



B u l l e t i n

Iranian Refugees

At Risk

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“UNSAFE HAVEN” :

Iranian Kurdish Refugees in Iraqi Kurdistan (Part I)

Shortly after the establishment of the autonomous Kurdish entity in northern Iraq, known as the Kurdish “safe haven” six years ago, the government of Iran stepped up its campaign of terror, violence and intimidation against Iranian Kurds in northern Iraq. In July 1996, over 2,000 Iranian troops invaded Iraqi Kurdistan, penetrating more than 200 km inside Iraqi Kurdistan in the “safe haven” area, to destroy the bases of the Kurdistan Democratic Party of Iran. While threats of large scale attacks continue, the menace posed by agents sent or hired by Iran has become so alarming that every Iranian Kurd in northern Iraq feels a price tag on their head.

As a result, a growing number of Iranian Kurdish refugees have been fleeing from northern Iraq to Turkey in the past years, as this has been their only avenue to resettlement in a safe country—the only possible safe solution for them. However, as the refugees have crossed the mine infested and high security border zone, many have been arbitrarily pushed back across the border by

the Turkish border officials without ever having a chance to apply for a temporary residence permit in Turkey. Dozens of others who have been fortunate to receive assistance from the United Nations High Commissioner for Refugees [UNHCR] in Turkey have been forcibly returned to northern Iraq, some even after having received a third country’s admission for onward resettlement.

Moreover, since February 13, 1997, the UNHCR has changed its policy on assistance for Iranian refugees fleeing northern Iraq. Citing misinformation, the UNHCR indicated that Iranians in northern Iraq have acceptable levels of security and have sufficient opportunities for resettlement from northern Iraq. The UNHCR has since refused to assist many such refugees and has instructed them to return to northern Iraq. This has been seriously detrimental for the refugees, making them more liable for deportation by the Turkish authorities.

This article summarizes parts of a comprehensive report under publication by Iranian

Iranian Refugees’ Alliance Inc.
Cooper Station POBox 316
NY NY 10276-0316
Phone/Fax: 212 260 7460
email: irainc@irainc.org
URL: <http://www.irainc.org>

ترجمه فارسی
موجود است

◀ Refugees' Alliance, which describes the perilous situation of Iranian Kurdish refugees in northern Iraq and classifies northern Iraq as an unsafe first asylum country for Iranian Kurdish refugees. Based on this information the Iranian Refugees' Alliance criticizes the use of physical and legal barriers by Turkey and the UNHCR in blocking Iranian Kurdish refugees from northern Iraq from access to safe asylum. The first part of the report, which is presented in this issue, deals with the general situation of the "safe haven" and the Iranian government's activities in the region. The second part deals with UNHCR activities in northern Iraq and the abusive and unfair treatment Iranian Kurdish refugees from northern Iraq have been receiving after fleeing to Turkey.

I- Safe Haven for Whom?

Following the end of the Gulf War and a failed Kurdish insurrection in northern Iraq, a Kurdish enclave or "safe haven" was established in 1991, in response to the desperate conditions of Iraqi refugees massed in refugee camps along the Turkish and Iranian borders and particularly to Turkey's decision to close its doors to the tide of refugees. Brutalities committed by the Iraqi army had forced some 1.5 to 2 million people, mostly Kurds, to flee to Turkey and Iran. American, French and English aircraft based at Incirlik air base in Turkey were deployed to enforce a no-fly zone north of the 36th parallel in Iraq. The government of Iraq withdrew its troops from most of the Kurdish region on October 23, 1991.

The "safe haven" project succeeded in wooing more than a million Iraqi Kurds back from the border zones. However, shortly after its establishment, incursions by Baghdad, Iran and Turkey as well as economic privation imposed by Baghdad and the West itself has perverted the very notion of "safe haven". Despite an aerial exclusion zone north of the 36th parallel, the Iraqi military has continued intermittent, sometimes heavy shelling of northern Iraq villages by long-range artillery. In August 1996, more than 30,000 of Saddam Hussein's elite Republican Guard troops moved into the area at the invitation of one of two rival Kurdish political parties. Over 6,500 Iraqi dissidents and Kurds, mostly employees of

US-funded non-governmental organizations, were evacuated fearing Baghdad's return to the north in force. NGOs not funded by the US government, about half of the original total, continued their operations in a climate of growing insecurity and in a society with a significant segment of its professional class evacuated.¹

Turkish military forces have crossed the border into northern Iraq frequently in order to eliminate the bases of the Kurdish Workers Party's, a militant organization seeking increased autonomy or independence for the Turkish Kurds. The largest operation included 35,000 Turkish troops which penetrated up to 40 kilometers into Kurd-controlled regions of northern Iraq. As discussed below, Iranian government's air and ground attacks have also hit the region on a regular basis.

Baghdad's 1992-1996 embargo has meant that Kurds in northern Iraq have been living under a double embargo, as the 1990 UN embargo against Iraq included and continues to include the northern Kurdish regions.² International relief has been limited to emergency needs, and gradually reduced "from nearly \$600 million in 1991, to \$71 million the next year, to \$22 million by the fall of 1996."³ According to one source, at times it has seemed "as if UN and NGO food rations were all that sustained the Kurdish economy".⁴ UN relief efforts have excluded the infrastructure construction necessary to rebuild the region's war-torn economy and to create institutions of civil society, as neither the Western coalition nor the neighboring countries favor granting even the most minimal rights of self-government to Iraqi Kurds.

In mid-1992, elections led to the establishment of an administration shared equally by the two major Kurdish parties, the Patriotic Union of Kurdistan (PUK), headed by Jalal Talebani, and the Kurdistan Democratic Party (KDP) led by Masud Barzani. Although the power-sharing agreement seemed to have averted a 20 year old conflict between the PUK and KDP, bloody internal conflicts between the two parties started in 1994 and have continued in an erratic fashion, with the most recent clash occurring in July 1997. Serious human rights violations have been committed by both parties and significant deterioration in the human rights situation continues under Kurdish control.⁵ Massive new displacement of the population and hampering of

aid delivery have further aggravated the humanitarian crisis. Primordial rivalries, lawlessness, and the proliferation of firearms have all contributed to a chronic lack of security for the whole population.

In their rivalry for power, territory and money, the PUK and KDP have given neighbors of the regions under their control, namely Iran and Turkey, as well as Baghdad, free tickets to interfere and assert their control in northern Iraq by proxy. "Operation Provide Comfort" as the "safe haven" project has been termed by some commentators has become "Operation Provide Cover" for the activities of these governments, which include an extensive military and intelligence presence as well as air and ground attacks as they please. Middle East specialist David McDowall foresees that the Kurdish protagonists are likely to find themselves increasingly fighting for the policy interests of their external patrons, rather than for any intrinsic Kurdish interests.

II. Iranian Kurds in Northern Iraq

Since 1980, tens of thousands of Iranian Kurds have fled to Iraq. The cause of their flight can be traced to the Iranian government's repression of minority groups and political dissenters. Kurds, numbering 7.5 million⁶, have been among the first political dissenters to face brutal repression and execution by the Islamic government of Iran. Nearly 200,000 soldiers dispersed over 3,000 military bases have been deployed to Iranian Kurdistan to prevent even the slightest attempt at rebellion. Military operations include mining the Kurdish zone, specifically the border zone, and the destruction and evacuation of the Iranian Kurdish villages. Kurdish sources estimate that, to date, more than 40,000 Kurdish civilians and some 5,000 cadres and fighters have lost their lives in the conflict.⁷ Approximately 300 Kurdish villages in Iran have been destroyed (271 villages destroyed between 1980-1992 and 113 bombed between July and December 1993).⁸ Nearly 10,000 Iranian Kurds are said to be in Iraqi Kurdistan.⁹ Iranian Kurdish refugees in northern Iraq had numbered many times more, but in 1982 the Iraqi government transferred them en masse to the Al-tash camp,¹⁰ 160 km (100 miles) west of Baghdad. About 4,000 of them are registered with the United Nations High ►

◀ Commissioner for Refugees (UNHCR), and are therefore officially recognized as refugees.¹¹ Most of the refugees are associated with Kurdish political organizations, such as the Kurdistan Democratic Party of Iran (KDPI)¹², the Communist Party of Iran (Komala), the Union of Revolutionary of Kurdistan¹³, and the Organization for National and Islamic Struggle of Iranian Kurdistan (Khebat). Some have previously been members of the parties while others have remained inactive members or take up periodic duties. They have remained in northern Iraq fearing persecution for their present or past political activities in Iran or Iraq. Many of them live under the protection and support of the Iranian political organizations in their camps, as the local Iraqi Kurdish administration is unable to provide them security, and material assistance from international aid organizations is not available to all refugees.

Because the majority of Kurds in Iran speak the Sorani dialect, Iranian Kurds in Iraq have lived in Sorani-speaking south of Iraqi Kurdistan, where PUK has been dominant.¹⁴ Currently, most Iranian camps are located in areas around Sulaymania and south of Erbil, which are under the control of the PUK. Most of those who live on their own also live in and around Sulaymania and Erbil. Only a small number of Iranian Kurds live in areas under the control of the KDP.

Since the Iraqi Kurds took control of northern Iraq after the 1991 Gulf War, Iranian Kurdish organizations have acceded to the Kurdish administration's demand to not stage cross-border military activities against Iran. However, the Iranian government continues to cite such armed attacks as justification for its military incursions in northern Iraq.

Although Iran claims to be targeting the bases of the organizations, it has often targeted the residential camps and personal residences of the refugees, who are not only known as dissenters of the Islamic regime, but despite their current relationship with the political parties are always considered as their potential supporters. Similarly, both party militants and refugees have been targets of Iran's individual terrorist attacks.

IRAN'S AIR ATTACKS

After the cease-fire in 1989 between Iran and Iraq, Iran began hitting bases of Iranian



Kurdish organization and villages inhabited by Iranian Kurds, which at the time were located near the border. However, after March 1993, the Iranian government began systematic shelling and aerial bombings of the border villages inside the territories controlled by Iraqi Kurds. Many of the attacks, including the first bombings in March 1993, which destroyed the Azadi Hospital run by two French international medical non-governmental organizations, took place in the no-fly zone above the 36th parallel, where the U.S. and other Western aircraft patrol the skies. Throughout 1993 and 1994 villages near the Iran-Iraq border which had been recently rebuilt were destroyed again, thousands more of the population became newly displaced, and dozens of civilians were killed or wounded.¹⁵ Six months after the first attacks, one report said that the UNHCR was drawing up plans to resettle about 5,000 Iranian Kurds who had fled their homes on Iraq's northern border with Iran.¹⁶

Two reports by the Federation International des Ligues des Droit de l'Homme (FIDH) Fact Finding Commission shed more light on the extent of Iran's air attacks.¹⁷ For example, between August 1993 and August 1994, FIDH's report listed 35 attacks directed by the Iranian armed forces in the region of Sulaymania, including bombardment by artillery and rocket, border violations or flyovers, installations of military bases and the laying of mines. At the time of these attacks several people were injured, the population

was evacuated, and vineyards and orchards were burned.¹⁸ In one series of artillery bombardments in the Raniya region, FDIH reported that at some moments as many as six bombs a minute are alleged to have fallen on Qala Diza, killing 40 people and wounding some 50 others.¹⁹

To complement and facilitate air attacks, Iranian ground forces advanced several miles into northern Iraq.²⁰ Members of Revolutionary Guards were dispatched admittedly on "intelligence" missions to gather information for more bombardment of the region. Some Guards were captured by Iraqi Kurdish forces, but were released after Iran threatened to bomb major towns like Sulaymania.²¹

Iran's goal in the air raids, however, went beyond harming Iranian dissident Kurds and party bases in northern Iraq. Massive numbers of Iraqi Kurds were also targeted in air attacks.²² The intention was to make Iraqi Kurds pay a high price all along the region's 200-mile border for supporting their Iranian brothers by leaving thousands of villagers homeless and destroying their livelihood. Once hundreds of local Kurds who used to live off trade in anything they could buy on the Iranian market lost their business as a result of the attacks, the Iranian government stepped up its efforts to use them against the Iranian Kurds. Those who wanted to continue buying from the Iranian market were now required to "pay for border access with information." ▶

◀ Iranian officials visited homes of Kurdish farmers regularly, "pressing them to take weapons to protect the border." According to Kurdish officials, some important tribal leaders agreed.²³

IRAN'S ISLAMIST ALLIES

Looking for strategic and ideological zones of influence in Iraqi Kurdistan, Iran had long created and supported Kurdish Islamic parties. After the creation of the Kurdish autonomous entity, Iran initially relied on these parties.

