Iranian Refugees' Alliance, Inc.

Bulletin

Iranian Refugees At Risk

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Inside:

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"UNSAFE HAVEN":

Iranian Kurdish Refugees in Iraqi Kurdistan (Part II)

The first part of this report described the perilous situation of Iranian Kurdish refugees in Northern Iraq. The general instability and chaos of the region, intra-Kurdish politics, external aggressions, and the increased activities of Iran's agents have all contributed to the increasingly dismal outlook for Iranian Kurdish refugees in Iraq.

The second part of this report, presented here, discusses what little assistance and protection are available to these refugees through the United Nations High Commissioner for Refugees' [hereinafter "UNHCR"] activities in Northern Iraq.

The third part will discuss the abusive and unfair treatment Iranian Kurdish refugees from Northern Iraq have been receiving after fleeing to Turkey.

III. Illusory Asylum

Under international law refugees have a fundamental right to safe asylum. At the heart of which lies the right to physical security in the country where they are granted asylum. Refugees also have the right of *non-refoulement*. This means that they should not be forced back from their country of asylum to a place where they may be persecuted. Refugees also deserve to have their other basic human rights adequately respected.

The protection of refugees is the responsibility of the authority that exercises sovereign jurisdiction in a given territory. Most governments have obligated themselves to protect refugees by becoming parties to the 1951 UN Convention relating to the Status of Refugees ("Convention") and the 1961 Protocol ("Protocol").

However, Iraq is not a party to the Convention or the Protocol and has no international treaty obligations to refugees. Consequently, conditions for Iranian refugees in Iraq have always been precarious.

Because Iraq is not a signatory to the Convention, the Office of the UNHCR plays an active role in protecting refugees in Iraq.[1] UNHCR's assistance to Iranian

ترجمه فارسی موجود است

Kurds seeking refuge in Iraq is mainly directed toward two groups. One group is the estimated 4,000 Iranian Kurdish refugees scattered throughout the Erbil and Sulaymanieh governorates in Northern Iraq. The other group consists of 21,000 Iranian Kurds in the Al-tash refugee camp, west of Baghdad.[2] Assistance to these groups has consisted of only the most basic care and maintenance, efforts toward the voluntary repatriation of these groups, and for those who are unable or unwilling to repatriate, efforts, generally unsuccessful, to resettle them.[3]

Implementation of UNHCR programs in Iraq has been complicated and difficult. The vast numbers of refugees,[4] the ongoing UN embargo against Iraq, inflation, general economic disarray, and internal and external political turmoil have all hampered UNHCR's efforts. While these problems have had a devastating impact throughout Iraq, they have hit the refugee population harder than the general population. As one UNHCR staffer noted, Northern-Iraq is "one of the most difficult places in which UNHCR is currently operating".[5] The significance of such a statement can only be fully appreciated when one considers the fact that UNHCR operates in some of the harshest, poorest and most conflict-ridden regions of the world.

An overview of UNHCR's assistance to Iranian Kurdish refugees in Iraq reveals that the levels of assistance are woefully inadequate. Refugees in government controlled areas have been languishing under deteriorating living conditions for over a decade. Their prospects for improvement or resettlement in a third country are slim to non-existent. In Northern Iraq similarly dismal conditions are compounded by a lack of security for refugees which leaves them living in constant fear.

Care and Maintenance

There are no independent reports on living conditions and levels of assistance for refugees in Northern-Iraq. However, reports from Iranian refugees suggest that only a portion of them receive food rations through the UNHCR. The ration itself--9 kg flour, 900 gr. cooking oil, 300 gr. sugar, 500 gr. lentils, per month per person-- does not even provide half caloric needs of a person. All other items must be purchased on the open market where prices are several thousand times what they were in early 1990.[6] Employment remains severely restricted even for the local population[7] and the nutrition situation has remained critical.[8] The uncertainties of the future continue to take their toll on Iranian refugees too.

Few Iranian Kurds live in refugee camps run by Iraqi Kurdish authorities (Kurdistan Democratic Party) and the UNHCR. However, the appalling conditions reported from inside some of these camps indicate that these refugees have no alternatives that would allow them to live a better life in Northern Iraq. [see box]

The Conditions of Refugee Camps in N. Iraq

Life in refugee camps in Northern Iraq is even less hospitable and more insecure than in urban areas.

According to reports received from refugees who resided in two camps in Northern Iraq for several months in 1997. The camps, Balguz (families) and Zawita (singles), are run by the the Kurdish Democratic Party forces and the UNHCR.. Refugees in these camps suffer from insufficient food, water, heat, sanitation, medicine and doctors. Most camp residents are members of the Iraqi Shi'a Supreme Council of the Islamic Revolution, which is a group in Iraq controlled by Iran. As a result, Iranian refugees who live in these camps constantly fear that they will be killed, poisoned or abducted with the help of the members of the SCIR. At night Iranians have to stand guard in turns to watch the activities of SCIR members. The camp in Zawita is reported to have accommodated crime fugitives from the government controlled areas, suspected by the refugees to also be potential collaborators of the Iranian government in exchange for money. Turkish troops have regularly launched military attacks in that areas, injuring and killing many civilians. In fact, it is reported that in spring 1997, Turkish troops set up a base in a yard adjacent to the camp site in Zawita, further exposing the refugees of being caught in the middle of the conflict between the Turkish military and the Kurdish rebels from Turkey. Source: Three refugees who were deported from Turkey to Northern Iraq in March 1997 and resided in these camps for 6 to 12 months until they were resettled in western countries by the UNHCR Office in Turkey.

In summer 1997, a group of human rights activists from various European countries visited two other refugee camps, Ninova and Sumail, in the KDP territory which accommodated Kurdish refugees from Turkey. Their report describes Ninova to be a prison Camp, administered by the UNHCR where according to the camp committee, more than 40 children had died as a result of infectious diseases. The report adds that Malaria, typhus, and dysentery were spreading among the refugees while the camp lacked doctors and medicine and refugees were prohibited from attending the hospitals in neighboring Dohuk. Three quarters of the inhabitants of the camp were undernourished due to the insufficient monthly food rations provided by the UNHCR and the drinking water was contaminated. The KDP had stolen the little that the refugees have had and those who have tried to leave the camp have been shot at by armed KDP men or have disappeared without a trace. In another camp, the report says, typhus epidemic was raging and nearly all the children were malnourished. There was no doctor to treat the sick and the hospital refused to treat the refugees. Anyone who left the camp and ran into a KDP checkpoint risked prison and torture.

Source: R*efugees In The Ninova Camp* ,Kurdish Red Crescent, 1997, Germany.

Reports from the Al-tash camp, which is located outside Iraqi Kurdistan and controlled by the Baghdad government, further indicate the general gravity of living conditions for refugees anywhere in Iraq. Independent reporters who visited the Al-tash camp in 1996 found the refugees living in squalor in a slum-like conditions.[9] In the summer of 1995 UNHCR's representative in Iraq, Abdallah Saied, told Reuters: "With U.N.'s food stocks in Iraq running out UNHCR could no longer provide them [Al-tash refugees] with a full food basket." World Food Programme representative in Iraq, Lucielo Ramirez, added that "The situation of the refugees is getting bad. Because of our supply shortages, they are not getting enough."[10] In Al-tash, refugees are not permitted to work, and their movement is also severely restricted.[11]

The outlook for these refugees is so grim that in June 1996 some 150 Al-Tash refugees, mostly women and children, who "could not stand it any more", fled to Kurdish-held Northern Iraq because "there was hardly any water, food or health care." Some of them were offered dilapidated houses by Iraqi Kurdish villagers, but many sought shelter in abandoned poultry shacks and sought help from relief organizations.[12]

Repatriation

No repatriation efforts have been reported for refugees in Northern Iraq. However, according to refugees who have approached the UNHCR offices in Northern-Iraq to seek resettlement in a third country, UNHCR officers encourage refugees to return to Iran voluntarily. It is estimated that 10,000 of the Al-tash refugees have registered their names for voluntary repatriation since 1995.[13] To date, no progress has been made in repatriating them due to bilateral problems.[14] Regardless of the levels of success, the refugees austere living conditions for more than a decade without any prospects for resettlement call into serious question the true voluntariness of their requests for repatriation.

Resettlement

Resettlement has been the bedrock of protection for Iranian Kurd refugees in Iraq due to the unacceptable conditions of asylum in this country. For refugees in Northern Iraq resettlement has also been the only means of protection against immediate and long-term security threats. As noted by the UNHCR, in theory, any refugee in Al-tash or Northern Iraq who is "unable or unwilling to repatriate" is eligible for resettlement in a third country. However, lack of resettlement opportunities, undervaluing of resettlement by the UNHCR itself, as well as problems in the processing of cases has made this only durable solution impossible for most of the approximately 25,000 eligible refugees in Iraq.

A very limited number of countries provide annual resettlement quotas for refugees. Within these annual government quotas, limited places are available for UNHCR requirements given the percentage of places reserved for special interest groups admitted by governments independent of UNHCR. Additionally, of the places available to UNHCR, many countries prefer to admit persons with potential for rapid integration. In the past several years, while UNHCR's annual resettlement needs have consisted of only 1%-2% of the world's refugee population, only between 30%-40% of the targeted caseload was actually resettled.

Another is that there are elements within UNHCR that undervalue resettlement as a legitimate solution to the refugee crisis. In 1995, a consultant to UNHCR commented that "there are strong forces in Geneva, and in several European capitals, that would like to see resettlement collect dust in the bins of history."[15]

Among the problems that particularly hinder UNHCR's ability to resettle refugees from Iraq are the following: none of the principal resettlement countries has an embassy in Iraq; the Baghdad International Airport is closed; and there are many obstacles to obtaining permission to exit Iraq. In addition, until 1996, government missions from potential resettlement countries were not even able to travel to Iraq. Thus, UNHCR officers had to hand carry case files to Amman, Jordan, where some governments had agreed to examine cases there.[16]

Resettlement of refugees from Northern Iraq is even more complicated. Refugees who were recently resettled had to first be moved to the government controlled area. Then, from Baghdad, special permits were required for travel to Jordan. After that arrangements were made for them to transfer from Jordan to the country of resettlement. In addition, intra-Kurdish fighting continues to threaten peace and stability.

