applicants face possible human rights concerns, if deported, should not have to gamble on funding decisions.

The steady decline in asylum seekers’ appeal rights is of concern to refugee NGOs. The Refugee Council and Refugee Action noted in March 2006 that solicitors were “increasingly hesitant to take on cases where the outcome is unclear” (*Joint Response* 2006:3) They noted that “[t]he daily lists of the AIT reveal that an average of 15 per cent of appellants appear [at the hearing] legally unrepresented” and that “[a]ll of the advice services in our One Stop Shops are dealing with increasing numbers of clients whose solicitors are no longer representing them” (*ibid.*). They argued against proposals for LSC contract sanctions on solicitors with less than a 40% success rate in appeals work, stressing that “access to an appeal process with high quality legal advice and representation is central to a fair asylum system” (*ibid.*:2). They warned: “Any diminution of access to legal advice and representation is likely to result in flawed asylum decisions leading to the removal of asylum seekers with a continuing need for protection that has not been fully tested before the law.”

7.2.3 Determined to restrict: the fast track

The fast-track process, too, reduces rights of appeal. Fast-track appeals are governed by the Immigration and Asylum (Fast Track Procedure) Rules 2003. They apply what the Immigration Law Practitioners' Association (ILPA) describes as “extraordinarily tight time limits” throughout the appeal process (Henderson 2003:512). You may be subjected to the fast-track process if, when you apply for asylum, the Home Office decides that your claim is “straightforward”. This may be because you come from a country designated by the government as “safe” (5.3.5), and your case is thus “certified” as “clearly unfounded”, or the government may make the decision on other grounds (*Process* 2007:18-19). Either way, “Home Office practice in cases which it hopes will be subjected to the Fast Track Rules is to detain the claimant on arrival, conduct the asylum interview on the day after the arrival, and decide the claim on the day after that” (Henderson 2003:512). If the asylum application is refused, “the applicant continues to be detained during the appeal process pending removal from the UK” (Shaw & Witkin 2004:8).

Before the New Asylum Model (NAM), the aim of the Home Office was to complete the entire process, including appeals, in 22 days. Under NAM, timescales are shorter: you are screened on the first day, have your main asylum interview on the second or third day, are told the decision on the third or fourth day, any appeal will take place on the ninth or tenth day and, if it fails, you will be deported any time after the tenth day (Briefing NAM 2007:3). In fact the only route to an appeal in most fast-track cases is to apply for a judicial review. The judge will review the Home Office decision to certify the claim as “clearly unfounded”, and the test to be applied is whether the decision to certify was so unreasonable that no “reasonable public body” could have made such a decision (*Process* 2007:9). “This is a very narrow test”, comments the ILPA, “and limits the courts’ power to supervise the executive” (ibid.). If the review is in your favour, you will have the right to appeal against the initial refusal. If the review goes against you, you will be deported back to your country of origin, with no right of appeal in the UK. You may have a right to appeal from your country of origin but this seems an unlikely prospect: “in practice”, notes the ILPA, “it is extremely difficult ... to appeal from abroad” (ibid.:19); indeed, you may be persecuted after deportation, not given the right to launch an appeal. So the Asylum Rights

Campaign⁴ believes that “any reasoned dispute over the safety of [a] country of origin should always attract an in-country right of appeal” (cited *ibid.*).

The fast-track process since 2003, both before and after NAM, clearly limits asylum seekers’ rights of appeal. Indeed, the short timescales, the limited grounds of appeal, the narrow test applied at judicial review and the absence thereafter of any appeal rights from within the UK seem to undermine the government’s Refugee Convention obligations to protect people from persecution. However, they are all consistent with other aims, expressed in government legislation and discourse, to restrict, discourage and remove.

7.3 The AIT: making decisions and shaping policy

Access to the appeals process is important. The rate of appeals allowed ranged between 20% and 25% of cases heard by the AIT in the years 2006-2008 (*Statistical Summary 2008*, table 2c) . Such rates seem to justify concerns about poor Home Office decision-making at the initial stage. Access to the AIT, therefore, gives asylum seekers a chance to take issue with the initial decision to refuse and, where necessary, to question practices of the kind described in chapter 6. The AIT thus has an important role in the asylum process. Two other aspects of the AIT’s role add to its importance: first, “the AIT ... periodically issues ‘Country Guidance’ determinations that provide guidance for future Tribunals on the approach they should adopt in similar cases”;⁵ secondly, these decisions “then feed into the development of country specific asylum policy, guidance on which is provided to BIA Case Owners”;⁶ i.e. to interviewers and caseworkers. The AIT, therefore, “not only provides independent consideration of appeals against BIA decisions but also plays a role in shaping country specific asylum policy.”⁷ We will look at a number of law reports and the Immigration Advisory Service (IAS) research into country-guidance cases (Yeo (ed.) 2005) and consider how satisfactory this process is from the point of view of the asylum seeker.

7.3.1 *The purpose of country-guidance cases*

The first stated aim of the use of country guidance cases is “to assure consistency in decision-making” (the second is “to save public time and money by avoiding the need to

⁴ The Asylum Rights Campaign is a consortium of churches, refugee community groups, agencies and human rights organisations committed to upholding the right to seek and enjoy asylum.

⁵ Letter from home secretary Jacqui Smith to Alan Johnson MP, 7 November 2007.

⁶ *Ibid.*

⁷ *Ibid.*

revisit country conditions repeatedly”) (Carver 2005:31-2). The idea of achieving consistency by establishing the facts of the situation in a country, and using those facts as a precedent for later cases (a “factual precedent”, similar to a legal precedent in questions of law), was mooted as early as 1997: in the *Manzeke* case Lord Woolf, in the Court of Appeal, thought it would be useful, in assessing the facts in a case, for judges “to have the benefit of the views of a Tribunal in other cases on the general situation in a particular part of the world, as long as that situation has not changed in the meantime”.⁸ In 2002 Lord Justice Laws, in *S and Others*, reasoned that refugee claims from any particular country “are inevitably made against a political backdrop which over a period of time ... is, if not constant, at any rate definable.”⁹ If this is borne in mind, the facts in a case may be used as a precedent for subsequent cases as long as certain safeguards are adopted, particularly (a) that all the relevant issues in the case are addressed so that the decision is “effectively comprehensive” and (b) that individual asylum seekers are given a chance to show how their case is different. Yeo notes that both in *Manzeke* and the 2003 case of *Shirazi* “the Court of Appeal ... states that flexibility is needed, strongly implying that there would be no error of law in failing to follow such precedents if reasons are given” (Yeo 2005:14). The IAT began to establish country-guidance cases in 2003. In 2005 IAS research identified a number of problems associated with the designation and use of such cases.

IAS found no information about why any particular case is given “country-guidance” or “country-guideline” status. By 2004 there were about 300 country-guidance cases (ibid.:6), some of which were historical cases elevated to country-guidance status retrospectively by the AIT (ibid.:11), yet “[t]he criteria for designating individual cases as having ‘Country Guideline’ status have never been published, if such criteria exist at all” (ibid.). Indeed, the entire process by which such status is given is unclear and the most that IAS researchers could reliably say (ibid.) was that

it is known that the Tribunal has organised itself into country groups, believed to be chaired informally by a Tribunal Vice-President, to whom interesting-looking cases are perhaps referred or who co-ordinates the work of the group in some other way, including “de-designating” cases that are deemed no longer to be appropriate as Country Guideline cases. The membership of the groups is believed to rotate.

⁸ Cited in *R (Iran) and Others v. Secretary of State for the Home Department* [2005] Imm. AR 547.

⁹ Cited *ibid.* 548.

Yeo comments (ibid.): “It is difficult to trust or have faith in the decision-making process when one is so unaware of what it is or what it involves ...”

7.3.2 “Effectively comprehensive” analyses: key requirements

In *S & Others* the Court of Appeal indicated what constitutes an “effectively comprehensive” analysis of material before the court in a country-guidance case and Carver (2005:33) identifies the key requirements, including:

- careful referencing of materials in determinations
- using the most recent reports
- giving reasons for preference of one source over another.

She cites several examples of the way that “[m]any Country Guideline cases fail to meet these ... requirements” (ibid.:33).

7.3.2.1 Referencing

The AIT appears to have similar problems to the Home Office in referencing its sources (see 6.5.3). One of the purposes of good referencing in AIT determinations is to provide a clear record of what was or was not before the tribunal and to indicate what was or was not considered by it. The Court of Appeal referred *S & Others* back to the AIT precisely because, although there were two UN country reports before the tribunal during its deliberations on the case, it had apparently read neither of them. Moreover, good referencing of materials helps future claimants and representatives to assess whether a decision might be challenged. Poor referencing, writes Yeo, “is extremely effective in insulating such cases from future challenge” (ibid.:19) for “[i]f the claimant does not know what evidence the tribunal used to make its earlier decision, he or she cannot possibly point a future ... tribunal to different or new evidence and persuade them to depart from the earlier case” (ibid.).

A v. Secretary of State for the Home Department, a country-guidance case relating to Ethiopia, provides an example of poor referencing practice. While the tribunal had listed its sources at the beginning of its determination, it “then engaged in substantial analysis of an

unnamed article which claimed that the peace process between Ethiopia and Eritrea had broken down” (Carver 2005:35). Although the article had used the word “breakdown”, the tribunal concluded, “[w]e do not ... consider that ... the peace process has broken down” (cited *ibid.*). This conclusion, writes Carver, dismissed “a key plank of evidence submitted on behalf of the claimant” (*ibid.*). Yet the article is unnamed and unlisted in the determination, making it impossible to trace and its contents impossible to check. Carver speculates that it may be a BBC Internet report of November 2003 but “this cannot be confirmed with any confidence” (*ibid.*:35, n. 42). Thus an important element in an asylum appeal was discounted on the basis of an article entirely unreferenced in the record of the proceedings. Such practices make it difficult for future claimants and representatives to assess whether a case might be successfully challenged. They also undermine confidence in the country-guidance system and in AIT decision-making generally.

7.3.2.2 *The most recent reports*

According to the 1996 *Ravichandran* case, country conditions are always to be assessed “at today’s date” (Yeo 2005:16). In the case of *S & Others* in 2002, the Court of Appeal criticised the tribunal for not taking account of two recent UN reports, and this “means that the duty [to give reasons in a decision] has not been fulfilled” (cited Carver 2005:36). The failure was even more obvious since the tribunal had itself observed that because “the situation is somewhat fluid [in the country concerned] ... it is necessary to look particularly at the most recent reports.”

That necessity was not observed in *NL v. Secretary of State for the Home Department*, a retrospective country-guidance case heard in August 2002 dealing with issues of mental health and family support in Pakistan. According to the principle in *Ravichandran* and *S & Others*, the Home Office should have submitted its latest (April 2002) country report on Pakistan to the tribunal. Instead, it submitted its October 2001 report, which had no specific information on mental health services in Pakistan. Moreover, one section of that report relied on material published in 2000 which “refers to events in 1999 or before” (Yeo 2005:17) and another of its sources was published in 2001 and refers to events in 2000. The Home Office report also cites Canadian research completed in 1994, eight years before the hearing. Yeo notes (*ibid.*:18) that the case of *NL* “is nevertheless a Country Guideline case, considered by the Tribunal to be binding on adjudicators.”

The problem in the case of *NL* has its roots in the way the Home Office prepares and utilises its country reports (6.5.3). But the principle of assessing “at today’s date” strongly suggests a duty on the AIT, too, to ensure that it does at least consider the most recent reports. Failure to do this necessarily undermines confidence in the AIT and the appeals process generally.

7.3.2.3 “What sources ... can we attach most weight to and why?”¹⁰

The third factor constituting an “effectively comprehensive” analysis of a case concerns the need to give reasons for preferring one source over another. In *S and Others*, Lord Justice Laws ruled that “effectively comprehensive” meant that the tribunal “should address all the issues in the case capable of having a real ... bearing on the result, and explain what it makes of the substantial evidence going to each such issue” (cited Yeo 2005:13) or, as Lord Justice Sedley put it in *Karanakaran*, “everything capable of having a bearing has to be given the weight, great or little, due to it.”¹¹ The IAS researchers found “a shocking disregard for this approach” (Carver 2005:39). For example, IAS researchers found that while careful methods of assessing evidence at a tribunal are “applied scrupulously to material submitted on behalf of the claimant, the same cannot be said for that submitted by the Secretary of State” (ibid.:40). In particular, tribunals may assume the reliability of Home Office country reports, “despite the fact that they are produced by one side in an adversarial process” (ibid.). Carver cites the case of *Devaseelan* (ibid.:41), where a report by the Medical Foundation¹² was criticised because, said the tribunal, it was

a reply to (or rebuttal of) the Home Office’s reasons for refusing many Tamil asylum claims. Nobody could regard the whole report as anything other than partisan. It is written against the [Home Office], by those who have taken the side of [the] Appellants. In its proper place, it is none the worse for that. But it should not under any circumstances be regarded as “objective evidence”.

¹⁰ Question to be asked, according to Dr H.H. Storey, Vice-President, Immigration Appeals Tribunal, in the case of *VL (Risk-Failed Asylum Seekers) (Democratic Republic of Congo CG)* [2004] UKIAT 00007, para. 51.

¹¹ *Karanakaran* [2000] Imm AR 271, para. 137.

¹² The Medical Foundation for the Care of Victims of Torture is a registered charity dedicated solely to the treatment of torture survivors. It provides medical consultation, examination and forensic documentation of injuries, psychological treatment and support and practical help.

The tribunal did recognise that the Home Office country report was also “a partisan document”. But it defended its reliability in the following terms (ibid.):

It is, however, little more than a compendium of material from other published sources, which are listed in the bibliography. They range from reports of international organs, through various governmental bodies in Britain and abroad, to news reports around the world. The Bulletin is arranged in such a way that the source of each statement in it can readily be traced.

In the same way, the tribunal in the case of *Badzo* (ibid.)

considered counsel for the claimant to be “wrong to stigmatise the [Home Office] report ... as being self-serving.” In the Tribunal’s opinion, the ... report “offers a balanced, objective and proportionate summary of evidence, often with different viewpoints. The quotations are properly cited and can be checked against the references given.”

In the case of *AW*, too, the tribunal stated its opinion of the Home Office report (cited ibid.:43-4):

... it is clear from its terms that it is well-researched and fully sourced throughout. It attempts to provide a balanced assessment of the current position in Somalia, drawing for its information on a number of normally reliable and impartial sources. We are therefore satisfied that it provides a reliable, reasonably impartial and up-to-date assessment of the current general position in Somalia.

In the light of the evidence of the Home Office’s poor sourcing practices identified earlier (6.5.3) and relating to the same time period, and its tendency (7.3.2.2) to submit outdated sources to tribunals, Carver’s conclusion (ibid.:44) may be seen as a justifiable health warning both against the way the Home Office compiles and uses country reports and the way tribunals often read them:

The Tribunal may observe that the report is sourced, but it is not in a position to know or investigate just how poorly sourced the report may be. The Tribunal may observe that the report carries a range of opinions from reputable sources ... but it is not in a position to know or investigate how selectively these sources have been quoted, often to the extent of complete misrepresentation. The Tribunal may observe that a particular sentence in a report emanates from a particular source, but it is not in a position to know whether this is actually the case ... The Tribunal may observe the date of the sources used ... but it is not in a position to know or investigate how often the ... report misrepresents the date of the document in question.

It seems clear that a tribunal should take the partisan nature of Home Office evidence at least as seriously as it does that of the claimant.

Most of the examples of doubtful preference cited by IAS involve giving preference to Home Office country reports. This is done not only against organisations like the Medical Foundation or individual witnesses, who the tribunal may think have “an axe to grind” (ibid.:54), but even against UNHCR evidence accepted by the tribunal as objective. In the 2004 country guidance case *FD*, “UNHCR and the Parliamentary Assembly of the Council of Europe strongly indicated that minorities, particularly Serbs and Roma, faced what they considered a real risk of persecution in Kosovo” (ibid.:62). The Home Office country report “appeared to indicate some risk, but not a significant risk” (ibid.). According to Symes and Jorro (2000:728), “where there is a divergence of specialist opinion as to the objective situation in the country from which the asylum claimant is in flight, it is proper to give the appellant the benefit of the doubt.” This might have been expected in *FD* since it had spoken highly of UNHCR’s evidence, saying that “[t]he UNHCR Paper is derived from its sources in the field and they must be well placed to provide sound information; it would then have been through a process of consideration through the UNHCR hierarchy, so it should be regarded as a responsible, well researched and considered analysis” (cited Carver 2005:64, n. 150). The Parliamentary Assembly report had undergone a similar process. Its evidence was based on a fact-finding mission, evidence from NGOs and other sources, including the authorities in Kosovo (ibid.:64). Moreover, its report was recent (two months old at the date of the hearing) and the UNHCR evidence reflected events up to 2004. The Home Office report, on the other hand, “selectively quoted UN material over two years

old”, (ibid.:63). Nevertheless the tribunal preferred the Home Office report but did not explain why. It noted that UNHCR made “a clear recommendation about return whereas the [Home Office report] contains no such conclusion; as is normal with such reports, it leaves the question of safety on return to those who have to make the decisions” (cited ibid.: 64-65). The tribunal then made its decision: it was safe to return FD to Kosovo. Carver comments:

It might be the case that the Tribunal’s conclusions could be justified. As with many other Country Guideline findings, however, the failure to analyse and engage with the evidence in a critical manner leaves the reader confident neither that the conclusions reached are justified nor [that they are] justifiable” (ibid.:49).

In 2007 Home Secretary Jacqui Smith described how the AIT not only gives “independent consideration of appeals against [Home Office] decisions” but also “plays a role in shaping country specific asylum policy”¹³ through its country-guidance determinations. However, we have seen that trust in this process is marred by Home Office bad practice at earlier stages, which feeds into tribunal proceedings, by lack of openness about the way the AIT designates country-guidance cases and by weaknesses in the way tribunals reach their decisions. These factors raise questions about the reliability and fairness of the appeals process. The experience of two participants in this study exemplify some of the problems.

7.4 OH13 and FS3: two experiences of appeal

7.4.1 The case of OH13

OH13 arrived from Eritrea with his wife and five children in 2004 and was refused asylum and humanitarian protection in 2005. At his AIT appeal, the judge accepted major aspects of his account that had been denied by the Home Office:

- She accepted that he had been a long-standing member of the ELF-CC party in Eritrea because he had “demonstrated adequate knowledge of the party at interview and at the hearing”,¹⁴ and she thus rejected the Home Office’s view that “[i]n light

¹³ Letter from home secretary Jacqui Smith to Alan Johnson MP, 7 November 2007.

¹⁴ *Determination and Reasons* in OH13’s AIT hearing, 2005, para. 13.

of your demonstrated lack of knowledge of this [party], your account of your political activities for the ELF is not accepted as being true.”¹⁵

- She accepted that OH13’s café had been closed down for six months in 1997 “because of official suspicion about his political views.”¹⁶
- she found his account of how the authorities might have suspected him of illegal political activities “persuasive”.¹⁷

She did not, however, accept that he had been detained and tortured in 2004, or that he had been released by way of a bribe. She did not explain why, except that his account was “so vague that I have no doubt that it did not occur”¹⁸ and that his wife, who might have corroborated his evidence, was never called as a witness. Judge Henderson did not believe that his home had been raided by the police and his papers stolen,¹⁹ or his account of how he had obtained the party membership documents he had presented as evidence.²⁰ Once more his wife had not been called to corroborate his account. Moreover, as far as the documents were concerned, the judge believed that they had been “created since the appellant’s departure from Eritrea in order to support his claim for asylum.”²¹ But she added:

I consider that they might well reflect what I have already found to be a truthful part of his claim, namely, that he has some long-standing involvement with the ELF. To that extent the documents are not particularly damaging to his case.²²

She nevertheless dismissed the appeal both on asylum and human rights grounds. She did so, however, not simply because of her particular doubts about his story but because she chose to rely on a 2004 country-guidance case, a case which included outdated information and poorly sourced or unsourced material. On the question whether members of opposition

¹⁵ OH13’s “Reasons for Refusal” letter, 2005, para. 16.

¹⁶ *Determination and Reasons* in OH13’s AIT hearing, 2005, para. 14.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, para. 15.

¹⁹ *Ibid.*, para. 18.

²⁰ *Ibid.*, para. 17.

²¹ *Ibid.*

²² *Ibid.*

groups were in danger simply because they were opponents of the regime, the judge acknowledged that

Eritrea has been an authoritarian one party state since independence in 1993 and ... there is evidence that opponents, even low level opponents, are sometimes detained without legal safeguards and are sometimes at risk of being seriously ill-treated.²³

She nevertheless agreed with the conclusions of the 2004 country-guidance case *AN (ELF-RC – low level members – risk) Eritrea*, taking the view that “the available background evidence does not establish that there is a real risk to members of the political opposition per se.”²⁴ But was it safe to draw this conclusion from the determination in *AN*? *AN* seems at first sight an appropriate case for providing relevant and up-to-date information for OH13’s 2004 appeal. Indeed, the *AN* tribunal had cited the latest Home Office country report of 2004 in its determination. However, that country report had itself selectively lifted earlier material, almost word for word, from a 2002 Amnesty International report without acknowledging that source.²⁵ We get here a flavour of the Home Office’s cut-and-paste approach to information-gathering and its careless attitude to sourcing discussed earlier (6.5.3). The material in this plagiarised passage was mostly historical description and, standing alone, would not in itself be detrimental to OH13’s case. But it was put into a section of the country report whose aim was to show that “low-level” members of opposition groups were not at risk in 2004 and it was not capable of doing this. Moreover, even older evidence turned up in OH 13’s case: when the judge assessed the Home Office’s conclusion accepted in *AN*, she said:

I consider that the background evidence does establish that an individual’s susceptibility to official ill-treatment is generally dependent upon the authorities’ perception of that individual’s profile within the opposition.²⁶

²³ *Ibid.*, para. 19.

²⁴ *Ibid.*

²⁵ Paras 6.87 and 6.88 of the country report are almost entirely lifted from *Eritrea: arbitrary detention of government critics and journalists* (2002), Amnesty International, London, p. 3.

²⁶ *Determination and Reasons* in OH13’s AIT hearing, 2005, para. 19.

But this seems to be adapted from another quotation based on outdated material. The country report, cited by the AN tribunal, had put it like this:

... the government's reaction to returning members of ELF or ELF-RC will depend on the position held in the organisations and the type of activity undertaken.²⁷

Similar words are found in OH13's refusal letter, but they are attributed not to the country report but to a statement by the British embassy in Eritrea. The embassy had declared that

the Government's reaction to the return of the individual would depend on the position he had held in the organisation and on the type of activity he was thought to have carried out.²⁸

But, as the refusal letter showed, this embassy statement was made on 3 March 2000, and by 2004 this was very outdated information indeed.

To sum up, a different verdict was possible in OH13's case: the judge showed ambivalence about some aspects of OH13's story – for example she did not believe that he had been detained and tortured, but she thought that there was “nothing inherently implausible about the appellant's account;”²⁹ she did not believe that his ELF membership documents were genuine, but she did believe he was a member of the ELF and “the documents are not particularly damaging to his case.”³⁰ In the event, relying on a country-guidance case which, we have seen, turns out to contain outdated, poorly sourced and plagiarised material, she dismissed the appeal.

7.4.2 *The case of FS3*

We examined the case of FS3 in chapter 6 (6.6) and identified a number of problems with his asylum interview and his refusal letter. FS3 appealed against his refusal to the AIT.

At the hearing the adjudicator outlined the reasons for refusal and accepted some of FS3's account. He believed that FS3 was a member of the Hezb-e-Mellat party. He believed that “it may have been his support for this party that caused him to leave Iran with

²⁷ Paragraph 6.90 of the country report, cited in *Determination and Reasons* in the case of AN, para.10.

²⁸ OH13's “Reasons for Refusal” letter, 2005, para. 12.

²⁹ *Determination and Reasons* in OH13's AIT hearing, 2005, para. 15.

³⁰ *Ibid.*, para. 17.

his wife”³¹ However, like the Home Office, he did not believe that FS3 had been involved in any demonstrations but did not give any convincing reasons for his disbelief (“he was running a successful company, he was 32 years of age, he had attended university, was married”³²). Like the Home Office, he did not believe he had been detained and tortured but he gave no reason. The adjudicator did not deal with any of the problems identified in chapter 6 concerning his refusal letter (the ignoring of FS3’s explanations, the misquoting of his words, the reliance on the Iranian government’s word, the denial that FS3’s political party existed, the mis-citing of questions and answers from the asylum interview (6.6)). He dismissed the asylum appeal.

He did, however, allow the human rights appeal. FS3 had not “established a well-founded fear of persecution both in respect of his time in Iran and if he returned”³³ but

[w]ith regard to the human rights appeal, the Appellant would in my view come to the authorities’ attention on his return as a member of [Hezb-e-Mellat]. It may well be that the reason he left Iran was because of the detention of one or more of his colleagues. The objective evidence is quite clear that the Iranian authorities do not tolerate political dissent and even as a low-level activist, I consider that the Appellant would fall into this category ... [T]here is reliable evidence that he would be subjected to torture or inhuman or degrading treatment if returned to Iran.

To an untrained eye, this is a hair-splitting exercise, but it nevertheless gave FS3 humanitarian protection. It must be a concern, however, that if the tribunal had identified and dealt with the issue of bad practice in FS3’s case, he might have been granted asylum and refugee status. This raises the question of whether tribunals can be relied upon to give effective redress for earlier Home Office bad practice.

Conclusion

We are left with a number of concerns at the end of this chapter. I have argued that the government has sought to reduce asylum seekers’ rights of appeal by focusing on claims of abuse of the system rather than on protection for vulnerable people fleeing persecution and

³¹ *Determination and Reasons* in FS3’s case, para. 19.

³² *Ibid.*, para. 21.

³³ *Ibid.*, para. 23.

that the introduction of such restrictions has more to do with controlling immigration and deterrence than the government's obligations under the Refugee Convention. The abolition of the second tier of appeal, the setting of unrealistic time limits, the introduction of a merits test and the use of fast-track processes and detention were all aimed at reducing access to the higher courts, and this in the context of poor decision-making at earlier stages in the process. I have shown the unsatisfactory nature of the use of country-guidance cases, in terms of the way they are established, analysed and referenced and in the AIT's treatment of sources.

Despite these concerns, however, for most people this is their last chance to be heard. All that remains is either voluntary departure or detention and enforced deportation.

CHAPTER 8

SEEKING ASYLUM IN THE UK: DETENTION AND DEPORTATION

8.1 Introduction

Once you reach the end of the asylum process and receive a final refusal, you will be required to leave the country. This may entail what the government calls “enforced removal”, or you may “volunteer” to leave under your own steam or under the government’s voluntary returns programme. Enforced removal may include detention prior to removal and by definition will include deportation against your will to your country of origin. In this chapter, I chart the increasing use of detention over the past decade, identifying as reasons the development of fast-track processes and the setting of targets for removal rates. I describe the difficulties in getting bail and legal representation at this stage and show that victims of torture and people with medical, including mental health, problems are regularly detained, as well as families with children. I examine the role of the European Court of Human Rights in relation to the detention of asylum seekers and consider the experience of detention from asylum seekers’ viewpoints. I then examine the process of forcible detention and deportation and the use of section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004 and of section 4 of the Immigration and Asylum Act 1999.

8.2 Targets for removal

Many asylum seekers fleeing persecution have spent periods of imprisonment in their own countries and have fled in order to avoid further detention or imprisonment. When considering the treatment of asylum seekers, the Joint Committee on Human Rights stated that Article 5 of the European Convention on Human Rights (ECHR) “guarantees the right to liberty and sets out the exceptions when detention can be lawful” and that “[t]he exceptions to liberty must be narrowly interpreted” (*Treatment* 2007:70). The committee cited the Home Office’s *Operational Enforcement Manual* to much the same effect (*ibid.*:71):

... there is a presumption in favour of temporary admission or temporary release. Detention should be used only as a matter of last resort ... Once detention has been authorised, it must be kept under close review to ensure that it continues to be justified.

Another Home Office manual, *Enforcement Instructions and Guidance*, is in tune with this approach: “detention must be used sparingly and for the shortest period necessary” (*Enforcement* 2007, para. 55.1.2).

Yet the use of detention has increased: in mid 1997 there were about 200 places in UK detention centres; ten years later there were 2,545 places (*Treatment* 2007:69). Two policy developments largely account for this rise: fast-track procedures and the stated aim of increasing the removal rates of refused asylum seekers. Indeed, the Nationality, Immigration and Asylum Act 2002 “formally changed the name of detention centres to removal centres to reflect the increased use of detention in the removal of asylum seekers from the UK” (*ibid.*:69). The *Enforcement Instructions and Guidance* manual recalls that in 1998 the government’s White Paper had made clear that “wherever possible, we would use alternatives to detention” (*Enforcement* 2007, para. 55.1). But after March 2000 asylum seekers could “be detained at Oakington Removal Centre [when] it appears that their claim is straightforward and capable of being decided quickly” (*ibid.*). When the detained-fast-track process opened at Harmondsworth Removal Centre in 2003, the so-called “Oakington criteria” were “widened so as to be capable of applying to a fast track process at any removal centre” (*ibid.*). This was the first of two Immigration Removal Centres (IRCs) to adopt the “super fast track” process (the second being Yarl’s Wood from 2005) in which “the asylum applicant is interviewed on day two, served with a decision on day three, has two days to lodge any appeals, and the appeal hearing is on day nine” (*Treatment* 2007:72).

In 2004 another measure was introduced to increase removals: section 9 of the Asylum and Immigration (Treatment of Claimants) Act made provision for the withdrawal of support from refused asylum-seeking families with children if they did not agree to return to their countries of origin, either by arranging their own departure or signing up to the voluntary returns programme run by the International Organization for Migration (IOM).¹

¹ Founded in 1951 to help with the resettlement of refugees after the Second World War, IOM now works with governments and civil society partners on migration issues. In terms of refugees, it undertakes

If after support was withdrawn they still did not “volunteer”, their children could be taken into care. The government pursued this policy against concerted opposition from NGOs and voluntary agencies. Then in 2004 prime minister Tony Blair announced a government target for removals, declaring that “we want the monthly rate of removals to exceed the number of unfounded applications” (Blair 2004). This eventually became the aim that the number of refused asylum seekers removed each month should exceed the number of arrivals predicted to be refused that month (*Target 2007*).

8.3 Bail and legal representation

Asylum seekers may be able to secure their release from detention by applying for bail either to

the Asylum and Immigration Tribunal (AIT) or the immigration authorities, including in some cases the police. Bail is not often granted by the immigration authorities, partly because they require substantial amounts from sureties (£2,000-£5,000), which in most cases an asylum seeker is unlikely to be able to provide. This has led to more detainees requesting bail from the AIT instead (*Fit? 2008:58*).

Under the Immigration and Asylum Act 1999, there was an apparent intention to provide an automatic right to bail hearings. Such a right had not existed before, since “[t]he decision to detain is taken by the executive alone”, with “no automatic judicial oversight of whether the individual concerned should indeed be detained in the first place” (*Seeking 2005:55*). But Home Secretary Jack Straw (Commons *Hansard* 1999, col. 39) committed the government to

a more extensive judicial element in the detention process. That will be achieved by introducing routine bail hearings for those detained under immigration legislation.

According to the Act, the Secretary of State had a statutory duty to arrange such a hearing, your case being heard either by a magistrates’ court, the Special Immigration Appeals

“programmes which facilitate the voluntary return and reintegration of refugees, displaced persons, migrants and other individuals” (IOM Mission Statement: <http://www.iom.int> – accessed 18 February 2009). Its membership includes 125 member states.

Commission, the Court of Appeal or, in Scotland, an adjudicator (IAA 1999, s. 44). However, as Amnesty International points out, these provisions “were never implemented and were, in fact, repealed under the Nationality, Immigration and Asylum Act 2002” (*Seeking* 2005:8).

Nevertheless, though there is no *automatic* right to bail hearings, asylum seekers in detention can, after seven days, apply for bail to the Asylum and Immigration Tribunal (AIT). However, the Joint Committee was concerned by “considerable evidence that ... in reality many detainees are unaware [of], or unable to exercise, this right because of language difficulties, a lack of legal representation and mental health issues” (*Treatment* 2007:84). Legal representation is important here and may well lead to the solution of the other difficulties. Yet Anne Owers, the chief inspector of prisons, told the committee (*ibid.*:85) that

as a general rule, it remains extremely difficult for detainees to find a competent and available legal representative; there is a national shortage of competent specialist legal advisers, and this is compounded by detainees’ moves away from a home area where they may have had contact with a solicitor.