The most powerful group, the Islamist Movement of the Iraqi Kurdistan (IMIK), was formed in 1986 during the Iran-Iraq war and is headed by Shaik Uthman Abdl al-Aziz.²⁴ In an interview, its leader declared IMIK's aim "to establish an Islamic state in northern Iraq similar to the one in Iran."²⁵ There is ample evidence of Iran supporting and using the IMIK to reinforce its military presence in northern Iraq. In October 1993, arms left behind by the IMIK during clashes with the PUK were said to have Persian writing on them.²⁶ In 1994, several Kurdish officials, including the minister of military affairs and customs officials at the Iranian border, said that Iran's Revolutionary Guards had set up a joint military base in areas controlled by the IMIK.²⁷

A second group is the Hizbollah, which was formed in 1982 in Iran, and is led by Sheikh Muhammad Khalid Barzani (a cousin of [KDP leader] Masud Barzani).²⁸ Sources close to United Nations' guards in Baghdad have described the group as an "offshoot of Iran's Revolutionary Guards" which is "free to operate in northern Iraq" and is "well-armed, well-paid and well-organized."²⁹ In late 1988 the group split and the Revolutionary Hizbollah was formed, led by Adham Barzani. It is based in the Diyana region.³⁰

A number of killings, abductions and forcible returns of Iranian Kurds in northern Iraq have been attributed to these Islamic groups. Majid Salduzi and Mulla Ahmad Khezri, two Iranian refugees who had stopped being members of the KDPI three years earlier but continued to live in Iraqi Kurdistan because of their record of political activities, were reportedly captured in January 1995 and handed over to Iran by the Revolutionary Hizbollah forces.³¹ According to the KDPI they were executed in Urumieh on March 1, 1996,³² and a 1997

Amnesty International report listed their names among the political prisoners who were reportedly executed in Iran in 1996.

Seven KDPI activists were reported to be arrested by the IMIK on October 20, 1996 in the Halabja region. The KDPI held Anwar Anabi, a military commander of the IMIK, responsible for the act and said after Anabi turned them over to the Islamic Republic, the seven were taken to a Pasdaran jail in Paveh, where they have been tortured and face possible execution.³³

Another Iraqi Islamic group controlled by Iran is the Shi'a Supreme Council of the Islamic Revolution in Iraq (SCIRI). The Badr forces, SCIRI's armed militia, are estimated to be 5000 strong. In October 1995, following an agreement between the PUK and Mohammed Baqr al-Hakim of the SCIRI during a visit to Tehran, at least one brigade of Badr forces, the Imam Ali, was moved to northern Iraq from the south.³⁴ Analysts marked this as a new threshold in Iran's drive for ascendancy in the "Western-protected" enclave.³⁵

IRAN'S BASES OF OPERATION INSIDE NORTHERN IRAQ

Iran is also said to have "tentacles" all over the north, from humanitarian missions to intelligence bureaus.³⁶ It maintains several intelligence offices in northern Iraq, run by the Revolutionary Guards. According to Iranian Kurdish sources such offices are located in Erbil, Sulaymania, Raniya, Masif, Diyana, Halabja, and Dohuk. Depending on which Iraqi Kurdish party controls the region, that party's armed forces stand guard in front of these offices. In 1996, an "intelligence leak" disclosed plans by Iran's Ministry of Intelligence and Revolutionary Guards to conduct "intelligence activity" and "possibly a chain of explosions" in Iraq. It also stated that "talks with tribal leaders south of al-Sulaymania" to cooperate and plan "terrorist operations" had already begun in northern Iraq.³⁷ "Among the field officers who moved to northern Iraq were commanders of camps run by the Islamic Revolutionary Guards, namely Brigadier Generals Mohammad Karimi of Hamzah camp, Javad Ja'fari of Ramadan camp, 'Abdol Reza Maskari of Nasr camp in Naqadeh, Shela'i of Zafar camp in Kermanshah."³⁸

In the past three years, Iran has also begun establishing Red Crescent Society offices in

northern Iraq. According to Kurdish sources many of the employees at these offices are recruited from Iran's Security and Intelligence forces and from the Ramadan camp.³⁹ Iranian Kurds describe the purpose of these offices as intelligence gathering and providing cover for violent attacks against Iranian Kurds. For example, one report in April 1996 said that the terrorists who killed four members of one refugee family and a fifth refugee, Mansur Fadaie, returned to the Red Crescent Society office in Sulaymania, after which they easily transferred to the Ramadan camp.⁴⁰ On April 21, Iranian agents driving a Red Crescent Society ambulance attacked an Iranian Kurdish refugee camp in the Bainjan region of Sulaymania. One assailant, captured by camp guards, acknowledged that the attackers had been dispatched by the Security and Intelligence office in Kermanshah (Iranian Kurdistan) to carry out terrorist activities against Iranian refugees, and that they had crossed the border under the cover of the Red Crescent Society's relief aid programs.⁴¹

IRAN'S PROXY FORCES

Since the days of the Shah, Iran has frequently made alliances with Iraqi Kurdish parties to gain influence in the region and to suppress its own Kurds. In 1967, Mulla Mustafa Barzani agreed to restrain KDPI's political activities in Iran in return for the Shah of Iran's aid against Baghdad. Barzani suspended all KDPI activities hostile to Iran. Later Barzani expelled Iranian Kurds who were still in Iraq. In the summer of 1968, Barzani men captured and executed Sulayman Muini and handed his body over to the Iranians. The body was displayed in Mahabad as one of over 40 Iranian Kurds killed or turned over to the Shah's men by Mulla Mustafa.⁴²

After the Shah's downfall, the remnants of Mulla Mustafa Barzani's group in Iran, Qiyada-ye Movaqqat, became an ally of the Islamic government and commanded armed groups who had established bases in Kurdistan. In fact, one of the first major demands of the Kurds in Iran in 1979 was the expulsion of the Qiyada-ye Movaqqat leadership from Iran.⁴³ Iraqi KDP forces engaged in several clashes with the KDPI in 1980 and 1981 after the Iranian revolution. In 1982, the Iraqi KDP, supported by the Iranian army and Revolutionary ▶

Iran's long-standing campaign to assassinate Kurdish dissidents was recently highlighted in the "Mykonos Trial." The Berlin Supreme Court trial, which concluded in April 1997, convicted one Iranian and four Lebanese for the murder of three Kurdish Iranian dissidents and their translator in Berlin in 1992. The German judge said that the order to assassinate the four Iranians came from the Committee for Special Operations, which includes the Iranian President Akbar Hashemi Rafsanjani, Secret Service chief Ali Fallahian, Foreign Minister Ali Akbar Velayati, and Iran's spiritual leader, Ayatollah Khamenei. By formally implicating the Iranian government in the assassinations, this ruling proved that the Iranian government is committed to terrorism against its dissidents abroad at any price. If Iran is willing to risk such scandalous international condemnation in Europe, then whatever terrorist measures it uses outside the scrutiny of the West in northern Iraq should not come as a surprise.

ence, providing Iranian forces a free-fire zone against Iranian Kurds. Throughout 1995 and 1996, Iranian forces attacked hundreds of Iranian Kurds in northern Iraq with mine explosions, car bombs, assassination attempts by terrorists sent or hired locally, and long and close range artillery. Iranian Kurdish sources report that between 1991 and 1996, at least 218 Iranian Kurds were killed or injured in these attacks.⁵³ (Also see page 6).

The intensity of personal rivalry between the PUK and the KDP leadership and their rival patronage system have also provided a fertile ground for Iran's terrorist activities. Both leaders are known to have their respective party apparatus and fighters much the way paramount chiefs had retinues 150 years ago. Under the umbrella of each party stands a number of chiefs with their own retinues who bargain their loyalty in return for favors or rank within the party system.⁵⁴ Iran has long tried and succeeded in influencing Iraqi Kurdish tribal chiefs to cooperate against its dissidents. Additionally, by exploiting the dire economic conditions of the region, Iran is also reported to be able to easily hire local Kurds for murdering dissidents. The assassins enjoy impunity through primordial loyalties, including allegiances to families, clans and tribes under the umbrella of one of the parties. Therefore, even if an assassin is identified and handed over to security forces of these parties it is unlikely that they will be punished because it may cause defection of a family, a clan or a tribe from that party in favor of the other party or cause more clashes between the two parties. On July 26 and 27, 1996, 200 Iranian vehicles with more than 2,000 Iranian soldiers loaded with heavy and light weapons⁵⁵ crossed the Iraq-Iran border at Panjwin District in Iraqi Kurdistan and took position in Koy Sinjaq District in the Erbil region within the areas under the control of the PUK. On the morning of July 28, they launched a large-scale attack on the Iranian refugee camps of the KDPI and the party's offices and centers in the Koy Sinjaq area, using all kinds of weapons including heavy artillery, missile launchers and armor.⁵⁶ During the course of this onslaught the KDPI reported that the Azadi Hospital [relocated after Iran's 1993 bombardments of border villages] and the houses of Iranian Kurdish refugees were completely ➤

◀ Guards, succeeded in driving KDPI peshmerges [militias] from strategic positions in Iranian Kurdistan near the Turkish border. The KDP also took active part in a major Iranian offensive in the summer of 1983, which ended the KDPI's control of vast areas of Kurdistan.⁴⁴ During the Iran-Iraq war, the KDP depended even more on the Islamic Republic than Barzani ever depended on the Shah.⁴⁵

Members of KDPI who were in northern-Iraq in 1994 and 1995 accuse KDP forces of repeatedly attacking their camps in alliance with the Revolutionary Hizbollah and the Ramadan camp, killing and wounding several unarmed party militants and non-combatant women and children. In one instance, in 1995, as many as 200 armed militia members, on order from a member of KDP's Political Bureau and Barzani's nephew, Nuchehid, are said to have attacked KDPI bases in Basirme (in the vicinity of Harir).

However, it has been the inter-Kurdish fighting between the PUK and KDP in the past four years that has given Iran its great opportunity in northern Iraq. The conflict has divided Iraqi Kurdistan into two separate regions, with the KDP controlling the north and the Iraqi-Turkish border, and the PUK controlling the south and the Iranian border. Both parties have been weakened politically and militarily by their quarrel and have sought assistance from the regional states, a policy which has only exposed them to further exploitation by Iraq, Iran and Turkey.

As this fighting escalated, Iran abandoned its traditional pro-KDP posture and aligned

itself with the PUK, which in turn found Iran's assistance vital in its ascendancy over the KDP. The alliance with Iran allowed the PUK to maintain its only link between areas under its control and the outside world. The PUK's main source of income is also through trade with Iran. As revealed in a PUK communiqué, more than \$2.2 million each month are generated in their trade outlet with Iran.^{46 47} Additionally as the KDP has relied more on Baghdad for military assistance, the PUK has relied more on Iran for logistical and military assistance against its rival.