As shown in the Table below, until 1996, the overall resettlement of Iranians from Iraq has been infinitesimal. In 1996, for the first time missions from Norway, Sweden, Finland and Denmark traveled to Iraq to interview refugees. As a result, the number of resettled cases doubled to a little more than 500 persons, the majority of whom were Kurds in the Al-Tash Camp. This, however, was still only a fifth of UNHCR's minimal need assessment for that year (2,400), which in turn was less than one-tenth of the actual number of refugees in need of resettlement.[17]

In 1997, UNHCR made further progress in resettling Iranian Kurd refugees from Iraq. However, only 6% of the actual resettlement need were resettled. Also, a considerable number of refugees in the backlog from previous years still remained without resettlement opportunities.

According to the UNHCR an estimat-

RESETTLEMENT OF IRANIAN KURDS FROM IRAQ

	Total number of Iranian Kurds in Iraq (N. Iraq)	volunteered to repatriate	UNHCR resettlement assessment	UNHCR resettlement actual
1993	28,500 (6,000)	-	-	-
1994	26,500 (4,000)	-	2,000	280
1995	27,000 (4,000)	10,000	1,460	255
1996	23,762 (3,682)	10,000	2,400	514
1997	24,487 (3,700)	10,000	N/A	1,616

sources: UNHCR and the US Committee for Refugees.

Timely Ressetlement: A Matter of Life and Death

The following refugees were determined by the UNHCR offices in Northern Iraq not to have "priority" for resettlement to a third country or, as it is also termed, "not to be security cases". The fates of these refugees challenge UNHCR's conclusions about their security.

■ Ebrahim Gageli 's body was discovered on August 13, 1997. near Panjwin after his disappearance for several days. [KDPI-Iran, Kurdistan, No. 248, August 1997, p11]

■ Mansur Mohammadpour's body was discovered between Dukan and Sulaymania on October 4, 1997. He was kidnapped on his way from his home in Koy Sanjagh to Sulaymania by agents of Iran. There were two bullet holes in his body and his legs, arms and neck were broken [Kurdistan, No. 250, October 1997, p11].

■ Hossein Zinati was shot to death on November 12, 1997 in Sulaymanieh. [KDPI-Iran, Kurdistan, No. 251, November 1997, p15]

■ Khalid Abbasi, another refugee, was shot to death on 6 June 1997 in "Huze Vashke", a Bazaar in Sulaymania in front of the eyes of hundreds of residents of Sulaymania. [KDPI-Iran, Kurdistan, No. 246, July 1997, p7]

■ Ahmad Sharifi, an Iranian refugee in Northern Iraq "disappeared" in 1997 after he was arrested in his home in Sulaymania, reportedly by members of the Patriotic Union of Kurdistan security forces. Sharifi was a former member of the Iranian opposition Organization of Iranian People's Fedaii Guerrillas (Minority). According to Amnesty International, his fate remained unknown at the end of the year. [AI Report 1998]. However, the Kurdistan Democratic Party of Iran reported that Sharifi was handed over to Iranian authorities on January 23, 1997 after he was arrested in Sulaymania. [KDPI-Iran, Kurdistan, No. 242, February 1997, p.13]

■ Salim Karimzadeh, a former member of KDPI-Iran, sought the assistance of UNHCR's Erbil Office for resettlement in 1996. In March 1997, while his request was still under consideration by the UNHCR, he was shot in front of his residence in a village near Erbil. His colleagues who fled to Turkey earlier say that even as a former member of the KDPI-Iran in Northern-Iraq, Mr. Karimzadeh was threatened by agents of Iran. He was an anchor man in the KDPI-Iran radio until 1996.

■ When Mohammad Hakimzadeh and his family were finally resettled in late 1996, his 16-year-old son, Kaveh, did not accompany them. He was brutalized and then killed in August 1996 reportedly by agents of the Iranian government who were assisted by local Patriotic Union of Kurdistan security forces. As reported by Kaveh's friends, Mr. Hakimzadeh, a former member of the KDPI-Iran, registered with the UNHCR in 1991. Before Kaveh's assassination, however, repeated pleas by him for resettlement, were turned down by the UNHCR.

■ Rahman Shabani and Haji Abdullah Mohammadi, two other refugees who were assassinated in Sulaymania in January 1996, were also reported to have been found ineligible for resettlement by the UNHCR for several years prior to their murder. Survivors of Rahman Shabani's family were eventually resettled in 1997. Survivors of Mohammadi's family are still in Northern Iraq awaiting resettlement.

This is not an exhaustive list. More than 200 disappearances, *refoulements* and killings of Iranian dissidents in Northern Iraq have been reported in the past several years. A number of them have been active members of the political parties who did not register with the UNHCR and thus were not formally recognized as refugees. However, a significant number have been refugees who registered with the UNHCR and requested resettlement in a third country.▮

➤ ed 2,000 refugees will be processed for resettlement from Iraq in 1998 (it is not stated how many of this estimate will be from Northern Iraq).[18] However, as in previous years, successful processing of even this finite caseload remains precarious due to the aforementioned problems.

It is further important to note that for those refugees in Northern Iraq who are selected for resettlement, whether or not they can actually take advantage of the opportunity depends on their ability to protect themselves from aggression during the period necessary for processing of their applications.

Finally, what remains a matter of compelling concern is that the overwhelming majority of the refugees will remain in precarious conditions due to lack of resettlement opportunities. The prioritization system that the UNHCR has been resorting to should not be seen as an indication of a lack of a compelling need for resettlement for the remaining group, but rather as a mandatory response to a limited resettlement quota.

In fact, under the prevailing conditions of general insecurity in Northern Iraq, where all Iranians with a history of opposition to the Iranian regime are targeted by agents of Iran, any criteria used for this prioritization is highly prone to erroneous decisions. A significant number of refugees have already paid the price with their lives because of the prioritization system. [see box]

Although the UNHCR continues to express that the agency remains "preoccupied by the security situation in Northern Iraq"[18] and that resettlement remains "the principal instrument of protection" in this region, the reality is that, due to insurmountable constraints, UNHCR will continue to be unable to respond to the protection needs of the ➤

great majority of refugees. Thus, asylum and protection continue to be denied to thousands of Iranian refugees in Northern Iraq. They will continue to be left on their own devices to figure out how to avoid aggression and to protect their lives.

For those refugees who find the means to seek the only available solution, which is to flee to the neighboring country of Turkey in order to seek the assistance of the UNHCR office in Turkey, there is yet another gauntlet to run. Upon crossing the southern borders of Turkey, Iranian refugees have continuously found themselves in a hostile and precarious situation. During the past several years, Turkish authorities have been subjecting many ex-Northern-Iraq Iranian refugees to summary deportation at the borders. Those who have managed to approach the UNHCR Branch Office in Turkey have been refused assistance for resettlement and instructed to return to Northern-Iraq and request assistance from the UNHCR offices in that region.

In the next part of this report, we will discuss the Turkish government's unjust and arbitrary asylum practices concerning ex-Northern Iraq refugees. We will also criticize the UNHCR's discriminatory policy of considering Northern Iraq as a reasonable protection option for these refugees once they flee to Turkey -- a policy that is only aimed to protect the resources of that Office at the expense of compromising irreparably the protection of refugees.

This presents part of a report under publication by Iranian Refugees' Alliance, describing the latest of the unending threats to the safety and well-being of Iranian Kurdish refugees in Northern Iraq.

Endnotes

1. The mandate for international protection of refugees has been given to the Office of the UNHCR by the international community through the General Assembly of the United Nations. The Office has been charged with the duty to seek durable solutions for the problems of refugees, to supervise the application of international conventions for the protection of refugees by governments, and to promote the implementation of "any measures calculated to improve the situation of refugees." (Statute of the Office of the United Nations High Commissioner for Refugees, adopted by United Nations General Assembly, 14 Dec. 1950).

2. The refugees in Al-tash were transferred in 1982 by the Baghdad government from Northern Iraq.

3. EXECUTIVE COMMITTEE OF THE HIGH COMMISSIONER'S PROGRAMME, Forty-sixth session, UNHCR ACTIVITIES FINANCED BY VOLUNTARY FUNDS: REPORT FOR 1994-1995 AND PROPOSED PROGRAMMES AND BUDGET FOR 1996.

4. Iraq is situated in a volatile region and as a result has accommodated tens of thousands of refugees, including Iranians of all ethnic groups, Kurds from Turkey, Palestinians, refugees from various African countries and also thousands stateless persons who were expelled from Kuwait in the aftermath of the 1991 Gulf war. In addition to these groups, UNHCR has been in charge of assisting thousands of Iraqi nationals, namely Kurds and Shi'a Iraqis, who have been returning from Iran and Turkey after the establishment of the "safe haven", or who have been expelled from regions under Iraqi government control, and those who have been displaced in the North as a result of the intra-Kurdish fighting. EC/47/SC/CRP.6, 6 January 1997.

5. More Turmoil in Northern Iraq, Rupert Colville, Refugees, IV - 1996, p12.

6. An Iraqi 100 dinar note which was worth $320 in 1989, was worth less than five cents in 1996.

7. For example, high levels of unemployment have led to deadly attempts to make a living. Farmers have been reported to engage in defusing and dismantling live mines to sell the aluminum, because "there is no other way to make a living". The Independent, October 20, 1996, Sunday, HEADLINE: The most dangerous harvest in the world; Patrick Cockburn in Penjwin, Northern Iraq on the farmers who defuse live mines so their families can eat.