She said that “less than half of the detainees we have surveyed have had a legal visit in detention” (*ibid.*). Chapter 6 showed how changes to legal aid have reduced the chances of legal representation to asylum seekers in general (6.4.1). The evidence is that the problem becomes worse if you are detained and, in her July 2004 report on the Dover removal centre, the chief inspector found that “access to competent and independent legal advice is becoming more, not less, difficult as fewer private practitioners offer legally aided advice and representation” (cited *Fit?* 2008:59). Her report on Dover between 18 and 21 July 2005 (Dover IRC 2005, para. 2.8) found that a previous recommendation that “arrangements should be made to allow all detainees to have on-site access to competent independent legal advisers” was “not achieved”. She described a situation which shows inadequate action by the authorities at Dover and unnecessary distress caused to detainees (*ibid.*):

The centre provided useful lists of immigration practitioners, but we met many detainees who had no legal representative. Some had used all their £5 weekly allowance on telephone calls without finding a legal aid practitioner prepared to

advise them. A local office of the Refugee Legal Centre was able to take on only some of the cases. Some detainees had had a legal representative in the past who had declined to continue with the case because Dover was too far away, or because the detainee could not pay them.

There is evidence that some solicitors do not take on detention cases because they “feel that they cannot sufficiently prepare a case within the restricted timeframe set out by the Legal Services Commission and there is often an assumption that the case will most likely fail” (ICAR Briefing 2007:9). This assumption also seems to be made when it comes to bail applications: Bail for Immigration Detainees (BID) cited a detainee on their files who reported (Oakley & Crew 2006:33):

My solicitor didn’t care that much. I asked him why I should be in the fast track because it meant that I couldn’t access my documents or have my cell phone to contact anybody ... I asked [him] about bail so I could print off documents from the internet and [he] didn’t want to do it because he just said, “They will not allow you”.

The Joint Committee noted that “[b]ail hearings, when they occur, are usually unsuccessful” (*Treatment* 2007:84). There are sometimes problems with the quality of the applications for bail presented to the AIT and poor representation on both sides. AIT president Mr Justice Hodge noted that “bail summaries vary in competence and quality” and “something like 30% of bail applications are withdrawn, probably because the information is not full enough” (*ibid.*:85). He said that Home Office Presenting Officers (HOPOs) “before our tribunals are often not as well briefed as we would like them to be” (*ibid.*). Indeed, the Committee found that there were “cases where no Home Office representative turned up at all and therefore the immigration and asylum judge was not helped by anyone from the Home Office”, and “cases where the representation simply was not good enough to enable the judge to make an informed decision” (*ibid.*). Perhaps not surprisingly, Home Office figures for Yarl’s Wood bail hearings (*ibid.*:84) show that

between January 2005 and January 2007 there was a total of 149 applications for bail. Of these ... 76 were refused and 54 were withdrawn. Only 19 applications were granted.

8.4 To be detained only in “very exceptional circumstances”

The Home Office’s *Operational Enforcement Manual* identifies categories of people who are “normally considered suitable for detention in only very exceptional circumstances” (cited *ibid.*:74). Included in this category are the following (*ibid.*):

unaccompanied children, the elderly, pregnant women (unless there is the clear prospect of early removal), those suffering from serious medical conditions or the mentally ill, those where there is independent evidence that they have been tortured and people with serious disabilities.

However, there is evidence that such people are regularly detained, often with serious consequences to their health and well-being. According to evidence given to the Joint Committee, “despite the existence of guidance to the contrary, some vulnerable people are detained and ... consideration of their vulnerability does not form part of the decision making process” (*ibid.*:75). According to BID’s evidence to the committee, “vulnerable people are detained, often without access to appropriate or adequate medical help” (*ibid.*). They included “people with evidence of torture, rape victims, pregnant women and people with severe mental and physical health problems” (*ibid.*).

8.4.1 Victims of torture

Victims of torture are a particularly vulnerable group. Yet according to the London Detainee Support Group (LDSG),² “[t]he detention of torture victims remains routine, in contravention of Home Office policy that it will not normally be appropriate” (LDSG *Memorandum* 2007, para. 10). A report in July 2007 by the NGO Medical Justice³ (*Beyond*

² LDSG aims to improve the welfare of immigration detainees, primarily those held at Harmondsworth and Colnbrook Immigration Removal Centres near Heathrow airport in London. It publishes reports and makes recommendations on policy and its volunteers regularly visit detainees.

³ Medical Justice facilitates the provision of independent medical advice, as well as legal advice and representation, to asylum seekers detained in immigration removal centres. It publishes reports on the treatment of detainees.

2007:12) found that 20 out of 56 detainees in four IRCs, examined by Medical Justice experts on torture and scarring,

gave a history of torture and had physical signs “consistent with”, “highly consistent with” or “typical of” torture (using the definitions established by the Istanbul Protocol on the Reporting of Torture). In no case had the Home Office investigated the allegations of torture or offered medical assistance, even when it had been appropriately reported to Home Office officials and doctors.

The 20 people had been kept in detention either despite evidence of torture or without the prescribed medical examination, laid down in the Detention Centre Rules 2001,⁴ which could have discovered such evidence. Indeed, Medical Justice believes the failures by the Home Office in these cases “were in breach of the statutory duties imposed by the Detention Centre Rules, in particular rules 33, 34, and 35” on healthcare (ibid.). Medical Justice cites Mr Justice Davis in the 2006 case *D & K*, where he deplored “the cross-the-board failure to give effect to the requirements of Rule 34 [on the mandatory medical examination within 24 hours of entry]” (cited ibid.). The Home Office regarded compliance “as ‘neither necessary nor appropriate’. I repeat what I have said earlier: that is not acceptable” (cited ibid.).

In January 2007 Home Office minister Baroness Scotland sought to reassure parliament that the government was complying with the Rules. As part of her answer to a question from Lord Hylton (Lords *Hansard* 2007, col. WA25), she said that the system for reporting allegations of torture was

laid down in the Detention Centre Rules 2001. An allegation of torture is reported to the case holder in the Immigration and Nationality Directorate, and they investigate using the detainee’s medical records. Where it is judged appropriate the detainee’s case is referred to the Medical Foundation for the Care of Victims of Torture.

⁴ Detention Centre Rules 2001, Rule 34 (1): “Every detained person shall be given a physical and mental examination by the medical practitioner ... within 24 hours of his admission to the detention centre.” The Rules are found in Statutory Instrument 2001 No. 238, available at <http://www.parliament.uk>

Apart from the fact that IRC medical practitioners are required not simply to report an allegation of torture but also their own concerns that torture may have taken place,⁵ the Medical Foundation's refugee policy officer, David Rhys Jones, told the *New Statesman* (O'Keeffe 2007:25) in the wake of the Medical Justice report:

Immigration officers have never made referrals of torture victims to the Medical Foundation, and no formal mechanism exists for them to do so. Baroness Scotland subsequently claimed that health care staff at one detention centre had made several such referrals. We are satisfied that in each case the prime referrer was in fact the Immigration Advisory Service [NGO] at the centre.

Moreover, Lord Hylton's original question was about numbers: "How many persons who were raped or tortured abroad have been held at ... removal centres since April 2005; and for what purpose?" (Lords *Hansard* 2007, col. WA25). Baroness Scotland refused to provide the figures because it was too expensive to do so: "While there are allegations of torture abroad made in centres," she answered, "these allegations are not centrally recorded and could be collated only at a disproportionate cost" (*ibid.*). Yet the Detention Centre Rules give such allegations considerable importance: the medical practitioner must report to the manager in the case of

- anyone whose health is likely to be "injuriously affected" by detention (Rule 35 (1))
- anyone suspected of having suicidal tendencies (Rule 35 (2))
- anyone who may have been the victim of torture (Rule 35 (3)).

In such cases, the manager "shall send a copy of any report ... to the Secretary of State without delay" (Rule 35 (4)). The vulnerability of all these categories of people is presumably the reason for such a sense of urgency in the Rules and the reason why such categories are precluded from detention, barring "very exceptional circumstances". It is surprising, therefore, that basic statistics about them are not centrally recorded and unacceptable that government ministers can avoid questions about them on that basis.

⁵ Detention Centre Rules 2001, Rule 35 (3): "The medical practitioner shall report to the manager on the case of any detained person who he is concerned may have been the victim of torture."

Further evidence of Home Office failures and breach of the regulations is found in a report by Médecins sans Frontières (MSF).⁶ Seven out of 13 detainees, referred to the organisation by BID, told the MSF doctor that they had experienced severe ill-treatment in their countries of origin. MSF then found (MSF 2005:39) that

[d]espite documentation of these experiences in four of the detainees' medical notes there was no evidence that the detention health care team had followed through with, for example, referrals to the Medical Foundation for the Care of Victims of Torture, nor offered follow up with any form of care and support. From the medical notes, it was unclear as to whether health care staff had notified the appropriate management in three of these cases, as required in the detention centre rules ...

The detention of torture victims and the failure to comply with regulations concerning their health and welfare has a devastating impact on many asylum seekers:

- Toure Abu was assessed by the Medical Foundation as a torture victim, but only after he had already spent two months in Colnbrook IRC. He was a member of the RDR party in Côte d'Ivoire, opposed to the military dictatorship. Arrested and accused of hoarding weapons for the RDR, he suffered interrogation, beatings and torture. He applied for asylum in the UK in 2004 and was refused. "In the detention centre", he remembers, "the guards would come early in the morning [and] brutalise you psychologically ... I was told I was being deported to the Côte d'Ivoire; in that environment you can imagine the stress and depression" (*Falsely Accused* 2007:2). Toure witnessed the attempted suicide of another detainee and eventually suffered a psychological breakdown. He was released after the Medical Foundation assessment, but only on condition that he wore a leg tag. The Medical Foundation reported that, "in spite of government policy ... that torture survivors are exempt from tagging owing to its 'invasive' and potentially psychologically harmful nature, it was two months before the tag was removed" (*ibid.*).
- Forty-five-year-old Sarah⁷ was a torture victim. She fled from Uganda, having suffered beatings, rape and torture, with external and internal injuries that made it

⁶ MSF is an international humanitarian aid organisation which provides emergency medical assistance to populations in danger in over 70 countries.

⁷ Not her real name.

difficult for her to walk. After eight years in the UK awaiting a decision on her asylum claim, she was detained at Yarl's Wood. She took medication several times a day, but was not allowed to keep it with her – it was “held for ‘safekeeping’ at the medical centre, a long and painful walk from her room” (O’Keeffe 2007:24-25). “Immigration think they are God,” she told Alice O’Keeffe. “They do not believe in people. What is a human being to do?” (ibid.:25).

8.4.2 Initial medical examination, follow-up and unidentified medical needs

Although Rule 34 requires a medical examination within 24 hours of arrival at the IRC, MSF found that “initial health assessments of detainees on arrival to [sic] the facility were not carried out in all cases and, even where they were, concerns were not followed up in a systematic way” (MSF 2005:42). The consequences for detainees may be dire when serious medical conditions go undiagnosed. MSF (ibid.:8) found

a variety of medical conditions among 12 of the 13 adult detainees that required attention. These included auditory hallucinations, a breast lump, a persistent cough possibly indicating TB, the need for an urgent referral back to a genito-urinary clinic and the need for a genito-urinary check for sexually transmitted infections post-rape. It was apparent from both medical notes and the description given by the individual detainees that health care staff were not addressing these conditions or appeared unaware of the health need.

There was apparent reluctance in some cases to facilitate referrals to secondary-care services or to services not available within the IRC. There were examples of detainees not getting appropriate referrals to “a psychiatrist; a genito-urinary clinic; a tuberculosis clinic; and HIV services” (ibid.:43). MSF considered that the apparent “reluctance of health care staff to facilitate these referrals ... may reflect the perception of staff that the removal of detainees from the UK is inevitable and imminent” (ibid.):

Yet we noted that of the detainees we visited, some were still within the asylum process, possibly going on to appeal a negative decision. This can be a lengthy process, after which they may well receive leave to remain in the UK.

Moreover, four detainees had been detained for more than one year.

8.4.3 *Mental health*

MSF had concerns about the mental health of all the adult detainees examined. There were “features of depressive illness” in 11 of the 13 and “features of post-traumatic stress” in nine (MSF 2005:38). There were examples of self-harm and suicide attempts, one of the latter almost successful. There was “considerable illness ... associated with stress and anxiety including headaches and gastro-intestinal problems” (ibid.). “Seven reported to the MSF doctor that they had experienced ill-treatment prior to coming to the UK: such traumatic experiences are among those likely to be reactivated by the trauma of detention” (ibid.:41). The Royal Society of Psychiatrists gave evidence to the Joint Committee about Campsfield House IRC (*Treatment* 2007:88):

There were no regular visits to the centre by qualified mental health staff, no equivalent to community mental healthcare, no daycare and no outpatient care. The Society expressed concern about the lack of specialised provision for torture victims and the absence of protocols for the identification, assessment and treatment of substance misusers.

According to the Detention Centre Rules, IRC medical practitioners are required to “pay special attention to any detained person whose mental condition appears to require it, and make any special arrangements (including counselling arrangements) which appear necessary for his supervision or care.”⁸ Yet MSF reported (MSF 2005:43):

Most facilities had no such services available, and even in the very serious cases we documented there had been no attempt to refer to outside specialist help nor any indication that medical staff had registered their concern over the impact of continuing detention on the detainee’s mental state.

MSF noted that there was “deterioration of the health status, in particular mental health, of detainees during detention” (ibid.:42). The experience of an asylum seeker in Colnbrook

⁸ Detention Centre Rules 2001, Rule 35 (3).

IRC, reported by the BBC (*Life Inside* 2005), illustrates the point. In a telephone interview from a corridor at the centre, Forard⁹ claimed: “There are people here who are mad; they were normal people when they came in but now it’s like their brains have been disturbed. They walk in circles all day ...” A loud scream in the corridor interrupted the interview, followed a few moments later by the heavy slamming of a door. “This is the frustration that I have been talking about,” said Forard. “Sometimes [this man] talks, sometimes he will go and just scream like this, sometimes he will go and slash his hands – he has scars all over his hands.”

John Oguchukwu, a 27-year-old Nigerian priest, had twice attempted suicide in Harmondsworth IRC before he was moved to Dungavel (Mackay 2004:1). After eight months there, and following the suicide of another detainee, he became suicidal again. He was not put on suicide watch but transferred to Greenock Prison, amid conflicting arguments about the reason for the transfer: was it because he was suicidal (the Home Office denies this), because he had been violent (he denies this) or because he had informed refugee support groups of the suicide of the other detainee? What is clear is that, despite his record of suicide attempts, he was not given the care and attention mandatory under Rule 35 and he was not put on suicide watch, either in Dungavel or in Greenock. Oguchukwu told the *Sunday Herald* (ibid.:2):

At the time I was just so down that I actually was passing out. I was feeling very low. I was clinically depressed. At one point I didn’t eat for two weeks. I was moved to Greenock three weeks ago ... I didn’t commit any crime. Why am I in this place? Everyone here is a criminal. I am not. I feel very depressed again. This move has taken me from bad to worse.

8.4.4 The detention of families and children

In 1998 government policy was that the detention of families and children “should be planned to be effected as close to removal as possible so as to ensure that families are not normally detained for more than a few days” (*Fairer* 1998, para. 12.5). By 2001, however, the policy had changed. The government explained the new arrangements in its 2001 White Paper *Secure Borders, Safe Haven*: families could “where necessary, now be detained at other times and for longer periods than just immediately prior to removal” (*Secure* 2001,

⁹ Not his real name.

para. 4.77). Such detention “could be whilst their identities and basis of claim are established, or because there is a reasonable belief that they would abscond” (ibid.). These stated reasons for detention gave the Home Office wide scope to detain, especially since establishing the “basis of claim” is the very purpose of the asylum process.

There are good reasons for preferring the earlier policy, particularly where children are involved: in the words of a Save the Children report, detention is “no place for a child” (Crawley and Lester 2005). In a 2003 report the chief inspector of prisons spelt out her view of why the detention of children should be “an exceptional measure” (*Dungavel* 2003):

The key principle here is not the precise number of days [in detention] ... It is that the welfare and development of children is likely to be compromised by detention, however humane the provisions, and that this will increase the longer detention is maintained.

A Commission for Social Care Inspection report in 2005 by the joint chief inspectors¹⁰ also expressed concern about “the adverse effect of detention on the welfare and development of children” (*Safeguarding* 2005, para. 7.33):

The process of removal from familiar surroundings, which often occurs with no notice, can have a traumatic effect on children who are removed from their peer groups and schools. There are examples of the removal of pupils who had spent up to four years in school and were shortly to complete GCSEs ... Educational provision in all immigration removal centres [is considered] deficient for all but the youngest children.

The joint chief inspectors were even more concerned about

¹⁰ The joint chief inspectors were David Behan CBE, Chief Inspector, Commission for Social Care Inspection; David Bell, Her Majesty’s Chief Inspector of Schools; Eddie Bloomfield, Her Majesty’s Chief Inspector of Court Administration; Andrew Bridges, Her Majesty’s Chief Inspector of Probation; Sir Ronnie Flanagan GBE MA, Her Majesty’s Chief Inspector of Constabulary; Stephen J Wooler CB, Her Majesty’s Chief Inspector of the Crown Prosecution Service; Anne Owers CBE, Her Majesty’s Chief Inspector of Prisons; and Anna Walker CB, Chief Executive, Healthcare Commission.

the effect of detention itself on a child, which is likely to compromise children's ability to thrive. Children may have had traumatic experiences in their home country before coming to the UK. Inspectors found evidence that the additional effects of restrictions on children's movements and activities and of witnessing their parents' powerlessness had led, in some cases, to eating and sleeping problems and depression (ibid., para. 7.34).

The deterioration in health of adult detainees while in detention, noted above (8.4.3), also applies to children. The two-year-old girl examined by MSF (MSF 2005)

showed regressive behaviour and some apparent weight loss on assessment. The [girl of 12 and the boy of 10] had experienced deterioration of their health since being detained ... Prior to detention the parents of these children reported stability in their home and school situations.

Even if they are not detained themselves, children are affected "by the detention of one of their parents, in cases where a family is split up" (*Fit?* 2008:61). Moreover, "[v]isiting detained family members is made even more difficult by the fact that a higher proportion of dispersal operates in the north of the UK and the majority of IRCs are located in the south" (ibid.).

8.4.5 Counting heads

Crawley and Lester found that it was "virtually impossible to assess the extent to which children are detained in the UK or the average lengths of time spent in detention" (2005:7). When Lord Roberts asked Baroness Scotland in the House of Lords, "How many children were detained in immigration removal centres in each month of 2006?" she replied, as she did to the question on victims of rape and torture (8.4.1), that it was too expensive to provide the figures: "The exact information requested is not available; it would be available only by examination of individual case files, at disproportionate cost."¹¹ Crawley and Lester note (ibid.) that the government's published statistics

¹¹ Lords *Hansard*, 8 January 2007, col. WA22.

do not include information on the total number of children detained over a period of time, the age of these children, at what stage of the family's case they were detained, nor the outcome of the detention, including whether or not these children are subsequently removed from the UK. Neither do they show the length of time for which the children are detained.

Baroness Scotland did point out that “snapshots are published showing the number of people detained under Immigration Act powers on the last Saturday of each quarter.”¹² On the basis of these “snapshots”, ministers have insisted that numbers of detained children are low: in the House of Lords in 2004 Lord Bassam, minister of state at the Home Office, regretted that

the misconception that there are large numbers of families detained for lengthy periods continues to prevail in some quarters. At any one time there are very few families in detention – something we have been saying for some time, but it is a message we must repeat (cited Crawley & Lester 2005:12, n. 25).

However, based on figures given by Lord Bassam himself that, during March and April 2004, 323 children were taken into detention, Crawley and Lester calculated that if “the number of children detained over this two-month period were to be replicated across a 12-month period ... around 2,000 children [would be] detained with their families every year for the purpose of immigration control” (ibid.:7). A finding by the Joint Committee supports this figure: “In 2005, 1,860 children were detained under immigration powers (not including those whose age is disputed), the majority of whom (85%) were asylum detainees” (*Treatment* 2007: 76).

8.4.6 “Invisible” children

In light of its detrimental effects on children, their detention “only in very exceptional circumstances” might seem an essential caveat. There is strong evidence, however, that their needs are ignored and that, indeed, they become “invisible” during the asylum process. The notion of the invisibility of children was raised by the chief inspector of

¹² Ibid.

prisons. Speaking of the initial decision to detain a child, she told the Joint Committee (*Minutes* 2007, Question 151) that

we do not routinely find any evidence that the interests of the child are considered at all in making that initial detention decision. In our view the child becomes invisible at this point and there is no consideration of whether the welfare of a child in a family will be adversely affected by the process of detention.

Once children are detained, she recommended reviews by an independent body which would be fed into further decisions on continued detention. This was because “detention should be a measure of last resort, should be exceptional, and in the way that these decisions are made and continued there is not sufficient evidence that those considerations have played a proper part” (*ibid.*).

On the question of welfare assessments of children once they have been detained, the Joint Committee found that it was “not clear that the evidence presented in [welfare reports] about the welfare of a child was ever considered by the Immigration Service or an immigration judge” (*Treatment* 2007:79). A local authority social worker told the Committee that “he had never been asked to give evidence directly to a judge” and Judge Nehar Bird told the Committee: “I have been sitting at Yarl’s Wood for about a year. I have not seen a welfare report from staff at Yarl’s Wood” (*Minutes* 2007, Question 450). On the day that that evidence was given, the hearing was briefly suspended for a House of Lords division. When it was reconvened, Mr Justice Hodge told the Committee (*ibid.*, Question 453):

In the interlude we [Judge Bird and Mr Justice Hodge] have had a discussion. We are not familiar with any kind of process which produces a social work report out of a removal centre or a detention centre into paperwork for us. It is possible that they go into the bail summary in some way or another, but we are not familiar with that happening so we do not see them.

The Joint Committee concluded that “the current process of detention does not consider the welfare of the child” (*Treatment* 2007:80):

The detention of children for the purpose of immigration control is incompatible with children's right to liberty and is in breach of the UK's international human rights obligations ... We believe that the detention of asylum seeking children constitutes a breach of the UK's human rights obligations. Asylum seeking children should not be detained.

8.4.7 International human rights standards

The detention of children certainly raises the question of where the UK stands in relation to international human rights standards. The Children's Commissioner for England had "concerns as to whether the detention of children is compatible with international human rights instruments (including the UN Convention on the Rights of the Child [CRC] and the UN Rules on Juveniles Deprived of their Liberty [UNJDL])" (*Treatment* 2007:76). He told the Joint Committee that "Home Office policy prior to October 2001 was broadly in line with most of these international standards in that it required detention to be effected as close to removal as possible" but this was no longer the case once it was "changed so as to allow detention of families whose circumstances justified it" (*ibid.*). UNJDL requires that juveniles should only be deprived of liberty in exceptional cases, the length of detention determined judicially with the possibility of early release and an age limit set below which children are not detained. The Commissioner concluded that the government's policy of "[a]dministrative detention of children for immigration purposes, which is not time-limited, sets no minimum age and is not used as a measure of last resort, is therefore in clear breach of the UNJDL rules" (*ibid.*).

8.5 European Convention on Human Rights (ECHR) to the rescue?

Human rights instruments and laws relate not just to children but to all asylum seekers. The Joint Committee on Human Rights asked the Home Office to explain why it uses detention and when it regards it as appropriate (*Treatment* 2007:70). The Home Office explained that

... immigration detention is used to prevent unauthorised entry into the UK or when action is being taken with a view to removal or deportation from the UK. Detention may for example be appropriate in the following circumstances: where a person's identity and basis of claim are being decided; where there are reasonable grounds for believing that a person will fail to comply with the conditions of temporary

admission or release; to effect removal; and for applicants whose asylum claim appears to be capable of being decided quickly as part of a fast-track process.

Shayan Baram Saadi was detained at Oakington IRC, released, and then refused asylum. After two years in the appeals process, he was finally granted asylum. But Saadi continued to complain about the detention he had suffered during the application process and took his case as far as the European Court of Human Rights in Strasbourg. The importance of his case is that, because the decision in the European Court on his detention went against him by only four votes to three, he appealed to the court's Grand Chamber. The Grand Chamber upheld the judgment, however, and the issues it discussed were relevant to the Home Office's explanation of detention policy cited above. The arguments used by the court suggest that states are allowed wide discretion in the formulation of policy on detention and that the ECHR does not give asylum seekers as much protection from wrongful detention as might be supposed at first reading.

First, the court accepted that Saadi's detention "had to be compatible with the overall purpose of ECHR Article 5, to safeguard the right to liberty and ensure that no-one should be dispossessed of his or her liberty in an arbitrary fashion."¹³ In order "to avoid being branded as arbitrary", the court declared, the detention had to satisfy a number of criteria, one of which was that "it had to be closely connected to the purpose of preventing unauthorised entry ..."¹⁴ The court accepted that Saadi had not sought to gain entry illegally but, on arrival at Heathrow, had "immediately claimed asylum".¹⁵ Saadi nevertheless fell foul of the court's reading of Article 5. The court "considered that, until a State had 'authorised' entry, it was 'unauthorised' and the detention of a person who wished to enter the country concerned and who needed but did not yet have authorisation to do so, could be to 'prevent his effecting an unauthorised entry'."¹⁶ Specifically, the court denied that if an asylum seeker "surrendered himself to the immigration authorities [i.e. applied for asylum], he was seeking to effect an 'authorised' entry ...". So it agreed with the earlier decisions of "the [UK] Court of Appeal and the House of Lords ... that the detention

¹³ *Saadi v. UK – appeal judgment* (Grand Chamber, 16 May 2007) – press release issued by the Registrar of the European Court of Human Rights, p. 3. Available at <http://www.statewatch.co.uk> and accessed 7/10/2008.

¹⁴ *Ibid.*

¹⁵ *Ibid.*, p.1.

¹⁶ *Ibid.*, p. 3.

[of Saadi] was ‘to prevent unauthorised entry’¹⁷ despite his immediate asylum application. The court’s broad argument on Article 5 was that

while the general rule set out in Article 5 (1) was that everyone had the right to liberty, Article 5 (1) (f) provided an exception, permitting States to control the liberty of aliens in an immigration context. States were permitted to detain would-be immigrants who had applied for permission to enter, whether by way of asylum or not.¹⁸

Thus all asylum seekers might be seen as attempting unauthorised entry and liable to detention and, on this reading, Article 5 provides a basis for EU states to place asylum policy in the context of immigration control rather than protection.

Secondly, the court decided that the fast-track process was appropriate in Saadi’s case, without ever asking why that should be so. The fast-track system may be used because the applicant is seen as likely to abscond, but this was not the case with Saadi: the court noted that Oakington was “a new detention facility for asylum seekers considered unlikely to abscond”.¹⁹ The fast-track system is most often used for people whose claims can be quickly decided because they are “manifestly unfounded”. It is not clear how this could be true of Saadi, an Iraqi Kurd, a member of the Iraqi Workers’ Communist Party, who had helped others to escape and had now escaped himself. The Iraqi regime was regarded by the UK in 2000 as a regime which denied human rights and committed atrocities against its own people, especially the Kurds. The court, however, simply relied once more on previous decisions by the UK Court of Appeal and the House of Lords that his “detention was lawful in domestic law”.²⁰

Thirdly, the court approved of Saadi’s detention on grounds of administrative convenience. The growing use of detention for this purpose has been a concern of NGOs and voluntary organisations for some time. Amnesty International’s concern is that “many asylum-seekers are detained to permit the Home Office to make a quick decision on straightforward claims, the main factor being the asylum-seekers’ nationality”, and Amnesty “believes that the use of fast-track procedures, where the time limits are so tight,

¹⁷ Ibid., p. 2.

¹⁸ Ibid., p. 3.

¹⁹ Ibid., p.1.

²⁰ Ibid., p. 2.

is not conducive to fair decisions and that asylum-seekers are detained for administrative convenience” (*Seeking* 2005:62). The European Court, however, “recalled that the purpose of the Oakington regime was to ensure the speedy resolution of some 13,000 of the approximately 84,000 asylum applications made in the United Kingdom per year at that time.”²¹ The House of Lords had previously made a similar point when it considered Saadi’s case, finding that “given the high number of interviews every day (up to 150), detention was necessary for the speed and efficiency of the system.”²² Now the court in Strasbourg gave preference to administrative convenience over human rights and once again agreed with their Lordships. It concluded that “given the difficult administrative problems with which the United Kingdom was confronted during the period in question, with an escalating flow of huge numbers of asylum-seekers, it was not incompatible with Article 5 (1) (f) to detain the applicant ... to enable his claim to asylum to be processed speedily.”²³

The court had declared itself against arbitrary detention, recognising that asylum seekers were not criminals but people “who, often fearing for their lives, had fled from their own country.”²⁴ It is worrying that its expressed concern for vulnerable people had no bearing on its eventual decision: it concluded that Saadi’s detention had not been in violation of ECHR Article 5 (1).

8.6 Life inside

We met Forard earlier (8.4.3). He fled from torture in Zimbabwe. At the time of his BBC interview he had been detained at Colnbrook IRC for four months awaiting deportation. Forard described Colnbrook (*Life Inside* 2005):

The structure of this building is just like a jail. Inside the rooms there are toilets with no doors. The ceiling is dark blue, close to black and they lock us up at 10 pm and they open in the morning at 7.30, sometimes 7.45. There is no way you can get out of the room. It feels that there is no air coming in, there is artificial ventilation but it feels like it is blocked most of the time. It gets very hot sometimes and I have to fan myself with a newspaper at night and there is no way you can open windows.

²¹ *Ibid.*, p.3.

²² *Ibid.*, p. 2.

²³ *Ibid.*, p. 4.

²⁴ *Ibid.*, p.3.

The view from his room was of razor wire and solid fences. There was

nothing much to see, you look from the room to the fence, the way I had seen the inside of a jail on television, this is what I see here. In Dungavel the toilets are outside the rooms and you can get out of the room and go to television rooms and you come out and you can play games. Your rooms are not locked at night. Here, when they lock, you are locked in and there is nothing else you can do.

The Joint Committee met a Pakistani family at Yarl's Wood: a husband, wife and two children aged eight and 10 (*Treatment* 2007:78). They had

been detained at 6 am one morning. His wife has severe arthritis. The family had been moved around the detention estate, spending time at Dungavel, Liverpool, Tinsley House and Harmondsworth as well as Yarl's Wood. The journey from Dungavel to Yarl's Wood had involved an eight hour journey in a freezing cold van. That family told us that living conditions were satisfactory at Yarl's Wood, although staff did not always show respect. They had been unable to access legal advice and were due to be removed shortly.

Though good relations have been reported between IRC staff and detainees, there are many cases where staff "did not always show respect". Crawley (2007:154-5) cited the case of a 16-year-old boy who reported:

I tell you, what bothered me most was [that the guards] used to make fun ... they make noises over the loudspeaker. It used to be very loud. They would say Ab-dull-ah like the sound of the call for prayer. Then we could hear them laugh.

Asylum seekers sometimes compare conditions of detention in the UK favourably with detention or prison conditions in their country of origin. This was so in the case of children interviewed by Crawley. Sixteen-year-old Raheen²⁵ said (2007:154):

²⁵ Not the detainee's real name in this example or the next two.

It was a lot different between Oakington Centre and Afghanistan. In Afghanistan there was no food, no drink and they would beat me a lot and work me a lot. It is like a hotel in Oakington and they treat me very well.

Sixteen-year-old Soran remembered:

While I was detained I didn't think about anything, just eating and drinking ... All I care is I'm happy because I'm alive.

However, the boy who had been worried about the guards' mockery of the Muslim call to prayer felt stressed and unhappy at a number of levels:

You know, when I was in Oakington I came out and looked at all the barbed wire, the security, I felt maybe I have committed a crime ... It was utter boredom and anxiety. I just try to play table tennis to pass the time ... The common room was full of smoke. I couldn't go out and get fresh air because it was cold.

There were certainly problems at Oakington. In 2005 a BBC documentary, *Detention Undercover*, showed racist abuse taking place, filmed by reporter Simon Boazman, who had posed as a trainee security guard. Oakington security guard Brian Davidson explained to the "new recruit" his own view of the detainees (*Detention* 2005):

They're no good at all in society. They're not even good in their own society – that's why they come here: they want to get it all for free. Their own country don't give them fuck all 'cos they deserve fuck all.