Since the creation of the Kurdish entity, Iran has pressured Iraqi Kurdish groups to stop sheltering Iranian rebels, making any assistance conditional on their cooperation on this issue.⁴⁸ Iran has reportedly demanded that both the PUK and KDP "hand over members of the dissident groups"⁴⁹ and "curb the activities of Iranian Kurdish rebels in their enclave, much as they did with the Turkish PKK [Kurdish Workers Party],"⁵⁰ meaning, of course, that the Iranian Kurdish parties must be uprooted. According to Kurdish sources, Iran has also wanted "the guerrillas either disarmed or expelled to government-controlled parts of the northern Iraq, where they would be more exposed and less effective."⁵¹

In order to gain Iran's trust and receive its support, the PUK has gradually and increasingly bowed to Iran's demands. First, in the spring of 1995, the PUK closed down the KDPI's radio, which broadcasts to Iranian Kurdistan.⁵² Then, the PUK was complicit and cooperative as Iran began to expand its military and intelligence pres-

Examples of Iran's Terrorist Activities Against Iranian Kurds in Northern Iraq

Abduction, torture and murder:

■ Kaveh Hakimzadeh, a 16 year old refugee, was abducted by agents of the Islamic Republic on 31 July 1996. A PUK member, who asked for anonymity, later informed his family that Kaveh was seen at a PUK base in Raniya that evening. Kaveh's body was discovered the next day near Rania. He was brutally tortured and forced to swallow acid. Haji Hadi, an Iranian agent in Raniya who is known to be a commander from the Ramadan camp and the head of Sardasht's Information and Security Department, is held responsible for Kaveh's murder. He is also known to have killed and tortured Rasul Amini and Ghader Alkun, Kurdish Democratic Party of Iran, Revolutionary Leadership (KDPI-RL) members, with the same method in Raniya. (Sources: KDPI press release August 1, 1996, and Kaveh's friends) ■ On January 19, 1997 Abdullah Piroutzadeh, a former cadre of the KDPI, who was at the time a shepherd in the vicinity of Diyana, which is controlled by the KDP, was assassinated by the agents of Iran. (Sources: KDPI, "Kurdistan," February 1997, and Abdullah's friends) ■ Another refugee, Mulla Hossein Hamzehpour, who was previously a cadre of the KDPI disappeared on February 14, 1997. His body was found the next day on the road connecting Qala Diza and Raniya. (Source: KDPI, "Kurdistan", March 1997) ■ Salim Karimnejad, another refugee and a former cadre of KDPI who was an anchor man in Radio Kurdistan, was shot to death on March 10, 1997, in front of his home in "Kani Qerzale".

■ In February 1997 a KDPI member named Ataollah Feizi, who was in Sulaymania to seek medical treatment, disappeared on his way back to his camp. Three days later Abass Badri, another KDPI member who went to search for him, also disappeared. Both their bodies were found near Sulaymania about a week later. A friend of Ata's reported that his eyes were gouged, his legs were broken and his head was ruptured with a spike. Local residents said that both Ata and Abbas were seen in a PUK base. Although the KDPI invited the witnesses to testify, they refused due to fear of reprisal. (Sources: KDPI press release February 14, 1997, and friends of Ata and Abbas) ■ On December 7, 1996, several PUK forces under the command of Mahmoud Sangavati accompanied a number of Iran's security forces in attacking a camp belonging to the Union of Revolutionaries of Kurdistan. At the time the camp was sheltering families of the Union's members and was protected by some of the Union's armed militants. Six militants along with several of the women and children were captured and taken to PUK's Al-Salam base (5 km from Sulaymania). The men were tortured, their necks and backs were broken, and then they were executed. To cover up the crime, their bodies were taken to Dasht Piramagroun, 40 km from Sulaymani, where they were buried in mass graves. The women and children remained captive for three days, until the KDPI mediated their release with PUK. (Source: Member of the URK) ■ On November 30, 1996, a vehicle rented by the KDPI to transport some of its members and their families



Kaveh Hakimzadeh, 16 years old, was tortured and forced to swallow acid. He was attacked by killers in the pay of Tehran. The attack claimed five victims, including a four year-old child and two visiting relatives of Party members, and wounded several others, among them a native driver of the car. (Source: KDPI Press Release, December 3, 1996)

Regular barrage of refugee camps:

■ According to refugees who lived in a KDPI-Revolutionary Command camp in the Raniya region in 1995 and 1996, their living quarters were attacked on a nightly basis by mortar, RPG, Katyusha and remote control rockets from nearby heights. Iranian agents were also said to have planted bomb traps and dynamite in refugees' living quarters. ■ According to refugees residing in a Komala camp 20 km from Sulaymania, their residence was also attacked by heavy weapons, Katyusha missiles and RPG. In one occasion, on June 25, 1995, Komala reported that the attackers left their heavy weapons behind and were able to return to Marivan in Kurdistan of Iran with the help of Iran's Red Crescent Society office in Sulaymania. (Source: Secretary of Komala central Committee, A list of Islamic Republic terrorist action in 1995 against Komala in Kurdistan of Iraq) ■ On April 7, 1997, refugees in the Bazian camp operated by the KDPI in the Sulaymania province were severely poisoned with the highly toxic metal, Thallium, the second such incident in two months. Sixty refugees fell seriously ill immediately. They were rushed to Baghdad Hospitals, due to the severe shortage of medicine in northern Iraq. A week later Iraq's Health Ministry Undersecretary said the number of poisoned people admitted to Iraqi hospitals - Saddam Medical City and Karamah Hospital - had so far reached 80. He said many were in critical condition and Baghdad was trying to arrange their transfer to Europe since their hospitals lacked the medical supplies necessary to treat those in critical condition. According to Iranian Kurdish sources the number of the hospitalized rose to 130 persons, 16 of whom were eventually transferred to Austria for medical treatment. (Sources: KDPI Press Release, April 7, 1997, and Reuters, April 13, 1997).

◀ destroyed and set ablaze. Not a single residential unit remained unscathed by the shells from mortars, cannons and Katyushas.⁵⁷ Two refugees, an elderly woman and a man, died during the offensive, two children were injured and 2,500 refugees fled as a result of the invasion.⁵⁸ Confirming the damage inflicted on the refugees and the ongoing danger, UNHCR representative Abdullah Saied told Reuters that, "The incursion and bombardment in Kurdish areas has resulted in the displacement of many refugees and many of them have fled, seeking refuge and assistance." He called on "the Iranian government to exercise constraint and not harm the refugees or their property."⁵⁹ As the Iranian army was retreating towards Iran, an official of the UNHCR in Arbil said that his office was dealing with an "urgent situation" and "coping with around 2,500 refugees, mostly women and children who fled Koi Sanjaq after Iranian troops shelled their camp."⁶⁰ Many of the refugees stayed at a school in Erbil while the UNHCR tried to arrange the reconstruction of their homes.⁶¹

This large incursion not only showed that Iran has the capability, when it wishes, to strike at the heart of the Iranian Kurdish community in northern Iraq, but also proved beyond doubt that the Iraqi Kurdish security forces, and in particular the PUK's forces are not only unable to protect Iranian refugees but are accomplices in the attacks against them. Accounts by independent international observers and the local population who witnessed the incursion attest to this fact. A German administrator of European Community aid in northern Iraq was quoted as saying, "Iran's forces entered a part of northern Iraq . . . to bomb an Iranian refugee camp, evidently with permission from [PUK leader Jalal] Talabani, whose people controlled that area."⁶²

Other eyewitnesses said that three hours before the Iranian attack, the PUK authorities shut off electricity, imposing a blackout from 10 p.m. until 8 a.m. in an area extending from Koi Sanjaq to Arbil. The six PUK check points in and around that region were removed. One hundred fifty PUK senior cadres had been taken hostage by the Iranians and moved to Marivan, inside Iran, in order to ensure PUK collaboration with them.⁶³

Another source wrote in anonymity, "The

terrible fact is that 1) the troops' commander was Jafar Sahraroudi, the terrorist who assassinated [KDPI leader] Abdul Rahman Ghassemlou; 2) his friend of a long time, [PUK leader] Jalal Talebani, had him seen over the frontier, from Marivan to Sulaymania. There, in a mosque, he prepared for him a friendly welcome. And the night after guided him to the environs of Koy Sanjaq, to 'his Kurdish brothers' place, so that Sahraroudi would do the dirty job for him. I know well how unscrupulous Jalal is-but this was beastly. As I know how readily - happily he meets the KDPI leaders, and how innocent he presents himself to them..."⁶⁴

Although Iran declared the retreat of its forces, the KDP and KDPI said that Iran kept some troops in northern Iraq and warned of more attacks.⁶⁵ In the following weeks as the conflict between the KDP and PUK escalated, Iran was reported to build up an even greater military and intelligence presence in northern Iraq. Thousands of Revolutionary Guards and the Badr Forces were reported to have joined the PUK in regaining Sulaymania from the KDP in October 1996.⁶⁶ Iran's Revolutionary Guards from the Ramadan, Zefar and Nasser command centers were also said to have set up a joint command center with the PUK in the city of Sulaymania.⁶⁷

While it seems that by moving to areas under the control of the KDP, Iranian refugees may be better protected, this is neither practical nor effective. Due to extreme resource constraints most refugees live with paltry assistance from international organizations or Party hand-outs. As seen in the aftermath of Iran's July large scale attack on refugee camps in Koy Sinjaq, neither the UNHCR nor the KDPI were capable of relocating the camps.

Moreover, as Iran's traditional ally, the KDP's history of involvement in repressing Iranian Kurds in exchange for assistance from the Iranian government has long been a source of distrust between Iranian Kurds and the KDP. Despite tensions resulting from Iran's backing of the PUK, the KDP has not stopped seeking "friendly and strong relations" with Iran. In order to expand its connections with Iran, the KDP has even been willing to dismiss its accusations as "misunderstandings." In turn, the Iranian government is still issuing invitations to KDP members and hosting them in

Iran.⁶⁸

The KDP's "tactical" alliance with Baghdad in August 1996, despite the "disappearance" of thousands of the KDP members in 1983 and the killings of tens of thousands of Kurds in the Anfal campaign in 1988 by the Baghdad regime, reveals that should the necessity arise, KDP would not hesitate to appease Iran's government at the expense of the Iranian Kurds. Finally, several reports indicate that a number of attacks against Iranian dissidents have taken place in areas under the control of the KDP. (see page 6)

ENDNOTES:

1 Joost R. Hiltermann, *The Demise of Operation Provide Comfort*, Middle East Report, Spring 1997.

2 Half a million children under the age of five have died as a result of the UN sanctions - ten times more than were killed during the Gulf War. The World Health Organization has said sanctions should be banned as a political weapon, while the United Nations Food Programme has called it a 'brutal' instrument. (Guardian, May 18, 1996)

3 New York Times, September 12, 1996.

4 Ronald Ofteringer and Ralf Backer, *A Republic of Stateless: Three years of Humanitarian Assistance in Iraqi Kurdistan*, Middle East Report Mar.-June 1994.

5 Amnesty International, *IRAQ: Human Rights abuses in Iraqi Kurdistan since 1991*, 28 February, 1995.

6 International Journal of Kurdish Studies.

7 Federation International des Ligues des Droit de l'Homme (FIDH), *Fact-finding Mission on the Human Rights Situation: Kurdistan*, Brussels, Jan 1995.

8 Ibid.

9 Ibid.

10 Iraqi Kurdistan, *Fact-Finding Mission on the Human Rights Situation* mandated by the and the Fondation France Libertes, October 1993.

11 EXECUTIVE COMMITTEE OF THE HIGH COMMISSIONER'S PROGRAMME, *UPDATE ON REGIONAL DEVELOPMENTS*, EC/47/SC/CRP.6, 6 January 1997.

12 The Kurdish Democratic Party of Iran reunited in January 1997 with a dissident faction, known since March 1988 as the KDPI-Revolutionary Leadership

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The European Convention on Human Rights and the Absoluteness of Article 3 - MAR v. United Kingdom

by Deljou Abadi

In January 1997, the European Commission on Human Rights [the Commission] found admissible a petition from an Iranian refugee, who was facing deportation by the British government for a drug trafficking conviction. Identified as "M.A.R." in the press, the petitioner claimed he would face inhumane treatment if expelled to Iran - and that his deportation would put Britain in breach of the European Convention on Human Rights [ECHR] which prohibits such treatment.

At the heart of this case is the absoluteness of Article 3 of the European Convention of Human Rights, which guarantees: ¹

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Considering that only a very small number of cases² are ruled admissible by the Commission, M.A.R. v. the United Kingdom will probably be a landmark case for refugees who because of their criminal convictions are subject to the exclusionary clauses of the UN Refugee Convention. Additionally, this case will examine the reactions of European States towards the political and justice system of Iran.