8. In 1994, the Agence France reported that Kurdish children have not been drinking any milk for a whole year, because there is no fresh milk available and a can of milk powder costs 4 times the monthly salary of for example some one who is lucky to have a job at the Arbil water department. Agence France Presse, March 17, 1994, Angry Kurds turn against international aid groups

9. Reuters World Service, July 13, 1995, UNHCR urges Iran to take back its Iraq refugees.

10. ibid.

11. US Committee for Refugees, *World Refugee Survey 1997*.

12. Agence France Presse, June 13, 1996, Iranian Kurd refugees flee to Northern Iraq.

13. US Committee for Refugees, *World Refugee Survey 1996.* ,14. A year later, several thousand of Al-tash refugees submitted a petition to the Iranian embassy in Baghdad to allow them to return home. But the Iranian embassy in Baghdad said the refugees lacked right documents to prove they were Iranian. Reuters, July 25, 1996, Thursday, HEADLINE: Iran refugees in Iraq ask to go home - diplomat

15. see *Revitalizing Resettlement as a Durable Solution*, John Fredriksson, Washington representative of Lutheran Immigration and Refugee Service, in World Refugee Survey 1997. As a dramatic illustration of how unimportant resettlement has become for UNHCR, the author points out the personnel and budget resource allocations:

> "According to the publicly released 'Evaluation Summary' of an internal 1994 report, Resettlement in the 1990s: A Review of Policy and Practice, UNHCR allocated only $7.2 million to its resettlement program budget, out of a total agency budget of $1.4 billion. This represents a minuscule one half of one percent of the UNHCR budget. That same evaluation summary noted that out of about 1,700 staff positions worldwide, the resettlement program included a meager 25 designated staff positions. Only five of these were professional, international civil service staff, and four of these five were based in Geneva."

Another recent example is the comments made by Nicholas Morris, director of UNHCR's Division of Operational Support, arguing against the use of resettlement for most urban refugee caseloads. See *UNHCR and Refugees*, US Committee For Refugees, Refugee Reports, November 30, 1997.

16. Assessment of Global Resettlement needs for Refugees in 1995, p. 22.

17. UNHCR Resettlement Section, UNHCR REPORT ON 1997 RESETTLEMENT ACTIVITIES, Resettlement and Special Cases Section, Division of International Protection, January 1998.

18. ibid.▮

TURKEY: UNHCR CONTINUES IRREGULAR MOVER POLICY

An appeal was launched in Nov. 1997 for action concerning the perilous situation of Kurdish Iranian refugees who after fleeing to Turkey due to lack of safe asylum in Northern Iraq are refused assistance and instructed to return to Northern Iraq by the United Nations High Commissioner for Refugees (UNHCR). This non-assistance policy, known as the Irregular Mover policy (IM), started on Feb. 13, 1997 and continues to make Kurdish Iranians deportable by the Turkish authorities.

Iranian Refugees' Alliance is criticizing this policy and demanding its immediate cessation because Northern Iraq is not a safe country of first asylum for Kurdish Iranian refugees. Furthermore, due to the lack of prospective resettlement from Northern Iraq -- the only durable solution available -- the vast majority of refugees will remain in life-threatening situations. [see "Unsafe Haven: The Situation of Iranian Kurdish Refugees in Northern Iraq" (in the previous and current issues of this newsletter) and to our letter addressed to the High Commissioner for Refugees printed below]. UNHCR has a critical role in protecting refugees in Turkey. A vital need exists for re-examining it's policies towards Kurdish Iranian refugees. The restrictive IM policy must be scrutinized because it imposes a barrier to safe asylum, contradicts established refugee law and creates a challenge to UNHCR's own credibility and role as the global protector of refugees.

Please continue to express your concern by writing to the UNHCR Headquarters and Branch Offices urging them to:

1- Stop Turkey from deporting Iranian Kurdish refugees to Northern Iraq and using any measures to deny such refugees access to its asylum procedures.

2- Discontinue the IM policy and provide resettlement to all refugees who feel compelled to move from Northern Iraq to Turkey.

Address your letters to:

1) High Commissioner Sadako Ogata
UNHCR- Geneva Headquarters (address noted below), Tel: (41-22) 739-8587 Fax: (41-22) 739-7377.

2) Mr. El Ouali
UNHCR-Senior Regional Legal Adviser for CENTRAL ASIA, SOUTH WEST ASIA, NORTH AFRICA AND THE MIDDLE EAST, Tel: 41-22-739-8587 Fax: 41-22-739-7377.

3) Dennis MacNamara
UNHCR-Division of International Protection, Tel: 41-22-739-8587 Fax: 41-22-739-7377.

4) Barry Rigby
Representative, UNHCR - Branch Office in Turkey, Tel: 90-312-439-6615 Fax: 90-312-438-2702.▮

November 26, 1997

Mrs. Sadako Ogata
United Nations High Commissioner for Refugees
Case Postale 2500, CH-1211 Geneva 2 Depot Switzerland

RE: Policy of Returning Kurdish Iranian Refugees Back to Northern Iraq

Dear Mrs. Ogata:

We are writing to ask you to reassess and reverse the policy of classifying as Irregular Movers (IM) and returning Kurdish Iranian refugees to Northern Iraq which is being implemented by the UNHCR Office in Turkey. We previously requested clarification of this policy in our letter dated August 30, 1997 to Mr. El Ouali, Senior Legal Advisor, CASWANAME, but we did not receive any reply.

We are critical of the UNHCR's IM policy of returning Kurdish Iranian refugees back to Northern Iraq because:

- **Refugees have a fundamental right to safe asylum, at the heart of which lies the right to physical security in the country they are given asylum. They should also not be forced back from their country of asylum to a place where they may be persecuted and should be ensured that their other basic human rights are adequately respected.**
- **UNHCR has been entrusted with the responsibility of ensuring that refugees receive safe and true asylum, as described above.**

Since February 13, 1997, when the IM policy became effective, dozens of Kurdish Iranian refugees, some of whom have re-entered Turkey after being arbitrarily deported by the Turkish police before the IM policy was effective, have been refused assistance by the UNHCR Office and are being subjected to deportation by the Turkish authorities. Based on correspondence, it seems that the UNHCR in Turkey is defending its policy on the premise that:

1. An acceptable level of security for Kurdish Iranian refugees in Northern Iraq already exists; and
2. Increased UNHCR resettlement activities in Northern Iraq are such that resettlement opportunities should no more be an incentive for refugees to cross the Turkish border.

We have found that all available evidence clearly contradicts these optimistic conclusions. Publicly available information, including media, NGO, and scholarly evidence as well as UNHCR's own reports, all point to the fact that the physical security of Kurdish Iranian refugees in Northern Iraq remains in critical jeopardy and that the prospects for any improvement in the situation are dim. Similarly, information from UNHCR's public documents on its resettlement activities in Iraq does not instill confidence that prospective resettlement of refugees from Northern Iraq will take place satisfactorily.

The attached report entitled "Unsafe Haven: The situation of Kurdish Iranian Refugees in Northern Iraq," realistically describes the precarious situation confronting these refugees. The report finds that due to the general instability and chaos of the region, intra-Kurdish politics, and increased activities of Iran's agents, Iranian Kurds in Northern Iraq have become easy targets of attack by their government. The report further indicates that refugees, along with active members of opposition parties, have been victims of attacks and abductions while hopelessly waiting for the UNHCR to resettle them in a third country.

We recognize that UNHCR's resettlement program from Iraq showed slight improvement in 1996 in comparison to previous years (514 refugees were resettled in 1996 from the 2,400 assessed caseload in comparison to 255 from 1,460 in 1995 and 280 from 2,000 in 1994). However, based on the following factors, we strongly feel that this increase is inadequate and will not support the satisfactory resettlement of refugees from Northern Iraq in safe third countries:

1) UNHCR's increased efforts in 1996 to resettle refugees from Iraq was still only a fifth of its initial assessment caseload--which is evidently a minimal assessment due to lack of resettlement ➤

➤ opportunities;

2) The total number of refugees in need of resettlement from Iraq in 1996 is at least five times more than the minimally assessed caseload: this includes 3,682 refugees in the North and at least 8,000 of the 20,080 refugees in Al-tash camp in the government controlled area who had not registered for voluntary repatriation;

3) There has been no progress in the past two years for the repatriation of the 12,000 refugees in Al-tash camp who volunteered for repatriation in 1995 reportedly as a result of losing hope for resettlement in a third country; and

4) As reported by the UNHCR, the majority of the resettled cases in 1996 were from the Al-tash camp and not from Northern Iraq.

In addition, by returning refugees back to seek resettlement assistance from UNHCR offices in Northern Iraq, the UNHCR-Turkey is also needlessly complicating and delaying the orderly processing of refugees in the international community. Based on information we obtained from the Istanbul office of the International Catholic Migration Commission, the agency which is responsible for processing refugees claims for resettlement in the US, UNHCR has been unable to fill the 1996 US resettlement quota from Turkey. It, therefore, makes no sense to force refugees to seek resettlement assistance from the Northern Iraq offices which are admittedly most strained and hampered while more streamlined procedures and an excess of resettlement slots exist in Turkey.

Furthermore, we also want to express our deep concern at indications that the IM policy has been dictated to the UNHCR by the Turkish government. It is hard not to notice that the IM policy followed a long campaign of arbitrary deportation by the Turkish border police of ex-N. -Iraq Kurdish Iranian refugees. The policy also immediately preceded an extensive campaign by the Turkish authorities to deport hundreds of other such refugees who were residing illegally inside the country and receiving assistance from the UNHCR.