The company running the centre, GSL, claimed to be "committed to tackling institutional discrimination and to promoting understanding and respect for cultural difference and diversity" (ibid.). It provided human rights training which underlined the need to treat all detainees with respect and Boazman believed that many officers tried to do that. Yet based on his three-month experience he believed that racist abuse was practised by "a significant

minority” at Oakington. On his shift, security guard Jason Martin (nicknamed “Wolfie”) was filmed telling Boazman (ibid.) that in the morning he had to

get ’em out of fucking bed. Never leave the room until all of them are out of bed, all the lights on, all the curtains open. Plenty of fucking shouting.

Martin took loud music with him into the communal bedroom as part of the waking-up procedure. There was concern about the mental health of one of the detainees shown on the programme, who was seen as particularly vulnerable. Nevertheless, accompanied by raucously loud music, Martin shouted him awake (ibid.):

Get out of fucking bed before I do you some damage ... I don’t give a toss about Oakington, I don’t give a toss about this wanking job, either. I especially don’t give a toss about a wanker like you: you really get on my fucking tits. You just don’t want to [get up] because I’m white and you think you won’t do anything because a white man tells you what to do. Well, I’m afraid you’re wrong. My great-grandfather shot your great-grandfather and nicked your fucking country off you for 200 years. So I won’t be messed with.

He then tipped him out of bed on to the floor. Alun Baxter, one of eight staff responsible for dealing with race-related problems at Oakington, boasted that no complaints about racist staff went further than him because “I always talk [the detainees] out of it” (ibid.). He also claimed that no complaints had been upheld. He explained some of the code language used between officers to describe detainees: “‘TGB’: thieving Gypsy bastard; ‘forks’: knives, forks and spoons – coons.” Another officer said, “It’s fucking Pakiland in here” (ibid.).

After the programme there was an investigation by prisons and probation ombudsman Stephen Shaw. The government included all Shaw’s 54 recommendations in its “action plan” to solve the problems and declared that its focus was not just on Oakington but that the lessons learned “will be applied across the whole detention estate”.²⁶ It is worrying, therefore, that in June 2006 the chief inspector of prisons was

²⁶ *Lessons Learned Go Beyond Oakington*, Home Office Press Release, 15 December 2005.

extremely disappointed to find that there continued to be insufficient attention to basic protective race relations structures, such as effective ethnic monitoring procedures. Given our previous recommendations, and the report of the Prisons and Probation Ombudsman, there can be no excuse for failing to put in place effective mechanisms to detect and prevent racial discrimination – even though staff–detainee relationships appeared to be essentially sound.

Yet even if conditions were improved and ill-treatment checked, detention in itself is inappropriate for a number of reasons. Asylum seekers are detained without being charged with any offence or suspected of being engaged in any criminal activity – in the words of former Yarl’s Wood detainee Codson Chapfika: “Imagine, these people are being detained for an indefinite period of time without committing any crime” (Mitchell 2002:2). Many of them have experienced detention or imprisonment in their home countries and have sought protection in the UK for that reason. Just as any detention of children, even for a short time, is detrimental to their welfare and development, so any detention, however short, may revive memories that adults had fled to forget, and may also cause the recurrence of previous trauma.

8.6.1 Responses to detention: protest and self-harm

Since the mid-1990s there have been protests by detainees against their detention, their conditions and the treatment they have received. At Campsfield House in 2001, “detainees went on hunger strike, complaining that they were being treated like prisoners when they had done nothing wrong” (Mitchell 2002:2). Much of Yarl’s Wood IRC was destroyed by fire in 2002 during protests, partly over the handcuffing of a female detainee on her way to medical treatment (*Eye-witness* 2002:1). Protests, hunger strikes, even riots continue to take place across the “detention estate”: BID’s written evidence to the Joint Committee (BID *Memorandum* 2007, para. 10) reported that

there has been an increasing incidence of hunger strikes in the detention centres. In BID’s experience, prior to 2006, there would be one or two hunger strikes a year in one or two detention centres. Since January 2006, there have been hunger strikes in Colnbrook, Haslar and Yarl’s Wood. In April 2006, 100 people were involved in a

hunger strike in Colnbrook and in July and August 2006, the parents of children held at Yarl's Wood undertook a hunger strike.

Self-harm and suicide are also responses to detention. BID told the Joint Committee (BID *Memorandum*, para. 10) that

in April 2006, 187 people were kept under surveillance in case they harmed themselves; 19 of those people required medical treatment. From April 2005 to March 2006, 231 people self-harmed and needed medical treatment; 1,086 were put on self-harm watch. Suicide verdicts have been recorded for two people in immigration detention and a further five inquests are to be heard into deaths over the last two years in detention centres.

The National Coalition of Anti-Deportation Campaigns (NCADC)²⁷ obtained figures under the Freedom of Information Act 2000 (*Incidents* 2008:1) which told them that

there were 48 incidents of Self-Harm requiring medical treatment in Jan/Feb/Mar 2008 [and] this is an increase of 54% on the last quarter of 2007 ... during which time there were 31 incidents ... 361 individuals were put on Formal Self-Harm at Risk in Jan/Feb/Mar 2008, a 28% increase on the last quarter of 2007 ... during which time there were 282 incidents.

Such responses to detention for deportation is not surprising. Asylum seekers' fears of returning to their home countries are real. When asked if he thought he would be deported, S1 said simply:

No ... if one day I knew they going to send me back I will kill myself [*gesture across throat*] before they send me back ... [I know] when I go back I get shoot very easy ... I don't want to be like that again.²⁸

²⁷ NCADC is a voluntary organisation, which provides practical help and advice to people facing deportation on how to launch and run anti-deportation campaigns.

²⁸ Research interview, 24 July 2006.

Some detainees self-harm or attempt suicide when being deported. Security guards showed the BBC's undercover reporter in the escort service at Heathrow airport an album of photographs of the inside of a van covered in a detainee's blood (*Detention* 2005). In the light of the Home Office's presumptions of guilt, the poor decision-making at all levels and the lack of interest in monitoring returns, there can be no confidence that the decision to refuse and return is necessarily a safe one. In these circumstances, an assumption of risk may be better than an assumption of guilt. Indeed, if assumptions of guilt and the focus on immigration control were abandoned and, instead, Refugee Convention and human rights obligations were put at the forefront of the asylum process, with improvements made in decision-making to match those changes, the practice of detention for removal would be rarely needed. Certainly, a fairer process at the outset would mean fewer people at the final stage who were fearful of return. If the process is unfair and prejudicial from the start, however, the outcome will continue to be resistance at the end.

8.7 Dawn raids

The Home Office's stated policy of using detention to effect removal regularly involves immigration officers and police forcibly transporting asylum seekers from their homes to an IRC, and from there to an airport for deportation. These events are widely known as "dawn raids", due to the early hour at which they usually take place. They are officially called "immigration enforcement operations" or "operational visits".²⁹ Robina Qureshi, director of Positive Action in Housing (PAIH),³⁰ told the BBC in December 2006: "Three or four dawn raids are now happening [in Glasgow] every week" (*Raids* 2006:1). Across the UK in 2005, according to immigration minister Liam Byrne, there were 8,865 police-supported raids and in 2006 there were 13,963, "some of which will have been undertaken early in the morning for operational reasons" (Commons *Hansard* 2007). According to *The Scotsman* newspaper, the Home Office "confirmed that removals operate '365 days a year, 24 hours a day'" (Gray 2006:1).

²⁹ Immigration minister Liam Byrne's answer to Written Question No. 460, House of Commons, 24 January 2007.

³⁰ PAIH is a Scottish charity based in Glasgow. It provides housing-related advice and information to new migrants, refugees and established ethnic communities.

8.7.1 The Hani family

One family in Scotland who received an operational visit came to the attention of Amnesty International: the Hani family were visited one morning at 6 am (*Seeking* 2005:15), when

several officials came to their flat. They knocked loudly, shouting “this is the Home Office” ... Some entered the flat and some remained outside and in the lift. Sergei’s 11-year-old son was asleep and neither [Sergei] nor his wife was allowed to wake him. Instead, he was woken up by the officials, which the boy found extremely traumatic. The officials made his wife go to the toilet with the door open.

When they arrived at Dungavel IRC,

the child locked himself in the toilet and refused to come out for a long time. He did not speak to his parents and communicated with them by passing notes to them under the toilet door. The whole experience has left him profoundly distressed; he is seeing a psychologist and finds it difficult to sleep (*ibid.*).

The family were eventually released and made a fresh asylum claim, which suggests that their detention was unnecessary. They were not alone: Home Office figures show that in the second quarter of 2006, 40.1% of detainees were released into the community,³¹ raising the question of why they had been detained in the first place.

8.7.2 The Bokhari family

Sibtain Bokhari was a rights lawyer, a member of the Bar in Lahore, Pakistan. He was a Shi’a Muslim in a Sunni-dominated area. “His chambers were trashed”, said Austin Mitchell, his constituency MP in Grimsby,³² “his home was stoned and he was threatened.” His asylum claim was refused and he lost his appeal. He and his wife Tahira, with their four children, were deported after a 6 am “operational visit” to their home at 6.30 am on 9 January 2007. Austin Mitchell had managed to secure their release on a previous occasion, but was not able to prevent their deportation this time. On 6 February 2007, however, he

³¹ E-mail from the National Coalition of Deportation Campaigns (NCADC), 16 February 2007, citing Home Office figures.

³² Research interview, 23 February 2007.

did get a debate in the House of Commons on the dawn raid. The raid was described by a neighbour, who was woken by the noise:

The children were brought out one by one and put into a car, then Mrs Bokhari was brought out. Mr Bokhari was brought out screaming. He only had his nightwear on and no shoes. Two of them put Mr Bokhari in a separate car, pulling him down the street. These children will be scarred for life. They looked so frightened.³³

The family were taken to Yarl's Wood IRC. While there, Sibtain became unwell because he did not have time to retrieve his diabetes medicine before being taken from his home. In a fax to Austin Mitchell after the family's return to Pakistan, Tahira explained that Sibtain had been taken handcuffed to the clinic at Yarl's Wood and came back "injured on his forehead and both wrists due to hand cuffing from backside."³⁴ He later lost consciousness "due to not giving medicine". On 22 January the Bokharis were deported to Pakistan. Their resistance to the detention and deportation process suggests real fears about returning there. In her fax Tahira simply relates that after their arrival they went

to Lahore by train but we are staying in a hotel one day and then we moved to my relative's house. We did not go to our actual residence as that place is still dangerous for us. As some people put a sign of a cross on our building wall, so we are avoiding to go that place [where] we were attacked and persecuted very badly.

8.7.3 Detained while signing on

Most asylum seekers have to sign on at a Home Office reporting centre, every week or fortnight, while their application is in progress. During this signing-on procedure, asylum seekers may be detained without warning and deported. This happens so frequently that the Unity Centre in Glasgow, situated 100 yards from the reporting centre, operates a system whereby asylum seekers write their names on a piece of paper on their way to the centre and cross the name off on the way back. If names are not crossed off at the end of the day, workers at the centre make enquiries, call solicitors, contact supporters by email, in order to prevent the deportation. The people detained while signing on, like those who experience

³³ Cited by Austin Mitchell in the debate: House of Commons Hansard, 6 February 2007, col. 256WH.

³⁴ Fax message to Austin Mitchell, 26 January 2007.

dawn raids, include families with children. A Unity Centre worker explained³⁵ that the vans in which they are transported have darkened windows and the inside of the van is a cage. Asylum seekers are put inside by armed guards who first shut the cage, then the van doors. Children who experience this, added the worker, often still show signs of trauma years later.

8.8 Section 9

The government has another means of forcing families to leave once they have reached the end of the asylum process and exhausted their rights of appeal. At that point, according to section 9 of the Asylum and Immigration (Treatment of Claimants) Act 2004, you become a new category of person: “Fifth class of ineligible person: failed asylum-seeker with family” (AIA 2004, s. 9 (1)). If you do not “take reasonable steps to leave the United Kingdom voluntarily” or “place [yourself] in a position” to do so (e.g. by signing up to a voluntary returns programme or applying for travel documents), the secretary of state may issue a certificate stating that you have “failed [to do so] without reasonable excuse” and your asylum support will end. The government believes that this will “persuade” you and your family to leave: immigration minister Beverley Hughes told the House of Commons Home Affairs Select Committee that “I want to try to persuade as many families as possible, when they come to the end of the road, to go back in a dignified way, with support, on a voluntary basis” (Home Affairs 2003, para. 60).

Section nine was not successful, even in terms of this stated policy aim. The government had set up a pilot scheme in Manchester, Leeds and London involving 116 families and by January 2006 it was clear that it was not working: the Refugee Council and Refugee Action found that only one family had left the UK; only three had signed up for voluntary return; and only 12 had taken steps to obtain travel documents (*Inhumane* 2006:2). In terms of care taken in planning the project, 75% of clients could not fully understand the letter sent to them to explain their position and its tone “made them feel threatened and insecure” (*ibid.*:4); 30% of families had “outstanding asylum claims or other legal representations” (*ibid.*) and thus should not have been included at all. Moreover, section nine caused considerable difficulties to local authorities trying to support families with dependent children. From the start local authorities were unclear about their legal obligations, the

³⁵ Research interview, 25 May 2007.

options open to them under the Act and how to reconcile section 9 requirements with their duties under the Children Act 1989 (ibid.). That Act places a “general duty” on local authorities to “safeguard and promote the welfare of children who are in need” and “to promote the upbringing of such children by their families by providing ... services” (CA 1989, s. 17 (1)). But under section nine asylum support is ended and, as Lewis notes, “local authorities were prohibited from providing support to families, unless children were treated under [section 20 of] the Children Act 1989, separated from their parents, and taken into care” (2007:63). The children’s charity Barnardo’s, in its report *End of the Road*, set out some of the options available to local authorities in the light of section nine. When asylum support for a family ceases, the local authority cannot pay “subsistence money ... to the parents without breaching section 9, nor can it be paid to the child” (Barnardo’s 2005:14). It could pay “another adult with whom the family was living” but with little control over whether the money reached the child. The authority may take the child into care with the child’s consent, but Barnardo’s considered such consent “highly unlikely” in the circumstances (ibid.:15). The authority may argue that the parents are not “able to provide accommodation”, in the words of the Children Act (s. 20 (7)), but since such inability arises from the direct action of NASS, Barnardo’s describes this solution as “a little perverse” (2005:16). The charity concludes that “the three principal options open to local authorities seeking to support families affected by section 9 are problematic: at a fundamental level the Asylum and Immigration (Treatment of Claimants) Act 2004 and the Children Act 1989 appear incompatible” (ibid.:17). Moreover, local authorities are obliged to work in accordance with the Human Rights Act 1998, which incorporated the European Convention on Human Rights into UK law. Barnardo’s argued (ibid.) that there was a potential breach, not only of Article 8 of the Convention (right to private and family life) but also of Article 3 (prohibition of torture and inhuman or degrading treatment).

During the pilot scheme in Leeds, the Social Services Department and the local council made a judgement on their conflicting duties and obligations: they considered the removal of “these children [from their families] to be against the best interests of the children and contrary to childcare legislation and accepted practice” (Lewis 2007:17). Describing the situation of one family, Anne James, team manager of the Children’s Asylum and Refugee Team in the Social Services Department, concluded that “to ask me to remove those children would be against all social work ethics” (ibid.). Social Services and the council therefore continued support for children and refused to separate them from their parents.

In terms of humane treatment, the Refugee Council and Refugee Action found that, across the pilot scheme as a whole, 60 of the families had no NASS or other support and four children had been taken into care (*Inhumane* 2006:5, 6). They concluded that “[s]ection nine has caused immense distress and panic among families who face destitution, homelessness and having their children taken into care” (ibid.:2). Thirty-two families had “gone underground without support, housing or access to health and welfare services” (ibid.:3). Leeds Social Services found that the pilot scheme there had “caused widespread fear among families of their children being removed”, and Lewis argues (2007:17) that “[t]his is likely to encourage families to distance themselves further from the Home Office and refugee agencies, and to therefore cause the destitution of children.” Beverley Hughes, however, blamed the families themselves: she told the Home Affairs Committee that the purpose of the policy was “to ensure that people who are under a legal duty to leave the country have no incentive to frustrate and draw out the process” (Home Affairs 2003, para. 62). She thought that “some families might decide not to leave the country even at the risk of destitution for themselves and their children” (ibid., para. 63) but the government “cannot know what proportion of families would act in such an irresponsible way: I hope it will be small” (ibid.). Cunningham and Tomlinson (2005:258) note that “Hughes shifts the concept of ‘irresponsibility’ quite clearly *away* from government policy, preferring to locate it instead in the actions of ‘irresponsible’ asylum-seeking parents.” They cite the view of the Refugee Children’s Consortium³⁶ that “the notion that the government is not responsible for the suffering of children resulting from the laws it passes ‘is very dangerous and unjust’” (ibid.). Certainly, the idea that families might resist deportation because they were afraid to return seems not to have occurred to the minister.

In the end, pressure from asylum support groups, NGOs and others led to the government signalling that it would abandon the use of section 9. Rod McLean, head of the Asylum Policy Unit at the Home Office, told me³⁷ that section 9 would be abandoned “because it hasn’t worked”. When I asked whether he meant that people were disappearing rather than volunteering to leave, he agreed. He said the policy had not been thought through at the beginning because home secretary David Blunkett had introduced it “with an eye to the media” who wanted tougher measures on removals. There would be an

³⁶ The Refugee Children's Consortium (RCC) is a group of NGOs working together to ensure that the rights and needs of refugee children are promoted, respected and met in accordance with domestic, regional and international standards. It is currently chaired by the Children’s Society.

³⁷ Research interview, 17 March 2006.

announcement in a week or two that the policy had been abandoned. However, no announcement was made for more than a year: on 29 June 2007 the Home Office announced that “there was no significant increase in the number of voluntary returns or removals of unsuccessful asylum-seeking families” under the scheme and therefore section 9 would “not be implemented on a blanket-basis”.³⁸ However, on 6 July 2007 the BIA announced:

We intend to keep section 9 on the statute books as we think it is a measure that should be available to case owners when dealing with particularly uncooperative families or in circumstances where its use is considered appropriate. It is important that we retain an ability to withdraw support from families who are wilfully not co-operating in the process.³⁹

While section 9 remains for use when “appropriate”, NCADC believes that, on the basis of its admitted failure, legal advisers might be able to argue that caseowners “should now exercise their discretion and discontinue” its use.⁴⁰ In terms of government policy, however, it might be more appropriate not just to abandon the section but to repeal it.

8.9 Refused and made destitute

Though families with children are specifically targeted by section 9, single adults and childless couples are also liable to lose their support and become destitute. Amnesty International explained in 2006 that “[o]nce the applicant’s claim has been rejected and there is no outstanding appeal they are expected to leave the country within 21 days” (*Down and Out* 2006:5). After that time financial support and accommodation are stopped. If you have been allowed to work your employer is informed that you can no longer be employed and you will lose your job. You are then expected to sign up to a voluntary return scheme or apply for a travel document and make arrangements to leave. If you do so you may be able to receive “section 4 support” under the Immigration and Asylum Act 1999 if you are destitute and also qualify for one of the following reasons:

³⁸ Cited in an e-mail from the National Coalition of Anti-Deportation Campaigns (NCADC), 3 September 2007.

³⁹ *Update on key current asylum, refugee and broader migration issues: Section 9 update*, Border & Immigration Agency, North East Strategic Co-Ordination Group, 6 July 2007.

⁴⁰ E-mail from NCADC, 3 September 2007.

- you are physically unable to travel or have some other medical reason
- the government says there is no safe route of return to your country (e.g., Iraq from December 2004 to July 2005)
- you have applied for, and been granted, a judicial review hearing
- you have made a fresh claim or have been granted an appeal hearing out of time, in which case refusal of accommodation would breach your human rights.

Section 4 support is accommodation on a no-choice basis “and £35 of subsistence vouchers per week (no cash)” (ibid.). The low level of subsistence, however, is not the only problem with section 4 support and the way it is applied. Many asylum seekers do not apply for it at all, since it entails giving up their asylum claim and being returned to danger. They therefore go underground and become destitute. Gary Pounder of the 167 Centre in Hull explained that

a lot of the clients that we've got have still got problems in their own country ... whether it be political or whether it be because of a particular social group ... the problems are still there. So ... the client will say, “Well, we're not going to go back to our own country, it's not safe for us to go back”, which then puts them back out on the street again, because there's no support or anything whatsoever there ... [W]e've got people that are living on the streets. ... [R]ound the back of this building [there's] a derelict car ... and ... one of our clients that come in here that's actually sleeping in that car – and he has been for the past 3 months.

S1 explained what happened to him:

I get a refuse. Alright. Still I been working, I been working up to now. And last 2 weeks, immigration is been visit to my company ... and they check ... everybody there, if anybody have been refuse.⁴¹

⁴¹ Research interview, 24 July 2006.

S1 was sacked and “now, I am living with my friend, because I have to give back my flat to my [landlord].”⁴² S2 was interviewed with the help of an interpreter, who explained:

He been employed [since 2003] up to last two weeks ... He had [heard nothing] from immigration. Last two weeks ago, immigration visit ... his company [and said] he had no to work because his case is over.⁴³

S5 was also sacked. When I interviewed him he was living in a garage “somewhere near”. The owner of the garage,

she say, “[S5], I’m sorry, I can’t take you [in] my house because I got boyfriend: maybe my boyfriend thinking something going on between me and you.”⁴⁴

When I asked him what happened to his previous accommodation he seemed to rebuke me for not knowing the answer:

Come on, I rent [a] flat from you. Every week I was paying you, but now I haven’t got a job. Are you going to let me to stay house? No.⁴⁵

PB1, a recognised refugee who now works for the 167 Centre, thought the application of section 4 in this way would have social consequences. He estimated that there were more than a thousand destitute asylum seekers in Hull in 2006:

So that’s why we get more problems, if we just leave them like that. Because some of them, they have a friend – so ... they will ... live with them. But some of them sleep on the street. [But] they don’t want to sleep on the street ... They are looking for to steal something, because they are hopeless. They have no way to choose, actually.⁴⁶

⁴² Ibid.

⁴³ Research interview, 24 July 2006.

⁴⁴ Research interview, 26 July 2006.

⁴⁵ Ibid.

⁴⁶ Research interview, 24 August 2006.

He predicted that “[i]f the Home Office leave them like that for one year, two years, three years, we [will] still [be] getting problems from them.”⁴⁷

Asylum seekers who do apply for section 4 support, however, are also likely to encounter problems. Research undertaken by the Asylum Support Appeals Project (ASAP)⁴⁸ found that out of 117 section four refusal letters from NASS over 80% contained a misapplication or misinterpretation of the law, or of NASS’s own policy (*Failing* 2007:4): there were examples of the wrong test being applied for destitution (*ibid.*:18, 19); of NASS judging the merits of a fresh claim instead of assessing the need for support (*ibid.*:20); and of refusal for not making an application sooner (*ibid.*). ASAP case studies demonstrate the consequences for asylum seekers of such errors and practices (*ibid.*:18):

- “Bina”: Bina had been homeless for 3 months, sleeping rough in a squat with a man who gave her money in exchange for sex. He also expected her to have sex with his friends. Bina suffered from post-traumatic stress disorder which caused her to sleepwalk, putting her in danger on the streets at night. She applied for section 4 support because she had made a fresh claim. NASS said she was not destitute despite evidence to the contrary from charities and the police.
- “Mohammed”: Mohammed had been staying in a mosque for 6 weeks. Members had been giving him food and sometimes he could have a shower and wash his clothes at a friend’s house. Sometimes Mohammed would have to sleep outside if he could not get into the mosque: he would go onto a night bus, without paying, to be in the warm and off the streets. He was sometimes caught but could never pay the fine. Despite letters from mosque members NASS said he was not destitute.

A Refugee Council case study highlighted the case of “Kadir”, who had been tortured and fled to the UK. He was refused asylum and became destitute, sleeping rough and relying on churches and friends. He told the Refugee Council (*Case Studies* 2007:1):

⁴⁷ *Ibid.*

⁴⁸ Asylum Support Appeals Project (ASAP) is an advocacy organisation working to reduce destitution amongst asylum seekers in the UK by protecting their legal rights to food and shelter. ASAP provides free legal advice and representation in asylum support appeals, as well as legal advice and training on asylum support law for refugee community organisations.

I feel really depressed, unhappy and hopeless. I smell filthy and cannot walk amongst other people. I feel less than human – like an animal. I hate myself. I left my country to escape imprisonment, suffering and death. Here I fear hunger and homelessness.

Applicants may also have problems while waiting for a decision to be made. The Joseph Rowntree Charitable Trust commissioned a destitution survey in Leeds (Lewis 2009), following on from similar surveys in 2006 and 2008. Four participant agencies identified long and variable waiting times for decisions on section 4 applications as a major problem. “‘Waiting for section 4 support to begin’ was the reason for destitution for 33% of individuals in the 2009 survey”, plus four families out of 21 with dependent children (ibid.). Waiting times “can be up to several months, a particular concern for pregnant women” (ibid.:11). During Lewis’s 2006 research (2007:53), the Home Office had indicated that “transition from NASS to section 4 is an area they are working to improve”. On the evidence of her 2009 research, she concludes that in fact “waiting for section 4 is a worsening cause of destitution in Leeds” (Lewis 2009:11).

8.10 Conclusion

I have shown the increased use of fast-track processes, the setting of targets for removal rates and the growing use of detention in recent years. I have shown that asylum seekers at this stage find difficulty in getting bail hearings and legal representation, and that vulnerable people, including torture victims and children, are regularly detained. I have critically examined the treatment of vulnerable people in detention, citing evidence that the detention of children is detrimental to their well-being and that children’s welfare is being ignored in the interests of immigration control. I show that detainees regularly respond to detention by self-harming or attempting suicide.

I critically examine the role of the European Court of Human Rights in relation to the detention of asylum seekers, and conclude that its interpretation of Article 5 of the European Convention on Human Rights may fail to give asylum seekers protection from wrongful detention. I consider the experience of detention from asylum seekers’ viewpoints and suggest that poor conditions, poor treatment make protest by detainees more likely, including through self-harm and attempted suicide. I then examine the process of forcible detention and deportation and the use of section 9 of the Asylum and Immigration

(Treatment of Claimants) Act 2004 and of section 4 of the Immigration and Asylum Act 1999 and the harmful effects of both on asylum seekers. The way these factors operate at this last stage of the asylum process shows little concern on the part of the government for the UK's obligation to protect under the Refugee Convention. Instead the focus is on immigration control and this undermines the right to asylum.

CHAPTER 9

SEEKING ASYLUM IN FRANCE

9.1 Introduction

In this chapter I examine what it is like to apply for asylum in France. I begin by describing how asylum seekers are detained on arrival, with limited rights and in danger of having their request for asylum declared “manifestly unfounded” without proper consideration. I examine the application process at the préfecture and argue that it is an obstacle race designed to deter applicants. I show how the fast-track procédure prioritaire is used to deny asylum seekers a fair hearing and prevent them from pursuing their claims. I critically examine the provision of accommodation and support, in particular showing how the use of accommodation centres (CADAs) is intended to facilitate deportation. I argue that the procedure followed by OFPRA (the agency which examines asylum claims), with its short timescales and deadlines, the non-mandatory nature of asylum interviews, OFPRA’s power to declare claims “manifestly unfounded” and the difficulty of obtaining legal advice and representation undermines the right to asylum. I stress the importance of the appeals tribunal, but argue that its procedures and practices also often undermine the right to asylum. I describe the procedures which operate at the end of the asylum process after final refusal, involving detention and deportation. I examine the living conditions in CADA’s, the protest movements against deportation and aspects of the deportation process itself.

9.2 Detained on arrival: the zone d’attente

You can ask for asylum either on arrival or “in country”. In both cases your official application must be lodged at a préfecture (a police headquarters, usually in the area where you are living) and is then passed to the Office Français de Protection des Réfugiés et Apatrides (OFPRA), where the decision is made to grant or refuse protection. However, if you indicate at your port of arrival that you want asylum you will be detained in a holding centre (zone d’attente) by the border police (Police aux Frontières – PAF) while the interior ministry decides, after advice from OFPRA, whether to allow you on to French territory to

make your claim. Zones d'attente (found mainly at ports, airports and train stations serving international routes) are areas where foreigners, including asylum seekers, are detained, mostly because they don't have valid travel documents. There are 99 zones d'attente in metropolitan France and 24 in France's overseas departments. Though the zone d'attente includes the arrival and departure areas and the customs area, it may also be extended to the local magistrates' and other courts, the police station, the hospital and surrounding hotels. This ensures that, wherever you are taken, you are always in the zone d'attente, never on French territory (Castagnos-Sen 2006:26).

9.2.1 Rights

Since 1995 certain NGOs having as their aim “[the provision of] aid or assistance to foreigners, the defence of human rights, [the provision of] medical or social assistance”¹ (ibid.:37) have had rights as observers in the zones d'attente, together with rights to report on the conditions they find there and on the treatment people receive. These organisations include the Association Nationale d'Assistance aux Frontières pour les Étrangers (ANAFÉ), the Red Cross and Amnesty International. By 2006 their number had grown to 13 and asylum seekers now have a number of rights in a zone d'attente. There are time limits on your detention, which will last only for “the time strictly necessary for an examination to assess if [your] claim is not manifestly unfounded”² (CESEDA 2008, Art. L.221-1). You can be detained in the first instance for 48 hours, which the PAF administration can extend by 48 hours if no decision has yet been made in your case. Any further extension must be by order of a judge, and must be no longer than eight days. In exceptional circumstances, a judge may grant a further extension of up to eight days, bringing the total to 20 days (Castagnos-Sen 2006:28). The decision on whether your claim is “manifestly unfounded” is made by the interior ministry, on advice from an OFPRA official who interviews you in the zone d'attente. If your claim is not rejected, or if a decision is not reached within the 20-day limit, the PAF will give you a “safe-conduct” pass so that you can make your asylum application at a préfecture. However, if your claim is rejected you will be liable to immediate deportation, usually to your country of origin.

¹ ... l'aide ou l'assistance aux étrangers, la défense des droits de l'homme ou l'assistance médicale ou sociale

² ... le temps strictement nécessaire ... à un examen tendant à déterminer si sa demande n'est pas manifestement infondée.

Other rights include: rights to contact a lawyer, to medical care, to communicate with anyone of your choice (individuals or organisations) and to “a clear day’s notice” (“un jour franc”) before deportation. However, there are obstacles to the delivery of these rights:

- although the right to a lawyer includes provision of “an area allowing lawyers to conduct interviews with foreigners in confidence”³ (*CESEDA* 2008, Art. L. 221-2), in practice “foreigners do not generally have the name of a lawyer on their arrival in France and there is no permanent office provided”⁴ (Castagnos-Sen 2006:31). Moreover, lawyers are generally refused access to zones d’attente and usually do not meet their clients until they are due to appear in court (ibid.)
- although the law gives the right to consult a doctor (*CESEDA* 2008, L. 221-4), medical facilities are provided as part of the regime only at Roissy-Charles de Gaulle airport (*Procédure* 2006:21). No other zone d’attente provides such facilities (Castagnos-Sen 2006:31)
- the right to communicate with any person or organisation of your choice is limited by each zone d’attente’s prescribed visiting hours, though communication may also take place by telephone
- the “clear day’s notice”: before November 2003 you could only be deported from a zone d’attente after a full day’s notice of the ministry’s intention to do so (*Procédure* 2006:17), which gave you time to consider options and seek advice. Since November 2003, however, you can only benefit from the clear day’s notice if you ask explicitly to do so. Human rights commissioner of the Council of Europe Alvaro Gil-Robles reported examples where the right was not claimed due to the lack of an interpreter and of any understanding of the legal terminology. Moreover, he noted that, “in certain cases, the police would use the foreigners’ ignorance of laws, procedures and language to persuade them to renounce this right.”⁵ (Gil-Robles 2006:53).

³ ... un espace permettant aux avocats de s’entretenir confidentiellement avec les étrangers ...

⁴ ... les étrangers ne possède généralement pas le nom d’un avocat à leur arrivée en France et il n’existe pas de permanence organisée.

⁵ ... useraient de leur méconnaissance des lois, des procédures et de la langue pour les inciter à renoncer à ce droit.