M.A.R.'s Petition

M.A.R. left Iran illegally in December 1981 after becoming known as a political activist supporting the Mujahedin Organization. He was granted refugee status by the UK in March 1982 after interven-

tion by the United Nations High Commissioner for Refugees (UNHCR). He was later convicted on three separate occasions of possessing drugs. Following the third conviction the Home Office recommended that he be deported.³ However, after consultation with the UNHCR, the Home Secretary decided not to act. In June 1988, after a fourth conviction for supplying drugs, M.A.R. was sentenced to 10 years jail and recommended for deportation after his sentence.⁴ In 1993, after he was paroled, the Home Secretary issued a deportation order, but M.A.R. appealed. His appeals were rejected by a special adjudicator and by the immigration appeals tribunal. In 1995 a further appeal was refused by the Court of Appeal.⁵ The UNHCR was consulted early in 1989 and agreed with the provisional view of the Home Secretary that the appellant, as a result of this very serious conviction, fell within Part 2 of Art. 33 of the 1951 Convention, which provides:⁶

"1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, consti- ➤

The European Human Rights System

The European system for the Protection of Human Rights was established by the Council of Europe, a regional inter-governmental organization currently consisting of 40 European nations. One of the two legal resources of this system is the Convention for Protection of Human Rights and Fundamental Freedoms [hereafter ECHR] which was signed in 1950 and entered into force in 1953. Most members of the Council have also ratified the additional Protocols, one of which abolished the death penalty (Protocol No. 6).

To ensure the observance of the Parties' undertakings, the Convention established two institutions: the European Commission of Human Rights (hereafter the Commission), and the European Court of Human Rights (hereafter the Court), each with a number of members equal to that of the State Parties. The Convention also confers some supervisory functions on the Committee of Ministers of the Council of Europe, which is composed of national parliamentarians from Member States of the Council and is considered the political body of the Council.

By ratifying the ECHR, states accept the jurisdiction of the Commission and the Court respectively to receive complaints from other States Parties. However, the recognition of the right of private petition is not automatic and requires a special declaration by the States. To date 35 of the 40 State Parties have accepted the Commission's jurisdiction. Private petitions may be filed by "any person, non-governmental organization or group of individuals claiming to be the victim of a violation . . . of the rights set for [the] Convention" allegedly committed by a State Party which has accepted the jurisdiction of the Commission to receive

such petitions. The admissibility of petition is determined by the Commission in a preliminary proceeding.

After admitting a case, the Commission holds hearings, receives written submissions, examines witnesses in order to do a thorough investigation of the facts. Then "it place itself at the disposal of the parties concerned with a view to securing a friendly resettlement", usually wherein the Respondent State undertakes to pay compensation or to make some other amends without, however, admitting a violation of the Convention.

Cases that have not been settled move to a third stage, where the Commission is required to "draw up a Report on the facts and state its opinion as to whether the facts found disclose a breach by the State." The report is transmitted to the Committee of the Ministers together with any proposals the Commission wishes to make. At this point the Commission or the States have three months within which to refer the case to the Court. If this has not been done, the Committee of Ministers must decide whether there has been a violation of the Convention.

Recently, Protocol No. 9 has also enabled an individual, a group of individuals or a non-governmental organization, to refer their case to the Court after it has been examined by the Commission. Originally the Convention did not empower individual applicants to appear before the Court as parties either. However, due to new provisions the Commission is permitted to have the assistance of the lawyer of the individual applicant, or the applicant himself and applicants can be represented in the Court.

◀ *tutes a danger to the community of that country.*"

The Court of Appeal, the Tribunal and the Secretary of State agreed that due to the nature of the appellant's conduct "the public interest" should be balanced against "the likelihood of the abuse of the appellant's human rights if returned to Iran." After considering the risk of persecution, abuse and ill-treatment in Iran, it was concluded "that the risk of abuse if he were returned was outweighed by the risk to the community if he remained here."⁷

M.A.R. is now challenging this conclusion before the Commission. He is arguing that Articles 2 and 3 of the Convention, which guarantee everyone's "right to life" and freedom from "torture or inhuman or degrading treatment or punishment" are of an **absolute nature**. Accordingly, such rights do not allow for any balancing of the competing interests of the applicant and the community by the domestic authorities when deciding on his expulsion; once a genuine risk to the applicant of treatment contrary to those Articles is established (as he submits it has been), his expulsion would amount to a violation of those Articles.⁸

To establish a real risk of treatment contrary to Articles 2 & 3 of the Convention, M.A.R. has referred to various reports on the political situation and the judicial system in Iran and on the vigorous anti-drugs campaign pursued in Iran since 1989. He has emphasized that his life would be at risk because of the cumulative effect of his acknowledged political activities in Iran prior to his leaving of Iran, his being granted refugee status on the basis of the UNHCR's intervention and his subsequent drugs convictions.⁹

Furthermore, M.A.R. has submitted that his expulsion would also amount to a violation of Articles 5 and 6 of the Convention,¹⁰ which deal with the right to be free from unlawful "arrest or detention" and the right to "a fair and public hearing" in determination of any criminal charges.

If the Commission cannot now succeed in effecting a friendly settlement, it will draw up a report on the facts and state its opinion as to whether the facts disclose a breach by the British Government of its obligations under the Convention. The Report will then be transmitted to the Committee of Ministers, which will decide the matter unless the case is referred to the European Court of Human Rights by the Commission or the Government of the United Kingdom, or by M.A.R. as provided by Protocol 9 to the Convention [see box on previous page].

Precedence on the absoluteness of ECHR's Article 3 has already been set by previous cases referred by the Commission to the Court [see Box]. Therefore, M.A.R.'s success in his petition essentially depends on whether or not in the Commission's view Iran's existing human rights record would prevent his deportation. Since Iran's record of human rights abuses is overwhelmingly characterized by political repression, lack of due process of law, and illegitimate punishments for criminal offenses, we believe that the Commission should come up with a decision favoring M.A.R.'s plea.

Intentional news black out by the Iranian regime have generally prevented the release of information about human rights violations. International human rights groups, such as Amnesty International, have, therefore, been unable to verify reports about the arrests and mistreatment of persons returning to Iran after pro-

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Precedent Cases:

■ CHAHAL v. UNITED KINGDOM, EUROPEAN COURT OF HUMAN RIGHTS, STRASBOURG, 15 Nov., 1996.

Last year, the UK government lost a case in the Court in attempting to deport Mr. Chahal from the UK to India. In that case, the government argued that Article 3 of the ECHR did not apply to those whom governments wish to deport as "national security" risks and that therefore there was a limitation to Article 3 entitling a contracting State to expel an individual to a receiving State even where a real risk of ill-treatment existed. The Court, however, ruled, that the authorities could not expose anyone to a potential threat of human rights breaches, regardless of the reasons for the deportation in the first place and said that:

"The absolute character of Article 3 ... enshrines one of the fundamental values of the democratic societies making up the Council of Europe."

■ AHMED v. AUSTRIA, EUROPEAN COURT OF HUMAN RIGHTS, STRASBOURG, 17 Dec., 1996.

In another case decided a month later, the Court again confirmed that in no circumstances whatsoever can a person be sent to a country where they are at risk of being tortured. This case involved a Somali national, Mr. Ahmed, whose forfeiture of refugee status and expulsion was ordered by Austrian authorities, following a judgment in 1993 in which he was sentenced to two and a half years imprisonment for attempted robbery. After failed attempts to appeal his exclusion and expulsion, Mr. Ahmed lodged an application against Austria with the Commission in Dec. 1994. The Commission referred the case to the Court in Sept. 1995. Based on the findings of the Commission, the Court accepted that the situation in Somalia had changed hardly at all since 1992, when Mr. Ahmed requested asylum in Austria. The Court, therefore, held in Dec. 1996 that for as long as the applicant faces a real risk of being subjected in Somalia to treatment contrary to Article 3 of the Convention there would be a breach of that provision in the event of deporting him there.

■ Title not given (Ref.:25Nov.1993, VG Wiesbaden InfAusIR 2/94), [IJRL/0245, International Journal of Refugee Law, p698.]

In 1993, by making reference to the provisions of the ECHR, a German appeal court ruled that a stay of deportation was appropriate in the case of an Iranian refugee applicant whose application was previously denied because he was convicted of illegal drug trafficking in Yugoslavia and Germany in 1987. In that case the Court feared that the Iranian authorities might receive information concerning the applicant's history of drug crimes; hence, he could be arrested if returned to Iran and maltreated, since border policing often times occurs outside the law. The Court concluded that it could not rule out the possibility that the applicant might be re-tried in Iran for the same crime. Based on the evidence presented before it [art. 8(6) of the Iranian Drug Act, provides for execution of individuals convicted of possession of more than thirty grams of heroin], the Court adjudged the applicant to be in danger of being executed if returned to Iran. Protocol No. 6 to the ECHR Concerning the Abolition of the Death Penalty [Strasbourg, 28.IV.1983], to which Germany is a party, explicitly regulates deportations of individuals to states where the deportee faces capital punishment. Article 1 of this Protocol states:

"The death penalty shall be abolished. No one shall be condemned to such penalty or executed."

Gender Persecution and Iranian Refugee Women (An Introduction)

by Deljou Abadi

Since the establishment of the Islamic government in Iran, many Iranian women have fled their homeland fearing gender-related persecution by their government. Their refugee claims have been some of the most compelling because the oppression women face in Iran is not simply the result of the government's inability or unwillingness to prevent violent acts against women by public authorities or private citizens but is institutionalized by a plethora of laws and policies intentionally devised to abrogate the human rights of women and to circumscribe their lives. Furthermore, women who oppose these laws and policies are faced with drastic sanctions from the authorities themselves.

As a result of many years of struggle by feminist, human rights, refugee, and immigration activists, the right to protection for refugee women has received more recognition in recent years. The fact that women often face different types of human rights violations than men, have different reasons for fleeing, and thus have different bases for establishing their eligibility for refugee status is now more understood in western countries where women seek refuge.

As a result, there have been some inspiring decisions on Iranian women's gender-related refugee claims. The treatment of women in Iran has been often used by scholars to illustrate, in extreme, the type of milieu in which gender persecution can be found.¹ Nevertheless, this trend still does not guarantee that Iranian women claiming asylum based on gender-based persecution will find the relief they deserve. For example, in the US, all previous precedent decisions (Court decisions) on Iranian gender claims have been negative, despite the increase in the past couple of years in the number of administrative positive decisions.

Article 1A (2) of the 1951 UN Convention defines a refugee as a person with a "well-founded fear of persecution" on account of "race, religion, nationality, membership in a particular social group, or political opinion". To determine whether or not a person is a refugee, an individual must first demonstrate a "well-founded fear of persecution." Next s/he must show that it is based on one or more of the grounds enumerated in the Convention.

As the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status notes, there is no universally accepted definition of persecution. While the lack of an accepted and authoritative definition of persecution is a problem common to evaluating all asylum claims, women's claims are further disadvantaged because the existing bank of jurisprudence on the meaning of persecution is based on, for the most part, the experiences of male claimants.

For the purpose of refugee determination, there is general consensus that mistreatment of any individual rises to the level of "persecution" when the abuse, or the threat thereof, is considered a serious violation of human rights. Therefore, the linkage between persecution and the abrogation of basic human rights is key to recognition of a woman's "well-founded fear" of gendered persecution. Despite the fact that a woman's right to be free from gender-based discrimination is codified in several international human rights instruments,² defective interpretations of what constitutes "human rights" of women contin-

What is Gender-Related Persecution?

Gender-specific persecution is violence, discriminatory treatment, or repressive measures directed at women specifically because they are women. It includes sexual assault, infanticide, genital mutilation, bride-burning, dowry related murders, forced marriage, domestic violence, forced abortion, compulsory sterilization, and forced prostitution. Persecution of women also takes the form of imposing repressive and discriminatory laws and practices to oppress and subordinate women, such as the compulsory wearing of the veil in Islamic countries.

Nada's case is one well-publicized example of a claim involving gender-related persecution, of how such claims have been trivialized and dismissed, and of how subsequent positive changes in the conception of gender-related forms of persecution have affected such claims.