UNHCR-Turkey turned a blind eye over these campaigns and allowed Turkey's breach of the most essential component of refugee status and asylum to go unchallenged. Article 33 of the UN Convention and the principle of *non-refoulement* clearly proscribe the return of refugees to the frontiers of territories where their life or freedom would be threatened. It was further disingenuous of this Office to justify the inaction by suggesting that "a *refoulement* is a forcible return to a refugee's country of origin and not to a country of first asylum," since, fifty years ago, the travaux preparatories of the UN Refugee Convention had intentionally worded Article 33 of the Convention to make it clear that the principle of *non-refoulment* applies not only in respect to the country of origin but to any country where a person has reason to fear persecution.

It is alarming that a section of the UNHCR is misinterpreting an essential component of the UN Refugee Convention in a country which has remained among the most recalcitrant European states at implementing the Refugee Convention and Protocol. This oversight is particularly serious, according to your own words, at a time when the declining willingness of States to grant asylum is one of the most disconcerting issues on international humanitarian agenda and when key standards are increasingly being interpreted so restrictively as to lose their meaning and purpose.

We are also disappointed that a section of the UNHCR is misinterpreting and using carelessly the term "Irregular Mover." As defined in the EXCOM Conclusions No. 58, "Irregular Mover" only applied to persons who "have already found protection" but nevertheless "move in an irregular manner" to other countries to "seek asylum or permanent resettlement." In fact, the same Conclusions further recognize that: "**... there may be exceptional cases in which a refugee or asylum-seeker may justifiably claim that he has reason to fear persecution or that his physical safety or freedom are endangered in a country where he previously found protection. Such cases should be given favorable consideration by the authorities of the State where he requests asylum...**"

Instead of using an incorrect interpretation, we recommend the use of "refugees without an asylum country", a term which was introduced by the High Commissioner in the Thirtieth Session of the EXCOM. In that Session, the Commissioner provided that in circumstances where it can reasonably be said that a refugee does not enjoy "the protection normally associated with asylum, and indeed that he does not have asylum in the true sense of the term, "**and "he feels obliged to seek asylum in another country, his case should be favorably considered and he should not simply be told that he already has a country of asylum.**" The High Commissioner even went further in providing that,

> **"there may, however, also be cases were the prevailing conditions in the country of asylum, e.g. lack of employment or study possibilities, are such to make it genuinely impossible for a refugee to establish himself there. Cases of this kind should normally be resolved in the context of resettlement. Where, however, a refugee, in these circumstances, leaves his country of asylum on his own initiative there may be good reasons for other countries to give sympathetic consideration to his understandable desire to establish himself elsewhere."**

In conclusion, we want to call your attention again to the real incentives behind the movement of Iranian Kurdish refugees from Northern Iraq to Turkey. They sacrifice their life-long savings and risk their lives and those of their children crossing mine-infested and high security borders to enter Turkey because those risks are outweighed by the risks they leave behind. If deported back to Northern Iraq, they will face even greater physical vulnerability, economic hardships and psychological strain and for the vast majority prospective resettlement will remain impossible. We are confident that when security conditions in Northern Iraq improve and UNHCR's actual resettlement caseload from Northern Iraq truly increases, refugees will stop moving to Turkey. Until those conditions exist, we urge you for humanitarian reasons to:

1- Stop Turkey from deporting Iranian Kurdish refugees to Northern Iraq and using any measures to deny such refugees access to its asylum procedures.

2- Discontinue UNHCR's IM policy and provide resettlement to all refugees who feel compelled to move from Northern Iraq to Turkey.

We thank you for consideration of these important and urgent concerns and look forward to your response.

Sincerely,

signed

Nancy Hormachea, ESQ.

President- Iranian Refugees' Alliance, Inc.▮

Expulsion of Iranian Asylum Seekers from the Netherlands, is the Crisis Over?

by Deljou Abadi

An increasing number of Iranian asylum seekers have sought asylum in the Netherlands. Contrary to popular belief, this increased influx has not been accompanied by an increase in the refugee recognition rate of Iranians in this country. From 1990-1995, Netherlands received sixteen thousand Iranian asylum seekers. and made decisions on close to fifteen thousand of them. Only 17% were recognized as Convention refugees with the lowest rate of 6% in 1995. Another 23% received residence permits on humanitarian grounds[1] and approximately 60% were rejected. Prior to 1994, the Netherlands maintained a non-expulsion policy for Iranians who were not given either refugee or humanitarian status. Instead of being deported, they were allowed to stay on a "tolerated status" (gedoogdenstatus).[2]

Inception of the Expulsion Policy

Towards the end of 1994, however, Dutch authorities began to return non-recognized Iranian asylum seekers citing a report from the Ministry of Foreign Affairs stating that, in some cases, Iranians could be sent back to Iran without fear of persecution.[3]

In reality, this change of policy can be attributed to other reasons such as the significant increase in the number of Iranians seeking asylum in this country (accounting for 51% of all Iranian asylum seekers in 1994 in Europe), increasing restrictions, as in the rest of Europe, in asylum procedures to deter unwanted migration, and, finally the Dutch government's desire to improve ties with the Iranian government, if not by impressing the Iranian government, by impressing the public that human rights and the political situation in Iran are not that bad after all.

The expulsion ban was officially removed in January 1995. However, following an appeal to an Aliens Court in the Hague by two rejected Iranian asylum seekers, deportations were suspended once more for most of this year.[4] On November 2, 1995, the Court turned down the appeal, setting a precedent for hundreds of similar cases pending in the Netherlands. The Court held that the political and human rights situation in Iran was not a sufficient reason in itself for Iranians to be granted refugee status.[5]

On February 15, 1996, the Dutch authorities returned the first Iranian to Iran since the November 1995 court ruling.[6] In a confidential report issued in May 1996, the Ministry of Foreign Affairs confirmed the court's assessment saying that although Iran was not a constitutional state by "Western criteria", the general situation in Iran was not bad enough that the repatriation of rejected asylum seekers could be termed "irresponsible".[7] The Ministry's report paved the way for more repatriations during the year.

Deportation Figures

Exact figures on the number of Iranians who were forcibly returned or were coerced to return is not available. However, in August 1997, the Dutch media reported that 73 Iranians were deported in 1995, 51 were ordered to leave and 122 returned voluntarily in 1996, and at least 33 were deported in 1997.[8] At the same time another report by the Agence France said that between 1995 and 1996 the Netherlands sent back more than 500 Iranians, while 121 others returned voluntarily to their country after being refused asylum. In the first half of 1997 some 35 returned voluntarily while 20 were expelled.[9]

Protest and Criticism

The government's policy of returning non-recognized Iranians has incited sharp protest from the Iranian community, including mass sit-ins, demonstrations, and public criticism. Several Dutch refugee organizations have joined in the protests by lobbying to stop the policy and/or providing shelter, health services, and legal assistance to at-risk refugees. A number of Iranians who faced the possibility of forced return to Iran also have held long-term hunger-strikes and have committed desperate acts of self-incineration and a series of other suicides. According to the refugee organization PRIME (Participating Refugees in Multicultural Europe), more than 100 asylum seekers have tried to commit suicide (excluding the hunger-strikers). More than twenty of these attempts have been successful.[10]

In some cases, even such desperate acts have not persuaded the Dutch authorities to review their decision or even postpone their return. In July 1996, an Iranian man was forcibly returned despite being unfit to travel after slashing his wrists. Earlier that year another Iranian died in the hospital from burns sustained in a suicide attempt to avoid deportation.[11]

One of the most unprecedented harsh punitive treatments was faced by an Iranian ➤

NUMBER OF ASYLUM APPLICATIONS AND DECISIONS FOR IRANIANS

	1990	1991	1992	1993	1994	1995	Total	Total	Total
	[		Netherlands				]	Europe	N. America
Applications	1,720	1,730	1,300	2,610	6,080	2,700	16,140	70,600	14,130
Conv. Ref.	260 (31%)	220 (13%)	1,010 (44%)	480 (29%)	280 (8%)	300 (6%)	2,550 (17%)	21,760 (36%)	8,260 (79%)
Rejections	570	1,440	1,310	1,200	3,040	4,620	12,180	38,210	2,240
Humanitarian	40	120	440	430	1,320	1,080	3,430	11,430	0

Source UNHCR, June 3, 1997

Suspicious Death of Iranian Returnee Must Stop Further Deportations

The tragic fate of a non-recognized Iranian asylum seeker in the Netherlands, after his return to Iran, is a stain on the international system of refugee protection. In view of his suspicious death, countries which undertake deportation of Iranians must reconsider their policy.

The Dutch policy of deporting non-recognized Iranian asylum seekers, which officially started on January 1995, has, in part, been based on the government's purported "monitoring" of returnees by the Dutch embassy in Tehran. Several other western governments, which undertake deportations, although not claiming to have a monitoring program, have maintained that they are capable of verifying the fate of Iranians after their return to Iran.

The Iranian Refugees' Alliance, has been continuously pointing to the incredulity of these claims because any kind of monitoring in Iran is impracticable. The Iranian government has systematically prevented any sort of independent investigation on matters related to violation of human rights. There are no independent human rights organizations in Iran and international investigators such as the UN Special Representative and Amnesty International delegates continue to be denied access to the country. Finally, most returnees are not willing to disclose any human rights violations which they may face after their return due to fear of retaliation against themselves and their families.

Despite these obvious obstacles, until recently, the Dutch authorities ostensibly insisted that their embassy in Tehran had a "monitoring" system for the returned Iranians and had verified that none of the returnees have faced any problems after returning to Iran from the Netherlands. However, in October 1997, representatives of the Ministries of Justice and Foreign Affairs admitted that the Dutch embassy in Tehran had stopped "monitoring" the situation of returnees about a year ago.

Shortly after this admission, the Dutch press reported the tragic fate of one Iranian who disappeared one week after his return and was subsequently found buried in a cemetery.