9.2.2 “... information ... communicated in a language that [you] understand”⁶

The last example underlines the importance of your right to an interpreter (*CESEDA* 2008, Art. L.221-4), and you must be provided with one if you “[d]o not speak French and cannot read”⁷ (Castagnos-Sen 2006:31). But the interpreters provided are not always qualified or competent and an interpreter for your language may not be available. The interpreting service duty officer at Roissy zone d’attente during ANAFÉ’s inspection in 2006 stressed that “the procedure is very arduous and complicated for [the service’s staff]. They get the notification of non-admission and of detention in the zone d’attente translated, in fact, by anybody who happens to speak a language that the foreigner is likely to understand: hostesses, maintenance staff and airport staff in general”⁸ (*Inaccessible* 2007:16). Sometimes such members of staff are “requisitioned” simply to “ask the foreigner succinctly to sign a decision”⁹ (*ibid.*).

At Roissy there are interpreters for the five official languages of the United Nations (English, Spanish, Arabic, Chinese and Russian). For other languages an interpreter may be brought in or asked to translate by telephone but there are problems with this: it is difficult to check accuracy or ascertain whether the asylum seeker understands the interpreter or has confidence in their impartiality – indeed, the whole practice of translation by telephone was criticised by the Court of Appeal, which ruled that the interpreter had to be physically present. But in 2003 a new law specifically declared that “the assistance of the interpreter can take place through means of telecommunication”¹⁰ (*CESEDA* 2008, Art. L.111-8).

Dissatisfaction with the interpreting service relates to all stages in the zone d’attente procedure. During inspections in 2002 ANAFÉ noted that “foreigners often complained about not being understood during interviews with the PAF and the MAE [ministry of foreign affairs] ... as well as during visits to the doctor”¹¹ (*Difficultés* 2003:22). Problems also arose during court proceedings, where “French-speaking foreigners claimed ... that interpreters did not translate anything to non-French speakers and that their role was often

⁶ ... informations ... communiquées dans une langue qu’il comprend (*CESEDA*, Art. L. 221-4).

⁷ ... si l’étranger ne parle pas le français et qu’il ne sait pas lire ...

⁸ ... la procédure est très lourde et très compliquée pour eux. En fait, ils font traduire la notification de non-admission et de maintien en zone d’attente par toute personne parlant une langue que l’étranger est susceptible de comprendre : hôtesse, personnel d’entretien et tout le personnel de l’aéroport en général ...

⁹ ... demander succinctement à l’étranger de signer une décision.

¹⁰ ... l’assistance de l’interprète peut se faire par l’intermédiaire de moyens de télécommunication ...

¹¹ Les étrangers se plaignent souvent de ne pas avoir été compris lors des entretiens avec la PAF et le MAE ... ainsi que lors des visites avec le médecin ...

limited to signing the order extending the stay in the zone d'attente"¹² (ibid.). These problems continue, although ANAFÉ reports an improvement in interpreting services during interview since 2004, when OFPRA became responsible for interviews. But interpreting problems remain elsewhere in the zone d'attente process (Castagnos-Sen 2006:31).

9.3 Deprived of liberty

The zone d'attente is a fundamentally worrying and much-contested aspect of the French asylum system. People are deprived of their liberty although they have committed no offence.¹³ The legal status of people arriving in France without authorisation to enter the country has long been a grey area. Prior to 1992 they were deemed to be in a “zone internationale”, inside which French law did not apply, and they could be quickly deported. In 1992 this legal fiction, condemned by the courts, was replaced by the legal zones d'attente. Yet there is still a legal fiction at work in the operation of these areas: in legal terms it is not a prison. If you are placed in a zone d'attente, you are described as being “kept” there (“maintenu”) not “detained” (“retenu”), for it is closed only on one side: theoretically, you can “leave the zone d'attente at any moment for any destination situated outside France”¹⁴ (CESEDA 2008, Art. L.221-4). In practice, however, you are confined there, and when you are deported your destination will usually be your country of origin. Philippe Bolmin, a former official of the Appeals Commission for Refugees (CRR), takes the view that “[i]f the zone d'attente is, strictly speaking, not a detention centre, it resembles one like a twin brother and deprives foreigners of their liberty to come and go”.¹⁵ Moreover, the zone d'attente may quickly become the route to a real prison. For, since you can only be “kept” for 20 days, fear on the part of PAF officials that you will be released by a judge drives them into a “race against time”¹⁶ (*Enfermement* 2005:1): they “do not hesitate to multiply their attempts at removal – including the use of physical duress”¹⁷

¹² ... des étrangers francophones ont relevé que les interprètes ne traduisaient rien aux non-francophones et que leur rôle se limitait souvent à signer l'ordonnance de prolongation du maintien en zone d'attente ...

¹³ Under Article 35 of the Refugee Convention the lack of a passport does not constitute an offence: “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who ... enter or are present in their territory without authorization” (*Convention and Protocol* 1996:31).

¹⁴ ... quitter à tout moment la zone d'attente pour toute destination située hors de France.

¹⁵ Si la zone d'attente n'est pas à proprement parler un centre de rétention, elle lui ressemble comme un frère jumeau, et prive l'étranger de sa liberté d'aller et venir. (Email to me from Philippe Bolmin, 22 April 2008.)

¹⁶ ... course contre la montre ...

¹⁷ ... n'hésite pas à multiplier les tentatives d'éloignement y compris en usant de la contrainte physique.

(*ibid.*). If these attempts meet with resistance and, “in spite of everything, they do not succeed in removing the foreigner, s/he is brought before a magistrates’ court for ‘evading the implementation of an order of refused entry’”¹⁸ (*ibid.*), an offence which attracts a three-month prison sentence followed by a ban from French territory. This procedure is even applied to children: Mlle KM was 14 years old when she was sentenced to three months’ imprisonment and then banned from entering France for three years (*Roulette* 2003:28).

9.3.1 Rights of appeal

The question of enforced detention arises again in the context of the right to appeal. On the face of it, the existing rights of appeal seem to safeguard the right of the asylum seeker to be heard. The French legal system has two levels – the administrative and the judicial levels – each with its own courts and judges. A decision to refuse entry “is an administrative decision, capable of challenge before an administrative judge with the power to quash the judgment.”¹⁹ Such an appeal is “suspensif”, i.e. any deportation order against you is suspended until the judge has heard your appeal and made a decision. If the judge decides in your favour you will be allowed on to French territory to make your asylum application at a préfecture. But the alternative judgment gives rise to a major point of contention, for if the judge upholds the refusal of entry you will be kept in the zone d’attente or in a detention centre to await deportation. You have no right of appeal against this decision to detain you against your will. An administrative judge cannot hear an appeal against detention since “it is the judicial judge who has the responsibility of protecting liberties”²⁰ and you have no right of appeal to a judicial judge. Not surprisingly, NGOs like ANAFÉ protest against the fact that foreigners “may be refused entry on to the territory and be detained against their will without being able to apply to a protection-of-liberties judge (the judicial judge) to have their cause heard.”²¹ ANAFÉ therefore continues to argue for a fully “suspensif” appeal against detention before a judicial judge.

¹⁸ ... malgré tout elle ne parvient pas à éloigner l’étranger, celui-ci est présenté devant le tribunal correctionnel pour « soustraction à l’exécution d’une mesure de refus d’entrée » ...

¹⁹ ... est une décision administrative susceptible d’être contestée devant un juge administratif qui a le pouvoir d’annuler la mesure. (Email to me from Philippe Bolmin, 22 April 2008.)

²⁰ ... le juge qui a la charge de protéger les libertés est le juge judiciaire. (Email to me from Philippe Bolmin, 22 April 2008.)

²¹ ... un étranger peut être interdit d’entrée sur le territoire et être retenu contre son gré, sans pouvoir accéder au juge des libertés (le juge judiciaire) pour entendre sa cause. (Email to me from Philippe Bolmin, 22 April 2008.)

9.3.2 “Manifestly unfounded”: no right to seek asylum

The zone d’attente undermines the notion of constitutional asylum (4.6.1). This is a “fundamental liberty” which “has as its corollary the right to seek the status of refugee”²² (Conseil d’État ordonnance, 25 March 2003, cited *ibid.*:33). But zone d’attente procedures allow the immediate deportation of asylum seekers before they have been able to lodge their claims at the préfecture, thus undermining this right. Before 2004 the ministry of foreign affairs, not OFPRA, advised the interior ministry whether the claim was “manifestly unfounded”. Yet neither ministry was qualified to decide the outcome of asylum claims: only OFPRA is legally authorised to do so and only OFPRA has “adequate facilities at its disposal to undertake all the necessary research and investigations: a documentation centre, translations, expertise in dealing with documents and the verification and retrieval of information”²³ (*ibid.*:10).

The procedures as they stood in 2004 were defended on the basis that the two ministries were not concerned with the detail of claims for asylum but were looking only for the most obvious signs that they were unfounded. Once these were discovered, there was no need to probe more deeply. The intention was to filter out people who wanted to work, study, be reunited with their families, but who wanted to avoid the required visa-application procedures (*ibid.*). Then, in 2004, the task of advising on zone d’attente claims was transferred to OFPRA – but the timescales are still short and it is still the ministry of the interior that makes the final decision. ANAFÉ argues that “the fundamental question raised by the investigation of asylum claims at the border concerns the extent of the examination carried out”²⁴ by OFPRA and the interior ministry (*ibid.*:10). In theory (*ibid.*) the examination should

consist only in verifying in summary fashion that the claimant’s reasons correspond to a need for protection (in the widest sense, with reference to [Refugee] Convention criteria ... or any other form of humanitarian consideration). It should

²² ... le droit constitutionnel de l’asile, qui a le caractère d’une liberté fondamentale, a pour corollaire le droit de solliciter le statut de réfugié ...

²³ ... dispose des conditions adéquates pour effectuer toutes les recherches et investigations nécessaires : centre de documentation, traductions, expertise de document, vérification et recoupements d’informations.

²⁴ ... la question fondamentale posée par l’instruction des demandes d’asile à la frontière concerne les limites de l’examen pratiqué ...

only be superficial, not a detailed examination of the basis of the claim for asylum ...²⁵

Yet in practice it is clear that, both under the pre-2004 arrangements and under the OFPRA scheme, examinations have often strayed beyond the confines of a brief evaluation of obvious factors to examining the claim itself, and using certain details to justify deportation. This is clearly worrying because of the lack of time for proper investigation at this stage. But it also raises concerns about the dangers of interviewing vulnerable people who are suffering the combined stresses of persecution and flight (4.7).

9.3.3 “Manifestly unfounded”: under ministry scrutiny

Though the ministry of foreign affairs lacked both the authority and the expertise to give definitive advice on asylum claims, it constantly did so – using the details of its examination to justify refusing entry. In the 2003 case of KA from Bangladesh, for example, it categorised KA’s account of his brother’s arrest in 2002 as “unconvincing”²⁶ since “none of the leaders of the Awami League [his political party] had been imprisoned”²⁷ (cited *ibid.*:15). But Amnesty International reported (*AIR* 2003:45):

Several Awami League leaders were detained for long periods [in 2002] and reportedly tortured or ill-treated ... Over a dozen Awami League politicians were arrested in December and continued to be detained under the [Special Powers Act], despite court orders for their release on bail.

Nevertheless the ministry concluded that KA’s evidence was “of a kind to discredit the truth of the fears expressed and the well-founded nature of his claim”,²⁸ which was, therefore, manifestly unfounded (cited *Roulette* 2003:15).

In another 2003 case, MB claimed to have been an information officer for the president of the Democratic Republic of the Congo (DRC) and to have been arrested after writing a

²⁵ ... ne devrait consister à vérifier que de façon sommaire si les motifs invoqués par le demandeur correspondent à un besoin de protection (au sens le plus large : par référence aux critères énoncés par la Convention de Genève ... ou toute autre forme de considération humanitaire). Il ne devrait s’agir que d’un examen superficiel, et non d’un examen au fond, de la demande d’asile ...

²⁶ ... peu crédible ...

²⁷ ... aucun des dirigeants de la ligue AWAMI ait été emprisonné.

²⁸ ... de nature à jeter le discrédit sur la réalité des craintes invoquées et sur le bien-fondé de sa demande ...

paper on the collapse of the state. After repeated arrests, and harassment of both himself and his wife, he was accused of membership of a rebel movement, the MLC. His wife fled and applied for asylum in France and he eventually followed her. But the ministry quickly decided that his claims of harassment and arrest were not sustainable: "... his declarations, as much concerning his so-called [political] activities as concerning his alleged successive arrests, are devoid of credibility: in effect it does not seem likely that he was arrested several times and then released"²⁹ (cited *ibid.*:18). The ministry also declared that "investigations undertaken with the service responsible for assessing asylum applications found no asylum claim lodged in the name of the woman he claims to be his wife"³⁰ (*ibid.*). Yet ANAFÉ easily contacted his wife and obtained her official préfecture receipt, evidence that her asylum application was in progress (*ibid.*). Moreover, ANAFÉ cites evidence that in the DRC a number of higher civil servants, like MB, were secret members of the MLC and had been arrested around the same dates as MB indicated (*ibid.*). Nevertheless the ministry concluded that his evidence was "of a kind to discredit the sincerity and the well-founded nature of his claim"³¹ (*ibid.*). MB was deported to Morocco.

In some cases, the ministry sounds uncertain of its arguments. Several standard phrases give this impression: "it is unlikely", "it seems surprising", "it is unconvincing", among others (*ibid.*:17).³² In a context where the task is apparently to show that the claim is *manifestly* unfounded, an argument for deportation based on such uncertainty cannot be satisfactory. Nevertheless, in the case of DE (cited *ibid.*:19) – where, after suggesting, with no supporting evidence, that his party membership card was false ("the supposed membership card"³³), it is said that various matters "appear surprising" or "seem unlikely"³⁴ – the conclusion is drawn that DE's evidence was "of a kind to discredit the reality of the fears expressed, the sincerity and the well-founded nature of his claim"³⁵ (*ibid.*:19) and that therefore the claim was "manifestly unfounded".

²⁹ ... ses déclarations tant sur ses soi-disant activités que sur les interpellations successives dont il aurait fait l'objet sont dénuées de crédibilité : en effet, il paraît peu probable qu'il ait été plusieurs fois arrêté puis relâché ...

³⁰ ... les recherches menées auprès des services chargées d'instruire les demandes d'asile ont établi qu'aucune demande d'asile n'a été déposée au bénéfice de sa prétendue épouse ...

³¹ ... de nature à jeter le discrédit sur la sincérité et sur le bien-fondé de sa demande.

³² "il est peu vraisemblable", "il paraît surprenant", "il est peu crédible".

³³ ... la supposée carte de membre ...

³⁴ "paraît surprenant", "paraît peu vraisemblable".

³⁵ ... de nature à jeter le discrédit sur la réalité des craintes invoquées, la sincérité et le bien-fondé de sa demande.

The dangers inherent in these practices are seen in the final outcome of many cases: if someone is released from the zone d'attente, has his or her claim heard in full by OFPRA and is then granted refugee status, the “manifestly unfounded” applicant becomes a “recognised refugee”:

- TM’s account of his reasons for fleeing the DRC in 1999 were described by the ministry as “marked by vagueness”³⁶ (ibid.:29) and he was charged with resisting deportation and banned from French territory. He managed nevertheless to lodge his claim and was recognised as a refugee in 2000
- NY’s account (ibid.:30) was “not very precise”, the police raid on her home was “hypothetical” and “unconvincing”.³⁷ Yet after a month in a French prison for resisting deportation she lodged a claim, which was judged well founded, and she was granted refugee status
- YK’s story was “devoid of detail”³⁸ concerning his political activities in Côte d’Ivoire (ibid.:30-31). His failure to describe the physical abuse he suffered was said to show the manifestly unfounded nature of his claim. But, after resisting several attempts at deportation, he was eventually granted refugee status by OFPRA.

Without the authority, expertise or time to do so, the ministry examined these claims and found them wanting. Its approach seemed to cast applicants as defendants and then assume their guilt. Such practice is inconsistent with a commitment to the protection of refugees and undermines the right to asylum.

9.3.4 Under OFPRA’s scrutiny: still “of a kind to discredit”

The practice of examining details rather than obvious factors at this stage continued under OFPRA. In her report for the Commission Nationale Consultative des Droits de l’Homme (CNCDH),³⁹ Castagnos-Sen (2006:34) describes how the zone d’attente procedure under OFPRA

³⁶ ... entaché d'imprécisions ...

³⁷ “peu précise”, “hypothétique”, “peu crédible”.

³⁸ “dénuées de précisions”.

³⁹ CNCDH is a French human rights body with the aim of protecting and promoting human rights. It advises the French government and makes proposals on questions of human rights, law and humanitarian action. Its

goes well beyond the simple evaluation of whether the claim is “manifestly unfounded”: it involves a real pre-examination of the basis of the claim, undertaken in conditions which do not respect the minimal procedural guarantees associated with the normal examination procedure in a claim for protection. Now, this carries a serious risk of error in the evaluation, taking into account the time limits and the conditions under which it takes place.⁴⁰

She cites the 2005 case of “Mr G”, a persecuted opposition journalist from Eritrea. OFPRA’s Bureau of Asylum at the Border (BAF) interviewed him and decided that his declarations contained “numerous inconsistencies of a kind to discredit his assertions”⁴¹ and he was refused entry into France both by the ministry of the interior and by the administrative judge on appeal. After a recommendation by the European Court of Human Rights, Mr G lodged his claim with OFPRA and, after full consideration, was granted refugee status (ibid.:34-35). Castagnos-Sen goes on to make a policy recommendation intended to solve these problems (ibid.:35):

The assessment of the validity of claims at the border must not go beyond the simple evaluation of whether they are “manifestly unfounded”, and must in no case become an examination of the basis of the fears expressed by the applicant regarding persecution.⁴²

This recommendation fails to solve the problems. The notion that an assessment of the “validity” of an asylum claim can be undertaken without examining its details is pure fiction. No “simple evaluation” of the claim can avoid becoming “an examination of the

members include government and parliamentary representatives, members of the Conseil d’État and the judiciary and a diverse range of civil society representatives. It commissions regular reports on human rights issues and regards its diverse membership as a guarantee of its independence of government and state.

⁴⁰ ... va bien au-delà de l’évaluation du simple caractère “manifestement infondé” de la demande : elle implique un véritable pré-examen au fond de la demande, effectué dans des conditions qui ne respectent pas les garanties minimales de procédure attachées à la procédure normale d’examen d’une demande de protection. Or, cette procédure comporte un risque d’erreur d’appréciation compte tenu de la brièveté des délais et des conditions dans lesquelles elle se déroule.

⁴¹ ... de nombreuses incohérences de nature à discréditer ses affirmations.

⁴² L’appréciation de recevabilité des demandes à la frontière ne doit pas aller au-delà de l’évaluation du simple caractère « manifestement infondé » de la demande et ne peut en aucun cas relever d’un examen au fond des craintes de persécution invoquées par l’intéressé.

basis of the [applicant's] fears ... regarding persecution", since that is what the applicant's claim is all about. But the only information necessary at this stage is the asylum seeker's identity and country of origin. Any assessment now, before all the facts are in, is in danger of excluding applicants from the asylum process before it has begun and returning them to their countries of origin without properly examining their claims. Far from being part of France's refugee-protection policy, zones d'attente can be seen as part of its attempt, together with other EU states, to extend immigration controls beyond its own borders – in French terms, control “en amont” (upstream): according to the legal fiction of the zone d'attente you are not on French territory, you cannot make an asylum application and you can be returned quickly to your country of origin. If the “manifestly unfounded” rule were abolished, together with zones d'attente and any “assessment of the validity of claims” at the border, asylum seekers could instead be given the right to enter France, lodge their claims at the préfecture and have them considered carefully by OFPRA.

9.4 Applying for asylum at the préfecture

When you lodge your claim at the préfecture, you are essentially seeking temporary permission to stay in the country while your application is being considered by OFPRA. If that permission is granted, the préfecture will issue you with a temporary pass (autorisation provisoire de séjour – APS), valid for one month, and a dossier which you must complete in French and send to OFPRA within 21 days.

Between 2000 and 2004 reception conditions for asylum seekers at préfectures across France were very poor. In some departments, where “hundreds of asylum seekers crowded in front of the préfectures”⁴³ (*Main Basse* 2007:3), a limited number of tickets were provided to allow entry into the building. At Lille in 2001, “these tickets were distributed on a lottery basis”⁴⁴ and in Paris “asylum seekers were often obliged ... to ‘camp’ around the entrance, sometimes for several nights, in the hope of getting inside the building”⁴⁵ (*ibid.*). Cimade⁴⁶ points out, however, that much has now changed at this early stage of

⁴³ ... des centaines de demandeurs d’asile se pressaient devant les services des préfectures ...

⁴⁴ ... ces tickets étaient distribués par triage au sort.

⁴⁵ ... les demandeurs d’asile étaient souvent obligés ... de « camper » devant les portes d’entrée, parfois durant plusieurs nuits, dans l’espoir d’accéder à l’intérieur des locaux préfectoraux.

⁴⁶ Cimade is an ecumenical agency, founded in 1939 to help displaced persons in camps in the south of France. During the Second World War it gave active support to the French Resistance against the Nazis. Today it works to provide a welcome to foreigners in France and to give them social and legal support. It is the only support group with a presence in immigration removal centres. It supports its partners in the

reception (ibid.). Pressure from asylum support groups, trade unions and local politicians, as well as the decline in applications in recent years, has meant that the physical conditions of reception at the préfectures are “quite good in the majority of departments” observed by Cimade’s researchers (ibid.). This improvement apart, however, application at the préfecture remains a difficult and stressful experience, part of an obstacle race designed to deter.

9.4.1 *The obstacle race: lack of information*

As a new arrival in France, you are unlikely to have any knowledge of the complexities of the asylum procedures. In 2005 UNHCR, the ministry of the interior and the NGO Forum Réfugiés⁴⁷ produced a guide which provides basic information on the process. It was to be “given to asylum seekers in the préfectures, the sole places where they can make applications for asylum on French territory”⁴⁸ (*Guide* 2005:1). Cimade’s researchers, however, found that the majority of the 20 or so préfectures they observed did not give applicants any information on procedures or on the support groups that exist to help them. In fact, only four distributed the *Guide* itself (which in any case is only available in French, English and Russian). At Arras a pile of them had been placed on the reception desk but were not distributed. Most préfectures claimed to be out of stock, “although the *Guide* is downloadable from the ministry of the interior’s website”⁴⁹ (*Main Basse* 2007:4). The préfectures at Dijon, Grenoble and Versailles provided addresses of local reception facilities in the department as well as of voluntary agencies; Nantes, Caen and Strasbourg put up notices for the same purpose, but only in French; Marseilles and Nice put up notices in several languages (ibid.). There is in fact a legal requirement on préfectures to furnish asylum seekers with information not only “on the conditions of admission into France but on the documents and other items required in order that an application can be considered

countries of the south in projects linked to fundamental rights, aid to refugees and support for people returned to their countries of origin.

⁴⁷ Forum Réfugiés is a non-profit-making organisation working to promote the right to asylum and the interests of refugees. It works with public and private partners, including government, EU institutions, UNHCR and numerous “associations”, such as ANAFÉ and CFDA, which support asylum seekers. It gives legal, administrative and social support to asylum seekers and refugees and provides accommodation in four reception centres (CADAs).

⁴⁸ ... remis aux demandeurs dans les préfectures, lieux uniques de dépôt des demandes d’asile sur le territoire français.

⁴⁹ ... alors que le guide est téléchargeable sur le site du ministère de l’Intérieur.

‘complete’⁵⁰ (*Réforme* 2007:7). So the current patchy provision of extremely limited information hardly fits the bill. CFDA agrees with Cimade: “[I]t seems that in practice this obligation is not respected, the *Guide du Demandeur d’Asile* being, for example, only exceptionally handed out”⁵¹ (*ibid.*). Certainly, at Créteil, “Mdme S” found no sign of official concern that she should understand the procedures she was about to undergo: she waited in two different queues over a period of seven hours and, when it was her turn to be called (cited *Main Basse* 2007:4),

a not very cheerful woman said to me, “Good day, why have you come? Which country?” I told her I wanted to ask for asylum and that I had come from Mali. She handed me a paper to fill in and a list of documents that I had to provide (passport, address) and asked me to come back in 13 days.⁵²

Mdme S did in fact already have the items required in order to register her claim successfully, and wanted to hand them over there and then, but she was not allowed to do so: “she told me to come back just the same”,⁵³ so the process remained an obstacle race.

9.4.2 *The obstacle race: demanding more than the law requires*

The *Guide* (2005:7) lists the main items you need to provide:

- four identity photos
- information relating to your name, date of birth, marital status, etc.
- information about the way you entered France and your route there from your country of origin
- proof of where you live.

⁵⁰ ... sur les conditions de l’admission au séjour mais aussi sur les éléments exigés pour qu’une demande soit considérée « *complète* ». Original italics.

⁵¹ ... il apparaît qu’en pratique cette obligation n’est pas respectée, le *Guide du demandeur d’asile* n’étant par exemple qu’exceptionnellement remis.

⁵² ... une femme peu souriante m’a dit “Bonjour, vous venez pourquoi ? Quel pays ? » Je lui ai dit que je voulais demander asile et que j’étais du Mali. Elle m’a remis un papier à remplir et une liste de documents à fournir (passeport, adresse) et m’a demandé à revenir treize jours plus tard.

⁵³ ... mais elle m’a dit de revenir quand même.

Some préfectures, however, demand that you supply further items, and some of these demands are illegal. You do not, for example, have to produce a passport: this relates to Refugee Convention Article 31, which stipulates that non-possession of travel documents is not to be treated as an offence. Yet Cimade found that some préfectures (e.g. in Strasbourg and Nanterre) demanded passports as a condition of registering claims (*Main Basse* 2007:5). Préfectures in Grenoble and Marseilles demanded that passports and other documents be translated into French at the applicants' expense (*ibid.*). Some préfectures demand five or six photos, not four. Where such demands are not met, the préfecture "blocks access to the asylum process by refusing to issue the APS and the OFPRA dossier, thus contradicting the constitutional principle that each individual has the right to seek asylum in France"⁵⁴ (*Réforme* 2007:8).

9.4.3 *The obstacle race: procédure prioritaire*

Préfectures can refuse to grant an APS, thus stopping your claim from proceeding any further, on a number of grounds:

- if it is considered that, under the Dublin II agreement, another EU state should examine your claim
- if you are considered to be a serious threat to public order ("hardly ever used in practice"⁵⁵ (Bousquet 2006:7-8))
- if your country of origin is considered "safe"
- if your claim is considered "fraudulent or abusive".

If you are refused an APS for any of the last three reasons, you can, through the préfecture, ask OFPRA to consider your claim, but only under the fast "priority" procedure (*procédure prioritaire*). There are a number of disadvantages attached to this procedure:

- with an APS, you have 21 days to complete your application form and send it to OFPRA – under the *procédure prioritaire*, you have only 15 days

⁵⁴ ... bloque l'accès à la demande d'asile en refusant de délivrer l'APS et le dossier OFPRA, en contradiction avec le principe constitutionnel selon lequel tout individu a le droit de solliciter l'asile en France.

⁵⁵ ... en pratique quasiment jamais invoqué.

- with an APS you are entitled to accommodation in a CADA,⁵⁶ as well as to the temporary benefit known as ATA,⁵⁷ amounting to 10.38 euros per day per adult – under the *procédure prioritaire* you have no such entitlements
- with an APS, your right of appeal is “suspensif” (that is, any plans to deport you are suspended until your appeal is heard) – under the *procédure prioritaire* your right of appeal is “non-suspensif”, i.e. you may be deported before the hearing takes place.

With your rights reduced in this way, it is important that you are not placed in the *procédure prioritaire* without good cause. Yet these decisions are often made in the absence of good cause.

9.4.3.1 *Procédure prioritaire: “late” claims*

The law allows the *procédure prioritaire* to be used in the case of a “late claim justified by the asylum seeker with reasons devoid of foundation”⁵⁸ (*Réforme 2007:3*, n. 5). But interpretations of the word “late” are variable across France, and “subjective” according to Cimade (*Main Basse 2007:25*). CFDA noted that *préfectures* have a “tendency to place applications abusively in the *procédure prioritaire* when they have been made [only] a few days or a few weeks after arrival in France”⁵⁹ (*ibid.:3*). The *préfectures* of Ain and Ardenne, notes Cimade (*Main Basse 2007:25*),

refuse admission almost systematically on this basis. In these departments, not to hurry to the *préfecture* in the first hours after your arrival constitutes an “abuse” of the asylum procedures.⁶⁰

Such practice deprives you of your rights, reduces your chances of obtaining a full and fair hearing of your claim and thus undermines the right to asylum.

9.4.3.2 *Procédure prioritaire: safe country of origin*

⁵⁶ Centre d’accueil des demandeurs d’asile – an accommodation centre.

⁵⁷ Allocation temporaire d’attente.

⁵⁸ ... demande tardive justifiée par le demandeur d’asile par des raisons dénuées de fondement ...

⁵⁹ ... tendance à placer abusivement en *procédure « prioritaire »* des demandes déposées quelques jours ou quelques semaines après l’arrivée en France ...

⁶⁰ ... refuse quasi systématiquement le séjour sur cette base. Dans ces départements, ne pas se précipiter à la *Préfecture* dans les premières heures de son arrivée en France constitue un « abus » de la *procédure d’asile*.

The préfecture may refuse you an APS and put you in the procédure prioritaire if your country of origin is on OFPRA's list of "safe" countries, i.e. countries where persecution is regarded as unlikely. The EU had been discussing the creation of a common EU list for some years but had not been able to reach agreement. The UK introduced one in 2002 (5.3.5), and in 2003 France introduced a clause into the law so that applicants could be refused permission to stay because they had "the nationality of a country considered a safe country"⁶¹ (CESEDA 2008, L.741-42). There was no list, just a general description: the country must respect "the principles of freedom, of democracy and of a constitutional state, as well as the rights of man and fundamental liberties"⁶² (ibid.). France eventually compiled a list in 2005, with further countries added in 2006, and it now contains 17 countries plus all the EU member countries.⁶³ But CFDA points out that it includes "countries suffering internal crisis, others where genital mutilation is currently practised and others where the death penalty has not been completely abolished"⁶⁴ (*Réforme* 2007:4). After examining the list, Gil-Robles declared: "I seriously doubt that all these countries could be considered 'safe' ... all the more so because [they] continue to produce refugees" (2006:62).⁶⁵ CFDA found it "difficult to consider as 'safe' such countries as Bosnia-Herzegovina, from where there were 2,000 applications in 2004 and protection granted at a rate of 67.4%"⁶⁶ (*Réforme* 2007:4) and Cimade sees what it calls the paradox of "safe countries": although the creation of the list seems to have resulted in a considerable reduction in applications from these countries, "the rate of recognition of refugee status for [their] nationals is rising and remains well above that of many 'unsafe' countries"⁶⁷ (*Main Basse* 2007:23). OFPRA's reply to this is that there has been a "qualitative" increase due to the "quantitative" reduction (ibid.:24). However, it is only when the "quality" applications reach the CRR that the rate rises: in 2005 OFPRA gave refugee status to 9.67% of "safe country" cases; when cases proceeded to the CRR the rate was 27.17%. In 2006 the rates were 5.95% and 30.61%

⁶¹ ... la nationalité d'un pays ... considéré comme un pays d'origine sûr.

⁶² ... des principes de la liberté, de la démocratie et de l'Etat de droit, ainsi que des droits de l'homme et des libertés fondamentales.

⁶³ Outside the EU the countries are: Albania, Benin, Bosnia-Herzegovina, Cape Verde, Croatia, Georgia, Ghana, India, Macedonia, Madagascar, Mali, Mauritius, Mongolia, Niger, Senegal, Tanzania and Ukraine.

⁶⁴ ... des pays en crise interne, d'autres où la pratique des mutilations génitales est courante et d'autres où la peine de mort n'est pas définitivement abolie.

⁶⁵ ... je doute fortement que tous ces pays puissent être considérés comme des pays d'origine sûr ... d'autant plus que ces pays continuent à produire des réfugiés.

⁶⁶ ... difficile à considérer comme « sûr » des pays comme la Bosnie-Herzégovine qui représentait 2000 demandes en 2004 pour un taux d'accord de 67,4%.