A Saudi Arabian Woman, identified as Nada, sought asylum in Canada because "[she] was a woman" who believed she was a victim of gender-based persecution in her own country. When Nada began removing her face veil in public, "men threw stones at [her] or called [her] a prostitute." Saudi Arabia's religious police attempted to arrest her simply because her face was uncovered. Thus Nada made the decision to leave her country. She waited three years for a passport and even then her brother had to accompany her out of the country.

Nada was initially denied refugee status because Canada did not recognize gender-based persecution as a ground for refugee status. The Convention Refugee Determination Division (CRDD) 4 panel hearing her case castigated Nada for her effrontery. Two male members of the CRDD even advised Nada that she "would do well to comply with the laws of her homeland" and "to show consideration for the feelings of her father, who [was] opposed to the liberalism of his daughter."

However, on January 1993, the Canadian government, reacting to the Canadian public outcry, announced it would allow Nada to stay in Canada only on "humanitarian grounds", thereby making it clear that a "new, gender-based asylum category" had not been recognized. [Jan Goodwin, *From the Valley of the Chador*, MIRABELLA, April 1994]

Then in March 1993, amid public outcry over Nada's case and several other well publicized incidents regarding the plight of women who had made unsuccessful refugee claims based on gender related persecution, Canada adopted Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution. These Guidelines made a range of recommendations for effectively evaluating and accepting claims such as Nada's.

ue to lead to misevaluation of gender-related claims.

One typical misevaluation is exemplified in a recent administrative decision in Canada. The claimant, an Iranian woman, had four confrontations with Iranian authorities over perceived infractions of the Islamic dress law. The Refugee Division however found that the ➤

◀ claimant had encountered what all women in Iran have to cope with daily: “petty and arbitrary harassment by a puritanical regime.” It stated that “the dress code was an ordinary law of general application and did not violate a basic human right” and concluded that the four incidents constituted only “harassment,” and “not persecution”. The Refugee Division further suggested that should the claimant be “cautious”, she will have “no problems whatsoever” with the authorities in her country.³

This decision represents a typical failure to recognize that the restriction on dress in Iran is a direct violation of a woman’s right to freedom of religion and conscience. Additionally, it fails to put the dress-law in the right social and political context, where it is only one strand in a web of oppression restricting the ability of Iranian women to function as autonomous and independent individuals. Finally, it fails to consider that the penalty for violation of the rule is disproportionately severe in relation to the infraction and thus even if one rejects the contention that the proscription does not constitute persecution, one should conclude that the penalty is. In fact, some courts have already considered the Iranian “dress law” to be a “persecutory law” because of the “disproportionate penalty women face for disobeying it (seventy-five lashes without any procedural guarantees)”⁴

Even if a woman is able to establish that the degree of oppression and discrimination exercised by the state or its agents rises to the level of persecution or results in a well-founded fear of persecution, she must next show that her fear is based on one or more of the grounds enumerated in the Convention. Because “gender” is missing as an independent ground in the Convention refugee definition, women have to establish that their gender-based persecution is based upon race, religion, nationality, political opinion or a particular social group. Since late eighties efforts to expand the meaning of a “particular social group” under Article 1A (2) of the 1951 UN Convention to include women or subgroups of women have particularly gained grounds. There have also been efforts to determine certain forms of persecution directed against women on grounds of “political opinion” and “religion”.

However, Iranian women have faced further complications in fitting their claim in one of these grounds. One fatal element has been the restrictive interpretations of requirements for establishing a “social group”. For example, the claim of an Iranian woman based on the particular social group of “westernized middle class women” was denied in Britain because the court held that since the group did not hold a “common belief or practice” it lacked “identifiability”.⁵ The court suggested that women who are subject to gender-related persecution in Iran are required to show that they are an organized entity in order to establish a social group. It, therefore, failed to recognize that while women may not consciously organize as a group opposed to the regime, they may, nevertheless, be targeted by the

government for group persecution. The group’s identity is therefore formed by the government’s targeting of the group.

In contrast, Germany’s Federal Office for the Recognition of Refugees granted asylum to an Iranian woman who based her fear of persecution on a specific social group, “Iranian women”. The Office ruled that “the ideologically based power of men over women results in a general political repression of [Iranian] women in defiance of their individual liberties and human rights.”⁶ Such inspiring decisions, however, are scarce.

A common reason for denial of gender claims based on “political opinion” is that such claims, are often considered as “private” and “personal” matters, even when the perpetrator is the government. For example, in one case that an Iranian woman was accosted by the Revolutionary guards in the street on at least fifteen occasions for refusing to wear a veil before fleeing Iran, a US Court ruled that

her actions in not complying with the dress law were just “personal attire decisions” rather than “political activities”. Because of the Court’s failure to comprehend the political dimensions inherent in her refusal to comply with the strict gender laws of Iran, the woman was, therefore, determined not to have a well-founded fear of persecution by reason of her “political opinion”.⁷

In contrast, another asylum petition based on “political opinion”, received positive

opinion by a Federal Court in Canada which held that “in a country where the oppression of women is institutionalized any independent point of view or act opposed to the imposition of a clothing code will be seen as a manifestation of opposition to the established theocratic regime.”⁸

In the context of the Convention refugee definition, the notion of religion encompasses the freedom to hold a belief system of one’s choice or not to hold a particular belief system and the freedom to practice a religion of one’s choice or not to practice a prescribed religion. Nevertheless, in considering the basis of persecution of another Iranian women who claimed non-compliance with Iran’s religious laws, religion was ruled out as a valid basis simply because the woman said that she was not religious.⁹

Yet, in another decision, noting that non-compliance with the Shari’a, Iran’s religious law, entailed severe penalties, an Iranian woman who had been lashed in Iran for meeting clandestinely with her boyfriend and was expecting a child from her new relationship after her flight from Iran was found to face persecution on grounds of “religious precepts and cultural norms”.¹⁰

These brief examples show that although Iranian women’s gender-based refugee claims can and occasionally have easily fit in the Convention’s refugee definition, it is still difficult to establish that the abrogation of women’s fundamental human rights constitutes per-



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Turkey Halts Deportation Campaign

In March 1997, Turkey launched a deportation campaign against Iranian refugees, mostly those who had entered Turkey via Iraq and had failed to register with the authorities due to fear of arbitrary deportation by the border police. Iranian Refugees' Alliance wrote the following letter to the Interior Ministry, to protest these deportations and bring to the attention of the authorities the first hand experience of it's representatives' recent visit to Turkey. In addition, we tried to engage international organizations in protesting the deportations.

The protest was directed at non-compliance of Turkey's new asylum regulations with international law as well as the arbitrary practices of the border police. However,

Turkish authorities continued to ignore or dismiss the criticism. In one reply in May 1996, although a Turkish embassy official in Canada acknowledged one criticism "that there is lack of information to asylum-seekers regarding applying within five days to the relevant Turkish authorities," he dismissed it as "baseless" since "a comprehensive information campaign on the Ordinance has been carried out by the use of booklets and video cassettes."

The official also said that: "Turkey has asked the UNHCR and third countries not to determine the status of the asylum-seekers who do not legalize their status in the country. However, flexibility will be shown for refugees who have already obtained a visa from a third country, and Turkey and

UNHCR will cooperate in order to prepare a joint list of these individuals."

Although Turkey's eventual reaction was welcomed in saving hundreds of other refugees from deportation, more than 80 refugees who were by then deported to northern Iraq, continued to face the worst possible living conditions and serious threats against their lives by Iran's agents in northern Iraq.

In mid-summer 1997, the deportees to Iraq finally began to receive transit visas from the Turkish authorities and returned to Turkey for onward resettlement. Those refugees who remained in hiding in fear of deportation were also given temporary stay permits for the time needed for processing of their visas to third countries. ■

Mrs. Meral Aksener
Minister of the Interior
Dear Minister Aksener:

April 7, 1997

Iranian Refugees' Alliance is writing this open letter to you to urge ceasing expulsion of Iranian asylum seekers to Iran or Iraq, where they may face serious human rights violations. Since 26 February 1997, more than 80 asylum seekers have been forcibly returned by the Turkish government and hundreds more are at risk.

These forcible returns violate internationally accepted refugee and human rights laws and must stop immediately. At present it appears that most of the at-risk asylum seekers are:

- recognized as refugees by the United Nations High Commissioner for Refugees (UNHCR) and would be leaving Turkey for resettlement shortly,
- expelled solely on the procedural ground of having failed to register an asylum claim within the required time period,
- returned despite ongoing serious human rights situations in Iran and despite scores of assassinations and kidnappings attributed to agents of the Iranian government operating in northern Iraq and other reported human rights violations in the region.

The 1951 UN Refugee Convention prohibits the imposition of penalties on refugees due to their illegal presence and requires an unconditional examination of each and every refugee's claim. It further prohibits States from sending anyone against their will to a country where they would be at risk of human rights violations (the fundamental principle of non-refoulement.) At its 28th session, the Executive Committee of the UNHCR, which was represented by Turkey among other member states, reiterated that no reservations are permitted to this fundamental principle. It was clearly stated that application of the principle of non-refoulement is not dependent on the lawful residence of a refugee in the territory of a Contracting State and that this principle applies not only with respect to the country of origin but to any country where a person has reason to fear persecution.

Penalizing asylum seekers for their failure to register an asylum claim with the Turkish authorities is further unjustified by the fact that Turkey's asylum practices in the past two years have violated the trust and confidence of any impartial observer, let alone asylum seekers whose lives may depend on this system. Several international organizations and national critiques have criticized the 1994 Turkish Asylum

Regulations on such technical and substantial grounds as:

- the five-day deadline for filing claims and its rigid application, the geographic restriction for filing claims at the borders,
- disqualification of the police as authorities responsible for interviewing asylum seekers,
- lack of expertise and partiality of officials of the Foreigner's Bureau within the Interior Ministry responsible for both making the decisions and reviewing them on appeal,
- partiality of the currently available administrative appeal which is referred to the same division making the initial decision, and lack of a judicial review for negative decisions and deportation orders,
- lack of any practical opportunity for obtaining legal assistance and the right to representation for asylum seekers,
- unwillingness to cooperate with the UNHCR and to defer when this agency decides a person is qualified as a refugee.

Other foreboding signs have to do with the unrelenting powers of the local police in implementing the regulations, including stepping out of the regulations with impunity. In a recent visit with asylum seekers in Turkey, members of Iranian Refugees' Alliance obtained a more accurate and comprehensive picture of the current situation as it relates to Iranian asylum seekers and the reasons for their failure to present themselves to the Turkish police. We feel we should immediately put on record some of these findings to encourage a better understanding of the prevailing distrust and fear among Iranians:

In the past two years many asylum seekers have been arbitrarily refused to register an asylum claim and summarily returned by the border police in violation of the procedures set out in the Turkish regulations. Since December 1996, at least 85 Iranian Kurds who approached the police in Sirnak to register have been reportedly refused registration and deported to Zakho in northern Iraq. As a result very few Iranians have been registered in Sirnak in recent months. At the time of their registration, the police resorted to deceitful methods to deport them since they all met the requirements. Some were instructed twice by the police to return in two days, after which they were told that they had failed the "five-day rule". In some other cases their identification documents and UNHCR registration letters were confiscated by the police and they were finally deported for not having them. Others were returned for failure to come up with the money requested by the police; an amount which is reported to ►

◀ exceed \$1000.

The tragic deportation of a group of 21 Iranians who were summarily returned to Iran in August 1996 by the police in Agri, despite meeting the requirements, is another well-documented example. However, to date, there are no indications that the perpetrators of this unlawful act were ever prosecuted or disciplined.

There have also been many reports of physical and verbal abuse and various forms of intimidation while asylum seekers stay in the border towns. Those residing in the southeastern provinces report being regularly beaten or insulted by the police. One reason for the beatings appear to be their illegal entry, an issue which the police regards with highest sensitivity since the creation of the no-fly zone above the 36th parallel in northern Iraq. Naturally these entries cast doubt on the ability of the police to control the borders and aggravate the police for being "humiliated in front of their superiors." In this connection, it is believed that one purpose of the arbitrary deportations by the police is to use them as a measure to deter others from crossing the border and increase police performance in securing the borders.