Reza Hashemy left his wife and child and fled to the Netherlands in 1994. His refugee file was closed in 1995 and by 1996 he was put in deportation proceedings. Facing his inevitable removal by the Dutch authorities, Hashemy decided to return voluntarily to Iran. His voluntary act protected him from direct contact with the Iranian embassy, as people who are forcibly returned are taken to the Iranian embassy by the Dutch authorities in order to obtain a "laissez passer" travel document.

According to his friends in Dordrecht refugee camp, when Hashemy signed his voluntary return papers he was psychologically unstable. He suffered from insomnia. He appeared aloof and preferred solitude. He said that he was getting one step closer to death each day. He was no more the intelligent and gentle person we knew before. He was only the ghost of Hashemy.

Two weeks after he returned to Iran, someone informed his friends in the Netherlands that he had disappeared one week after he went home. After a while a worker in a laboratory found his identity papers. He contacted Hashemy's family. He informed them about the documents, but said that he had not seen Hashemy's body. Subsequently, Hashemy's relatives went to the Behesht Zahra cemetery. There they found his grave stone.

Iranian authorities claimed that Hashemy died in an accident. They claimed that his name was published in a newspaper but because no one responded they buried him. However, further investigation revealed that Hashemy's name was not written correctly in the newspaper notice which the government authorities posted. This was odd because the Iranian authorities had Hashemy's identity documents. Moreover, his name was engraved correctly on the stone at his burial cite. It also was strange that in the newspaper notification, Hashemy's photograph was not printed. It is common to print the photograph of the deceased in such notifications for identification of the relatives.

As reported by the Dutch media, the Dutch embassy in Tehran has so far confirmed the suspicious circumstances of Hashemy's death and the possibility of him being subjected to torture prior to his death. Although the Dutch authorities have said that investigations of the circumstances of Hashemy's death would continue, there have been no more reports of any such investigations. Heshemy is not the only unresolved case brought to the attention of the Dutch authorities. For example, at the same time, another Iranian returnee, Siavosh Mohammadi was also reported to be arrested and detained immediately after his deportation to Iran.

Hashemy's tragic fate should sound a clarion call to all countries to halt all deportations of Iranian asylum seekers. It calls into question the quality of the refugee protection systems in which people like Hashemy are not recognized as refugees. Clearly these systems need to be scrutinized for compliance with international law. Dramatic reform is needed.▮ (Media reports: Trouw 4 & 7, November 1997)

DEATH OF IRANIAN RETURNEE IS SUSPICIOUS

De Volkskrant 11.12.1997

The body of Reza Hashemy who died after returning to Iran from the Netherlands has marks of serious injuries and wounds. Investigation about the circumstances of his death continues. This was said on Wednesday by the State Secretary for Foreign Affairs in the Lower House of the Parliament.

As a matter of policy, the cause of Reza Hashemy's death will be investigated carefully. If it is proven that he was killed by the Iranian government because he sought asylum abroad this could be enough reason to halt all deportations. Since last month Mrs. Schmitz, the State Secretary of Justice, halted deportation of Iranians and is waiting for the Ministry of Foreign Affairs' new report on Iran's human rights situation.

Hashemy returned to Iran voluntarily after his asylum claim was rejected, this was said by the State Secretary for Foreign Affairs, Mr. Patijn. The Dutch Embassy in Tehran has learned that Hashemy died on June 30, 1996 and was buried on July 17.

man of 27, Amir, when the authorities learned that he rather die than go back to Iran. Amir was arrested on May 17, 1996, at the Refugee Center a few hours after he failed to report for his removal to the Aliens Police. Thereafter, the Dutch authorities incarcerated him in a series of prisons/camps until they obtained a "laissez passer" from the Iranian embassy. On May 20th, Amir started a hunger strike (persons on hunger strike cannot be transported) and continued his strike until he went into a coma in the detention center in Zoetermeer. He was then force-fed in the Hospital unit of Scheveningen and subsequently transported to KONING WILLEM II Internment Camp in Tilburg, where he spent many months. WILLEM II is known as the worse camp in the system. The director there has the reputation for "breaking" the will of those who do not cooperate with their deportations.[12]

The Dutch government's position on Iran also has drawn criticism from humanitarian organizations, including Amnesty International and the US Committee for Refugees (USCR). USCR has urged the Dutch government to exercise "utmost care in assessing Iranian asylum cases," noting Iran's poor human rights record and the high recognition rates of Iranian nationals in refugee status determination procedures around the world.[13]

Ministry of Foreign Affairs' official report on Iran

The Ministry of Foreign Affairs made public its assessment of the general situation in Iran in a report of June 5, 1997.[14] The Ministry said that the report was largely based on information received from the Dutch embassy in Tehran. But, later on, it was revealed that important factual information directly attributed to the embassy in the report was false, calling into question the veracity of the rest of the factual claims made by the Ministry of Foreign Affairs in favor of deporting Iranians.

In order to draw the conclusion that rejected Iranian asylum seekers in the Netherlands can be safely returned, the report focused on certain events, which in its view had led to improvements in the democratization of the political system and were indicative of a decline in general repression in Iran. In addition, "monitoring" of the returnees by the Dutch embassy in Tehran was emphasized as an extra safeguard for the safety of returnees.

The report's evaluation of the human rights situation in Iran has no substantive value because it uses inappropriate standards to examine human rights infringements in Iran. The report is premised on the belief that peoples in the West and in Iran do not share a common humanity, which means that they are not equally deserving of rights and freedoms. It implies that international human rights are the sole prerogative of members of Western societies, thus nationality precludes Iranians from claiming the same rights and freedoms as people in the West -- fundamental rights such as the right to freedom of thought, conscience, privacy, religion (including the right not to have a religion), expression, assembly, sexual preference, and due process of law.

Although the report did not openly discuss the norms based on which it gave weight to certain facts and not to others, its relativist view was present in most of its factual claims concerning the human rights situation in Iran. An illustrative example is the report's examination of the situation of women in Iran. Among other "improvements" mentioned, the report noted that in Iran "[t]he presence of women is more visible on the streets and at places of entertainment than in surrounding Islamic countries. While the dress code (the hair and the contours of the body having to be kept covered in public) is mandatory [in Iran] there are hardly any women (voluntarily) covering their face with a veil or wearing the traditional burqah to be seen on the streets in Iran, unlike Islamic countries such as Saudi Arabia."[15]

There is no theory in international law that supports the notion that stricter repressive regulations in one country disqualifies people of another country from their right to fundamental human rights. The fact that some women may come from countries with Islamic governments does not justify limitations on their freedom to live and act in harmony with their conscience and beliefs. The restrictions mentioned above can be as fundamentally at odds with an Iranian woman's--and for that matter an Afghani or Saudi Arabian woman's--integrity and dignity as they can be with a western woman's.

In addition, the report is full of unsubstantiated, fabricated and contradictory information. For example: the Iranian Civil Code explicitly allows marriage of girls from age nine exclusively with the consent of the girl's father or paternal grandfather and, even before age nine, 'provided that the best interest of that child is taken into account'.[16] However, the report absurdly said that marriage to young girls is regarded as un-Islamic by the Iranian authorities and in particular, it is the "the imposed nature of such marriages for girls" that is "fundamentally rejected" by Iranian authorities.[17]

Yet another gross oversight in the report is the failure to address impunity enjoyed by both governmental and non-governmental human rights violators in Iran. The report completely overlooks the wide-spread and serious human rights violations that are

Relative Freedom

As long as women in Iran are not forced to dress like the women on the left, this is freedom and democratization for them. The fact that they may find all of these restrictions abhorent and against their conscience, dignity and integrity is irrelavent. This is the message from the Dutch Ministry of Foreign Affairs.

committed by unofficial agents of the Iranian government with the encouragement and/or toleration of the Iranian government.

For such reasons, the report's conclusion that Iranian asylum seekers may in principle be sent back,[18] is patently arbitrary. Similarly, the report's comment that despite improvements, "the human rights situation in Iran continues to give cause for concern"[19] cannot be taken seriously in view of its unacceptable standards of analysis and many false factual claims. Although the conclusions made in the Ministry of Foreign Affairs report are explicitly in regard to the safety of returning rejected Iranians, in practice, the most fatal consequences of the report can be observed in the consideration of refugee applications resulting in the "rejected" status. Unreliable and fabricated findings of the Foreign Affairs' reports are heavily used in finding Iranian refugee claims to be manifestly unfounded.

Monitoring

Since the lifting of the ban on expulsion of Iranians, the Dutch Ministries of Foreign Affairs and Justice have continuously emphasized that none of the returnees have faced any problems with the Iranian authorities. The State Secretary of Justice, Mrs. Schmitz, even pointed out to the Members of the Dutch Parliament that the Iranian authorities were actively working to make life for returning asylum seekers as comfortable as possible.[20]

In this regard, the Foreign Affairs' report noted in explicit detail the existence of an effective monitoring system for the returnees whereby upon entrance to the Mehrabad Airport in Tehran, returnees always find present a representative of the Dutch embassy in Tehran, who also would in most cases visit them later on at their address. Again, the report emphatically concluded that none of the expelled Iranians have encountered problems with the authorities on returning to Iran.[21]

The Dutch Parliament's endorsement of the expulsion policy for Iranians was, in part, due to the assurances by the Ministries of Foreign Affairs' and Justice that additional safeguards are in place. However, five months later, following the public admission of an official of the Ministry of Justice who said that "monitoring is impracticable and is only professed to please the public",[22] it was revealed that the Ministry of Foreign Affairs' professions were false.