⁶⁷ ... le taux de reconnaissance du statut de réfugiés pour les ressortissants de certains de ces pays est en augmentation et reste bien supérieur à celui de beaucoup de pays non « sûrs ».

respectively (OFPRA figures, cited *ibid.*). These figures show the importance in France (as in the UK) of rights of appeal. But they also show that OFPRA's apparent belief in a "qualitative" increase among these asylum claims has not led the agency to recognise more claims: for recognition, most of the "quality" applicants have to reach the CRR. Certainly the doubts about "safe" countries suggest that it is inappropriate to place their nationals in the *procédure prioritaire*.

9.4.3.3 *Procédure prioritaire: an abusive power of evaluation?*

In judging whether your claim is "fraudulent or abusive", the *préfectures* have accrued what CFDA calls "a very considerable power of evaluation"⁶⁸ of claims (*Réforme 2007:3*) and regularly "encroach on the prerogatives of OFPRA and the CRR".⁶⁹ In effect, states CFDA, in the course of deciding whether an asylum claim is abusive "the *préfectures* tend to evaluate the basis of the claim, despite instructions to the contrary"⁷⁰ (*ibid.*). These instructions are contained in a government circular: "As far as abusive use of the asylum procedures is concerned ... this categorisation can in no way result from the content of the asylum claim, OFPRA and the CRR having exclusive authority to assess the reasons for the claim, but only from the administrative and procedural context in which it is presented"⁷¹ (cited *ibid.*, n. 6). Nevertheless the evaluation of claims continues. In fact, concerns have been expressed because some *préfectures* include in the application form a section on the reasons for the application. Most may only ask for a sentence or two but "it forms no part of the *préfecture's* role to judge whether the claim is well founded"⁷² (*Main Basse 2007:5*). The inclusion of this section in the application form is at the very least questionable. When some *préfectures* began to ask for more detailed accounts, NGOs protested vigorously and they stopped doing so (*ibid.*).

9.4.4 *The obstacle race: accommodation and support*

Until 2001 reception procedures at the *préfectures* were based on a choice between living with family or friends, together with financial support from the state (the insertion

⁶⁸ ... un pouvoir d'appréciation très important ...

⁶⁹ ... empiéter sur les compétences de l'OFPRA et de la CRR.

⁷⁰ ... les *préfectures* tendent à apprécier le fond de la demande, malgré les consignes inverses ...

⁷¹ ... En ce qui concerne le recours abusif aux procédures d'asile ... cette qualification ne peut en aucune manière résulter du contenu de la demande d'asile, l'OFPRA et la CRR ayant compétence exclusive pour connaître des motifs de la demande, mais uniquement du contexte administratif et procédural dans lequel celle-ci est présentée (interior ministry circular, 22 May 2005, Art. II.2, p. 14).

⁷² ... il n'entre pas dans les prérogatives *préfecturales* du juger du bien-fondé de la demande.

allowance), or accommodation in a reception centre (centre d'accueil pour demandeurs d'asile (CADA)) or a provisional accommodation centre (centre provisoire d'hébergement (CPH)), where they would receive administrative and social support. By 2001, however, the reception system was in crisis: many asylum support groups (the "associations") were critical of the poor accommodation and services provided as well as the gap between demand and supply. In the year 2000 there were 5,000 places in CADAs and, despite the creation of 2,000 places in one year following the criticisms, CADAs only accommodated 6.9% of asylum seekers.

Throughout these years there seems to have been little government concern for those denied state-provided accommodation. Some departments have transit centres for asylum seekers waiting for CADA places but, if there are no transit centres in the department, problems begin to multiply and Bousquet believes that "[t]he maintenance of this gap between available accommodation and need has for a long time been part of a political strategy of dissuasion ... based on the deliberate worsening of reception conditions in France"⁷³ (2006:14). Certainly, the *Guide*, published in 2005, seems to reflect a casual approach to the plight of asylum seekers facing this problem: it simply informs applicants that "[i]f the national reception system ... cannot accommodate you or offer a provisional accommodation solution outside a centre, you will doubtless have to search for other accommodation"⁷⁴ (*Guide* 2005:20) and adds (*ibid.*:21): "There is a telephone number, 115, that you can dial any day from any telephone kiosk ... [and] you may be looked after for the night and accommodated in an emergency hostel for the homeless."⁷⁵ It warns: "This number is often busy and you have to keep trying"⁷⁶ (*ibid.*). As the *Guide* indicates, the accommodation is usually only for one night or, at most, a few days and it might have added that hostels do not usually provide meals. Bousquet notes a growing destitution among asylum seekers, many living rough on the streets or in inadequate, even dangerous, accommodation. The state has used "temporary" solutions for more than a decade, among them "very low-grade hotel rooms"⁷⁷ (Bousquet 2006:14):

⁷³ Le maintien de cet écart entre l'hébergement disponible et les besoins a longtemps fait partie d'une stratégie politique de dissuasion ... basée sur la dégradation volontaire des conditions d'accueil en France.

⁷⁴ Si le dispositif national d'accueil ... n'a pas vous accueilli hors centre, vous devrez sans doute chercher un autre hébergement.

⁷⁵ Il existe un numéro de téléphone gratuit, le 115, que vous pouvez composer tous les jours à partir de n'importe quelle cabine téléphonique ... [et] vous pouvez être pris en charge pour la nuit et hébergé dans un centre d'accueil d'urgence.

⁷⁶ Ce numéro est souvent occupé et il faut insister longtemps.

⁷⁷ ... chambres d'hôtels de très basse catégorie.

Systematic recourse to this type of insecure accommodation can prove extremely dangerous, as is shown by the tragic events of the winter of 2005 during which dozens of immigrants, including a number of asylum-seeking families, perished in fires in the hotels where they were being “temporarily” housed. Unfortunately, nearly 50% of offers of accommodation are in these inadequate premises.⁷⁸

Yet the government was worried too: it had to keep track of asylum seekers and deal with the problem of illegal working, a factor since 1991 when permission to work was abolished. Moreover, the European Council directive of 2003 on reception conditions also put pressure on the government: member states must take measures “to guarantee adequate healthy living conditions and to ensure that applicants have enough for their subsistence”⁷⁹ (*Directive* 2003, Art 13 (2)). So the French state eventually created 15,000 CADA places in five years, gave CADAs a new status within the asylum system and reformed the financial support package (9.4.4.2), now called ATA.

9.4.4.1 CADAs

CADAs are found in every department in France. They are mostly run by NGOs (e.g. Forum Réfugiés and France Terre d’Asile⁸⁰) but are under the auspices of the local préfecture and, at a national level, the ministry of employment and solidarity (*Centre d’Accueil* 2007:1). They provide a range of services throughout the asylum process:

- (a) accommodation and canteen/catering facilities;
- (b) access to medical and psychological services;
- (c) administrative support, including help

⁷⁸ Le recours systématique à ce type d’hébergement précaire peut se révéler extrêmement dangereux comme l’ont montré les événements dramatiques de l’hiver 2005 durant lequel des dizaines d’immigrés, dont un certain nombre de famille en demande d’asile, ont péri dans l’incendie des hôtels où ils étaient hébergés de façon « temporaire ». Malheureusement, aujourd’hui près de 50% de l’offre d’hébergement se fait dans ces locaux inadaptés.

⁷⁹ ... garantir un niveau de vie adéquat pour la santé et d’assurer la subsistance des demandeurs.

⁸⁰ France Terre d’Asile is a non-governmental organisation which promotes the right of asylum and the integration of refugees.

- in dealing with OFPRA and the CRR
- in preparing an account of the reasons for the application
- in preparing for interviews or court appearances and finding legal representation;

(d) children's activities and education;

(e) management of eventual departure from the CADA.

However, the aim of the 2006 reforms was not to help the CADAs to provide services but to strengthen state control over them and increase surveillance of asylum seekers, making their deportation easier. The government has introduced a system which pressurises people into accepting CADA accommodation and penalises them for refusing it. Under the reforms, the préfecture has to make a formal offer of CADA accommodation to asylum seekers, “who must immediately accept or refuse although there will be no question of a concrete offer with immediate take-up, just an offer in principle for when a place becomes available”⁸¹ (*Réforme* 2007:12). Waiting lists “may be very long (from several months to more than a year ...)”⁸² (*Hébergement* 2007:2). If they accept the offer they will be able to claim ATA while they are waiting; if, for whatever reason, they refuse the offer they will not be able to claim ATA. Yet there are several reasons why asylum seekers may want to refuse. Some people have

family or friends who can put them up, [know] fellow nationals or [have] knowledge of the department where their claim has been made. But, if they accept the offer, applicants may be given a place in another department, sometimes far away, and be isolated physically and socially⁸³ (*Réforme* 2007:13).

⁸¹ ... qui devra immédiatement accepter ou refuser, alors qu'il ne s'agit pas d'une offre concrète et immédiate de prise en charge, mais d'une offre de principe au cas où une place se libère.

⁸² ... peut être très long (plusieurs mois, à plus d'un an ...).

⁸³ ... de la famille ou des amis qui peuvent les héberger, qui ont des compatriotes ou des connaissances dans le département où ils ont demandé l'asile. Or, en acceptant l'offre de prise en charge, les demandeurs peuvent se voir attribuer une place dans un autre département, parfois très éloigné, et se trouver isolés, tant physiquement que socialement.

Nevertheless none of this is taken into account and, if you refuse the CADA offer, you will not receive any state benefit. Neither will you get another chance to choose CADA accommodation: “no other proposal of accommodation of this type will be offered to you”⁸⁴ (*Guide* 2005:20). Thus the government has created “a quasi-obligation of residence in the CADAs”⁸⁵ (*Main Basse* 2007:7).

At the same time, the government subjects the organisations who run the CADAs to increasing state control, usually through changes in regulations and administrative instructions. These tend to reduce the role of the CADAs to the provision of accommodation, minimising their other work. CADAs continue to provide educational, medical, psychological and legal support but with less state sanction and funding. For example, language courses under the old regime were intended as a tool to prepare people for integration into French society. Under the new regime this is considered unnecessary: “the state”, declared an immigration ministry circular, “does not consider asylum seekers to be a population dedicated to integration”⁸⁶ (cited *Accueil* 2008:31), and therefore there was no need to give them a good grounding in French. The ministry did recognise, however, that people would need some basic French for everyday purposes in the centres and the circular thus allowed “a system of initiation” into the language (cited *ibid.*). There is an implied assumption here that asylum seekers are not serious people, that their claims will be refused and they will soon be dispatched back home. In line with this, the control not only of entry into the CADAs but of departure from them is a crucial part of the new regime.

One of the government’s chief aims in the reforms was to speed up the departure of refused asylum seekers (“déboutés”) and recognised refugees from the CADAs, which contained increasing numbers of them. In the two-year period covering 2004 and 2005, “nearly 25,000 asylum seekers were given refugee status and 88,000 were refused and the departure measures in CADAs, already very fragile, could not cope with so many people”⁸⁷ (*ibid.*:46). The government was determined to reduce the numbers, both in order to free up space in the CADAs and to demonstrate that France was being tough on “false” asylum

⁸⁴ ... aucune autre proposition d’hébergement de ce type ne vous sera faite.

⁸⁵ ... une quasi obligation de résidence dans les CADA.

⁸⁶ ... l’État ne considère pas les demandeurs d’asile comme une population vouée à s’intégrer ...

⁸⁷ ... près de 25.000 réfugiés furent reconnus et 88.000 furent déboutés en deux ans et les dispositifs de sortie de CADA, déjà très fragiles, ne pouvaient pas gérer tant de personnes.

seekers. Thierry Coudert, a senior immigration ministry official, explained in a letter of instruction to prefects that they needed to improve their figures (cited *ibid.*:41):

I attach particular importance to reducing the rate of the unwarranted presence in the centres of ... *déboutés* for whom the consequence of refusal of refugee status ... must be removal from the national territory against a time limit of one month ... I would add that diligence concerning *déboutés* is a prerequisite for improving your results in the matter of removals [from the country].⁸⁸

The procedure put in place for reducing “unwarranted” residents in CADAs is as follows: the prefect informs the CADA manager that a particular applicant has been refused asylum; the manager notifies the asylum seeker that he/she has one month to leave the CADA. This deadline may be extended by one month if the *débouté* signs up to a voluntary return scheme (ARV), which gives a grant of 2,000 euros to a single person, 3,500 euros to a couple and extra for the children. As in the UK many asylum seekers do not see this as a safe option and this scheme has a low take-up rate – according to the National Reception Agency for Foreigners and Migration (ANAEM),⁸⁹ out of 4,000 departures from CADAs in 2007 only 84 accepted ARV (cited *ibid.*:45). Faced with the one-month deadline, some try, with help from CADA staff, to obtain permission to stay on grounds of family connections or health needs; others seek a re-examination of their claims. If all attempts to prevent removal fail, the *débouté* has to leave the establishment within the deadline. Some find lodgings with family or friends; some may get emergency – and temporary – accommodation in a cheap hotel or a hostel. “[T]he majority”, states Cimade, “risk finding themselves back on the streets”⁹⁰ (*ibid.*: 46).

Most CADA managers do their best to find *déboutés* accommodation or keep them in the centres for as long as possible. But there is heavy government pressure to remove their “unwarranted presence” and failure to do so attracts sanctions which threaten the CADA’s

⁸⁸ J’attache une particulière importance à la réduction du taux de présence indue dans ces centres ... de *déboutés* pour lesquels la conséquence du refus du statut de réfugié ... doit être l’éloignement du territoire national dans un délai maximal d’un mois ... J’ajoute que votre diligence, concernant les *déboutés*, conditionne l’amélioration de vos résultats en matière d’éloignement.

⁸⁹ ANAEM was created in 2005 and brought together the Office des Migrations Internationales (OMI) and the staff of the Service Social d’Aide aux Émigrants (SSAE). It oversees legal procedures relating to employment and family reunification, as well as matters relating to integration, and manages the reception of asylum seekers.

⁹⁰ ... la majorité risque de se retrouver à la rue ...

very existence: first, its annual grant may be reduced; secondly, its licence to operate may be withdrawn and the CADA will cease to exist. In these circumstances, the CADA eventually has to remove people in order to keep within the regulations and survive. So *déboutés* are reminded of the deadline through individual interviews, managers continue their efforts to find them alternative accommodation, but may stop the subsistence allowance paid to asylum seekers in CADAs – though they often try to continue paying it to families. Eventual departure may take place in a number of ways: *déboutés* may leave voluntarily; they may be called to an interview at the *préfecture* and removed to a detention centre for deportation; the police may wait for them outside the CADA and arrest them for non-possession of a valid APS; finally the CADA manager may remove the asylum seeker from the premises – most managers seek to avoid this confrontation, but are not always able to do so. Cimade cites a *préfecture* in the Haute-Garonne which regularly gives *déboutés* eight days' notice to leave the CADA (ibid.:47). A judge may extend the deadline, but in the end the manager confronts the *débouté*,

and, even if the person refuses, removes their belongings, takes an inventory and leaves the person on the landing. In the Oise, management changes the locks and cuts off the electricity supply before emptying the lodgings and leaving all the belongings in rubbish bags (ibid.).

The newspaper *Ouest France* reported the case of Iphigénie. When confronted by a CADA manager and his assistant, she did not understand what was happening (cited ibid.:48):

They told me: “You must leave. It’s the procedure.” They had certainly received the letter from my lawyer but they were there, standing there, by the lift, telling me to take my belongings out of the room. They helped me finish filling the bags.” Iphigénie took her bits and pieces and left. The affair then took another turn. Her lawyer, strongly contesting “the expulsion”, made a first application to the administrative court. After failing there, she put in a second request ... Today Iphigénie is destitute: “The CADA helped me for three years. After that, they obeyed the orders of the *préfecture*. My only worry today is my health.”⁹¹

⁹¹ Ils m’ont dit : «Vous devez partir. C’est la procédure. » Ils avaient bien reçu le courrier de mon avocate mais ils étaient là, debout, devant l’ascenseur, me demandant de sortir les affaires de la chambre. Ils m’ont

André Harnard, the CADA manager, claimed that this was “not a removal” (ibid.):

At no moment did she refuse to leave. She did not rebel ... We are under strong pressure from the préfecture to get refused asylum seekers out of the CADAs. But we stay within the law.⁹²

So the CADA may provide shelter and important help and advice to asylum seekers – yet it is in the end not a place of safety. The government’s restrictive agenda leaves CADAs little choice but to collaborate in the expulsion of vulnerable people.

9.4.4.2 *Low levels of support*

Before 2006 the benefit available to asylum seekers as support (the “allocation d’insertion”) was granted for only one year. Its successor (ATA), in line with EU harmonisation measures, is available throughout the asylum process. Despite this improvement, the support system still operates as an obstacle to pursuing an asylum claim. It still amounts to around 300 euros per adult per month, with nothing added for children. This means “that a single person as well as a single-parent family with several children have to provide for themselves on less than 10 euros per day”⁹³ (Bousquet 2006:15). This benefit does not get paid for at least a month after application (ibid.) and sometimes not for six to eight weeks (*Réforme* 2007:12). Thus not only are asylum seekers “deprived of all resources during this period” (Bousquet 2006:15) – a serious enough problem in itself – but their chances of having their asylum claims heard at all are put in jeopardy: the OFPRA form has to be completed and sent within 21 days and, in that time, documents need to be copied, translations made (at the applicant’s expense) and registered letters posted. Without funds this will be difficult to achieve. Moreover, some asylum seekers are not eligible for benefit

aidé à finir les sacs ». Iphigénie prend ses cliques et ses claques et s’en va. L’affaire prend ensuite une autre tournure. Son avocate contestant fermement « l’expulsion », saisit une première fois le tribunal administratif. Déboutée, elle dépose une seconde requête ... Iphigénie est aujourd’hui démunie. « Le CADA m’a aidée pendant trois ans. Après, ils ont obéi aux ordres de la préfecture. Mon seul souci aujourd’hui, c’est ma santé ».

⁹² ... A aucun moment elle n’a refusé de partir. Elle ne s’est pas rebellée ... Nous avons des pressions importantes de la préfecture pour faire sortir des CADA les personnes déboutées du droit d’asile. Mais nous restons dans le droit.

⁹³ ... qu’une personne célibataire aussi bien qu’une famille monoparentale avec plusieurs enfants devra subvenir à ses besoins avec moins de 10 euros par jour.

at all (those in the *procédure prioritaire*, those waiting to be dealt with by another EU state under the Dublin II agreement or those who have refused CADA accommodation). Thus the benefit system seems designed for deterrence rather than support.

9.4.5 *The obstacle race: winding down reception “platforms”*

The so-called reception “platforms” were created in the year 2000 to make up the deficiencies in reception facilities provided by the state and are mostly run by the “associations”. In May 2007 there were 49 “reception platforms” and 23 smaller “reception points” across France. Their help today is particularly needed in the light of the consequences for asylum seekers of refusing CADA accommodation. As shown above (9.4.4.1), there are perfectly valid reasons for such refusals. There is also evidence that a mixture of a lack of information, language problems and avoidable misunderstanding leads to inappropriate refusals: the CADA offer is couched in technical terms and in French only, so “[b]ecause they do not understand, some applicants do not sign or they tick the ‘refuse’ box”⁹⁴ and the majority do not realise that they will lose their right to financial support if they refuse the CADA offer (*Accueil* 2008:5). Cimade shows that refusal rates vary from department to department, ranging in the Ile-de-France from 10% in Paris itself, 37% in Seine-Saint Denis and 70% in Val d’Oise (*ibid.*). The services provided by the “platforms” are important in these circumstances. Gil-Robles (2006:61) visited one in Paris, run by France Terre d’Asile, and was

impressed by the work carried out by its staff. Some 12,000 applicants are accommodated there; around 1,200 ... attend each day. They come to get their post, information on emergency accommodation and legal advice. These platforms have become indispensable tools for managing asylum seekers.⁹⁵

Yet the CADA and ATA reforms threaten the work, even the existence, of many of these “platforms”. First, an administrative system is being put in place which restricts the work of the platforms to registering CADA applications and involves them in a complex

⁹⁴ Parce qu’ils n’en comprennent pas le sens, des demandeurs refusent de signer ou cochent la case du refus.

⁹⁵ ... impressionné par le travail effectué par ses salariés. Quelque 12 000 demandeurs y sont domiciliés ; environ 1 200 ... sont accueillis chaque jour. Ils viennent y chercher leur courrier, des informations sur les hébergements d’urgence et des conseils juridiques. Ces plates-formes sont devenues des rouages indispensables à la gestion des demandeurs d’asile.

bureaucratic process. Secondly, it involves the “platforms” in enforcing the state’s rules rather than providing good reception facilities. So if an asylum seeker fails to report to a “platform” to register an application for CADA accommodation, the “platform” must inform the préfecture, the asylum seeker will be considered as having refused CADA accommodation and ATA will be discontinued. If the applicant fails to attend regularly to enquire about the progress of his or her application, the “platform” has to send reminder letters (*Accueil* 2008:7). The restriction of their work to registration duties also involves a reduction in the state funding of the “platforms” and the immigration ministry announced that 25 of them would be closed in 2008 in the name of rationalisation and regionalisation. Cimade shows how this process, undertaken in the name of efficiency and cost-saving, has led to a reduced number of “platforms” in many regions, but with no corresponding increase in funding for those that remain. This was the case with closures in Saint-Brieuc, Vannes and Périgueux, and the Picardie region saw applications moved from its main city of Amiens to the Oise department, which had less means of coping (*ibid.*:9). There is certainly an administrative and cost-saving logic to this policy. But it also reflects France’s restrictive agenda, which focuses on immigration control rather than protection, and thus undermines the right to asylum.

9.5 The OFPRA procedure

OFPRA was established in 1952. In the reforms of 2003-4 it became the only agency to which asylum claims in France may be made. Yet, despite its long experience and increased funding, there are serious concerns about its procedures, which seem part of France’s restrictive agenda undermining the right to asylum.

9.5.1 Timescales and deadlines

If you are an asylum seeker the timescales and deadlines within which you must work are short. Even before the 2003-4 reforms you had to fill in the application form and deliver your completed dossier to OFPRA within one month. The deadline is now 21 days: if you miss it, your application will not be considered and your APS will not be renewed (*Guide* 2005:9-10; Gil-Robles 2006:57). Such a deadline presents a particular range of problems.

Most applicants have little information at this stage to help them through the process, no legal advice and little money (*Réforme* 2007:6). Few will find a place in a CADA in time to get the necessary help to complete the dossier, and we have seen the tightening constraints

being placed on the “platforms” (9.4.5). These problems are even more acute if you have been placed in the *procédure prioritaire*, where the deadline is just 15 days. Gil-Robles considered that “the shortening of the timescales does not leave sufficient time for the applicant to complete the dossier, gather the necessary documents together and produce a coherent account”⁹⁶ of their story (2006:57). If they meet the deadline but the dossier does not include all the required documents, or if the form is not completed in French, OFPRA will refuse to register the application and although another application can be made it will be subject to the *procédure prioritaire*. Moreover, although the form has to be completed in French, interpreters are at the expense of the applicant and it seemed to Gil-Robles “obvious that the very large majority of asylum seekers do not have the necessary means to pay an interpreter”⁹⁷ (ibid.:58). He found the lack of interpreting facilities to be discriminatory and “in direct contradiction to the Ordinance of 1945 which makes provision for an interpreting service”⁹⁸ (ibid.). The solution was clear: the French authorities should “reconsider their position and, if they continue to insist on French, [should] offer non-French-speaking applicants the linguistic help that they need to deliver a duly completed dossier”⁹⁹ (ibid.). To date the authorities have not done so. Thus many asylum seekers find their right to asylum undermined at this crucial stage by a combination of tight deadlines, inflexibility about the required contents of the dossier and a lack of translation services.

9.5.2 *Procédure normale*

Once your asylum application has been registered with OFPRA, and you have presented the receipt to the *préfecture*, your APS will be renewed for three months and is renewable every three months until a decision is made on your claim.

9.5.2.1 *Asylum interview*

An asylum interview is a legal requirement and OFPRA may dispense with it for only four reasons (*CESEDA* 2008, Art. L.723-3; *Guide* 2005:11):

⁹⁶ ... le raccourcissement des délais ne laisse pas suffisamment de temps au demandeur pour remplir le dossier, rassembler les documents exigés et produire un récit cohérent.

⁹⁷ ... évident que la très grande majorité des demandeurs d’asile ne possède pas les moyens financiers pour rémunérer un interprète.

⁹⁸ ... en contradiction directe avec l’Ordonnance de 1945 qui prévoit l’interprétariat.

⁹⁹ ... reconsidérer leur position et, si elles maintiennent l’exigence du français, [offrir] aux demandeurs non francophones l’aide linguistique dont ils ont besoin pour déposer un dossier en bonne et due forme.

- (a) if it decides to “take a positive position based on the evidence in its possession”¹⁰⁰ (CESEDA 2008, Art. L.723-3), i.e. on the documents and other items you have sent in support of your claim; or
- (b) if you come from a “safe” country; or
- (c) if OFPRA thinks, on the evidence you have provided, that your claim is “manifestly unfounded”; or
- (d) if your medical condition makes an interview impossible.

Nevertheless, the proportion of applicants called for interview is historically low: in 2003 only 68% received a “convocation” and Bousquet notes (2006:9):

France does not intend to bring individual interviews into general use. It defends this position on the ground that it prefers quality rather than quantity in relation to interviews and therefore chooses to set aside a certain number of applicants on the basis of the information they have provided in their dossiers.¹⁰¹

Such an approach presumes guilt and does not give people an opportunity to defend themselves. It also denies the constitutional right of all asylum seekers to have their claims heard (4.6.1; 9.3.2). Nevertheless there was a rise in the proportion called for interview in the following two years: 73% in 2004, 83% in 2005 (Castagnos-Sen 2006:102).

The figures on interviews that actually took place are more worrying: in 2003 only 49% kept the appointment. Once again the rate rose during the next two years, but it remained worrying: 51% in 2004, 61% in 2005 (ibid.). A number of factors help to explain this. Some people will not have received the notification in time, or at all (ibid.), and this is often linked to the problem of unreliable accommodation noted earlier (9.4.4). More important, as Bousquet noted (2006:9), non-attendance “is explained particularly by the fact that the

¹⁰⁰ ... prendre une position positive à partir des éléments en sa possession.

¹⁰¹ La France n’entend pas généraliser l’existence des entretiens individuels. Elle défend cette position au motif qu’elle préfère la qualité des entretiens à la quantité, et choisit donc d’écarter un certain nombre de demandeurs sur la base des informations fournies dans leurs dossiers.

costs of the interview (travel, lodgings ...) are totally at the asylum seeker's expense."¹⁰² Gil-Robles came to a similar conclusion and added that "[t]his measure equally concerns applicants resident in the provinces [who] do not always possess the means to make the journey as far as Paris"¹⁰³ (Gil-Robles 2006:58). He recommended opening provincial OFPRA offices, particularly since OFPRA staff had told him that "the number of applications in provincial préfectures is still rising"¹⁰⁴ (ibid.:59). The imposition of the costs of interview on the applicants themselves undermines the right to asylum, since failure to attend the interview may lead to the refusal of a claim: "If you do not attend this hearing", warns the *Guide* (2005:12), "your absence will have negative consequences on your claim for asylum".¹⁰⁵ Thus far, however, the recommendation has not been adopted.

As to the conduct of interviews, Gil-Robles and his team took a fairly positive view (2006:59):

We all noted the professionalism of the OFPRA officers who are given the responsibility of carrying out these interviews in order to check the consistency of what is said by the applicant. The officers are also specialised in what is certainly a large geographical area but, for the most part, have quite expert knowledge of the different countries of origin of the applicants.¹⁰⁶

Another positive point is that, at this stage, "[t]he applicant may request the assistance of an interpreter, paid for by OFPRA"¹⁰⁷ (ibid.). This service was put on a more secure footing in 2003, when OFPRA signed agreements with a number of agencies, which together provide translation services in 110 languages (Castagnos-Sen 2006:102). Problems arise, however: some languages are not covered, Chechen and Rom being prime examples (ibid.); and Gil-

¹⁰² ... s'explique notamment par le fait que les frais occasionnés par cet entretien (déplacement, hébergement ...) sont totalement à la charge des demandeurs d'asile.

¹⁰³ Cette mesure concerne également les demandeurs résidant en province. Ces derniers ne possèdent pas toujours les moyens de faire le voyage jusqu'à Paris.

¹⁰⁴ ... le nombre de demandes déposées dans les préfectures de province ne cesse d'augmenter.

¹⁰⁵ Si vous ne vous présentez pas à cette convocation, votre absence aura des conséquences négatives sur votre demande d'asile.

¹⁰⁶ Nous avons tous noté le professionnalisme des agents de l'OFPRA chargés de mener à bien ces entretiens pour vérifier la cohérence des dires du demandeur. Les agents sont d'ailleurs spécialisés sur une aire géographique certes large, mais ont, pour la plupart, une connaissance assez fine des différents pays d'où sont originaires les demandeurs.

¹⁰⁷ Le demandeur peut demander l'assistance d'un interprète, aux frais de l'Office.

Robles (2006:59) observed an interview where the translation was inaccurate, not reflecting the meaning of the applicant's statements.

9.5.2.2 “Manifestly unfounded” again

We have seen that your claim may be declared “manifestly unfounded” in the zone d’attente (9.3.2-9.3.4) and that the préfecture may also deny you access to OFPRA (9.4.3). Now, however, under the procédure normale, OFPRA itself can reopen the “manifestly unfounded” question and refuse an interview, thus denying you what Gil-Robles calls “a thorough and careful examination”¹⁰⁸ of your claim (2006:63), including a chance to explain your case and resolve doubts. So OFPRA describes applicants’ statements using the negative language noted earlier (9.3.3), and with as little justification: a claim is “judged to be ‘devoid of all substance’ or ‘lacking credibility’”, writes Castagnos-Sen, “either because it is insufficiently detailed or personalised, or because the account is ‘stereotyped’ or contains manifest contradictions and errors relating to events, dates or other objective matters”¹⁰⁹ (2006:102). OFPRA may decide that you have submitted false documents and that this casts doubt on your case. Castagnos-Sen notes that such an allegation is “rarely substantiated by the Office”.¹¹⁰ But rather than explore these matters in an interview, OFPRA can declare your case “manifestly unfounded” without one.

9.5.2.3 Legal help

There is no provision in the law for free legal advice at this stage (Bousquet 2006:9) and no right to have a lawyer present during the OFPRA interview, since OFPRA “does not yet accept the presence of a third party during interviews”¹¹¹ (*Accueil* 2006:35). Asylum seekers in a CADA receive legal and other advice but most people have to wait at least two months for a CADA place and have only 21 days to submit their dossier. By the time they get into a CADA, they may already have had their interview. They may find legal and other support through an “association” (e.g. France Terre d’Asile), but they must find it quickly – at a time when they are vulnerable, disoriented and possibly traumatised. Thus a

¹⁰⁸ ... un examen complet et attentif ...

¹⁰⁹ ... qu’il l’estime « dénuée de toute substance » ou « dépourvue de crédibilité », soit qu’elle est insuffisamment circonstanciée ou personnalisée, soit que le récit est « stéréotypé » ou comporte des contradictions et erreurs manifestes au regard d’évènements, dates ou autre éléments objectifs.

¹¹⁰ ... rarement étayée par l’Office ...

¹¹¹ ... l’OFPRA n’accepte pas encore la présence d’un tiers lors des entretiens.

combination of tight deadlines and lack of any legal right to free representation at this stage undermines the right to asylum.

9.5.3 *Procédure prioritaire*

Under the *procédure prioritaire* OFPRA has only 15 days to make its decision, including the time needed to arrange and conduct an interview, but in practice the situation is worse: on average, decisions are made within six to eight days, and in July 2004 only 20% of applicants were called for interview; by the end of the year this had risen – but only to 35% (Gil-Robles 2006:63). The rate rose to 60% in 2005 (Castagnos-Sen 2006:99), but this still left 40% of applicants without the right to “a thorough and careful examination” of their claims. The end results seem to reflect this rushed and detrimental procedure: asylum is granted at low rates in the *procédure prioritaire* – in 2004 acceptance rates ran at 1.8% (Gil-Robles 2006:63), in 2005 at 2.5% (Castagnos-Sen 2006:99).