In their interviews with the police, asylum seekers are not only greeted with hostility and threats, but also with disbelief and an atmosphere which is least conducive to elucidating an asylum claim. The police appear totally ignorant of the conditions of the countries that asylum seekers are fleeing and have not been able to demonstrate even a superficial knowledge of refugee and human rights laws. In Sirnak, police are often overheard commenting that a refugee is "a person who has lost his dignity", which does not demonstrate an awareness of the principles and requirements for refugee protection. Instead of inquiries of reasons for seeking asylum, most questions aim at finding grounds for deportation. By making the simplest mistakes in describing the details of their flight, asylum seekers are threatened with deportation. Iranian Kurds are regularly interrogated about PKK and accused of cooperation with them. There is a strong fear among secular Iranians to express their anti-Islamic sentiments, a common basis for their persecution, because this offends the police and may adversely affect their treatment. Asylum seekers have been subjected to spontaneous bodily searches for false documents during their interviews, which, if found, subjects them to immediate deportation.

Iranians residing in the eastern provinces feel extremely vulnerable to attacks by Iranian agents, who in the past have reportedly kidnapped and assassinated many Iranian dissidents in Turkey. Every day, many Iranians who wish to travel to or through Turkey by land, pass through these border towns. Busloads of pro-government Iranians on religious tours to Syria stay in Agri on a regular basis at close proximity to asylum seekers, as there are few guest houses in the border towns. Asylum seekers who stay in southeastern segment of Turkey which is under martial law are subject to the brutal realities of war. Most importantly they are posed with serious threats to their personal security. In 1996, paramilitary "village guards" have repeatedly raided dwellings of Iranians in Sirnak to use them for temporary operation bases against the guerrillas.

Problems with translations have become crucial since even in the third year of the implementation of the new regulations, competent, qualified and impartial interpreters have not been available during the process; In Sirnak, Iranians resort to using a food service worker at the police station to assist with translations—this worker does not even speak the same Kurdish dialect. In Agri, Iranian asylum seekers who speak Azeri are called in by the police to translate. According to their own assessment, they can hardly translate 50% of the communication. An orientation video for asylum seekers shows that translations in Ankara's Foreigner's Bureau of the police take place in a tri-lingual situation (Turkish to English to Farsi) and this is by using

a police officer who is not even fluent in English. Considering that most Iranians are not fluent in English either, such a scenario shows unacceptable criteria in selection of translators and a lack of knowledge that an applicant's asylum claim cannot be developed or fairly assessed if the communications are not accurately and completely interpreted.

While international refugee laws require that asylum seekers who have fled without passports and do not have relevant documents to prove their nationality must be given the benefit of the doubt in light of their special circumstances, in Turkey, they are refused access to the asylum procedure and deported by the border police. Those found with false documents are also subject to immediate deportation under the Turkish legal system. These requirements are neither mentioned in the regulations nor in the information pamphlet provided to asylum seekers.

While reported figures of refoulements (120 Iranian and Iraqi refugees in 1995 and 139 in 1996) show that deference is not given to UNHCR by the Turkish authorities in cases where this agency recognizes a person as a refugee, reports from Iranians residing at the border towns also indicate destructive attitudes by the border police in cooperating with local UNHCR offices. At times, when local officers have tried to remind police officers of the regulations or make inquiries about registration refusals, they have been treated with hostility and their advice has been ignored. On one occasion, in Sirnak, the police deceived a group of asylum seekers into signing a complaint against the UNHCR local officer. When called in to court, the judge withdrew the complaint after realizing that the plaintiffs had no knowledge of the deposition they were forced to sign. Such engagements severely undermines protection of refugees.

Under these circumstances, it is not surprising that there are so many asylum seekers who have not presented themselves to the authorities. Nor is it difficult to understand their duress. A provision of the Vienna Convention on the Law of Treaties states that a material breach of a multilateral treaty entitles a party especially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part.

We urge you that until effective improvements have taken place both in the regulations and their implementation, asylum seekers should not be penalized in any way for acting on their lack of confidence in the procedure: As an interim measure we urge you to allow persons who have failed to register a claim within the deadline to access administrative courts to exit Turkey for safe countries. In late 1996 early 1997 such persons were allowed to redirect their deportation orders from their country of origin to their country of resettlement through these courts. This practice can further be complemented by letting asylum seekers regularize their status with the police (register asylum claims) even before they are admitted by a resettling country.

Much public sentiment in Turkey has been sympathetic to the plight of asylum seekers. If the Turkish government wants to win the trust and confidence of its own people as well as the international community and finally asylum seekers, it must bring in line its asylum system with internationally acceptable standards. Effective control should be exerted on police officers who are responsible for receiving asylum seekers at the borders or registering their claims.

Once again, we urge you to stop expulsion of Iranian asylum seekers. We thank you for your attention to this matter, and welcome your response.

Sincerely,
signed
Dr. Mona Afary

VicePresident-Iranian Refugees' Alliance, Inc. ■

Discriminatory Asylum Policies and Practices in Turkey (Presentation at OSCE)

by Ezat Mossallanejad
(on behalf of ICCR)

For the last seven years, I have been working with Inter-Church Committee for Refugees (ICCR), mainly as the representative of the Jesuit Refugee Service-Canada. Along with Tom Clark (ICCR Coordinator) and Anne Woolger (another member of ICCR and a staunch supporter of Kurdish and Iranian refugees in Turkey), I shared the plight of non-European refugees with ICCR members. ICCR started its advocacy for this group of refugees more than three years ago. We have been enjoying ongoing cooperation from the Iranian Refugees' Alliance throughout these years.

The Inter-Church Committee for Refugees (ICCR) is a coalition of ten national Canadian church bodies whose mandate includes making joint submissions on refugee protection situations.

In 1994, Anne Woolger travelled to Turkey and investigated the lack of due process for non-European refugees in this country. A year later, Ann and Tom Clark travelled to Geneva on behalf of the ICCR. They raised the issue at the annual meeting of the Executive Committee of the United Nations High Commissioner for Refugees. They also presented first hand information on Turkey's unlawful deportations as well as several refugee claims which had been unfairly rejected by the UNHCR in Turkey. This information was obtained with the help of Iranian Refugees' Alliance in New York.

In early 1996, as a proactive approach to the upcoming Review Meeting of the Organization for Security and Cooperation in Europe (OSCE), ICCR sent two written submissions to OSCE. One was with respect to the lack of due process for some non-citizens in deportation by Canada. The other one (the full text is given below) was about the discriminatory policies and practices against asylum seekers in Turkey.

On the basis of these submissions, both I and Tom Clark were invited to Vienna to attend the OSCE meeting and add our verbal concerns to the written submissions in the "Human Dimension" workshop. We were also able to attend interesting sessions on the "Economic Dimension."

I started my journey in November 4, 1996. I quickly got oriented, learned the routine and met other countries' NGOs before speaking Friday November 8, 1996 at the session on "Tolerance and Non-Discrimination" which included treatment of foreigners. Tom joined me on November 8th to speak Wednesday 13th on "Rule or Law" which included right to a fair trial.

The Organization for Security and Cooperation in Europe, OSCE, is the present form of a process of consultation and negotiation that began with a Final Act signed in Helsinki in 1975 by governments of Europe and North America. It is the process which ended the Cold War. The process is important for its combination of human rights (referred to as the "human dimension") and security concerns, and its focus on the political accountability of its 55 members. Yet the level of human rights agreement to be complied with is quite narrowly focused. For example, States can be held accountable for large visa fees rather than "gross and systematic human rights violations".

There is a permanent council of representatives which meets weekly in Vienna. There is an Office of Democratic Institutions and

Human Rights, ODIHR, in Warsaw. Every two years there is a "Review Meeting" at which progress on the last undertakings is measured and new undertakings are contemplated. An NGO like ICCR can present their assessment of the OSCE process and can make recommendations to the body of national delegations for their further development of the OSCE principles, standards and mechanisms.

The format for a Human Dimension Working Group session begins with government statements. These can either report actions taken or complaints about incidents in another country. In general, the US spoke (seemingly for North America) and Ireland spoke for the European Union in a rather grand principled way. Other governments tended to report actions, although Switzerland took a stand to push ratifying the Convention against Torture. Some Nordics gave an excellent statement on the meaning of the Rule of Law which is helpful for NGO purposes. Governments could use a right of reply if they had been referred to by another government or by an NGO. Then international organizations spoke, routinely the Council of Europe. (Under the Economic Dimension Working Group, the World Bank UNDP, OECD also spoke.)

NGOs had 5 to 7 minutes to speak. This was not, of course, adequate to cover ICCR concerns on the plight of non-European asylum-seekers in Turkey. I spent hours to summarize ICCR's submission without sacrificing the content. I practiced many times in my Hotel in downtown Vienna. In the night of November 7, 1996, I received a fax from my colleague Anne Woolger about a border event in Turkey. She had in turn received information from a Dutch colleague involved with an NGO working in Sulaimaniya, Iraq, that on October 26, 1996, 28 Iraqi Kurds were massacred by Turkish guards as they tried to cross the Iranian Turkish border unofficially. They were first bombed, then some were shot from a distance and at least 3 were knifed. I included this information in my report and added that these tragedies were happening regularly. At the meeting, I spoke for 8 minutes and covered almost everything. Fortunately, the Chair did not interrupt me. I started with urging OSCE members to ban geographical limitations on the application of the Refugee Convention and Protocol imposed nowadays by two countries in Europe - Turkey and Hungary. I ended my statement with the same request.

The Chair of Turkish delegation refused to budge. While admitting about the existence of geographical limitation on the application of the Geneva Convention, he emphasized that this limitation will continue to exist. He made no comment whatsoever on the redundancy of the exit visas, but assured members about flexibility on 5-day time limitation on filing refugee claims. He then made reference to the lack of burden sharing for large numbers of refugees and mentioned about the reluctance of European countries to respond to emergency situations.

Both ICCR's sediments were well received by NGOs and UN bodies. In my opinion, ICCR laid the foundation for further advocacy. ■

Inter-Church Committee for Refugees

Comite Inter-Englis pour les Refugies

129 St. Clair Ave. W. Toronto, Canada

**BRIEF TO THE ORGANIZATION FOR SECURITY
AND COOPERATION IN EUROPE
ASYLUM POLICY AND PRACTICES IN TURKEY
AND ITS IMPLICATIONS**

September 27, 1996

Summary

Turkey reveals in a particular and dramatic way general problems which states have in granting rights to refugees. The "geographic limitation" limiting the application of the 1951 Convention to European refugees is in evident violation of the UN Charter and OSCE principles. OSCE Member States should agree to outlaw this option. OSCE members should also agree to hold workshops with ODIHR and UNHCR to develop new mechanisms to better ensure refugee right consistently across the OSCE Member States should urge Turkey to improve procedures for non-European refugees.

The Inter-Church Committee for Refugees (ICCR) gather representatives of ten national church bodies in Canada. Its mandate includes monitoring world's refugee situations and Canadian responses. Its work reflects a commitment to justice, peace and community and upholds a traditional respect for the dignity and worth of the foreigner. Member churches have been directly involved in resettlement of some refugees from Turkey to Canada to protect them, and speak from this experience.

Introduction

At the time of preparation of this brief several thousand Kurdish, Turkoman and Iraqi asylum seekers are at the Turkish-Iraqi border and are being denied entry into Turkey by government authorities.

For the past twenty years, Turkey has been the first country of asylum to Iraqi, Iranian and Syrian asylum seekers. Kurdish minorities from these countries are the largest group of asylum seekers in Turkey. These asylum seekers have usually used Turkey as a temporary refuge until they secure resettlement in a safe third country. Despite serious economic difficulties, the majority of Turkish people have proved to be quite receptive and hospitable to these refugees. However in recent years the asylum policy of the Turkish government has become more restrictive and discriminatory, resulting in an absence of protection for many endangered individuals.

This brief underlines the fundamental concern of the Inter-Church-Committee for Refugees that the right to non-discrimination and the right to asylum are threatened in Turkey - a member of the Council of Europe. To protect the lives of thousands of refugees, immediate and definitive action must be taken by agencies such as the OSCE to ensure that all members apply at least minimum standards of humanitarian justice for asylum seekers, and that members states offer asylum without discrimination on the basis of national origin.