In a Parliamentary hearing on the safety of the situation in Iran, which was held on October 20, 1997, following wide-spread and long-term public protest and criticism of the Dutch policy of returning Iranians, refugee advocates and some Members of the Parliament relentlessly questioned the Ministries of Foreign Affairs and Justice on this matter. A joint report by the two State Secretaries to the Lower House of the Parliament, dated October 30, 1997, admitted that the Dutch embassy in Tehran had ceased monitoring the situation of Iranian returnees about a year ago. It also revealed that in December 1996, the Dutch embassy was officially threatened by the Iranian Ministry of Foreign Affairs, which has said that monitoring is interference with Iran's internal affairs.[23]

Temporary Suspension of Deportations

On October 30, 1997 the Dutch government suspended deportations pending a re-evaluation of the safety conditions in Iran for returnees. Debates in the Parliament still continue. While Members of the Parliament continue to insist that return of Iranians must carry additional safeguards, the Ministries of Justice and Foreign Affairs seem to be trying to resume expulsions by persuading the Parliament that monitoring is not essential after all.[24]

Although the suspension of the deportations was a big victory for the at-risk asylum seekers and advocates, many are pessimistic and consider this act more of a transitory set-back than a sincere reform in the policy.

The Real Problem

Governmental debate on the issue of Iranian asylum seekers has remained focused on the justifiability of returning non-recognized Iranian asylum-seekers. Their ineligibility for asylum has been dealt with as a legitimate and irreversible fact.

However, statistics alone reveal that the inquest must be directed to the problems leading to such a grossly disproportionate approval rate for asylum in the Netherlands. During 1990-1995, the total recognition rate for the Netherlands which received 23% of Iranians seeking asylum in Europe was only 17% compared to, for example, 47% in Germany (receiving 43% of Iranians), and 36% and 79% for Europe and North America respectively.[25]

The refugee policy of the Netherlands towards Iranians is further suspect of bias because of a pattern of grossly unfair decisions on Iranian asylum applications. Several compelling claims have been brought to the attention of the Iranian Refugees' Alliance which have been unfairly rejected by the Dutch authorities. These cases invariably demonstrate use of an excessively strict interpretation of the Convention refugee definition. Overly stringent credibility tests are also used to reject refugee applicants' testimony. A common argument to reject Iranian claims seems to be based on the wrong assumption that a person who has not been persecuted in the recent past cannot have a well-founded fear of persecution in the future. For example, the claims of ex-political prisoners who have stayed in Iran for a period of time without major confrontations with the regime are judged in this context. However, if such persons claim to have remained politically active after their release from prison, they face a catch 22 situation. Their post-prison activities are found not to be credible because in view of the Dutch authorities a reasonable person who had been persecuted before would not risk it again.

Another outrageously unfair practice by the Dutch refugee adjudicators is the use of false country condition information, which to a large part is attributed to the Ministry of Foreign Affairs. For example, Dutch authorities contend that acts of leafleting and attending clandestine meetings by activists other than Mujahedin are not grounds for fear of persecution. They cite the Foreign Affairs' report which falsely states that such activities only carry a light sentence and do not seem to cause repression.

Obviously, general shortcomings and flaws of the refugee processing system in the Netherlands further increase the odds against Iranian refugee claimants in the Netherlands. These include the adversarial nature of the interviews[26] and lack of a suspensive effect on expulsion at the review and appeal stages.[27] The Netherlands also seems to be distinguishably lacking a developing refugee jurisprudence. For example, it is mind boggling that a country which has received such a large number of Iranian applications, still does not have any guidelines for the assessment of gender-perse-

◄ cution claims.[28] Gender persecution has most commonly been encountered in the refugee applications by women from Iran. Canada which received half as many applications as the Netherlands in the first half of this decade developed such guidelines in 1993. Similar guidelines have been developed in the USA, Australia, New Zealand and Switzerland.

Necessary Actions

As Iran remains one of the most chronically abusive governments that is also unresponsive to international monitoring, asylum seekers from Iran overwhelmingly have genuine personal fears of persecution in the sense of the Geneva Convention on Refugees or have grounds to fear inhuman treatment in the sense of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accordingly, they must be given refugee status or in the alternative humanitarian status. In this regard the extremely low rate of refugee recognition in the Netherlands and the high number of grossly unfair negative decisions are most alarming.

In order to effectively challenge the original cause of the crisis of expulsion of Iranians from the Netherlands, the practice and pattern of prejudicial adjudication of refugee applications must be thoroughly examined and revealed. This requires mobilization and active participation of both the refugee applicants and the legal defense organizations. It is also crucial for each refugee and her/his advocates to actively and promptly intervene at early stages of the process when such unfair decisions are issued. Finally, if all domestic remedies are unsuccessfully exhausted recourse should be made to International remedies. Netherlands is a party to the European Convention on Human Rights as well as to the International Covenant on Civil and Political Rights and the Convention Against Torture, all of which provide mechanisms for review of complaints in relation to violations of rights of non-citizens facing deportation.

Resort to domestic and international legal avenues will not, alone, ensure that Iranian asylum seekers in the Netherlands receive the protection they are unjustly denied under the Dutch administrative and judicial system. The ongoing work of promoting public awareness on human rights violations in Iran and actively contributing to public protest for reform in the refugee policies of the Dutch government remains with the local communities.

Endnotes

1. Humanitarian status will be granted where a person cannot reasonably be expected to return to his country of origin given the general living conditions (as distinct from the political situation) there. This status may also be granted where a person has suffered traumatic experiences in his country of origin, for example if he has been tortured or if close relatives or friends have been killed. The grounds may also be related to purely personal circumstances, such as a mental condition which renders the person unable to survive in the country of origin. However, In practice, it is not always clear which criteria are being applied in the granting of humanitarian residence permits. See *LEGAL AND SOCIAL CONDITIONS FOR ASYLUM SEEKERS AND REFUGEES IN WESTERN EUROPEAN COUNTRIES*, Danish Refugee Council, January 1997.
2. Migration News Sheet, October 1995. Following the January 1994 amendments to the Aliens Act, the "tolerated status" was replaced by a new provisional residence permit ("voorwaardelijke vergunning totverblijf"). A provisional residence permit may be granted if "enforced removal to the country of origin would bring unusual hardship to the alien in connection with the general situation in the country". In order for a provisional residence permit to be granted, the original application for asylum must be irrevocably withdrawn from the determination procedure. Provisional residence permits are granted on a yearly basis and are renewable. If the obstacles to expulsion cease to exist during the first 3 years, the provisional residence permit will be withdrawn. After 3 years of continuous principal residence in the Netherlands, the holder of a provisional residence permit is entitled to an ordinary residence permit. At present, provisional residence permits are granted mainly to Bosnians, Iraqis, Afghans and some Sudanese. See source of above note 1, Danish Refugee Council, Jan. 1997.
3. Migration News Sheet, November 1994.
4. Migration News Sheet, December 1995.
5. Algemeen Nederlands Persbureau, ANP English News Bulletin, November 7, 1995.
6. US Committee for Refugees, *World Refugee Survey 1997.*
7. ANP English News Bulletin, May 29, 1996.
8. N.R.C., 18 August 1997 (Farsi translation by PRIME).
9. Agence France-Press, August 15, 1997.
10. Ahmad Pouri, PRIME, *Give asylum seekers the opportunity to organize.*
11. ANP English News Bulletin, July 19, 1996.
12. Willem II camp is known for endorsing slave labor, excessive use without substantiated grounds, of punishment isolation and isolation cells and cages, incommunicado detention and continuous acts of discrimination against refugees and undocumented immigrants, as reported widely in publications such as The European, April 1996, The Guardian, April 1996, Al Hayat International, May 1996, US Industrial Workers Journal, September 1996 and many Dutch periodicals such as the Brabants Dagblad and Vrij Nederland, noted in Request for Humanitarian Assistance, *IRANIAN ASYLUM APPLICANT -- PROTRACTED INTERNMENT IN PUNISHMENT/ISOLATION UNIT IN THE NETHERLANDS IS NOW A SUICIDE RISK*, E. G. Schwienbacher, The Hague, 12 October 1996, via e-mail.
13. above note 6.
14. Ministry of Foreign Affairs, Directorate for Movements of Persons, Migration and Consular Affairs, to State Secretary for Justice, Immigration and Naturalization Service, Subject: General situation in Iran, June 5, 1997. All references are from the English translation obtained through the US Committee for Refugees.
15. above note 14, p. 17.
16. see Sima Pakzad, *The Legal Status of Women in Iran*, In the Eye of Storm, ed. Afkhami & Friedl.
17. above note 14, p. 19.
18. above note 14, p. 23.
19. above note 14, p. 13.
20. above note 7.
21. above note 15, p. 22.
22. This was first revealed in a meeting organized by two refugee organizationßs, PRIME and SKIA, on Sept. 29, 1997. In that meeting a high ranking representative of the Immigration and Naturalization Services (IND), P. Van Krieken, expressed to a crowd of a hundred that monitoring of returnees is impractical and is professed only to influence public opinion and the media, as noted in De Volkskrant, 18 Oct., 1997, and in TROUW, 4 Nov., 1997 (Farsi translation ►

European Commission of Human Rights:
Friendly Settlement in the case M.A.R. v. United Kingdom

A friendly settlement was reached between M.A.R. and the U.K. Government in the European Commission case featured in the Summer/Fall 1997 issue of Iranian Refugees At-risk.

M.A.R, an Iranian national, was accorded refugee status in the U.K. in 1982 However, he was ordered deported after a number of drug related offenses. On his last conviction in 1988 he was sentenced to 10 years imprisonment He was granted parole in 1993, but a few months later, the Home Secretary issued him a deportation order. After several stages of unsuccessful appeals, M.A.R. was given his removal directions to be effected on July 27, 1995.

In June 1995, M.A.R. made a complaint against the U.K. government to the European Commission of Human Rights. Following his request to the Commission, the U.K. government undertook not to deport him pending the Commission's fuller consideration of the matter.

M.A.R. claimed that his deportation to Iran would amount to a violation of Articles 2 (right to life), 3 (prohibition of torture), 5 (right to liberty and security), and 6 (right to a fair trial) of the Convention. He stated that, if deported, he would be at risk of treatment in violation of these Articles in view of his political activities against the regime while he was in Iran, his refugee status in the U.K. and a rigorous anti-drugs campaign conducted in Iran. In support of his claim he submitted, among other things, letters from Amnesty International.