Use of the *procédure prioritaire* is growing: taking account both of initial claims and requests for re-examination after refusal, 10% of total asylum applications were placed in this procedure in 2003, 16% in 2004, 23% in 2005 and 30% in 2006 (*Réforme* 2007:3). This increasing use of a fast process, with its reduced rights and low acceptance rates of, undermines the right to asylum. Former CRR president Michel Combarous warned in 2005 that, if use of the *procédure prioritaire* continued to increase, “the essential guarantee [of an OFPRA hearing] would tend to become a pretence”¹¹² (cited *ibid.*:3). In 2006 Gil-Robles (2006:63) judged that the *procédure prioritaire*

is far from offering the same guarantees as the claim to asylum in common law. In the end, it leaves only a tiny chance for applicants ... There exists therefore in France a two-speed asylum system, which tends to be reinforced by the recent asylum reforms and the mistrust with which foreigners are generally surrounded.¹¹³

¹¹² ... la garantie essentielle que constitue la possibilité pour le demandeur de saisir l’office tendrait à devenir un faux-semblant.

¹¹³ ... est loin d’offrir les mêmes garanties que la demande d’asile de droit commun. En définitive, elle ne laisse qu’une chance infime aux demandeurs ... Il existe donc en France un système de demandes d’asile à deux vitesses, qui tend à être renforcé par les récentes réformes de l’asile et la méfiance qui entoure de manière générale les étrangers.

9.6 Appeals to the CRR

9.6.1 A difficult application process

If your asylum application is refused by OFPRA you have the right to apply for an appeal to the CRR, and you have one month to do so after receiving your refusal letter from OFPRA. Unfortunately, the application process is difficult, as Gil-Robles reported (2006:60):

Déboutés must, in particular, compose a letter in French, in which they must explain the reasons for their appeal, complete a new dossier and enclose all the documents required by the CRR.¹¹⁴

The availability of help in the application process depends on your situation: you will get assistance if you are in CADA accommodation; if you are not in a CADA but you are in touch with an “association”, help may be available; if you are staying with friends or relatives, help is possible; but if your situation is less stable, you are much less likely to receive help. Furthermore, you may have problems even in a CADA. We have seen that government policy is to concentrate the work of CADAs on the provision of accommodation, reduce their support work, speed up procedures in general and increase the rate of departure (9.4.4.1). CADAs thus have less time to spend on guiding applicants through the appeals process. Moreover, pressure to accept CADA accommodation under the reforms led to more places being taken by individuals, which increased the number of individual claims in CADAs. Less time was then available to deal with each dossier and CADAs under pressure began to “[send] asylum seekers to the associations [for help], citing lack of time”¹¹⁵ (*Accueil* 2008:37). Whatever your situation, if time does run out and you do not meet the CRR deadline “your appeal will be judged inadmissible – that is, rejected without examination”¹¹⁶ (*Guide* 2005:14). In these circumstances, the appeals application process itself becomes another obstacle to the successful pursuit of an asylum claim.

¹¹⁴ Le débouté doit en particulier rédiger une lettre, en français, dans laquelle il explique les motifs de son recours, remplir un nouveau dossier et réunir les documents exigés par la CRR.

¹¹⁵ ... renvoyé des demandeurs d’asile vers les permanences associatives en arguant le manque de temps.

¹¹⁶ ... votre recours sera jugé irrecevable, c’est-à-dire rejeté sans examen.

9.6.2 Judges, interpreters and legal representatives

Once the CRR has received your application, it will send you an acknowledgement and you will receive one to three weeks' notice of the date of the hearing. You will be heard by a panel of three judges – a president, a member of the Conseil d'État and a representative of UNHCR. You are entitled to a full, argued hearing of all the issues,¹¹⁷ at which you will be able both to question OFPRA's decision by citing your original grounds and to present new arguments not previously heard. The CRR will provide an interpreter in your preferred language. Moreover, there has recently been an important and positive change: you now have the right to a lawyer in court, paid for by the state. Previously, as Bousquet had noted (2006:25), legal representation was granted

only to those who have entered French territory legally, yet many asylum seekers arrive clandestinely. Thus, less than 6% of foreigners who lodge appeals with the CRR benefit from this aid.¹¹⁸

This policy represented a substantial obstacle to the exercise of the right to asylum in France and was opposed by all the "associations". Further, the European Commission was moving towards the granting of legal aid to all asylum seekers. But France opposed the idea "on the ground that it would cost too much"¹¹⁹ (ibid.). In the end the European Commission issued the directive of 1 December 2005 which laid down that "free legal assistance and/or representation be granted on demand"¹²⁰ (cited Castagnos-Sen 2006:118). France managed to get a delay in implementation until 1 December 2008, but since that date free legal representation in court has been available to all asylum seekers with insufficient resources.

9.6.3 The importance of the CRR

One month after the hearing the CRR will notify you of its decision: it will either reverse OFPRA's refusal and grant you refugee status or protection subsidiaire, or it will confirm OFPRA's decision and ask you to leave the country within one month (*Livret* 2006:17). Such powers make the CRR an important part of the asylum process. But it has become

¹¹⁷ Un recours de plein contentieux.

¹¹⁸ ... seulement s'ils sont entrés légalement sur le territoire, or beaucoup de demandeurs d'asile sont venus clandestinement. Ainsi moins de 6% des étrangers qui interjettent appel devant la CRR bénéficient de cette aide.

¹¹⁹ ... au motif qu'il coûterait trop cher.

¹²⁰ ... l'assistance judiciaire et/ou la représentation gratuites soient accordées sur demande.

particularly important to asylum seekers because of what Gil-Robles calls the “persistent differences between OFPRA and the CRR”¹²¹ (2006:60). He means differences in outcomes, and gives an example: the nationals of Bosnia-Herzegovina “are, in their majority, refused by OFPRA although up to 78% of their claims are accepted by the CRR”¹²² (ibid.). In 2004 OFPRA granted refugee status to asylum seekers overall at a rate of 9.3% (ibid.) and Bousquet (2006:13) complains that the relative stability of the rate of recognition of refugees since the 1990s (around 15-20%) hides the fall in rates of recognition by OFPRA, since

today, nearly half the grants of refugee status are given by the CRR. Nearly 50% of people therefore obtain the status of refugee not from the administration with the responsibility for doing it but from the CRR, after an appeal by the applicant following a negative response from OFPRA.¹²³

Bousquet concludes (ibid.) that this shows OFPRA’s shortcomings in its treatment of asylum claims and puts in question “the reliability, even the seriousness and impartiality” of its decisions.¹²⁴ Moreover, Gil-Robles criticises OFPRA because it “does not always follow the jurisprudence laid down by [the CRR]”¹²⁵ (2006:60). All this increases the importance of the right of appeal and, not surprisingly, Castagnos-Sen found that applications to the CRR were “quasi-systematic, 78% of OFPRA refusals being taken to the CRR”¹²⁶ (2006:111). Nevertheless, a number of serious problems arise at the appeals stage.

9.6.4 *Refusal by order*

The CRR, argues Castagnos-Sen, is often “the only chance for an asylum seeker to be heard”¹²⁷ (2006:111) – except, she adds, in the case of “rejections of appeal by order”.¹²⁸

¹²¹ ... divergences persistante qui existent entre l’OFPRA et la CRR.

¹²² ... sont majoritairement déboutés par l’OFPRA alors que leurs demandes sont acceptées à hauteur de 78% par la CRR.

¹²³ ... qu’aujourd’hui, près de la moitié des statuts de réfugiés accordés le sont par la CRR. Près de 50% des personnes obtiennent donc le statut de réfugié non pas auprès de l’administration en charge de le faire, mais auprès de la CRR et après un recours du demandeur ayant reçu une réponse négative de l’OFPRA.

¹²⁴ ... la valeur voire le sérieux et l’impartialité des décisions rendues par l’OFPRA.

¹²⁵ ... ne suit pas toujours la jurisprudence établie par la Commission.

¹²⁶ ... quasi-systématique, 78% des rejets prononcés par l’OFPRA faisant l’objet d’un recours devant la Commission.

¹²⁷ ... la CRR constitue encore souvent la seule chance pour le demandeur d’asile d’être auditionné ...

¹²⁸ ... rejets du recours par ordonnances.

Your appeal may be dealt with by means of an order (*ordonnance*), i.e. a written judgment without a hearing. *Ordonnances* are made by a single judge, on advice from a “*rapporteur*” whose report is based on the documentary evidence. There are two kinds of *ordonnance*: the *ordonnance classique*, used if you miss the CRR deadline of one month or if the judge decides that you lack evidence to support your appeal; and the *ordonnance nouvelle*, introduced as part of the 2003 reforms. The law of 10 December 2003 (*CESEDA* 2008, L.732-2) provides that *ordonnances* will be used in cases “the nature of which does not justify the intervention of a collegiate bench”¹²⁹ (i.e. the three judges) and a later decree (14 August 2004) specified that *ordonnances* could be used in cases “which presented no serious facts capable of calling into question [OFPPRA’s] reasons” for its decision¹³⁰ (cited *Castagnos-Sen* 2006:116). An *ordonnance nouvelle* is used (*ibid.*) if

- (a) the claim falls outside the strict categories of asylum;
- (b) you have asked for a “re-examination” (*réexamen*) of your claim, where new facts are required, but you have not presented any new facts;
- (c) you did not turn up for an OFPPRA interview;
- (d) OFPPRA has refused an interview and declared your claim “manifestly unfounded”;
- (e) you are relying on the same facts and supporting evidence that you presented to OFPPRA.

So it is clear that at the CRR stage, as much as at earlier stages (9.3.2-9.3.4; 9.4.3), claims may be prejudged and filtered out, giving asylum seekers no chance to defend themselves. *Gil-Robles* (2006:60) described the criteria as “*floos*” (vague, hazy). Yet 28% of appeal dossiers are dealt with in this way (*ibid.*), and no reasons have to be given for the decision. He considered that 28% was too high and that “the increased workload the CRR has to face

¹²⁹ ... dont la nature ne justifie pas l'intervention d'une formation collégiale.

¹³⁰ ... qui ne présentent aucun élément sérieux susceptible de remettre en cause les motifs de la décision du directeur général de l'Office.

in no way justifies the massive use of ordonnances, which risks becoming abusive”¹³¹ (ibid.). The point missed here, however, is that any use of ordonnances with such “vague” justifications contradicts the notion of a full, argued hearing (9.6.2). Moreover, criterion (e) above directly contradicts a principle of such a full, argued hearing, i.e. that applicants are not required “to give reasons for their fears [or give] supporting evidence other than those presented at the first hearing”¹³² (Castagnos-Sen 2006:116).

Another point should be made about ordonnances: a demand to prove “serious facts” in advance

shows ignorance of ... the conditions in which asylum seekers prepare their appeals, often in a hurry without the help of a lawyer, the deadline for appeals before [the CRR] being one month while the deadline before administrative courts in common law is two months. We have here a procedure intended to reduce the argued element before [the CRR] ... to the detriment of the imperatives of protection¹³³ (*Réforme* 2006:7).

9.6.5 *Desperately seeking downward trends*

Gil-Robles’s reference to the CRR’s workload highlights another problem and calls into question France’s commitment to its protection obligations. From 2002 until 2004 there was a consistent rise in the number of appeals lodged with the CRR – 31,501 in 2002, 44,201 in 2003 and 51,707 in 2004 (Castagnos-Sen 2006:112). The CRR saw its resources increased to cope with it and Gil-Robles described this as “a very positive development”¹³⁴ (2006:59). There was, however, a fall in 2005 of 25.4% on 2004 and the CRR immediately began to scale down its activities (Castagnos-Sen 2006:113), presumably on the assumption that the trend would continue. It began to lay off staff and did not renew the contracts “of the great majority of the rapporteurs and secretaries recruited during the previous few

¹³¹ ... la charge de travail accrue à laquelle la CRR doit faire face ne peut en rien justifier l’utilisation massive d’ordonnances au risque qu’elle ne devienne abusive.

¹³² ... d’invoquer des motifs de craintes et des éléments d’appréciation autres que ceux présentés en première instance.

¹³³ ... méconnaît ... les conditions dans lesquelles les demandeurs d’asile rédigent leur recours, souvent dans l’urgence sans l’aide d’un conseil, le délai de recours devant la Commission étant d’un mois alors que le délai de droit commun devant les juridictions administratives est de deux mois. Il s’agit donc ici d’une procédure destinée à réduire le contentieux devant la Commission ... au détriment des impératifs de protection.

¹³⁴ ... un développement fort positif.

months”¹³⁵ (ibid.). But assumptions about an increasingly downward trend were premature, since “the number of appeals ... did not fall in any spectacular way”¹³⁶ (ibid). This was not surprising, since the rate of refusals by OFPRA was rising – from around 85% to 90% in the last few years. Thus 8,326 appeals were lodged in the first quarter of 2006, against 10,280 in the same quarter of 2005. The CRR acknowledged that it had seen “not a fall [in appeals], but the prolonging of a modulated change already observed at the end of 2005”¹³⁷ (cited ibid.). Unfortunately, the cuts affected the number of decisions made by the CRR in that quarter – down 55% on the same quarter of 2005. Any further reduction would lead to a bottleneck of dossiers and the lengthening of the appeals process, with an inevitable impact on asylum seekers. Castagnos-Sen cited a Senate report of April 2006 which “underlined the need for ‘OFPRA and the CRR [to have] sufficient means to face up to the inevitable fluctuations of asylum claims, and especially to avoid reducing ... those means once a crisis has passed – risking the precipitation of the next one’”¹³⁸ (ibid.).

9.6.6 Priorities

As in the UK, the right of appeal becomes particularly important in the context of poor decision-making at an earlier stage. Gil-Robles deplored the fact that, because of the low rate at which protection is granted by OFPRA, “an appeal to the CRR seems like a normal route to obtaining asylum in certain cases”¹³⁹ (2006:60). It is, however, no easy route: the tight deadlines, the problem of finding help, the use of refusal by order and the willingness to reduce resources at the first sign of a fall in numbers suggest that the priorities of the government and the CRR lie in reducing costs, speeding up the appeal procedures and reducing the number of cases given a full, argued hearing. Such priorities work to the detriment of France’s protection obligations and undermine the right to asylum.

Beyond the CRR there are just two possibilities of appeal. You can appeal to the Conseil d’État, but this body will not consider the facts of your case, only legal technicalities. Moreover, “[i]t is a long and costly procedure, necessitating a lawyer”¹⁴⁰ (*Livret* 2006:17) and although you may get legal aid the appeal is “non-suspensif” – i.e. you may be

¹³⁵ ... de la grande majorité des rapporteurs et secrétaires recrutés au cours des derniers mois.

¹³⁶ ... le nombre de recours déposés entre janvier et mars 2006 n’a pas diminué de manière spectaculaire ...

¹³⁷ ... pas d’une chute mais du prolongement d’une inflexion déjà observée à la fin de l’année 2005.

¹³⁸ ... souligne la nécessité que « l’OFPRA et la CRR disposent de moyens suffisants pour faire face en temps réel aux inévitables fluctuations de la demande d’asile, et surtout d’éviter de les réduire ... dès qu’une crise est passée – au risque de précipiter l’arrivée de la suivante ».

¹³⁹ ... le recours devant la CRR apparaît comme une voie normale d’obtention de l’asile dans certains cas ...

¹⁴⁰ C’est une procédure longue and coûteuse nécessitant un avocat ...

deported before your hearing. The alternative is to ask for a re-examination (réexamen) of your case by OFPRA, but this is only possible if you have new facts to present (Bousquet 2006:13) and the criteria for facts to qualify as “new” are strict. In practice, the next step is deportation.

9.7 Detention and deportation

Once your claim has been finally refused, you have no right to remain in France. The préfecture will write to inform you that your APS is no longer valid and that you must leave the country. The law states that you “have a month to leave French territory voluntarily” (CESEDA 2008, Art. L742-3). If you do not leave within the deadline, the préfecture will issue a deportation order (APRF) against you, enforceable after 48 hours. You have a right of appeal to an administrative court against the APRF and against the decision to specify the country of deportation. If you intend to challenge the specific-country decision, you are best advised to appeal against both at the same time, since the specific-country appeal alone is not “suspensif”, so you may be deported before the hearing (Diebolt 2008). The combined appeal, however, is “suspensif”. All this must be done within the 48-hour deadline, including obtaining legal advice and making the application in French (ibid.).

9.7.1 Detention

After receipt of the APRF, you are likely to be put in detention in one of the Centres de Rétention Administrative (CRAs). There are 24 of them, with a capacity of 1,700 people, and they are “places of detention for foreigners in the process of expulsion”¹⁴¹ (Main Basse 2007:33). Detainees are subject to various expulsion or exclusion orders – some relating to the refusal of asylum, some to criminal or other illegal activities, some to arrests made during police trawls for illegal immigrants, such as those undertaken under “Plan Ulysse 3” since May 2006, which target asylum seekers in the Calais region trying to get to the UK (ibid.:38). If you apply for asylum in the CRA the problems of deadlines are more acute: you have just five days to submit your dossier, in French, to OFPRA; OFPRA has 96 hours to decide your case.

In line with their restrictive agenda, and as a deterrent to asylum seekers, governments have long aimed at increasing the number of deportations and “from 10,067 in 2002,

¹⁴¹ ... lieux d’enfermement des étrangers en instance d’expulsion.

removals to the border reached 16,660 in 2004 and 19,841 in 2005”¹⁴² (Castagnos-Sen 2006:196). Though this last was below the government’s target for 2005 of 25,000, the upward trend continued and in February 2006 was 42% higher than in February 2005 (ibid.). In this context, the length of detention was increased from 12 days to 32 and the capacity of the CRAs expanded. Nevertheless “only around half of the foreigners in CRAs are effectively expelled”¹⁴³ (Gil-Robles 2006:69) and the minister of the interior told Gil-Robles of his hope that the deportation figures for 2005 would turn out to be 50% up on 2004. The commissioner, however, had other concerns (ibid.):

Setting quotas is a shocking practice which is liable to result in the use of devices such as mass arrests in targeted zones to meet the stated objectives, stopping and questioning people who come to the préfecture to deal with their formalities, and in various abuses.¹⁴⁴

9.7.1.1 *Living conditions*

Conditions in the CRAs, reported Gil-Robles, “vary from one CRA to the other”¹⁴⁵ (2006:65). He visited the CRAs at Arenc (near Marseilles), Mesnil-Amelot (near Roissy-Charles de Gaulle airport) and the Palais de Justice in Paris. His findings raise grave questions about human rights in France and about the right to asylum. At Arenc, where the CRA is housed on the top floor of a warehouse, he reported complaints about lack of hygiene, difficulty in getting medical care and infrequent access to the “cramped, wire-fenced” courtyard. The CRA was almost filled to capacity (59 detainees out of a possible 60, including four women). “The common room”, he reported,

was small, smoky and cruelly lacking in ventilation, and reflected the generally dilapidated state of the premises. Generally speaking, I can only emphasise the

¹⁴² ... de 10 067 en 2002, les reconduites à la frontière sont passées à 16.660 en 2004 et 19.841 en 2005.

¹⁴³ ... seule près de la moitié des étrangers placés en CRA sont effectivement expulsés ...

¹⁴⁴ Le fait d’énoncer des quotas est une pratique choquante qui présente le risque de conduire à la mise en place de dispositifs tels que les arrestations massives dans des zones ciblées pour remplir les objectifs fixés, les interpellations aux guichets des préfectures, et à un certain nombre d’abus.

¹⁴⁵ ... varient d’un CRA à l’autre.

necessity of closing the Marseilles-Arenc centre without delay in August 2006¹⁴⁶ (ibid.).

In Paris, Gil-Robles had problems gaining access to the Palais de Justice. His careful language suggests there was an attempt to keep him out: “I am glad that my visit – which I was absolutely determined to carry out – finally took place despite initial problems apparently caused by organisational difficulties”¹⁴⁷ (ibid.:66). The CRA took up two levels underground, “each as dilapidated as the other” (ibid.):

The premises are cramped, badly lit; hygiene is cruelly lacking, the bathrooms are in a deplorable state. Television is the only occupation offered to the detainees. They certainly have access to a courtyard, but it is only a few square metres in size. Furthermore, nearly a third of the ground surface of the courtyard is covered by a grid which overlooks the courtyard for the detainees in the lower basement. The courtyards, if such a description can be used for these places, constitute the single source of natural light. All that the detainees in the lower basement can see are the shoes of those in the upper basement and the cigarette ends they have stuck in the grid.¹⁴⁸

The women’s section at the Palais de Justice was

in a much better state. Clean, better ventilated, it offered more acceptable conditions to the 12 women who were detained there during our visit ... I can only underline the remarkable work carried out by the nuns of the religious order who, by

¹⁴⁶ La salle commune, petite, enfumée et manquant cruellement d’aération, illustre l’état général dégradé du bâtiment. De manière générale, je ne peux qu’insister sur la nécessité de fermer sans délai le centre de Marseille-Arenc en août 2006.

¹⁴⁷ Je suis content que la visite de ces lieux que je tenais absolument à effectuer ait finalement pu se faire malgré quelques problèmes initiaux apparemment provoqués par des difficultés organisationnelles.

¹⁴⁸ Les locaux sont exigus, mal éclairés ; l’hygiène fait cruellement défaut, les sanitaires sont dans un état déplorable. La télévision constitue la seule occupation proposée aux retenus. Ils ont certes accès à une cour, mais elle ne fait que quelques mètres carrés. De plus, près d’un tiers de sa superficie au sol est couverte par un grillage, qui donne sur la cour réservée aux retenus qui occupent le deuxième sous-sol. Les cours, si un tel qualificatif peut être employé pour ces endroits, constituent l’unique source de lumière naturelle. Les retenus qui sont placés au deuxième sous-sol n’ont pour seule perspective que les chaussures de ceux du premier sous-sol et les mégots coincés dans les grilles par ces derniers.

arrangement with the prison authorities, look after the women's area of the CRA

...¹⁴⁹

Gil-Robles praised the nuns. He had an altogether different message for the government on the Palais de Justice facility for men:

These inhuman and degrading conditions are not only unacceptable for the detainees who are placed there but also for the officials who work there. It is more than urgent to close this place which represents in itself a blatant and serious violation of human rights.¹⁵⁰

The CRA at Mesnil-Amelot was a different story. With separate accommodation for men and women, but free movement throughout the premises during the day, the site had been recently renovated and detainees had access to sporting activities, as well as a library provided by the Red Cross. There were problems of hygiene and constant noise from the planes at Roissy. But it seemed almost a model CRA and Gil-Robles had no difficulty gaining access.

Marseilles-Arenc did close, to be replaced by Marseilles-Le Canet.¹⁵¹ The Paris CRA for men also closed. In September 2006, the European Committee for the Prevention of Torture (CPT) noted that there had been improvements in CRAs since its report in 2000, declaring many of the conditions to be "satisfactory" (*Torture* 2007, para. 67). Yet no wide-ranging reforms had taken place: as in the UK (8.10), the authorities simply caught up with the latest critical report, addressed some of the issues and waited for the next complaint and another report, while the poor conditions and abuses moved from one CRA to another with no concerted attempt being made to bring them to an end across the board. So in October 2006 the CPT found that the women's CRA in Paris, praised by Gil-Robles in February, suffered from two major faults (*ibid.*):

¹⁴⁹ ... en bien meilleur état. Propre, mieux aérée, elle offre des conditions plus acceptables aux 12 femmes qui y étaient retenues lors de notre visite ... [J]e ne peux que souligner le travail remarquable effectué par les sœurs de la congrégation religieuse qui s'occupent, en collaboration avec les services pénitentiaires, de la partie femmes du CRA ...

¹⁵⁰ Ces conditions inhumaines et dégradantes sont inacceptables pour les personnes retenues qui y sont placées, mais également pour les fonctionnaires qui y travaillent. Il est plus qu'urgent de fermer cet endroit qui représente à lui seul une image flagrante d'une violation grave des droits de l'homme.

¹⁵¹ Report in *L'Express*, 3 January 2008 (<http://www.LEXPRESS.fr> – accessed 6 April 2008).

... weak, even very weak, availability of natural light in all the premises and totally deficient ventilation during the visit. Such faults – which would already be difficult to accept in a brief period of detention – are totally unacceptable where people are detained for a prolonged period, which may extend up to 32 days.¹⁵²

At Vincennes the Committee found overcrowding, some areas almost unfit for human habitation, the presence of fleas and ticks, detainees with insect bites on their bodies; they also heard complaints, from detainees and staff, about rats on the site (*ibid.*, para. 68).

Support services in CRAs are mostly provided by Cimade, the only NGO authorised to do so (*Main Basse* 2007:33). Cimade staff advise detainees of their rights, give guidance on procedures and provide, where possible, interpreting services and legal advice. The government agency ANAEM also has staff in the CRAs to advise on asylum procedures and how the CRA operates. Gil-Robles noted (2006:66) that detainees

seemed to prefer the help and advice of Cimade representatives to those of ANAEM staff. The latter ... gave them the impression of wanting to dissuade them from applying for asylum more than of wanting to see them through the process.¹⁵³

Nevertheless, the presence of both “greatly contributes to calming the highly palpable tensions I could feel in each of the centres I visited”¹⁵⁴ (*ibid.*:67). As in the UK, these tensions often result in protests and disturbances.

9.7.1.2 *Protest movements*

On 22 June 2008 part of the CRA at Vincennes was damaged by fire during a demonstration by detainees. Cimade was not surprised: “We have been telling the préfecture for months about the explosive situation brewing at Vincennes”,¹⁵⁵ a

¹⁵² ... un faible, voire un très faible, accès à la lumière naturelle dans tous les locaux et une aération des locaux totalement déficiente lors de la visite. De tels défauts - qui seraient déjà difficilement admissibles pour une période de garde à vue - sont totalement inacceptables pour un lieu d'hébergement où des personnes peuvent être retenues pour une période prolongée, pouvant aller jusqu'à 32 jours.

¹⁵³ ... semblaient préférer l'aide et les conseils des représentants de la CIMADE à ceux des collaborateurs de l'ANAEM. Ces derniers ... leur donnaient plus l'impression de vouloir les dissuader de demander l'asile que d'encadrer leurs démarches.

¹⁵⁴ ... contribue grandement à apaiser les tensions fortement palpables, que j'ai pu ressentir dans chacun des centres visités.

¹⁵⁵ Depuis des mois, nous avons rappelé à la préfecture la situation explosive qui couvait à Vincennes.

spokesperson told the newspaper *Le Monde* (Incendie 2008). Indeed, just two weeks before the fire, an official report¹⁵⁶ had warned of the “climate of tension and violence which reigns permanently in all the CRAs, especially at Vincennes where a tiny incident [would be] enough to set fire to the powder”¹⁵⁷ (Rapport 2008). Vincennes site 1 was set on fire at the beginning of 2007 and again when it reopened a month before Christmas. In January 2008 there were protests at both Vincennes sites and at Mesnil-Amelot. Detainees at Mesnil-Amelot presented a letter outlining grievances to the director and went on hunger-strike. At Vincennes protesters occupied the courtyard for part of one night, but were forcibly returned to their rooms.

The protests were about conditions in the centres – but also about wider issues: “the most important thing, deprivation of our liberty”,¹⁵⁸ as the detainees’ letter to the Vincennes management put it (Étrangers 2008). For France Terre d’Asile, the issue was “the policy of mass deportations, [which] ignores individual situations in order to reduce them to a statistical target which is purely arbitrary”¹⁵⁹ (Manifestations 2008). Cimade called for the abolition of expulsion quotas and for CRAs to be limited to 100 places – Vincennes housed 280.

The drive to achieve mass deportations impacts not just on recently refused asylum seekers but also on those who, despite “manifestly unfounded” verdicts, remained in France, started families and now have children in school. Some have applied for “régularisation” of their position (possible after 10 years but only given on a very discretionary basis). Cissé, from Mali, described his situation to *Le Monde* (Étrangers 2008):

I’ve been here for 11 years. I was arrested on Monday at the Gare du Nord and they brought me [to Vincennes] although I was waiting for a reply to my application for regularisation ... I have a job, payslips, tax records ...¹⁶⁰

¹⁵⁶ Report of 5 June 2008 by the Commission Nationale de Contrôle des Centres et Locaux de Rétention Administrative et des Zones d’Attente.

¹⁵⁷ ... climat de tension et de violence qui règne de façon permanente dans tous les CRA et spécialement à Vincennes, où un rien suffit à mettre le feu aux poudres (cited *ibid.*).

¹⁵⁸ ... la chose la plus importante, la privation de notre liberté.

¹⁵⁹ ... la tentative de massification de la politique d’éloignement des étrangers ignore de fait les situations individuelles, pour les réduire à un objectif chiffré qui relève du plus pur arbitraire.

¹⁶⁰ Je suis en France depuis onze ans. J’ai été arrêté lundi à la gare du Nord, et ils m’ont emmené ici alors que j’attends une réponse à ma demande de régularisation ... [j’ai un emploi, des fiches de payes, de feuilles d’impôts ...

Cissé “hovers between fear of the plane and the hope of being freed.”¹⁶¹ Tamil Elanchelvan Rajendram may have had similar fears: deported to Sri Lanka from the Alsace region of France in August 2005 after the refusal of his asylum claim, he was shot dead by the Sri Lankan army in the courtyard of his home in February 2006. He was unarmed. His family informed OFPRA, the CRR and the préfecture which had had oversight of his claim in order to “remind [them] that in the case of victims of persecution, expulsion may be synonymous with death”¹⁶² (Débouté 2007).

9.7.2 Deportation

We have seen how the harsh Pasqua–Debré laws in the 1980s and 1990s enabled deportations under armed escort and how even regularisation measures were used to effect more deportations (3.19, 3.22, 3.25). In 2006 the government circular of 21 February laid down the rules for arresting people for deportation – at home, in the street, at préfecture enquiry offices, on the premises of “associations”, in hospitals, hostels and CADAs. The circular was opposed by “professional organisations and associations for the defence of human rights and of refugees”¹⁶³ (Castagnos-Sen 2006:95) and Médecins du Monde¹⁶⁴ complained that the procedures undermined medical ethics. What the newspaper *Libération* called “the hunting down”¹⁶⁵ of sans-papiers for deportation continued, however, often with damaging consequences for the hunted: in the space of a month and a half in 2007, four sans-papiers jumped from windows in order to escape their pursuers (Désespoir 2007):

On 4 August, Sébastien, a young Congolese man, threw himself from the second floor of the premises of the border police (PAF) in Lyons. On 9 August, at Amiens, it was Ivan, aged 12, who fell from the fourth floor trying to flee from the police with his father. Last week ... a young Tunisian, taken by the police to his sister-in-

¹⁶¹ ... oscille entre la hantise de l'avion et l'espoir d'être libéré.

¹⁶² ... rappeler que, dans le cas de personnes victimes de persécutions, l'expulsion peut être synonyme de mort.

¹⁶³ ... plusieurs organisations professionnelles et associations de défense des droits de l'homme et des réfugiés

¹⁶⁴ Médecins du Monde is an NGO which aims to provide medical care to vulnerable groups throughout the world. It undertakes medical and relief projects and campaigns against human rights abuse and other injustices. Its volunteers are medical and paramedical professionals.

¹⁶⁵ La traque.

law's home in Rousillon (Isère), threw himself from the window of the fourth floor.¹⁶⁶

In the case of Sébastien, the doctors suspected a suicide attempt. In the case of 12-year-old Ivan, a police enquiry was “discreetly closed”¹⁶⁷ a month later, with a statement that “no criminal offence was found [against] the police officers”.¹⁶⁸ The fourth incident involved a Chinese woman who was seriously injured when she threw herself from a first-floor apartment in Paris.

In 2006 Jeff Babatundé Shittu, a 19-year-old lycée student from Nigeria, was deported.¹⁶⁹ His application had finally been rejected after the Nigerian ambassador in Paris had reported that there was no substance to his case. The dangers of believing the claims of diplomatic or government sources in countries of persecution were discussed earlier (6.5.5). Shittu was nevertheless deported – but not without resisting. He had been supported throughout the asylum process by several “associations”, as well as individuals including his teachers and Assemblée Nationale deputy Patrick Bloche. On the day of his deportation, several passengers on the plane protested at his treatment and two were arrested. Eventually, however, the plane took off for Lagos with Shittu on board.