The remainder of this paper reveals Turkish policies and practices with regards to its treatment of non-European refugee claimants

where there are clear violations of international human rights treaties and obligations.

Geographical Restrictions

At the time of its ratification of the 1951 UN Convention on Refugees and 1967 Protocol, Turkey placed a geographical limitation on its obligation to asylum seekers, limiting the recognition of refugees to European refugees only. This position clearly violates Articles 1.3 and 55 of the UN Charter and the 1975 Helsinki Accords which prohibit discrimination on the basis of the race. As a result of Turkish policy refugee claimants from such countries as Iraq and Iran are not even eligible to request permanent asylum in Turkey solely on account of their national and racial origin. The current international legal context would prohibit discrimination on "any grounds", as reflected in the Covenant on Civil and Political Rights and the 1986 Vienna Document and the 1989 Copenhagen Document at sections 5.7 and 3.5.

The geographical limitation itself raises profound questions. It is, of course, offensive that States can violate fundamental rights to non-discrimination. It is worse that this practice is sanctioned by an agency of the UN itself. States Members of the UN are permitted by the UNHCR, a UN agency to enter a treaty (the 1967 Protocol) in a manner which is at variance with the Charter of the UN, the 1975 Helsinki Accords, and the 1989 Copenhagen Document.

In November 1994, the Turkish government established a new series of regulations creating a system which judged whether non-European refugee claimants should even be regarded as asylum seekers and be granted the chance to make their claims. This system further complicates the plight of non-European refugee claimants in Turkey who until July 1994, sought assistance from the UNHCR which had been the sole authority, recognized by the government of Turkey, in deciding refugee eligibility of non-Europeans.

The following points outline some of the serious shortcomings of these new regulations for "non-European" asylum seekers in Turkey.

Time limitation

Regulations of November 30, 1994 have made it extremely difficult for non-European refugees fleeing persecution to get adequate protection in Turkey. Asylum seekers are required to file their claims within 5 days of entering Turkey. Failing to do so could lead ultimately to deportation regardless of the merits of one's claim. This is a short deadline considering the traumatic conditions of asylum seekers who escape persecution, tyranny, war, and civil conflicts in countries such as Iraq and Iran. Most of them are totally unaware of the Turkish government's asylum regulations and the time limit denies them the opportunity to make meaningful contacts with the local population and learn about their host country's asylum policies.

Living under Threat in Border Towns

Refugee claimants who enter Turkey with no or improper travel documents are required to report to police almost immediately. They are sent back to the nearest border entry point to file their claims with the local police. This forces many of them to remain near the border of the country from which they fled in fear of persecution. Such a practice leaves asylum seekers vulnerable ►

◀ to threats of forced repatriation and extradition. There have been reports of Turkish border authorities frequently resorting to arbitrary and atrocious methods of intimidation of refugees and who have at times extradited them to their colleagues in bordering countries. Another serious problem with the border point of entry application procedure is the presence of army personnel and militia from rival groups in the southeast border areas which puts the security of asylum seekers more at stake. There have also been reports of assassinations and kidnapping of asylum seekers in Turkey by Iranian authorities. These incidents are not consistent with 1991 Moscow Document sections 23.1 on liberty, and 28 on states of emergency. The incidents are not consistent with 1989 Copenhagen Document sections 16.1.

Lack of appeal

The current asylum determination system in Turkey is unjust and falls well short of international human right standards. There is no independent body to judge refugee claims in a manner which is free from foreign policy influences and public hostility. Turkey's domestic law does not provide an asylum seeker with the right to an appeal a negative decision. Asylum seekers are also unable to rely on the right to an "effective remedy". The right stems from the international Covenant of Civil and Political Rights, article 13, as described in General Comment 15 of the UN Human Rights Committee. This practice is not consistent with 1989 Copenhagen Document section 5.7 where human rights and fundamental freedom are to be guaranteed by law.

Refoulement

Turkey's expulsion practices are another area of grave concern. Reports have been received about non-European asylum seekers who were rounded up by Turkish police and transported to the borders of Iran and Iraq for the purpose of deporting them back to their countries of origin. This is "refoulement". It is inconsistent with the 1989 Copenhagen Document sections 5.7, 5.9, 16.1.

This practice is apparently based on Turkey's explicit security agreement with Iran and Iraq to return members of each other's opposition groups who seek refuge in their respective countries. Clearly, effective protection for many asylum seekers is greatly jeopardized. In addition, increasing reports of Turkish authorities rounding up and deporting refugees who have been granted both protection by the UNHCR office and asylum in a resettlement country is very alarming. It is our strong convention that bilateral treaties cannot be used to violate basic human rights, including the rights of refugees whose lives will be in danger if they are returned to their countries of origin. Article 33 of the Geneva Convention relating to the Status of Refugees has obligated contracting states not to send refugees "in any manner whatsoever" to the frontiers of States where life or freedom would be threatened (principle of non-refoulement). The policy of expelling asylum seekers should be stopped immediately. This situation runs counter to the Vienna Document 1986 which promises fundamental rights to all persons on the State territory.

Exit Visas

The new regulations have required all refugees leaving Turkey for resettlement to have Exit Visas. This provision has been applied in an unpredictable manner which has put refugees at risk of

refoulement. There have been many cases of refugees recognized by UNHCR and western embassies and accepted for resettlement in other countries, who were unable to leave Turkey due to erratic imposition of this rule. While a few refugees have obtained exit visas by bribing authorities, others have been forcefully repatriated to face danger in their countries of origin. We believe that this regulation should be revoked immediately. This situation runs counter to the 1986 Vienna Document section 12 on humanitarian travel and section 17 on restriction on travel for security reasons. The practice is also inconsistent with 1991 Moscow Document section 33 and 1989 Copenhagen Document sections 5.7 and 5.9.

Iranian sit-in

with regard to Iran we express our deep concern about the plight of approximately 150 Iranian asylum seekers who have been staging a sit-in near the UNHCR branch office in Ankara in protest of their rejection as refugees. We recognize that not all of these asylum seekers fit the Convention definition of refugee. But many of them may not have originally had a fair hearing. Since the appeal procedures are flawed the cases have continued to be classified as "unfounded" when some have strong evidence of potential persecution. We are concerned that even those who originally may not have had a valid refugee claim now have a valid fear of danger if returned to their native Iran on account of their exposure to international media.

Recommendation

We urge the members of the OSCE to:

- 1-Make a resolution to ban geographical restrictions on the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.
- 2- Agree to hold workshops with ODIHR and UNHCR to develop new mechanisms to better ensure refugee rights consistently across the OSCE.
- 3- Appeal to the government of Turkey to:
 - revoke or extend to a reasonable time the 5-day limit for asylum seekers to make a refugee claim and to permit cases to be filed in the interior of the country
 - review with ODIHR staff the policies and practices of Turkish officials and of UNHCR personnel to ensure that asylum seekers are granted fair interviews and meaningful appeals
 - revoke or simplify and streamline exit visa requirements
 - halt the deportation of non-European asylum seekers
 - consider humanitarian leave for Iranian sit-in participants and others who have become refugees "sur place" while in Turkey, and engage with international governments to facilitate their resettlements
 - open its border to refugees from Northern Iraq who are currently seeking asylum at the Turkish-Iraqi border, obtaining agreements for resettlement.■

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longed absence abroad. Consequently, M.A.R.'s claim that his past political involvement, his application for asylum, and his long stay abroad would increase such risks should he be returned to Iran must be taken seriously. The possibilities that he might be subjected to imprisonment and torture to obtain his confession are not matters which can lightly be set aside. Amnesty International, Human Rights Watch and other international human rights organizations have documented Iran's regular use of torture to obtain confessions.

Given the possibility of interrogation and the methods used in Iran, as well as the accessibility of national courts of other countries and criminal records, the Iranian authorities are likely to discover about M.A.R.'s drug offenses. Therefore, he might face additional punishment on his return to Iran for offenses committed in Britain. While it is difficult to ascertain what that punishment might be, it is reasonable to assume that M.A.R. would face treatment of an extremely harsh nature, based on Iran's record of mistreating alleged drug offenders.

Drug offenses are considered to be very serious crimes in Iran. In January 1989 the death sentence was made mandatory for the possession of 30 grams of heroin, codeine, methadone or morphine or five kilograms of hashish (cannabis resin) or opium. Since then thousands of people convicted of drug trafficking offenses have been executed.¹¹

At the beginning of the Iranian Year on March 21, 1997, the head of Iran's Organization of Prisons, Security, and Rehabilitation Affairs, estimated that 106,000 persons were serving terms or under pre-trial detention for charges of drug addiction, drug dealing, or drug smuggling.¹² According to press reports monitored by Amnesty International, from March to 20 June 1996, 1,743 major drug dealers; 6,802 small-scale distributors; and 18,172 drug addicts had been arrested in Iran. The organization also expressed its concerns that an unknown number of drug traffickers may be facing execution. The Human Rights Watch Report for 1997 also notes reports of the execution of convicted drug traffickers began appearing in the Iranian press during 1996 after being absent for several years.

The Iranian government has stated that it is engaged in a war on drug traffickers, and considers them as being political crimes in Iran. In September 1996, Jumhuri Islami, quoted Sardar Yusef Reza Abolfathi, the commander of Tehran's police forces, as saying that by "spreading drugs and cultural aggressions," the enemies of the Islamic Republic of Iran have begun wide efforts "to contest the holy establishment of the Islamic Republic."¹³ Addressing a meeting of the Revolutionary Court judges from all over the country, another government official, Ayatollah Yazdi, Chief Justice, said: "supplying drugs has a political bearing and distributors and dealers must be fought as enemies of the [Islamic] establishment."¹⁴

Alleged drug offenders in Iran are tried in the Revolutionary Courts. According to the United States State Department's Country Reports on Human Rights Practices 1996:

"Trials in the Revolutionary Courts are not fair. Often, pretrial detention is prolonged and defendants lack access to attorneys. When legal help is available, attorneys are rarely given time to prepare an effective defense.

Indictments are often for vague offenses such as 'antirevolutionary behavior,' 'moral corruption,' and 'siding with global arrogance.'

Defendants do not have the right to confront their accusers or to appeal. Secret or summary trials of 5 minutes are common. Others are show trials intended to highlight a coerced public confession."

The lack of due process in Iran's courts means that if M.A.R. is tried for drug offenses in Iran, he would not receive a fair trial and may be imprisoned or even executed without just cause. Imprisonment or torture in such circumstances are both very serious violations of an individual's human rights beyond what is considered as a legitimate imposition of punishment for such offense. Furthermore, M.A.R. has already received punishment for his offense in Britain and he should not be put in a position of double jeopardy.

ENDNOTES:

1. *Convention for Protection of Human Rights and Fundamental Freedoms*, 1950, Council of Europe.
2. The percentage was set to be roughly three to five percent by Buerghenthal in *International Human Rights in a Nutshell*, Thomas Buerghenthal, 1988. West Publishing Co.
3. Press Association Newsfile, January 17, 1997.
4. The Guardian, January 18, 1997.
5. *ibid.*
6. *United Nations Convention Relating to the Status of Refugees*, adopted by the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (adopted 28 July 1951).
7. Court of Appeal, Imm. AR 459, 2 May 1995.
8. Khashayar Behbanain, *Appeal Against Deportation*, London, England, THE IRANIAN Issue No. 9, Feb & March 1997.
9. *ibid.*
10. *ibid.*
11. Peter Feuilherade, *Merchants of death*, The Middle East, August 1991.
12. IRIB 6/15.
13. Jumhuri Islami 7/mehr/75 (Sept., 28, 1996), as cited in Gozareh, Liga-Iran, No. 18/year 3/ Oct & Nov 1996.
14. Keyhan 25/Farvardin/75 (April 13, 1996), as cited in Gozareh, Liga-Iran, No. 16/year 3/ June & July 1996. ■

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secution under one or more Convention protected grounds. By reviewing more cases involving Iranian women who have applied for refugee status on gender-related grounds in future, we will examine in more details, the circumstances in which the violations of human rights faced by women in Iran have constituted persecution and the extent to which Iranian women making gender-based claims of persecution have successfully relied on the categories of political opinion, religion, and particular social group to obtain relief. In conclusion, we will address the proper social and political context which the claims of Iranian women should be adjudicated and will propose a framework for evaluating the cases of Iranian women involving gender-specific persecution.n

ENDNOTES:

- 1 See, for example, *Women as a Social Group: Recognizing Sex-Based Persecution as Grounds for Asylum*, David L. Neal, Col. Human Rights Law Review, Vol. 20, No. 1, 1988.
- 2 A woman's right to be free from gender-based discrimination ►

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[KDPI/KDPI-RL joint statement 1/9/97]

13 The URK was formed in 1991 and was formerly known as "Cherikhay Fadayi Khalg Iran - Hoviat".

14 The Kurdish Democratic Party of Iraq (KDP) has been historically associated with the Kurmanji, or Bahdinan-speaking areas. Sorani and Kurmanji are difficult dialects of Kurdish which are mutually incomprehensible.