Throughout M.A.R.s' deportation legal proceedings, Amnesty International maintained the position that the prosecution, arrest and detention of long-term absentees from Iran on their return is "clearly a risk". Amnesty also maintained that the possibility of those returning to Iran, following conviction abroad for drug-related offences, being subjected to double jeopardy cannot be ruled out.

The government contested M.A.R.'s submission arguing that he has not demonstrated a real risk that his drug convictions or his long absence from Iran as a refugee would result in his being treated in a manner contrary to Articles 2 or 3 of the Convention should he be expelled to Iran. In this respect, the Government argued that the situation in Iran since M.A.R. was granted asylum has "considerably improved". In regard to Articles 5 and 6 claims, the Government argued that there is no evidence that M.A.R. would either be detained or tried in Iran in the manner in which he alleges and that, in any event, those complaints do not engage the responsibility of the U.K. under the Convention, as there exists no cooperation in the criminal process between the U.K. and Iran.

On January 16, 1997, the European Commission of Human Rights held a hearing on the admissibility and merits of M.A.R.'s application against the U.K. After further deliberations, the Commission considered that M.A.R.'s complaints raised issues of fact and law which were of such complexity that their determination should depend on an examination of the merits. The Commission, therefore, declared the application admissible, without prejudging the merits of the case.

Subsequent to this decision, the Commission undertook further examination of the case while also placing itself at the disposal of the parties with a view to securing a friendly settlement, pursuant to Article 28 para. 1 (a&b). By April 1997 the Government outlined proposals for a friendly settlement. By August, M.A.R. confirmed to the Commission that a friendly settlement could be reached based on the government's proposals to grant him indefinite leave to remain in the U.K. and allow him to apply for a Home Office travel document and to pay him reasonable legal costs arising from this Application to the Commission. Subsequently, on September 19, 1997, the Commission found that the friendly settlement of the case had been secured "on the basis of respect for Human Rights as defined in the Convention."

The friendly settlement precluded the Commission from stating its opinion as to whether the facts of M.A.R.'s case disclosed a breach by the U.K. Government of its obligations under the Convention. Such opinions are issued only if a friendly settlement is not reached. They are transmitted to the Committee of Ministers, which will decide the matter unless the case is referred to the European Court of Human Rights.

A finding of violations by the European Council's human rights system would have had a more far-reaching impact by lending support to similar cases. Nevertheless, the friendly settlement reached between M.A.R. and the U.K. Government underscores the extent to which a well-substantiated complaint to the international tribunals, and its resulting adverse publicity for the respondent government, can encourage that government to reconsider its earlier decisions.▮

◄ by PRIME).

23. Aan de Voorzitter van de Tweede Kamer der Staten-Generaal, Monitoring van teruggekeerde uitgeprocedeerde Iraanse asielzoeker, 30 oktober 1997, 070-3484794, DPC/AM-386/97.

24. ibid.

25. UNHCR, June 3, 1997. REFWORLD 1998 CD ROM.

26. In December 1996, an investigation into a range of asylum seekers' complaints resulted in a national ombudsman report that was particularly critical of IND staff. The ombudsman's scrutiny focused on the interview process, finding that asylum seekers were not always informed of the purpose of the hearing or given the chance to properly relate their persecution claim. US Committee for Refugees, World Refugee Survey 1997. This is also confirmed by the Dutch Refugee Council, as noted in Linburgs Dagblad, 15 July 1997 (Farsi translation by PRIME).

27. The lodging of an appeal or an application for review does not automatically suspend the execution of the Secretary of State's negative decision. If the Secretary of State denies suspensive effect during the review and/or appeal, the applicant may request the President of the District Court for a preliminary stay of execution. No appeal can be lodged against the President's ruling on this issue. See above note 1, Danish Refugee Council, Jan. 1997.

28. As noted by the Dutch representative in the Symposium on Gender-Based Persecution, Geneva, 22-23 Feb. 1996, the only development in the Netherlands in regard to gender-persecution claims is the use of female interviewers and interpreters. IJRL, Special Issue--Autumn 1997.▮

UN Committee Against Torture Challenges Stringent Credibility Tests, The cases of T v. Sweden and A v. Switzerland

by Deljou Abadi

In T. v. Sweden[1] and A. v. Switzerland[2], the UN Committee Against Torture [hereinafter "Committee"] accepted the claims of two Iranian asylum seekers because the State Parties had applied credibility tests which were too stringent.

In order to determine whether a refugee claimant has a well-founded fear of persecution within the meaning of the UN Convention's definition of refugee, decision-makers must decide if they believe the claimant's evidence. In making this determination, the decision-maker must assess the credibility of the claimant, and if available, documentary evidence.

It is widely understood that refugees who are fleeing persecution are seldom able to provide independent evidence such as copies of arrest warrants, prison records, court records or press reports of their arrest to document their claim. The decision maker responsible for adjudicating refugee claims must, therefore, frequently rely solely on the claimant's testimony and demeanor when deciding the claim. In the absence of corroborative evidence, the outcome of the claim will depend entirely on the credibility finding reached by the decision maker.

A claimant's own testimony may be sufficient when the testimony is believable, consistent and sufficiently detailed to provide a plausible basis for his or her fear. However, assessment of a claimant's credibility presents a particularly formidable task because it involves a cross-cultural and interpreted examination of a person who is probably suffering from trauma and suspect of the proceedings.

The potentially devastating results of an adverse credibility finding require the assessment to be conducted responsibly and in a reasonable manner. It is beyond the scope of this article to investigate all the issues involved in conducting a credibility assessment. General guidelines require that the test must be conducted in regard to truly relevant matters and must include all of the evidence. In case of an adverse credibility finding the decision must give its reasons in clear and unmistakable terms.

Recent decisions denying refugee status show that governments have been increasingly straying from the acceptable guidelines in order to implement their more restrictive immigration policies. For example, Sweden has been strongly criticized for placing an unfair burden of proof on asylum seekers. Swedish authorities are known to show a propensity to discredit asylum seekers who alter or amend their stories in even minor ways after the initial interview and to view with skepticism an applicant's attempts to clarify misunderstandings and mistranslations.[3]

However, the Committee which is responsible to ensure that the Convention Against Torture and Other Cruel or Inhuman or Degrading Treatment or Punishment [hereinafter "Convention"][4] [see box] is observed and implemented by the State Parties has responded by providing a more responsible and reasonable option for assessing the credibility of refugee claimants whose claims have ➤

The UN Convention Against Torture

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) was adopted in 1984 by the United Nations General Assembly to codify universally applicable standards against the practice of torture in the world. The Committee Against Torture (the Committee) is the monitoring body established to ensure that the Convention is observed and implemented. Like other international instruments relating to human rights, the Convention gives individuals the right to lodge complaints to the Committee.

In cases concerning a forced return to the country of origin the Committee must decide, pursuant to Article 3 of the Convention, whether there are substantial grounds for believing that the complainant would be in danger of being subject to torture upon return. Article 3 of the Convention states:

> **1. No State Party shall, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.**
>
> **2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.**

Torture is defined in Article 1 of the Convention as any acts by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain and suffering is inflicted by or at the instigation of or with the consent of or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidential to lawful sanctions.

As the newest of the treaty based mechanism for making human rights complaints within the United Nations system, the case load of the Committee is still relatively light (less than 100). But interestingly most of this caseload seems to be asylum and expulsion related. So far the Committee has concluded about a dozen of such cases. In seven of them it has found violations of the Convention by the State Parties.∎

◄ been denied in domestic administrative and/or judicial proceedings. The Convention allows a refugee claimant to lodge a complaint to the Committee and challenge his or her deportation order. [see box] The remainder of this article highlights the reasons cited by the Committee in rejecting the findings of the Swedish and Swiss authorities respectively in the cases of T. and A.

T. v. Sweden

Mr. T. applied for asylum in Sweden in July 1990. The Swedish Immigration Board refused his application in November 1990 and ordered his expulsion. T. applied to the Aliens Appeal Board which dismissed his appeal in July 1992. He filed a subsequent application to the Immigration Board which was also rejected. He then appealed to the Appeal Board which rejected his second application in 1995. T. then sought consideration by the Committee.

The Swedish authorities rejected T.'s claim concluding that he lacked credibility because of the inconsistencies in his statements throughout the asylum and appeal procedures. These inconsistencies as noted in the Committee's Views included the following:

- When T. arrived in Sweden and applied for asylum, he told the interrogating police that he had no passport and that he had traveled from Iran through Turkey to Sweden. However, some time later it was revealed that he had used a false Spanish passport and traveled through Copenhagen.
- In his initial interview with the police T. also stated that he had not been politically active but that he had carried out propaganda for the royalists when fulfilling his military service. However, later on 3 Sept. 1990 T. was interrogated again by the police and he revealed his activities with the People's Mujahedin Organization of Iran (PMOI), but he did not mention being tortured and maltreated in prison nor the circumstances of his release from prison.
- Subsequent to the Immigration Board refusal of his case in Nov. 1990, T. obtained new counsel, someone who he felt he could finally trust. On his appeal, he gave the authorities his true story. This time he included testimony about being tortured while in prison and presented a doctor's certificate. However, his appeal was rejected by the Alien's Appeal Board on 3 July 1992 which held again that he lacked credibility since he changed his story.
- In his new application to the Immigration Board and later on appeal to the Aliens Appeal Board, T. explained that the contradictions had resulted from misunderstandings with his first counsel.
- In his last submission, T. also provided the Appeal Board with new evidence from the Centre for Torture and Trauma Survivors in Stockholm which indicated that the scars and marks on his body were in conformity with his allegations of torture, and that he was suffering from Post Traumatic Stress Disorder. The Board, however, noted only that T. had given contradictory statements to his medical examiners as to how the injuries were caused; and therefore concluded that scars and marks did not show that T. had been tortured in prison.[5]

As acknowledged by T., inconsistencies existed in his statements through-out the proceedings. The question was, however, whether or not the Swedish authorities were correct in applying a simple consistency test to T.'s statements, regardless of his special conditions, and whether the inconsistencies in the application were material.