9.7.3 Children

Though children are protected from deportation in French law (*CESEDA* 2008, Arts L.511-4, L.521-4) and from unlawful or arbitrary detention under the UN Convention on the Rights of the Child (*Rights of the Child* 1990, Art. 37(b)), children in France are nonetheless detained and deported. This is usually defended in terms of the “best interest of the children [being] the non-separation of families”¹⁷⁰ (Castagnos-Sen 2006:196), and the whole family is normally deported and detained together. As a result of pressure by the Réseau Éducation sans Frontières (RESF),¹⁷¹ the government issued a circular, slightly

¹⁶⁶ Le 4 août, Sébastien, un jeune Congolais s'est jeté du deuxième étage des locaux de la police de l'air et des frontières (PAF) à Lyon. Le 9 août, c'est Ivan, 12 ans, qui est tombé du quatrième étage en voulant fuir la police avec son père, à Amiens. La semaine dernière ... un jeune Tunisien, raccompagné chez sa belle-soeur par les gendarmes, s'est jeté par la fenêtre du quatrième étage, à Roussillon (Isère).

¹⁶⁷ ... discrètement close ... (ibid.)

¹⁶⁸ ... aucune faute pénale n'a été relevée à l'encontre des policiers ... (ibid.)

¹⁶⁹ “Polémique autour de la reconduite à la frontière d'un lycéen nigérien”, *Le Monde*, 30 June 2006.

¹⁷⁰ ... l'intérêt supérieur de l'enfant étant apprécié dans le sens de la non séparation des familles.

¹⁷¹ RESF is an umbrella organisation, with more than 120 affiliated asylum support “associations”, which campaigns in particular for children of school age.

modifying its stance, advising préfetures “not to implement, before the end of the school year, [expulsions] of families whose child has been in school for several months”¹⁷² (cited *ibid.*). Even this advice, however, is “largely ignored”¹⁷³ by the préfetures, and children continue to be detained and deported. Gil-Robles judged that “[t]he legal and human problems posed by the presence of children in detention seem ... totally underestimated by the French authorities”¹⁷⁴ (2006:70).

9.8 Conclusion

I have shown how the restrictive agenda in France towards asylum seekers operates from the zones d’attente, where people have limited rights and where they may be subjected to deportation without proper consideration of their claims; to the préfeture, where their claim may again be judged as “manifestly unfounded”; and on to the OFPRA procedure, where the asylum interview is not mandatory, there is no state-funded legal advice and no right to any legal representation at interview, and where already short timescales and deadlines become even shorter in the *procédure prioritaire*. At the appeal stage, limited appeal rights, short timescales and the procedures of the CRR reduce the chances of a fair hearing and there are also concerns about the CRR’s independence from OFPRA and from government. At the point of final refusal, asylum seekers are arrested detained and deported with little chance of appeal, while poor conditions and abuse in detention centres and the fear of return lead to protest movements and resistance to deportation, often taking the form of self-harm or attempted suicide.

I have argued that France’s restrictive agenda means that the asylum process has become an obstacle race intended to deter and discourage applicants, with asylum seekers seen as a problem of immigration control rather than as victims in need of protection. Even the welcome widely given to the recently granted right to have a lawyer in court at the appeals stage must be tempered by the fact that this concession was extracted only with difficulty from an unwilling government (9.6.2) reluctant to accept its responsibilities of protection under the Refugee Convention.

In the next chapter I will review the findings of this study and suggest a way forward.

¹⁷² ... à ne pas mettre à exécution avant la fin de l’année scolaire l’éloignement de familles dont un enfant est scolarisé depuis plusieurs mois.

¹⁷³ ... largement ignorée ...

¹⁷⁴ Les problèmes juridiques et humains que pose la présence d’enfants en rétention semblent ... totalement sous-évalués par les autorités françaises.

CHAPTER 10

CONCLUSIONS

10.1 Introduction

I began by suggesting (Introduction, p.1) that the increasingly restrictive asylum policies of the UK and France, which reflected the trend across the EU, have undermined the right to asylum in those two states. In this chapter, I review the findings of the preceding chapters to show the contradictions between the duty to protect under the Refugee Convention taken on by the two states studied here and the laws, procedures and practices of both states as they deal with asylum seekers at their borders. I then make a number of recommendations for change both in terms of the asylum systems in both countries and in terms of wider issues beyond national borders.

10.2 A duty to protect, a procedure to dissuade

Although both the UK and France have signed and ratified the Refugee Convention and the European Convention on Human Rights (ECHR), their response to asylum seekers at their borders suggests a reluctance to fulfil their obligations as signatories. The response of both states to the flow of refugees over the last two decades has been increasingly restrictive and we have seen this both in the legislation passed (**2.17; 3.26; 4.3.1; 4.5**), in the successive reforms undertaken (**3.26; 4.4.1; 4.5**) and in the asylum procedures and practices adopted (analysed and discussed in chapters 5-8 (UK) and chapter 9 (France)). What has emerged is the treatment of asylum seekers as part of a problem of immigration control rather than as people needing protection under international law. This is also reflected in the language used by politicians in their public discourse (*4.3.1; 4.5*).

Procedures and practices in both countries undermine the right to asylum. At the earliest stage in the UK, screening procedures are liable to be lengthy, stressful (*5.2.1*) and sometimes abusive (*5.2.2*). No-choice accommodation and low levels of financial support are organised specifically to deter applications (*5.3.1*) and accommodation and cash support may be denied if an application is not made shortly after arrival (*5.3.2*), a demand made

more difficult by the lack of provision of Asylum Screening Units (5.3.3). The increasing use of detained-fast-track procedures, where negative assumptions about claims are made without full examination, facilitates not protection but removal (5.3.5). Timescales and deadlines, particularly under fast-track procedures and the New Asylum Model (NAM), leave applicants little time to find legal advice and prepare their case (5.3.5). Moreover, legal aid has been restricted in a way that has forced many solicitors out of immigration and asylum (6.4.1).

In France at the earliest stage, applicants at the port of entry are placed in a zone d'attente, a holding area not considered to be part of French territory. They have limited rights and their case may be declared "manifestly unfounded" without proper consideration (9.3.2ff) and they may be quickly deported to their country of origin. On application at the préfecture, préfectures may demand documentation beyond the requirements of the law and refuse to accept claims without it (9.4.2), applicants may be given sparse information (9.4.1), will have to work to short deadlines and meet stringent requirements to complete their dossiers (9.5.1). If they do not meet these requirements the application will not be accepted and any further application will be placed in the procédure prioritaire. Applicants are increasingly placed in this procedure, where timescales are shorter, applicants have no entitlement to accommodation or benefit, are less likely to get an asylum interview, are less likely to receive protection and can be deported before their appeal is heard (9.4.3; 9.5.3). In terms of accommodation and support as deterrent factors, the choice is between, on the one hand, insecure accommodation and no state benefits (9.4.4) and, on the other, accommodation in CADAs, through which the state increasingly controls the facilities available to applicants and more easily manages their removal (9.4.4.1).

At the interview and decision-making stage in the UK, the right to asylum continues to be undermined. Legal aid is not available for solicitors to attend the main asylum interview, despite the complexity of the law (6.4). There is frequent failure to provide female interviewers or interpreters for women applicants, contrary to UNHCR guidelines (6.5.2). Country reports are compiled, interpreted and used in ways detrimental to applicants' interests (6.5.3ff). The legal requirement to search for "credibility" issues has encouraged an "agenda of disbelief" which sends caseworkers searching for "contradictions" and "discrepancies" in asylum-seeker accounts as a basis for refusal (6.5.8ff). Moreover, under pressure from the restrictive agenda caseworkers may misinterpret or misrepresent

applicants' written statements and their answers at interview and use the result to justify refusal of claims (6.6.6).

In France at this stage, the right to asylum is undermined by short timescales and deadlines (9.5.1), the denial of state-funded legal advice, the non-mandatory status of the OFPRA interview and the denial of any legal representation at all at that interview. Moreover, since applicants have to pay the travel costs to the interview, many cannot afford to keep the appointment and are thus deprived of a hearing (9.5.2.1). OFPRA also has the power to declare cases "manifestly unfounded", often making no attempt to substantiate its charges (9.5.2.2).

Not surprisingly, a substantial proportion of initial decisions in both countries are overturned on appeal (7.2.1; 9.6.3) and appeal processes therefore play an important role for many asylum seekers in their search for protection. The restrictive agenda, however, impacts on these processes too. In the UK questions arise about whether the Asylum and Immigration Tribunal (AIT) can give adequate and consistent redress against the bad practices and poor decision-making of the earlier stages, as well as questions about its independence. The government has restricted rights of appeal by means of legislation (7.2.1) and a merits test for legal aid (7.2.2), both of which undermine the right to asylum. Moreover, the fast-track process works to tighter deadlines and reduces rights of appeal, and under NAM the timescales for appeals are shorter than before (7.2.3). Serious questions also arise about decision-making by the AIT: there are concerns about its role in shaping government policy through country-guidance cases, the way it analyses and references its material and uses its sources (7.3).

In France the short timescales for applications are particularly problematic and lead to difficulties in preparing for appeals (9.6.1) and there are questions about the independence of the Appeals Commission (CRR) (4.6.2.2). The CRR, moreover, decides 28% of its cases by order (ordonnance), thus denying applicants a hearing (9.6.4). In both countries limited appeal rights reduce the chances of a fair hearing and undermine the right to asylum.

The final stage of the asylum process is entirely about immigration control. The authorities presume that claimants have been proved guilty (by the decision made against them) and they must therefore be removed (4.3.2). So in the UK it is made difficult to get bail or legal representation (8.3), families and children are detained (8.4.4) together with victims of torture (8.4.1) and an armoury of legal and administrative devices is employed to persuade them, and finally force them, to leave (8.7-8.9). Fear of return, poor conditions

and abuse in detention centres (8.6) lead to protests and self-harm (8.6.1; 8.11). In France the restrictive agenda means that targets are set for deportations (9.7.1), people are unceremoniously expelled from CADAs (9.4.4.1) or are arrested in the street (9.7.1). Living conditions in detention centres (CRAs), the very fact of detention when no crime has been committed and the fear of return engender protest movements and resistance to deportation (9.7.1.2; 9.7.2).

10.3 Determined to travel in the wrong direction

Governments claim that the restrictive laws, procedures and regulations are necessary to deter unfounded applicants (4.3.1; 4.5; 5.3.1; 7.2) and UK governments in particular claim that they have succeeded in reducing numbers by these means (4.3.1).

It is certainly true that numbers have fallen in recent years. Claims in the EU fell by 19% in 2004 compared with 2003, according to UNHCR, and claims in the top 50 industrialised countries fell by 26% (cited BBC News 2005). Indeed, after the high of 655,130 applications to the top 50 in 2001, there was a steady fall to 396,380 in 2004. In 2006 UNHCR used a measure which estimates the capacity of a country to absorb newcomers and showed that “the UK was the 18th most popular destination out of 50 industrialised nations with 0.5 asylum applications per 1,000 people, compared with 0.8 in France ...” (cited BBC News 2006). The head of UNHCR’s Europe bureau, Raymond Hall, judged that “[i]n most industrialised countries it should simply not be possible to claim there is a huge asylum crisis any more” (ibid.). This success in reducing numbers, however, may not be anything to boast about: UN High Commissioner for Refugees António Guterres, surveying further falls in 2005, challenged the industrialised countries to “ask themselves whether by imposing ever tighter restrictions on asylum seekers they are not closing their doors to men, women and children fleeing persecution” (ibid.). In relation to the UK, this point was reiterated in 2008 by Donna Covey, chief executive of the Refugee Council. “Yet again”, she wrote, “the government takes pride in a fall in people seeking asylum” (*Response to Statistics* 2008). Yet this “should only be celebrated if the world has become a safer place”. However, “with wars raging around the world and serious human rights abuses continuing in places like Zimbabwe, Darfur and Burma this is patently not the case” (ibid.).

This suggests a need for urgent action: first, in the words of High Commissioner Guterres, the industrialised states should “devote more attention to improving the quality of

their asylum systems, from the point of view of protecting refugees, rather than cutting numbers” (BBC News 2006) and, secondly, the causes of flight in the countries of origin need to be addressed.

In fact UNHCR, the Refugee Council and Forum Réfugiés in France have long argued that such imperatives, rather than restrictions, should inform asylum policy. States, however, have not responded. In 2001 UK home secretary Jack Straw, in a speech to the Institute for Public Policy Research (IPPR), set the tone for asylum policy in the EU for the first decade of the twenty-first century. The speech reflected thinking across the EU – but pointed in the opposite direction to that suggested by António Guterres. Straw claimed his objective was to make the Refugee Convention “work as it was intended – to relieve the suffering of genuine refugees” (Straw 2001, para. 7). But if that was the case his words quickly disappointed. He identified three aims for the “international community”, the first two of which seem, at first sight, consistent with the stated objective. The first two aims were (*ibid.*, paras 28-29):

(1) to “make conditions in the regions concerned better”;

(2) to “make it easier for genuine refugees to access the protection regimes of Europe and other Western States, for example by making their journeys less hazardous”.

On a preliminary reading, Straw’s first aim might be to address the causes of flight and find ways to dissuade regimes from persecuting, and even waging war on, their own citizens. This was not the case. His aim was simply to find ways of keeping people in neighbouring countries and preventing them travelling further: “Action in the region of origin will reduce the pressure on refugees to travel further afield in search of protection” (*ibid.*, para. 38). It would mean funding UNHCR refugee camps in regions of origin and giving priority to protection in those regions (*ibid.*, para. 32), thus keeping most refugees out of the EU.

Yet it is not unreasonable to ask states to address the causes of flight when those states play a role in their creation. We saw how the economic policies of Western states and institutions have affected the ability of many Third World states to provide subsistence for their populations, and how this leads to poverty, protest, repression and an increase in the flow of refugees (1.4). Western arms sales are another important factor in creating the

refugees who turn up on the borders of Western states. Madgiguène Cissé, a spokesperson for French *sans-papiers*, told a 1997 conference in France (cited Hayter 2000:170-1):

They tell you about the debt we must pay back, they tell you about public assistance for the development, but what they don't talk about is that a large proportion of this public assistance serves to arm the dictators. They say, "We gave you *x* billion in aid", without mentioning that those billions were used to arm dictators such as Mobutu [of Zaire] ... Whenever there are public disturbances, when the people are in the street, the French army is there to restore order. There are some very recent examples of this: Zaire, and Bangui where the French army took the liberty of conducting reprisals.

In 2003 and 2004 Hawk jets and Scorpion tanks, supplied by the UK, were used for internal repression in Indonesia (Norton-Taylor 2003; Challenge 2004). Norton-Taylor also reported (2003) that "exports approved for Colombia included ... technology for the production of toxins ... components for heavy machine guns, combat aircraft, combat helicopters, and small calibre artillery". "All over the world", writes Hayter, "refugees flee wars, repression and torture which are made possible with weapons and equipment manufactured and exported by the West" (2000:171). So the West needs to address the reasons for flight. It is beyond the scope of this study to give a detailed analysis of how this may be done, but the issues involved should include, first, the ending of arms sales to regimes which abuse human rights, oppress their own populations or engage in acts of aggression against neighbouring states. Secondly, it should include encouraging what the Refugee Council called "joined-up policies of conflict prevention and [economic] development" (*Vision* 2004:19) and, in the case of the latter, debt should be cancelled and sustainable development devised and promoted to the advantage of those countries. In the context of these two aims, respect for human rights can be promoted.

Straw's second aim, too, raises hopes on first reading, since victims of persecution undoubtedly need easier access to protection. But, for Straw, making it easier to access protection did not mean easing restrictions. In particular it did not mean abolishing visa requirements for people from refugee-producing countries or abolishing the penalties on carriers who transport people with false travel documents (1.8.2; 2.17). He claimed that such abolition would mean refugee movements being "determined ... principally by

racketeers who control the trafficking routes” (ibid., para. 40). Most NGOs argue, on the contrary, that the traffickers’ trade flourishes precisely because of the visa requirements and penalties. Nevertheless, Straw rejected abolition and instead supported an idea, already under discussion in the EU, which would keep numbers to a minimum. If implemented, “an agreed number of refugees – and possibly others in need of protection – would be identified in their own regions and brought to the EU for resettlement” (ibid., para. 43).

Objections were quickly raised after the speech and Human Rights Watch feared that the plan “to set quotas of refugees that European countries would accept from specific trouble spots, while insisting that the rest find protection in the region from which they come”, would “seriously compromise the security of refugees”, many of whom “are simply not able to find safety in neighbouring countries in their region of origin” (HRW 2001). Indeed, such a scheme would exclude participants in this study who fled when they had to, often precipitately, most without choice or knowledge of their destination.

Such concerns were proved justified when the Gateway Programme, based on these ideas, was introduced in the UK in 2003. The criteria for inclusion in the programme were strict and only 1% of the refugee population in the refugee camps concerned were selected (*Gateway Presentation* 2006). In March/April 2004, 69 people were “resettled” in Sheffield; in November, 81 people went to Bolton; in 2005, 51 refugees were sent to Sheffield (*Protection Programme* 2005), 84 to Bury and Bolton combined and 115 to Hull and Rochdale (*Gateway Presentation* 2006). The numbers were low, as Human Rights Watch had feared. Fortunately there are still routes to protection outside such schemes. People who use them, however, have to negotiate the system described in this study, a system informed by the restrictive agenda which continued in the years that followed Straw’s speech. Neither Straw nor his successors, nor his counterparts in France, have shown any sign of initiating reforms which would truly “make conditions in the regions of origin better” or “make it easier for genuine refugees to access the protection regimes of Europe”. Instead they have continued to operate the restrictive agenda, take pride in reducing numbers, when there has been no corresponding reduction in persecution, and see asylum seekers as a challenge to immigration controls.

10.4 No justification

But the Refugee Convention is about the obligation to protect, not about immigration control, which should not be a consideration when dealing with asylum seekers. They

mostly come from countries known for human rights abuses. The only safe course is to accept their asylum claims unless there is clear and overwhelming evidence to the contrary: the burden of proof should be abandoned in favour of the benefit of the doubt. Unfortunately, this suggestion raises the spectre of the Third World poor migrating in uncontrollable numbers to the rich countries, a fear which prompted French prime minister Michel Rocard to say in 1990: “France cannot welcome all the poverty of the world ...”¹ (cited Taïeb 1998:75). This fear is one source of the idea that most asylum seekers are economic migrants pretending to be refugees: surely Western countries must protect themselves from such people? Yet it is not the poor who make up the majority of migrants. Harris argues that international migration requires “access to money well beyond the means of the poor” (2002:55). “The poorest countries do not produce emigrants”, he writes (*ibid.*), “and of those countries which do it is not the poor ... who emigrate”:

Jullundur in the Punjab has produced a large number of emigrants, yet it is one of the richer districts of a relatively rich province. The people who leave are the better educated with family incomes that are around or above the average, not people from India’s vast number of poor, who are concentrated in other provinces – eastern Uttar Pradesh, Bihar and Orissa.

In the case of refugees, they move because they see “a threat to life and liberty so great it makes the immense dangers and costs of flight acceptable” (*ibid.*). But in their case, too, the poor are not the first to move. S6 was accused of being an “economic migrant” (5.2.2) but, he told me, the reason for his hazardous journey on foot and by lorry was not

for money, for work. I was computer engineer [in Iran] and I had computer shop. Every month I [had my] salary – it’s about 600 dollars – and you can live just in bad situation in Iran, 300 dollars, you know. Every month I [get] 600, or more [than] that. But I leave Iran just for save my life.²

FS3 had property, his own business, and did not want to leave, but feared for his safety (6.6.4).

¹ La France ne peut pas accueillir toute la misère du monde ...

² Research interview, 23 August 2006.

It seems unlikely that easing restrictions would provoke mass migration. Hayter notes (2000:153) that when there have been no immigration controls (from the Commonwealth to Britain in the 1950s, from Puerto Rico and Cuba to the United States and from French overseas departments to France),

migration has been large but only a small proportion of the population of both receiving and most sending countries. Between 1950 and 1980 ... 0.6 of the population of the Caribbean emigrated per year, taking advantage of the absence of restrictions in former colonial powers and the United States.

When the UK handed Hong Kong back to China in 1997, it was very reluctant to offer visas to its former citizens, since it feared a mass exit. In the end 20,000 were made available but only 10,000 were taken up (*ibid.*).

If Raymond Hall, head of UNHCR's Europe bureau, is right when he says that "[i]n most industrialised countries it should simply not be possible to claim there is a huge asylum crisis any more" (cited BBC News 2006), then in the UK and France there is no justification for the restrictive agenda imposed on asylum seekers by these two signatory states to the Refugee Convention: not for visa restrictions and carrier sanctions or airline liaison officers abroad; not for poor support packages, reductions in legal aid or reduced rights of appeal; not for dawn raids, detention and enforced deportation. There is certainly no justification for the bad practices examined, for example, in sections 6.2 and 6.5-6.6 of this study. In their place a system is needed which, instead of presuming the guilt of asylum seekers, gives them a fair hearing, the benefit of any doubt, guaranteeing an interviewing and decision-making process which does not set "credibility" and other traps for applicants, and ensuring a full range of rights to legal representation and appeals.

10.5 Racism again

The language used by governments to justify their policies is racist language. Indeed, politicians both in government and in opposition have at various times characterised most asylum seekers as "bogus" or "faux" (4.3.1; 4.5) and claimed that they are economic migrants not in need of protection. The discourse that developed was that of a revived racism, originally rooted in the colonial histories of both countries (chapters 2 and 3), and now adapted to the new situation (4.3.1; 4.5). On attitudes to immigration in general,

Yasmin Alibhai-Brown wrote: “The Poles ... have become the new blacks” (Alibhai-Brown 2007). The Poles, of course, come to the UK and France by right in the expanded EU, though they still suffer this racism. But, in similar vein, “Kosovan” has become a term of abuse against asylum seekers in some areas (for example in Hull, where there are few Kosovans and where most asylum seekers are Iraqi Kurds). The term serves a similar purpose to “Paki” – it claims to identify and it insults.

The cost of playing the race card in politics is high: it is costly to society because it is socially divisive but its victims bear most of the cost. In the case of asylum this is seen most starkly at the end of the asylum process. The abuses inherent in dawn raids, detention procedures and enforced deportation (described in chapters 8 and 9) often result in protests, self-harm or suicide. They also result in people being sent back to their deaths (9.7.1.2). Moreover, as the Oakington documentary suggested (8.6), the racism resurrected by the government’s discourse may find particularly virulent expression when hidden from public view in a detention centre.

10.6 Change

There is no sign that governments are changing their stance and there seems no end to the restrictive agenda. On 30 March 2009 the UK Court of Appeal ruled that “failed asylum seekers” were not entitled to free National Health Service treatment in England, overruling an earlier High Court ruling that they were. One exception was allowed: if an asylum seeker cannot return home and cannot pay in advance hospitals must “consider treatment”, but they were “at the mercy of the discretion of the hospital” (*Access Denied* 2009). Lord Justice Ward expressed his views on “failed asylum seekers” clearly: they “should not be here and should never have come in the first place” (*ibid.*). Health Secretary Alan Johnson was “pleased with the Court of Appeal’s judgment that asylum seekers cannot acquire ‘ordinary resident’ status” which would entitle them to treatment and a range of other services (*ibid.*).

If there is no sign of change on the part of governments, there is no sign either that asylum seekers will give up their demands for protection. Asylum seekers often express the view that, at an individual level, their persistence and continued presence can change people’s perceptions of them. CB1 said that when he and others first arrived in Hull, “there were always fights – people would beat us up and we were blamed, and then banned from

pubs and clubs.”³ But, he said, “we didn’t go away, we stayed here, and now things are better.” S5 explained how this change starts. People were often hostile at first, but

... we are mixed [into society] now. We are making friendly, we learn English. We know how we started [to be] friendly with the English people because we learn language. We work. We was explain why we coming here: “We no coming here just for work. We no coming here just for going out with the English woman. We having a problem [in our country].”

However, if governments are to change their policies and practices, they have to be challenged collectively and politically, and hope may lie in the fact that campaigns and movements have developed to do just this. Just as migrants increasingly found a voice and fought for their rights in the UK and France in previous decades (2.15f; 3.18ff), so recent asylum seekers have done the same. The *sans-papiers* movement in France has organised protests against deportation at airports and even on planes and there are ongoing campaigns by organisations like ANAFÉ and Cimade. In the UK a range of organisations like the Unity Centre in Glasgow and the 167 Centre in Hull, as well as national organisations, give support to campaigns and protests, provide advice and other support to asylum seekers challenging refusal and deportation, produce reports and lobby governments. It may be that, just as the UK’s “sus” laws were repealed in 1981 due to the resistance of its victims (2.15), the restrictive agenda’s laws and practices will be removed by the concerted action of asylum seekers and their supporters and the involvement of concerned NGOs. If this happens, the EU states, by sharing the responsibility – not the “burden” – of refugee protection, will be able to uphold the right to asylum and fulfil their obligations under the Refugee Convention.

10.7 Conclusion: key findings and recommendations

10.7.1 Key findings

I have argued that, although both states studied in this research are signatories to the 1951 Refugee Convention, their increasingly restrictive asylum policies (expressed in laws, procedures and practices) work against their duty under the Convention to protect victims

³ Research interview, 8 November 2006.

of persecution and they thus undermine the right to asylum. I have argued that asylum seekers in the UK and France are treated as a problem of immigration control rather than as people needing protection. As a result, the asylum systems in both states are characterised by

- measures to prevent refugees from reaching EU borders in the first place, including visa restrictions, carrier sanctions and airline liaison officers abroad (1.8.2-1.8.3)
- lengthy and stressful screening processes on arrival, with limited rights of appeal (5.2; 9.2-9.3)
- short timescales for making applications, with no time to recover from the experience of persecution and flight (5.3.2; 6.4.2; 9.5.1; 9.5.3)
- poor accommodation and support packages (5.3; 9.4.4-9.4.4.2)
- limitations on legal aid and representation (6.4; 7.2.2; 9.5.2.3)
- the raising of spurious credibility issues in order to cast doubt on applicants' accounts of their experiences (6.5.8-6.5.13; 9.3.2-9.3.4; 9.4.3.3; 9.5.2.2)
- increasing use of fast-track processes, making a fair and considered hearing less likely (6.4.2; 7.2.3; 9.4.3; 9.5.1)
- restrictive and complex regulations which reduce applicants' rights to protection (4.4.1; 4.5)
- limited rights of appeal (7.2; 9.6)
- increasing use of detention to facilitate deportation at the end of the process, including detention of torture victims and children (8.4; 9.7)

These elements in the asylum systems are accompanied by a political discourse which creates a culture of disbelief towards asylum seekers in both countries.

10.7.2 Recommendations

In terms of the asylum systems examined here:

1. In both countries the initial screening interview should be as brief as possible (the whole process taking no more than 30 minutes), its purpose to record the identity of applicants and provide access to the asylum process. There should be no examination of the details of the claim, no assessment attempted and no question of

deportation at this stage. In France, zones d'attente as de facto places of detention should be abolished. In the UK, section 55 of the Nationality, Immigration and Asylum Act 2002, which allows refusal of support if the asylum seeker does not apply within three days of arrival, should be repealed. Increase the number of asylum screening units across the UK and provide provincial OFPRA offices across France.

2. In the UK, end dispersal and accommodation on a no-choice basis and give applicants an opportunity to choose their destination where possible and, in both countries, using reliable and well-regulated social partners, provide good-standard accommodation suitable to the asylum seekers' particular needs.
3. Provide a financial support package at full income-support levels, together with rights to the premium payments (for heating, disability, etc.) available to income-support claimants.
4. Give all asylum seekers the right to work.
5. Provide the right to free legal advice and representation at all stages of the process (including at the asylum interview), with no time restrictions and no merits test. In France, introduce the right to legal representation at the asylum interview.
6. In the UK, repeal section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004, which obliges caseworkers to raise "credibility" issues. I have argued that this makes refusal an objective of the asylum process (6.6.6). The repeal of section 8 will be an essential first step towards following UNHCR guidelines, which make the asylum interview not a search for contradictions but part of a shared responsibility between caseworker and applicant to establish the facts of a claim. It will also be a first step towards abolishing all the bad practice described in sections **6.5-6.6**.
7. In the UK, improve the way that country reports are sourced, compiled and presented, ensuring that they are a fair and balanced representation of current conditions in the country being researched. The use of unidentified sources should end. Country reports should be used as part of the shared responsibility to establish facts, as described above.
8. In both countries, timescales and deadlines should be lengthened to provide adequate recovery and preparation time before interview.

9. In both countries, fast-track procedures should be abolished in order to ensure a full and fair hearing for all applicants.
10. In France, the OFPRA interview should be mandatory (with travel costs paid) and “manifestly unfounded” decisions without interview or justification of the denial of an interview should be prohibited.
11. There should be full rights of appeal for all asylum seekers up to the highest court in each country, with free legal representation at all stages. Timescales should be lengthened to enable full preparation. In France the composition of the Appeals Commission for Refugees should be revised to make it more clearly independent both of OFPRA and of government.
12. Detention at the end of the process should be deemed unnecessary except in the most extreme circumstances. It should be allowed only after an application before three Court of Appeal judges (UK) or three judicial judges (France), who should be unanimous in granting permission, with automatic rights of appeal up to the highest court in each country. Permission to detain should never be granted in the case of children or vulnerable people.

In terms of wider issues beyond national borders, these recommendations would be facilitated by

- a concerted approach on the part of states to end arms sales to regimes which abuse human rights or show aggression towards neighbouring states, together with the adoption of conflict-prevention strategies
- international agreement to cancel the debt of the less-developed countries and a cooperative agreement with those countries to promote policies of sustainable development, linked with the promotion of human rights.

APPENDIX I: METHODOLOGY

Approach to the research

Aware that we all bring social and political perspectives to our work, and that “interpretation-free, theory-neutral facts do not, in principle, exist” (Alvesson & Sköldberg 2000:1), I am predominantly what Wolcott calls “reform- or problem-based”, judging that “things are not right as they are or are not as good as they might be” (1992:15) and having as an aim the promotion of change if this turns out to be the case. I do not think that this necessarily interferes with objectivity. If research is done, in the words of Miles and Huberman (1994:294), “carefully, thoughtfully and correctly in terms of some reasonable set of standards”, there is no reason why objectivity should be compromised.

With this in mind I note Solórzano and Yosso’s view of educational institutions, which comes from a critical race theory perspective, and I apply it to the state and the EU: “... educational institutions operate in contradictory ways, with their potential to oppress and marginalize coexisting with their potential to emancipate and empower” (2002:26). The EU states’ “potential to oppress and marginalize” can arguably be seen in their restrictive asylum measures (1.7, 1.8) and in the methods they use to enforce them. Part of this is an apparent determination to recast asylum seekers’ stories to meet the perceived interests of the state and I seek to retell those stories from asylum-seeker perspectives. I take a view of human rights which insists on the primary importance of protection for refugees – overriding the demands of economic interest, political and electoral calculations and the ever-shifting demands of security concerns.

Asylum-seeker interviews

Between July 2006 and May 2007 I interviewed 41 asylum seekers and refugees in the UK (Appendix II) in order to get first-hand accounts of the system from asylum-seeker perspectives. I make use of the documentation on their cases provided by several of them. I gained access to asylum seekers mainly through “gatekeepers” in local asylum-seeker support organisations, charities, colleges and Hull City Council. I prepared a flyer for potential interviewees explaining my research and why I needed their help, and undertaking to observe anonymity and confidentiality throughout: individual respondents would not be

named; my records would not include their names; the dissertation would not include their names (each individual is identified by a code which tells me who they are and where I interviewed them, and the code is decipherable only by me). I also made clear that their cooperation was voluntary and that each respondent could decline to answer any individual question, end an interview at any point without offence or withdraw cooperation from the entire interview process at any time. I also made it clear that I had no connection with the Home Office. Although most gatekeepers explained the flyer to potential participants in advance, I went through it with each participant before the interview started to ensure that they understood and agreed to participate.

I envisaged potential problems with the gatekeeper strategy in that some might try to influence my choice of participants to suit their own agendas. Indeed, I introduced myself to the ARKH asylum support centre in Hull at a time when section 4 of the Immigration and Asylum Act 1999 (see **8.9**) was being stringently applied to asylum seekers who had received their final refusal. This meant that many people had had their employment terminated or their benefit stopped, and were without accommodation. Lynne Coley, who ran the centre, was trying to get public support on this issue and was very keen to introduce me to these particular people. However, in the end, as well as introducing me to people she thought I should interview, she gave me free access to the centre and I was able to meet and interview a wide range of her clients. Elsewhere, I had no sense that gatekeepers wanted to restrict, influence or control my access to their clients. Most were concerned to ensure that people understood the purpose of the research, that everybody had a chance to participate but that nobody felt pressurised to do so.