15 When the regional administration was established, the region was already devastated by intermittent civil war since 1961, by the Iran-Iraq war of 1980-88, by an Iraqi onslaught in the Anfal campaigns of the late 1980s, and then by the 1991 Gulf War and its aftermath, including the defeat of a Kurdish uprising which resulted in the exodus of 1.5-2 million refugees. Up to 4,000 Kurdish villages were destroyed, 800,000 were forced out of their homes (USCR) and 50,000 to 100,000 Kurds were killed (Human Rights Watch) during the Anfal campaign.

16 The Guardian, September 9, 1993.

17 FIDH-France Libertes - October 1993 and FIDH- Jan 1995.

18 List handed over to the investigating mission by the Iraqi Kurdish security services.

19 see supra note 7.

20 Reuters, April .21 1993.

21 Agence France Presse, August 27, 1993.

22 Washington Post, 6.5.93

23 The Guardian, September 9, 1993.

24 see supra note 5.

25 Islamic leader sees goal as Islamic Kurdistan, London, Kanal-6 television, as quoted in FBIS-NES, 14 January, 1994, p33.

26 see supra note 7.

27 Agence France Presse, January 18, 1994.

28 see supra note 5.

29 Reuters, November 3, 1995.

30 see supra note 5.

31 Reuters, February 18, 1995.

32 Press Release, KDPI, Bureau of International Relations, Paris, March 14, 1996.

33 Press Release, KDPI, Bureau of International Relations, Paris, Oct. 31, 1996.

34 Reuters, November 3, 1995.

35 The Guardian, November 1, 1995.

36 The Guardian, July 30, 1996.

37 Amman AL-HADATH in Arabic, Iran's Secret War' Reportedly Launched against Iraq, 29 Jul 96p 8, as quoted in FBIS-NES, 7 August, 1996, p 64.

38 Ibid.

39 Ramadan is one of the Iranian regime's camps in Kurdistan-Iran which is set up to combat Kurdish opposition abroad. It is connected to the Hamzeh Seid-Al-Shohada camp which is based in Urumieh and combats Kurdish opposition inside Iran by military and political means.

40 Jahan Emrouz (in Farsi), April 1996.

41 KDPI, Iranian Kurdistan (English), 1996.

42 David, McDowall, *A Modern History of the Kurds*, 1996.

43 Sharzad Mojab & Amir Hassanpour, *The Politics of Nationality and Ethnic Diversity, in Iran after the revolution*, Edited by Rahnema & Behdad, 1995.

44 Martin van Bruinessen, *The Kurds Between Iran and Iraq*, Middle East Report, July-August 1986.

45 Ibid.

46 Isam al-Khafaji, *The Destruction of Iraqi Kurdistan*, Middle East Report, Oct-Dec 1996.

47 The KDP levies "customs" dues worth between \$100,000 and \$250,000 a day

(Financial Times, September 10, 1996).

48 Reuters, September 4, 1996.

49 The Guardian, September 9, 1993.

50 Ibid.

51 Middle East International, August 6 1993, Iran and the Kurds, Results of "containment" (NEXIS).

52 Agence France Presse, May 11, 1995.

53 Jahan Emrouz (in Farsi), August 1997.

54 David McDowall, *The Kurds*, 1996, Minority Rights Group. On the question of primordial loyalties among the Kurds, also see Martin van Bruinessen, *Aga, Shaikh and State: The Social and Political Structures of Kurdistan* (London: Zed Books Ltd., 1992).

55 Agence France Presse, July 28, 1996.

56 BBC Summary of World Broadcasts, July 31, 1996, Speaker of Iraqi Kurdistan parliament denounces Iranian attack (NEXIS).

57 BBC Summary of World Broadcasts, July 31, 1996, Kurdish radio says no lives lost in Iranian offensive (NEXIS).

58 Agence France Presse, July 31, 1996.

59 Reuters, July 29, 1996.

60 Agence France Presse, July 30, 1996.

61 Agence France Presse, July 31, 1996.

62 New York Times, September 3, 1996.

63 see supra note 46.

64 quoted in Vera Beaudin Saeedpour, *The Mystery of Parallel Plots*, Kurdish Life, No. 20, Fall 1996, letter to the author dated 8.2.96.

65 Agence France Presse, August 25, 1996.

66 BBC, October 24, 1996, KDP accuses Iran of "invasion", appeals for help, Source: Voice of Iraqi Kurdistan, Salah al-Din, in Arabic 0906 gmt 23 Oct 96 (NEXIS).

67 Agence France Presse, October 15, 1996.

68 Agence France Presse, February 28, 1997.■

◀ is codified in several international instruments. For example, article 7 of the U.N. Declaration of Human Rights ensures that "[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law." The Convention of the Elimination of All Forms of Discrimination Against Women defines sex discrimination as any "sex-based distinction which has the effect or purpose of detracting from women's human rights and fundamental freedoms." As a result, discriminatory practices against women, which directly violate these international principles, are violations of fundamental human rights. As such, they should be considered a form of persecution for purposes of refugee determination.

3 CRDD A96-00092, July 26, 1996 (REFLEX).

4 *P. N.* v. Minister of Employment and Immigr. of Can., Fed. Ct. of Can., Trial Div. Nov. 5, 1993.

5 *MMG. v. Secretary of State for the Home Department*, TH/9515/85, as cited in, *7 Case Abstracts*, IJRL, Vol. 1, No 3, July 1989, and referenced in *Refugee Women: Establishing a Prima Facie Case Under the Refugee Convention*, M. Jane Kronenberger, ILSA J. INT'L L., Vol. 15, No. 33.

6 Title not given (Ref: 24 Nov 1988, Bundesamt Anerkennung ausl. Flüchtlinge 439-26428-86)

7 *F. K.* v. INS, Legis 21716 (10th Cir. 1993) referenced in *Case Note and Comment: Recognizing Gender-Based Persecution as Grounds for Asylum*, Daniel McLaughlin, , 13 Wis. Int'l L.J., Fall, 1994.

8 See supra note 4.

9 See supra note 5.

10 CRDD V94-01847, June 21, 1996 (REFLEX).■

Humanitarian Projects 1997

The Support Fund for At-Risk Iranian Refugees in Turkey was established in 1993 to meet the basic needs of Iranian asylum seekers who otherwise would not have the necessary resources.

By the end of 1996, more than 370 contributors have made it possible to support 268 single and family refugees on a regular basis. Year end reports for the last three years are as follows:

1994: \$22, 650
1995: \$50, 050
1996: \$36, 045

Every year, there are more new refugees who need urgent financial aid. As the inflation rate soars in Turkey, our stipends should increase accordingly. Any contribution would make us that much more effective in assisting refugees.

The Fund for Iranian Refugee Children in Turkey was established in 1994 to respond to various needs of Iranian refugee children. Since 1995, it has provided 114 school stipends for children aged 6 years and older who have been allowed to attend public schools, and has cooperated with other non-governmental organizations to assert the right to education for all non-European refugees in Turkey. We are

currently raising funds for **1997/1998 School Stipends**, \$75 per year for each child.

The Fund has also provided more than 900 Norouz gifts for children since 1994.

Another active project is **A Playground for Yozgat**. Yozgat is a refugee camp located 213 km from Ankara in Turkey. It accommodates mostly refugees from Iran and Iraq. The camp is a two story, 40 room building with no education or entertainment facilities for the many children who have to stay in the camp for long periods of time.

Year end financial reports of the Fund for Iranian Refugee Children in Turkey are as follows:

1994: \$900
1995: \$3,640
1996: \$6,825
1997: \$5,760 (mid year)

All resources have come from public contributions.

We invite you to join the Fund by making a contribution for the 1997/1998 School Stipends or the Playground for Yozgat or for our future projects.

For more information about any of our humanitarian projects, please contact us.

About Us

Iranian Refugees' Alliance, Inc. is a non-profit organization registered under the US Internal Revenue Code 501(c)3. We are a community based organization in the US with the mission to preserve and promote the human and civil rights of Iranian refugees and asylum seekers nationally and internationally. Our efforts fall under four categories:

1. monitoring, documenting, and reporting world wide situation of Iranian refugees and asylum seekers, especially where they are most under-served and their rights are abused.
2. empowering asylum seekers in obtaining refugee status by providing information on asylum matters and their legal rights, affidavits, documentation, translation, referrals and financial support for those in need.
3. preventing forceful return of Iranian refugees as prohibited by international law and assisting their resettlement in safe countries if necessary.
4. supporting newly arrived Iranian refugees in the US who face discrimination and/or disfranchisement, through advocacy, providing information and referrals, translation, and public education.

Our efforts are entirely funded by donations from the public and rely on volunteer labor. If you like to join in our efforts or support us by making a contribution, please fill out the following form. Contributions should be made payable to **IRA Inc** and mailed to:
Iranian Refugees' Alliance, Inc.
Cooper Station POBox 316
NY, NY 10276-0316

Year End Report 1996

PROGRAMS:

Humanitarian Aid:	\$45,215	77.3%
Advocacy and Education:	\$11,156	19.1%
Subtotal:	\$56,371	96.4%

GENERAL EXPENSES:

Management:	\$529	0.9%
Legal & Professional Fees:	\$907	1.6%
Fundraising:	\$618	1.1%
Subtotal:	\$2,054	3.6%

TOTAL EXPENSES: \$58,425 100.0%

INCOME:

Contributions from the Public:	\$56,860	92.3%
Special events:	\$4,750	7.7%
TOTAL INCOME:	\$61,610	100.0%

YES I WANT TO SUPPORT IRANIAN REFUGEES' ALLIANCE'S EFFORTS

Here is my contribution of

\$25 \$50 \$100 \$250 \$_____

I like to pledge \$___ per month to continue my support (you will be sent bi-monthly reminders for your payments)

Keep me informed (you will receive our quarterly Bulletin & bi-monthly mailings)

I want to volunteer my labor.

Name: _____

Address: _____

Tel: _____

Fax: _____

email: _____

VISIT OUR NEW WEBSITE

<http://www.irainc.org>

Our new web-site features our
mission,
current projects,
publications,
fundraising events,
and a comprehensive Documentation
Center.

Iranian Refugees' Alliance, Inc. Documentation Center

In order to show that a refugee claimant satisfies the refugee definition it is not sufficient to just show that s/he fears persecution; it is also necessary to show that there is an objective basis for that fear. One way to meet the objective criteria is to provide documentary evidence of the conditions in the country (or countries) where the claimant fears persecution.

Iranian Refugees' Alliance's Documentation Center is established primarily to provide refugee claimants with such documentation; i.e. human rights reports, newspaper clippings, scholarly articles which can be used as evidence in prevailing their claims.

In addition, the Center holds a wide variety of asylum related documents concerning global issues and Iranian refugees, as well as a collection of published decisions on Iranian refugee claims in European Countries, US, Canada and Australia.

Index to the Documentation Center can be viewed at the following website:

<http://www.irainc.org/dcenter>.

Iranian Refugees' Alliance Inc.
Cooper Station POBox 316
New York, NY 10276-0316

USA

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