Hull is where I am based and is a city where asylum seekers have been sent under the government's policy of "dispersal" away from south-east England. Nevertheless, it presented a number of limitations that had to be overcome: all the clients I met at the two centres mentioned above were single male Kurds from Iraq or Iran: no women, married couples or families. Beata Barker (ESOL/Skills for Life curriculum leader at Hull College of Further Education) worked hard to find the right mix from among the students and provided, in addition to two single male Iraqi Kurds, one Iranian couple and one Afghan man. She also introduced me to a single Pakistani woman, who decided in the end not to participate. Steve Ibbetson, manager of the Hull City Council Asylum Support Service, and his staff provided one Chinese woman and a Palestinian man. They arranged an interview with a second woman, who did not turn up for the appointment and could not be contacted

later. It was clear that I would need a wider catchment area, not only in order to get a sense of what was happening in the UK as a whole but also to achieve some kind of balance in terms of individuals and their circumstances. London seemed a good choice, with its wide variety of countries of origin among asylum seekers, reflecting the well-established ethnic mix in the capital city. I had taught English at the College of North East London from 2002 to 2003, had good contacts there, and the college was able to provide a range of potential participants of different origins, male and female, married and single, from asylum seekers awaiting deportation to recognised refugees. Glasgow, where many asylum seekers had been “dispersed”, was a city I knew well and where I had previous contact with the Scottish Refugee Council. This time my main contacts were the charity Positive Action in Housing (PAIH) and the Unity support centre, which is run mainly by volunteers.

Interviews were semi-structured. I asked a limited number of main questions (Appendix III), allowing flexibility for people to answer in their own way, and allowing me the opportunity to seek clarification and elaboration where necessary. I asked each participant’s permission to record the interview on tape or digital recorder, giving each an opportunity to refuse. All of them agreed to be recorded. At the early interviews I used a portable cassette recorder, but it turned out to be mechanically unreliable (to the extent that I had to re-interview one participant) and I switched to a digital voice recorder which was not only reliable and clear but enabled me to store the recordings on my computer. There were few problems related to language. Students in the colleges were mostly studying English at ESOL Entry level 3 and above. In three or four cases, at these and other locations, a fellow asylum seeker with better English was able to help when a problem arose during an interview.

In deciding to cooperate with this research, participants were expressing their willingness to assist in its aims. There were pitfalls to avoid, however. There was a danger that participants would think that, in return for their cooperation, I might be able to solve problems where others (solicitors, local council staff, teachers, doctors, advisers, volunteers) had failed, or that I might “put in a word” for them in the right quarters at some future stage. I made it as clear as possible that this was not the case, as did the relevant “gatekeepers” in the various centres and colleges. Conversely, some potential participants expressed scepticism of the research process. One participant (S5) agreed to participate, but did so with an undercurrent of scepticism. Too polite to accuse me personally, he nevertheless expressed his opinion that nobody believed asylum seekers or wanted to help

them: not his solicitor (“absolute rubbish. Doesn’t want to [help] asylum seekers”), not the ARKH support centre in Hull (“[This] place no working for asylum seekers. They going to say, ‘Yeah, yeah, yeah, I work for you’, but it’s a lie”) and not the 167 support centre (“We no believe 167 ... don’t believe”). Indeed, “everyone getting money from asylum seeker, but nobody helps.”¹ Another (CC3) offered documentation on his case but withdrew the offer the next day, with profuse apologies, because, he said, his wife would not give her consent. Over time, however, a level of understanding and trust was established and compromises were reached: most sceptics gave me the benefit of the doubt and anyone looking for a problem-solver settled for my growing ability to understand the jargon of official letters. Another (CC9) expressed no doubts at the time of the interview and we exchanged email addresses so that he could update me on his case – but he subsequently avoided further contact by claiming that he had never met me, had not done an interview with me and that I must have a wrong email address. He subsequently phoned me to reiterate the point and I recognised his voice. However, I accepted what he said, did not try to contact him again and, although I knew his English teacher, decided not to discuss the matter with her.

Transcription and analysis

Once I had transcribed the asylum-seeker interviews, I read and re-read the transcriptions and set about identifying the themes that seemed to be emerging from them. I prepared a chart in order to show the experiences of the individual participants, starting with persecution and flight, what happened at each stage of the asylum process (arrival and screening, “dispersal” to different parts of the UK, the main interview and initial decision, the appeals process and the final decision on the claim) and their present situation. In terms of the treatment of individuals at each stage, I looked for, and highlighted, good practice (e.g. providing female interviewers for women, allowing applicants to give full answers, allowing breaks during the interview) and bad practice (e.g. allowing only brief “Yes/No” answers, giving no chance to explain inconsistencies, making accusations, aggressive questioning, misrepresentation of answers). I wanted to know how asylum seekers experienced the process so I highlighted, for example, how they described the conduct of the interview (“just like the police”, “aggressive”, “didn’t believe anything”, “seemed to

¹ Research interview, 26 July 2006.

believe me”) and of how they described their feelings at different stages of the process (“stressed”, “ashamed”, “worried”, “confused”, “crying”, “relieved”, “happy”).

I was able to judge the reliability of participants’ accounts in a number of ways. Some examples of bad practice were described by more than one participant, the subsequent individuals being unconnected with the first or with each other. Some were able to provide corroborating evidence in the form of official documentation (transcripts of Home Office asylum interviews, refusal letters giving the reasons for the refusal of protection, tribunal adjudicators’ “determination and reasons”). Moreover, while Home Office Asylum Policy Instructions (APIs) often give advice on good practice (6.5.13) they also give rise to some of the bad practices claimed by participants (6.5.2; 6.5.5; 6.5.11). Asylum seekers’ claims about their countries of origin are often supported by accounts from other sources, like NGOs in the field (6.5.4-6.5.12). Claims of human rights abuses in particular countries, denied by the Home Office, found corroboration from human rights organisations like Amnesty International (6.5.4), as did the existence of political parties (6.5.7; 6.6.3), also denied by the Home Office.

Stakeholders

The UK (interviews conducted May 2006-February 2007 and transcribed)

I interviewed three stakeholders in asylum support groups in order to learn about the asylum system from people who work with it at all stages on behalf of their clients: Gary Pounder and Karwan Baba Ali of the 167 Centre provided insights into the workings of the system and the needs of their clients; Ian Chisholm (PAIH) had specific experience of housing problems and of the practice of “dawn raids” for deportation purposes. I interviewed Pauline Brown (ESOL Guidance Officer at Hull College) who described the difficulties faced by asylum seekers and teachers in language learning and other areas of education. She also gave an account of the dispersal programme in Hull based on her early involvement in its development. Asmerom Woldegebriel (refugee support and development officer at the housing charity Centrepoint in London) explained how unaccompanied children are dealt with in the asylum system, as did Glen Hughes, personal adviser at the multi-agency Young People’s Support Service in Hull. At the Home Office I interviewed Rod McLean, head of the Asylum Policy Unit, to get the official view of aspects of asylum policy. He offered, in his own words, to “talk to you about the New Asylum Model and the

changes that are currently taking place in the asylum process.”² In addition, although he claimed he was “not the best person to speak to about detention and section 9” (on these, see chapter 8), he would, “at least, try to set out what I think is the Home Office position on both issues”.³ Alan Johnson, my local MP, obtained a reply from home secretary Jacqui Smith to my questions on the appeals process, and I interviewed Austin Mitchell, MP for Great Grimsby, on an asylum case in his constituency, and he provided excellent documentation on the case.

France (interviews conducted August 2005-June 2007 and transcribed)

I interviewed three stakeholders in France. A former employee of OFPRA and of UNHCR, Véronique Njo, put me in touch with two stakeholders: François Brun, an activist with the sans-papiers movement, who talked from the point of view of a group which works with and campaigns for asylum seekers; and Philippe Bolmin, a head of department at the Appeals Commission for Refugees (CRR),⁴ who could speak of the system from an official standpoint. In addition to a face-to-face interview and a telephone interview we exchanged emails on a number of legal questions. In Lyons I interviewed Clarisse Brunelle, project leader at Forum Réfugiés, a national non-profit-making organisation which promotes the right to asylum and provides administrative and social support to asylum seekers and refugees. She explained various aspects of the system and the organisation’s concerns about it.

Stakeholders in both countries answered in their own names. Only Rod McLean refused to be recorded, but he allowed me to take contemporaneous notes.

² Email to me, 6 March 2006.

³ Ibid.

⁴ Philippe Bolmin left the CRR in 2008 because he disagreed with the immigration policies of the government under President Sarkozy from 2007 (email to me, 20 April 2008).

APPENDIX II: UK ASYLUM-SEEKER/REFUGEE INTERVIEWEES

(Interviews took place between 24 July 2006 and 22 May 2007)

COI = country of origin; ILR = indefinite leave to remain; LR = leave to remain; DRC = Democratic Republic of the Congo

Codename	Gender (M/F)	Married/single	COI	Occupation in COI	Reasons for leaving	Means of travel	Arrived	Age on arrival	Situation at time of interview
CB1	M	Single	Iraq	Worked in father's restaurant	Political persecution	Lorry, train, boat	2001	20	ILR 2004
CC1	F	Single	Somalia	None	War	Car, plane	1996	21	ILR 2004
CC2	F	Single	Somalia	None	War	Plane	2004	16	ILR 2005
CC3	M	Single	Côte d'Ivoire	Psychiatric nurse	Political persecution	Plane	2000	32	ILR 2007
CC4	F	Single	Côte d'Ivoire	Student nurse	Political persecution	Plane	2005	21	LR 5 yrs 2007
CC6	M	Single	Iran	Revolutionary guard	Political persecution	Lorry	2003	35	Refused 2004, destitute
CC7	F	Single	Benin	No job	Political persecution	Plane	1998	18	ILR 2007
CC8	F	Married	Iraq	Children's nursery worker	Political/ethnic persecution	Lorry, + son, 9 yrs	2002	30	LR 4 yrs
CC9	M	Single	Kosovo	Odd jobs	Political persecution	Lorry	2004	17	Awaiting decision
CC10	M	Married	Kosovo	Teacher	Political persecution	Plane, train	1998	30	ILR 1999
FS1	M	Single	Afghanistan	Head teacher	Political persecution	Train, car, lorry	2001	37	ILR 2005
FS2	M	Single	Iraq	Student	Political/ethnic persecution	Lorry	2002	20	ILR 2006
FS3, FS4	M, F	Married	Iran	Own company	Political persecution	Plane	2000	33, 31	ILR 2006
MS1	M	Married	Lebanon	No job	Ethnic discrimination	Plane	2002	32	Refused, awaiting deportation
MS2	F	Married	China	No job	Unwilling to say	Plane, + daughter, 9 yrs	2003	37	Refused, awaiting deportation
ND1	M	Single	Sudan	Gardener	Political/ethnic persecution	Ship	2006	23	Refused, destitute
OH1	F	Single	Somalia	Student	War	Car, plane, boat, + son, 2 yrs	2002	22	ILR 2004
OH2	F	Married	Kosovo	Student	War	Lorry, + husband, 3 children	1999	28	ILR 2005 (amnesty)
OH3	M	Single	Côte d'Ivoire	Teacher, journalist	Political persecution	Plane	2002	24	Awaiting decision
OH4	F	Single	Turkey	Accountant	Political/ethnic persecution	Plane	1995		ILR 1996 (amnesty)
OH5	F	Single	Côte d'Ivoire	Student	Political persecution	Plane	1994	20	ILR 1998
OH5A	F	Married	Turkey	Shop worker	Political/ethnic persecution	Plane, + son, 4 yrs	1992	22	ILR 1999 (amnesty)
OH7	F	Married	Somalia	Housewife	War	Plane	2004	24	ILR 2005

Codename	Gender (M/F)	Married/single	COI	Occupation in COI	Reasons for leaving	Means of travel	Arrived	Age on arrival	Status at time of interview
OH7A	F	Married	Turkey	Housewife	Political/ethnic persecution	Ship	1998	25	ILR 2005
OH8	F	Single	Turkey	Factory worker	Political/ethnic persecution	Plane	1989	23	ILR 1992
OH9	F	Married	Somalia	Student	War	Boat/plane	2002	30	ILR 2003
OH10	F	Married	Turkey	Fashion designer	Political/ethnic persecution	Lorry	1999	28	ILR 2002 (amnesty)
OH11	F	Married	Iran	Housewife	Political persecution	Plane	1999	22	ILR 2003
OH13	M	Married	Eritrea	Coffee shop owner	Political persecution	Plane	2004	45	Awaiting appeal
OH14	M	Single	Somalia	Student	War	Bus/plane	2004	17	ILR 2004
PB1	M	Married	Iraq	Political party worker	Political/ethnic persecution	Lorry	2000	30	ILR 2002
S1	M	Single	Iraq	Political party worker	Political/ethnic persecution	Lorry	1999	24	ILR 2007
S2	M	Single	Iraq	Shop owner	Political/ethnic persecution	Lorry	2003	23	Refused, destitute
S4	M	Single	Iraq	No job	Political/ethnic persecution	Lorry	2001	19	Awaiting appeal result
S5	M	Single	Iraq	Student	Political/ethnic persecution	Lorry	2000	20	Refused, destitute
S6	M	Married	Iran	Computer engineer	Political/ethnic persecution	Lorry, walking	2005	25	ILR 2007
S7	M	Single	Iraq	School student	Political/ethnic persecution	Lorry	2002	17	Awaiting appeal
TR1	M	Married	Iran	Wholesaler and importer	Political persecution	Lorry, walking	2000	38	Refused 2007, awaiting deportation
TR2	F	Single	Russia	Worked in commerce	To find work	Plane	2004	40	Refused, making fresh claim
TR4	M	Married	Somalia	Farmer	War	Plane	2003	40	Refused, making fresh claim
TR5	F	Married	DRC	Secretary	Political/ethnic persecution	Plane	2001	36	Appeal refused 2006, awaiting deportation

APPENDIX III: QUESTIONS TO ASYLUM SEEKERS/REFUGEES

Main questions

Before coming to the UK

1. Where are you from?
2. What did you do there? (Job? Unemployed? Student?)
3. Why did you decide to leave?
4. When did you leave?
5. Did you travel with your family?
6. Did you want to come to the UK? (No – where was your first choice?)

Journey to the UK

7. How did you travel?
8. Describe the journey. Were you afraid? What were you afraid of most?
9. What other countries did you go through/stop in? How long did you stop there? Where did you stay?
10. What kind of travel documents did you have?

Arrival in the UK

11. Did you apply for asylum on arrival or later?
12. What happened at your first interview (fingerprints, photograph, personal details, asking about why you left your country, asking about travel details, travel documents)?
 - Interpreter?
 - Lawyer?
 - [women] Was the interviewer a woman? Did you want a woman interviewer? Did you ask?
 - What part of your history did they say they didn't believe?
 - How did you feel about what was happening?

- Did you know what was happening to other members of your family? How did you feel about that?

13. Did you have to fill in any forms? What help did you get?

14. What were you told about legal advice (they gave you a list of solicitors, it was up to you to find a solicitor, legal advice was free, you had to pay)?

15. Were you sent to a Reception/Detention Centre? (Yes – see **Detention**)

16. Where did you stay? What kind of accommodation and support did you get?

17. What happened at your main asylum interview (reasons for application, details of your country, how you travelled, how you got/why you didn't have travel documents)?

- Interpreter?
- Lawyer?
- [women] Was the interviewer a woman? Did you want a woman interviewer? Did you ask?
- What part of your history did they say they didn't believe?
- Did you get a chance to say everything you wanted to say? How did you feel?
- How did you feel about what was happening?
- Did you know what was happening to other members of your family? How did you feel about that?

Outcome of asylum claim

18. How long did you have to wait for a decision?

19. [refusal] Did you appeal?

- How long before the hearing?
- Were you satisfied with the legal help you had?
- Interpreters? Did you speak in English?
- Did you understand the court procedures? How did you feel in court?
- How long did you have to wait for a decision?

Making changes

20. For you, which aspects of the asylum process were bad and which were good?
21. What would you change about it if you could?

Present and future

22. What is your job now? Possibilities of further training, computer, English?
23. How do you see your future?

Detention

Arriving in detention

1. Did anyone explain what a detention centre is?
2. Did anyone explain why you were in detention?
3. What was the name of the centre? Did anyone tell you where it was?
4. How long were you there?
5. [family] Were you together? What happened to other members of your family?
6. Were you given information about legal advice?
7. Were you told about bail?
8. Was your detention reviewed while you were there?

Conditions and facilities

9. What were the conditions like?
 - How many people to a room? Who?
 - Furniture?
 - Were you locked in your room? – all the time, some of the time; could you lock it yourself?
 - Washing and toilet facilities?
 - Recreation? Education?
 - Children's education?
10. Were the staff friendly, helpful, hostile, indifferent?
11. Could you make/receive telephone calls?
12. Were you allowed visitors?

Health

13. What happened when you were ill? -- medical facilities?
14. Did you get depressed (because of what happened to you in your country, because of what happened to you here)?
15. Could you speak to a counsellor or social worker?
16. Did you ask for that kind of help?

Interviews

17. Were you interviewed about your application while you were there?
18. What happened at your asylum interview? (See **Main questions**, question 17.)

Information and advice

19. Did you have to fill in any forms? Help?
20. How often were you updated on the progress of your application (regularly, only when you asked)? Who gave you that information (solicitor, governor, member of staff)?

Deportation

21. Did the authorities try to deport you while you were there?
22. What happened? Why were you not deported in the end?

Release

23. How were you informed of your release?
24. How did you get somewhere to live after release? Did anyone explain about benefits?

APPENDIX IV: STAKEHOLDER INTERVIEWEES

UK

Pauline Brown is ESOL Guidance Officer at Hull College of Further Education. I interviewed her because of her expertise in the provision of English-language courses to asylum seekers and refugees and because she was involved from an early stage in the development of an infrastructure in Hull for the reception of asylum seekers.

Ian Chisholm is a project officer at Positive Action in Housing (PAIH), a housing charity in Glasgow. I interviewed him with specific reference to his concerns about Home Office operational visits (sometimes called “dawn raids”), made for the purposes of detention and deportation.

Rod McLean is Head of the Asylum Policy Unit at the Home Office, and I interviewed him about official perspectives on policy and about the New Asylum Model.

Austin Mitchell is the MP for Great Grimsby. I interviewed him about an asylum-seeking family in his constituency whose case he took up between 2005 and 2007. The family were deported in January 2007, and Mitchell instigated a debate on their case in the House of Commons in February 2007.

Gary Pounder is the manager of the 167 Centre, an asylum support group in Hull which works closely with the local council and other groups. It provides health advice, language and computer classes, and signposts its clients to solicitors for legal help and to various agencies for other specific kinds of help.

Pauline Short is a voluntary worker at the Unity Centre asylum support group in Glasgow. I interviewed her about the work of the centre and the support it is able to give its clients during the asylum process.

Asmerom Woldegebriel is the Refugee Support and Development Officer at Centrepoint, a London charity providing shelter and support services for homeless and unemployed youth

in London. He deals with asylum seekers and refugees between the ages of 16 and 25. As well as providing help with housing, he and a number of teams provide skills training and help to enable newcomers to live in the UK.

France

Philippe Bolmin was an official of the Appeals Commission for Refugees (CRR) and left the CRR in 2008 because he disagreed with the immigration policies of the government under President Sarkozy from 2007. He has expert knowledge of the asylum system in general, and a particular knowledge of the appeals process.

François Brun is an activist in the sans-papiers movement, which campaigns for the legalisation of all illegal immigrants. He is an official of the Highways Department (Ponts et Chaussées) in Paris.

Clarisse Brunelle is a project leader at Forum Réfugiés, a national non-profit-making organisation which promotes the right to asylum and provides administrative and social support to asylum seekers and refugees.

APPENDIX V: QUESTION GUIDES FOR KEY INFORMANTS

UK

Pauline Brown (ESOL Guidance Officer, Hull College, and involved in the planning and development of reception facilities in general)

Reception of asylum seekers in Hull

1. When did dispersal of asylum seekers to Hull begin?
2. Who came? – male/female, married/single, families with children, and where were they from?
3. How has the profile of arrivals changed over time?
4. What sort of numbers are we talking about?
5. What structures were there in place to deal with the arrivals?
6. How did you create an infrastructure? How has it developed since the beginning?
7. Who provides accommodation and how is it organised and managed in terms of standards?
8. How has Hull coped with the challenge and how could systems nationally and locally be improved?

ESOL

1. Who can have ESOL classes?
2. Who pays for the lessons?
3. Were there problems for the college, and how did you deal with them?
4. Do you think the experience of forced migration and of asylum seeking impacts on the learning process in English classes? How?
5. Is it the same for recognised refugees?

Rod McLean (Head of Home Office Asylum Policy Unit)

1. Why a New Asylum Model?
2. What are its main features?
3. What are “segments” and how are they defined?
4. The Refugee Council fears that the segmentation process undermines the principle of equal treatment of all asylum seekers with each case decided on its merits (especially in segments 4 and 5, where the concept “late/opportunistic” is used and where there are said to be “high” and “low” barriers to removal). The Refugee Council believes that this shows a preoccupation with removal rather than protection? Can you answer these concerns?
5. Segment 1 (passing through a safe third country): Why penalise someone for choosing the UK as their destination?
6. Fast-track processing: the time between initial interview and initial decision is reduced from 2 months to 2 weeks. There are concerns that it will be difficult for applicants to obtain legal advice in the time available.
7. The 2004 contract specification for solicitors in asylum and immigration cases seems to have made it more difficult for asylum seekers to get legal aid and good legal advice. Doesn't this undermine the right to asylum?
8. The 2004 Act, s. 9: the Refugee Council and Refugee Action regard this as failing on its own terms: people are not returning or preparing to return in any substantial numbers, and both organisations say: “Using the threat of destitution and the removal of children to bring about the policy objective of increased returns is abhorrent in a civilised society.” What is your view of that?
9. One aim of the Five-Year Strategy is stricter border controls, with fingerprinting of all visa applicants and electronic checks on all those entering and leaving the country. Yet existing controls already make it difficult for refugees legally to enter the UK to seek asylum. Why do they need to be stricter?
10. Why the five-year limit on refugee status/leave to remain?
11. Why return refugees after 5 years because we think the situation in their country has changed? What are the criteria of such change?
12. People often want to go home if their country becomes stabilised, and many do (Refugee Council). But why force them to go after giving them refugee status? Doesn't this undermine integration? And doesn't this period of uncertainty cause unnecessary stress to those who have already been traumatised?

Gary Pounder (167 Centre, Hull)

1. What is the 167 Centre and what is your job?
2. Are you independent of government?
3. How is the Centre financed?
4. What happens at the Centre (facilities, advice, legal services, etc.)?
5. Where do asylum seekers and refugees in Hull come from (nationalities, countries)?
6. Who comes (single, married, families with children, unaccompanied children)?
7. What are some of their reasons for applying for asylum?
8. Why have they come to Hull (choice, no choice, family, friends, problems in previous area)?
9. What is the range of problems you have to deal with (legal matters, asylum process problems, detention, family, accessing services, health, language, accommodation)?
10. What is the situation with section 4 support at the moment?
11. What has been the response of local people to the arrival of asylum seekers (welcoming, hostile (why? – racism, ignorance, press))?
12. What have you done to counteract negative responses?
13. How do you see the future?

Asmerom Woldegebriel (Centre Point)

1. What is your job (aims, responsibilities, etc.)?
2. Why do asylum seekers come to Centrepoint?
 - What proportion of your clients are asylum seekers?
 - Are they referred by Home Office?
 - What age groups?
3. What services do you provide?
4. What kind of projects do you initiate or support?
5. Do you provide legal advice?
 - lawyers employed by you?
 - lawyers hired from outside?
 - how do you choose them?
 - who pays?
6. What are the problems your clients face? Which ones can you help them with and which ones not?
7. What happens when they reach the age of 18?
8. What proportion of them get refugee/HP, etc. status?
9. What happens to those who don't?

France

Philippe Bolmin (official of the Refugee Appeals Commission (CRR))

1. Quel était l'objectif de la réforme de la procédure d'asile en 2003 ? (Loi du 10 décembre 2003, décret du 14 août 2004.)
2. CFDA dit que la réforme de 2003 marque le passage d'une procédure de droit à une procédure de contrainte de sorte qu'on ferme la porte aux beaucoup de gens qui fuient des persécutions. Que pensez-vous en général à cette critique ?
3. CFDA critique, par exemple, la procédure prioritaire en disant qu'elle ne permet pas au demandeur de voir sa demande convenablement examinée parce-que:
 - on n'a pas accès aux prestations sociales
 - l'instruction par l'OFPRA se fait dans un délai réduit de 15 jours (96 heures en rétention)
 - le recours contre l'OFPRA n'est pas suspensif

Par ailleurs :

- les préfectures, en considérant certaines demandes comme abusive, tendent à apprécier le fond de la demande, ce qui est dans les compétences de l'OFPRA
- les préfectures ont tendance à placer en procédure prioritaire des demandes déposées quelques jours ou quelques semaines après l'arrivée en France ainsi que la plupart des demandes de réexamen

Est-ce-que cette critique est justifiée ? La question est importante compte tenu que la procédure prioritaire est en constante augmentation : ils représentaient 10% de la demande globale en 2003, 16% en 2004, 23% en 2005 et 30% en 2006, si on prend en compte les premières demandes et les demande de réexamen.

[Gil Robles, ancien Commissaire aux Droits de l'Homme du Conseil de l'Europe a dit que « la procédure prioritaire est loin d'offrir les mêmes garanties que la demande d'asile du droit commun. Elle ne laisse qu'une chance infime aux demandeurs. » Il a fait le point que « chaque dossier doit faire l'objet d'un examen complet et attentif. »]

4. « Pays sûrs » : Le 30 juin 2005, l'OFPRA a adopté une liste de 12 pays d'origine sûr, une liste élargie à 17 le 30 juin 2005. Est-ce-que tous les pays son vraiment sûrs ? *[Le Rapport Gil Robles « doute fortement que tous les pays puissent être considérés comme des pays d'origine sûrs ... d'autant plus que ces pays continuent à produire des réfugiés. » CFDA cite comme exemple la Bosnie-Herzégovine, qui représentait 2,000 demandes en 2004 pour un taux d'accord de 67,4%.]*

5. L'utilisation d'une telle liste, ne suppose-t-elle pas une discrimination entre réfugiés en raison de leur nationalité, ce qui est interdite par la Convention de 1951 ? N'existe-t-il pas une présomption d'un caractère « manifestement infondé » au début, difficilement réfutable par la suite ?
6. Selon CESEDA, « La prise en compte du caractère sûr du pays d'origine ne peut faire obstacle à l'examen individuel de chaque demande. » Cette garantie, ne devient-elle illusoire pour les gens placés en procédure prioritaire ? *[Le taux de placement en procédure prioritaire des ressortissants de ces pays est passé de 4,8% en juin 2005 à 80% dès le mois de septembre suivant.]*
7. En principe les associations sont d'accord que c'est une bonne chose si la durée de la procédure d'asile soit réduite. Mais selon CFDA les réductions des délais de dépôt (21 jours, procédure normale ; 15 jours, procédure prioritaire 5 jours en rétention) sont contestables compte tenu que le demandeur doit préparer son dossier, chercher un conseiller juridique, et compte tenu la précarité des demandeurs, qui ne bénéficient généralement d'aucun pris en charge social. Est-ce-que cette critique est juste ?
8. Est-ce-que le demandeur d'asile a un droit à l'aide judiciaire pendant toute la procédure d'asile ?
9. Est-ce-que le demandeur d'asile a le droit à l'aide linguistique s'il en a besoin pour déposer son dossier et pendant l'entretien avec l'OFPRA ?
10. En zone d'attente, est-ce-que le demandeur d'asile a le droit à un recours suspensif en cas d'un refus d'entrée par le ministère de l'intérieur ?

François Brun (sans-papiers movement)

Choses à discuter

Contexte de l'immigration en général

l'histoire (écon. et démogr.) et la présente politique
assimilation et la république, le foulard
les banlieues
critique de l'approche anglo-saxone

Le système

les différentes possibilités et issues
demandes à la frontière
zones d'attente, centres de rétention
« manifestement infondée » ou examen au fond ?
demandes sur le territoire (ministère, OPFRA, préfecture)
le droit d'avoir un avocat, un interprète ou d'être accompagné
changements récents
la judiciaire et le Conseil d'État contre gouvernement/ministres
décisions, appels, recours
prestations sociales
travail

Clandestins

pourquoi clandestin ? Combien entre eux sont les réfugiés ?
régularisation
organisations de soutiens

Clarisse Brunelle (Project Leader, Forum Réfugiés)

1. Qu'est-ce que Forum Réfugiés ?
2. Est-ce que Forum Réfugiés est indépendant vis-à-vis le gouvernement ou les autorités en général ?
3. D'où viennent les fonds pour votre travail ?
4. De quels pays viennent les chercheurs d'asile en France ?
5. Pourquoi la France (choix, accident) ?
6. Et qui viennent spécifiquement – célibataires, hommes, femmes, familles, enfants isolés ?
7. Quel est le rôle de Forum Réfugiés dans le système d'asile (hébergement, conseils juridiques, administratifs, sociaux, aide à comprendre et négocier les procédures) ? Est-ce que vous avez des avocats sur place ?
8. Est-ce que vous fournissez un hébergement simplement dans les centres d'accueil ou est-ce que les appartements vous sont disponibles au dehors des centres ? Qui paie ?
9. Est-ce que les gens habitent dans la société en général ou seulement dans les centres d'une sorte ou une autre ?
10. Est-ce qu'on peut travailler ? Le droit aux prestations sociales ?

Demande à l'entrée

11. Quelles sont les procédures si on fait la demande à l'entrée ? Qu'est-ce qui arrive ? [*police, zone d'attente, examen, pièces à fournir, évidences*]
12. Quel est l'objet de l'entretien ? [*motifs, « manifestement infondée »*] [*interprète ? avocat ?*]
13. Comment décider qu'une demande est « manifestement infondée » ? [*rappports officiels sur le pays ; le pays n'est pas sur la liste des pays sûrs ; documents fournis/non-fournis*]
14. Si on décide que la demande n'est pas « manifestement infondée » ? [*APS ; OFPRA*] [*logement ? prestations sociales ?*]
15. Si on décide que la demande est « manifestement infondée » ? [*refoulement*]

16. Est-ce qu'on a un recours dans ce cas ?

Demande à l'intérieur de la France

17. Si on fait la demande à l'intérieur de la France, quelles sont les procédures ?
[*préfecture, APS ? OFPRA*]

18. Que fait la préfecture ?

19. Faut-il fournir des pièces et des documents ? Lesquels ?

20. Et si on n'a pas certains documents ? [*difficile ou impossible à obtenir, on part à toute vitesse*]

21. On attend la décision combien de temps ?

Rejet

22. Est-ce qu'il y a la possibilité de faire un appel contre une décision négative ?
[*Commission des recours des réfugiés*]

23. Pour faire un appel contre un rejet qu'est-ce qu'il faut faire ? [*pièces, délais, renouvellement du récépissé du demande d'asile logements ? prestations sociales ?*]

24. Peut-on se faire assister par un avocat et demander l'aide juridictionnelle ?
[*Commission des recours des réfugiés*]

25. Et en cas de rejet est-ce qu'il y a encore un recours ? [*en cassation*]

26. Est-ce que le recours est suspensif ?

27. Dans votre Journal en avril, vous avez dit que la France « est rentrée dans une période de réforme quasi-permanente » : quelles sont les réformes qui vous inquiète ?

28. Quelles changements voudriez-vous faire au système, aux procédures ?

Autres questions

- a Rapports officiels : crédible ? à jour ?
- b Les pays sûr, sont-ils vraiment sûr ? [*voir liste*]
- c Pays sûrs : est-ce qu'on a recours ?
- d Documents, etc. : Est-ce que c'est un désavantage si on ne les a pas ?
- e Il s'agit des circonstances personnel et il faut fournir la preuve individuelle : est-ce qu'on peut considérer les ressortissants de certains pays comme particulièrement en danger et donc qu'il est probable que leurs demandes sont justifiées ? (Voir procédure accélérée pour ressortissants des pays sûrs ; pourquoi pas pour les pays particulièrement dangereux ?)
- f Est-ce qu'il y a un recours contre le refoulement, puisqu'il est interdit dans la Convention ?
- g Si on n'a pas reçu la lettre de rejet, la silence est considérée comme le rejet : dangereux ? [*erreurs ; la poste ; préjugés ; appel impossible ?*]

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