The Committee examined the totality of the circumstances and succinctly stated that:[6] ►

The Individual Complaint Procedure of the UN Committee Against Torture

Article 22 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment sets an optional procedure which gives the Committee Against Torture jurisdiction over individual complaints ("communications"). For the Committee to be able to admit and examine individual communications against a State Party, that State Party must have expressly recognized the Committees competence in this regard under article 22. Thirty-nine out of 102 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee.

A communication may be submitted by an individual who claims to be the victim of a violation of the Convention by a State Party. If the alleged victim is not in a position to submit the communication, relatives or representatives may act on his or her behalf. A model communication has been produced by the Committee.

A communication must meet the criteria for the admissibility before the Committee examines its merits. For a communication to be declared admissible it must not be anonymous, constitute an abuse of the right of submission, or have been examined under another international procedure. Moreover, all available domestic remedies must have been exhausted first unless unreasonably prolonged or unlikely to bring effective relief. A case that has been declared inadmissible on the ground that domestic remedies have not been exhausted can be re-submitted at a later date. At any stage of the procedure, if the Committee feels that the claim is bona fide, it may request the State Party to take steps to avoid possible irreparable damage. In cases of an imminent danger of deportation, the Committee may request the State Party not to expel the complainant while the case is under consideration.

Once a case has been declared admissible, that decision and any submissions received from the complainant are sent to the State Party, which has six months in which to respond in writing. The Committee may establish a working group of up to five members to assist it in considering individual complaints. The Committee may also invite the parties to attend a meeting in order to provide further clarification or answer questions considering a communication. All proceedings considering individual communications are confidential.

The proceedings conclude with the transmission of the final views to the author of the communication and the State concerned. The State is invited to inform the Committee in due course, of the actions it takes in conformity with the Committee's Views.

In cases involving deportation of failed asylum applicants, the finding of a violation of article 3 by the Committee does not require the State party to modify its decision concerning the granting of asylum. It only requires a State Party not to deport the author. In addition, in contrast to the European human rights system and like other UN bodies, the Views of the Committee may not be binding, but according to many commentators, on balance they can be just as effective as States tend to assume their obligations and comply.∎

◄ "*complete accuracy is seldom to be expected by victims of torture.*" [emphasis added]

The Committee discounted the inconsistencies noting that they:[7]

> "do not raise doubts about the *general veracity of his claims*, especially since it has been demonstrated that the author suffers from Post Traumatic Stress Disorder." [emphasis added]

Finally, the Committee reached the conclusion that the medical evidence out weighed the inconsistencies T. made when describing the methods of his torture.

A. v. Switzerland

Mr. A. applied for asylum in Switzerland in May 1990. In August 1992, his application was refused by the Federal Office for Refugees, which considered his story not credible and full of inconsistencies. The Appeal Commission rejected his appeal in January 1993. In April 1993, he filed a request for reconsideration based on his activities in Switzerland for the Armenian and Persian Aid Organization (APHO), an organization in Switzerland which is considered illegal in Iran. By a decision of May 5, 1993, the Federal Office for Refugees refused to consider his request for review.

On August 10, 1994, the Appeal Commission also declared his application to be ill-founded. Under article 8 s(a) of the Swiss Asylum Act, such "subjective grounds" are considered not relevant to the granting of asylum. Subsequently A. was contacted by the police for the purpose of the preparation of his departure from Switzerland. He therefore lodged a complaint with the Committee on October 26, 1995. The Swiss government contested the admissibility of the application, holding that an applicant who invokes "subjective grounds" may nevertheless remain in Switzerland for humanitarian reasons (Asylum Act, art. 17, par.. 2) or temporary admission (Asylum Act, art. 18, par.. 1). At its sixteenth session, the Committee decided to suspend consideration of A.'s communication pending the result of his requests for reconsideration (temporary residence) in the light of his political activities in Switzerland. The Committee's considerations were resumed in August 1996.

As reflected in the Committee's Views, the Swiss authorities found the first part of A.'s claim--his political activities in Iran as a sympathizer of the People's Mujahedin of Iran, his arrest in 1981 for 25 days, and in 1983 for two years, and his alleged fear of being identified in 1989 for an activity he committed in 1982--to be "illogical", "totally unrealistic", "lacking substantiation" and "at variance with the facts". The grounds based on which these conclusions were reached for A. included:

- his knowledge of the political programme of the Mujahedin organization was very sketchy in essential respects,
- he could not present any documents with evidentiary value relating to his political activities for the Mujahedin, or any medical certificate attesting to his having been subjected to treatment prohibited by the Convention,
- his wife was unable to corroborate his statements at the hearing before the Federal Office for Refugees,
- his statement that he was sentenced to only two years imprisonment because of the judges respect for his origins as a descendant of Muhammad contradicts information gathered by the Swiss authorities in the course of asylum proceedings concerning Mujahedin.

Based on such assumptions, the Swiss Government submitted that A. has failed to establish that he has ever "engaged in the political activities in question, or even that he was a member of a party that opposed the existing political regime" and that therefore this Government cannot seriously take into account his allegation of a risk of inhuman treatment were he to return to Iran.

The second part of A.'s claim involving his activities in Switzerland with APHO was also rejected by the Swiss Government because A. "could not confirm" his allegation that "his identity is very probably known to the Iranian authorities." In this regard, the Government pointed to the insufficiency of the information obtained from police regarding two incidents in 1991 and 1992 alleged by A. in which he claimed members of that organization clashed with Iran's agents in public. The Government said that because by the time the police arrived at the scene of the event the "skirmish" was over and only the members of the organization were present, it "considers it at least doubtful whether the events in question occurred." The Government concluded that therefore "the events in question cannot automatically be considered to constitute a decisive ground in respect of article 3 of the Convention."

Contrary to the Swiss Government's conclusions the Committee opined that:[8]

> "even though there may be some remaining doubt as to the veracity of the facts adduced by the author of a communication, *it must ensure that his security is not endangered*. In order to do this, it is not necessary that all the facts invoked by the author should be proved; it is sufficient that the Committee should consider them to be sufficiently substantiated and reliable." [emphasis added]

After noting the State Parties concerns regarding "inconsistencies and contradictions" in A.'s statements, the Committee stated that there may indeed be some doubt" about A.'s statements, but not to the extent to "cast doubt on the veracity of his allegations" as the State party has concluded. The Committee, therefore, expressed that A.'s "membership in the People's Mujahedin Organization, his participation in the activities of that organization and his record of detention in 1981 and 1983 must be taken into consideration in order to determine whether he would be in danger of being subjected to torture if he returned to his country."

In regard to the second part of A.'s claim, the Committee, went on to say that: "there can be no doubt about the nature of the activities he engaged in Switzerland for APHO, which is considered an illegal organization in Iran." This opinion was construed from the State party's failure to demonstrate proper foundation and trustworthy evidence to the contrary of A.'s allegations regarding his activities in Switzerland. In fact, the Committee noted that the State party's limited investigations confirmed those activities by A. and that the State party did not "deny that skirmishes occurred between APHO representatives and other Iranian nationals in Bern in June 1992." Consequently, the Committee expressed that in this circumstances, it "must take seriously the author's statement that individuals close to the Iranian authorities threatened APHO members and the author himself on two occasions, in May 1991 and June 1992."[9]

The Committee explicitly challenged the Swiss authorities' refusal to take up A.'s request for review based on his activities in Switzerland by noting that:[10]

> "[t]he 'substantial grounds' for believing that return or expulsion would expose the applicant to the risk of being subjected to torture may be based not only on acts committed in the country of origin, in other words, before his flight from the country, but also on ➤

activities undertaken by him in the receiving country: in fact, the wording of *article 3 does not distinguish between the commission of acts, which might later expose the applicant to the risk of torture, in the country of origin or in the receiving country.* In other words, even if the activities of which the author is accused in Iran were insufficient for article 3 to apply, his subsequent activities in the receiving country could prove *sufficient* for application of that article." [emphasis added]

In addition to examining each individual's evidence, in both cases, the Committee also put into consideration:[11]

"the serious human rights situation in Iran, as reported inter alia to the Commission on Human Rights by the Commission's Special Representative on the situation of human rights in Iran ... in particular, the concern expressed by the Commission, especially about the large number of cases of cruel, inhuman or degrading treatment or punishment."[12]

Consequently, the Committee found that the forced return of both refugee claimants to Iran would violate the State Parties' obligation under Article 3 of the Convention.

CONCLUSION

The finding of a violation of Article 3 by the Committee does not require the State Party to reverse its decision on an asylum claim. It only requires a State Party not to deport the claimant. However, the Committee's findings are significant because they challenge the arbitrary and capricious denials of asylum cases by the State Parties. The conclusions reached by the Committee in both T. and A. are reassuring because they recognize the proper manner of weighing inconsistencies in a claimant's story. In addition, they emphasize that the responsibilities of governments to protect refugee claimants are not minimized by factual inconsistencies in the claim.

The Committee has been critical of the egregious practices of member States in several other cases. [see box] It is hopeful that this jurisprudence will have a broad impact and influence international opinion. These efforts of the Committee make it more possible to hold governments accountable to the international obligations they proclaim to respect.

Important Findings of the Committee Against Torture

The approach and findings of the Committee Against Torture have been considered as milestones in enforcing the rule of non-refoulement (the prohibition not to return an asylum seeker to a country where s/he is at-risk of persecution). Some important findings of the Committee in the taking of a decision in accordance with article 3 of the Convention include:

1- respect for a margin of appreciation with regard to inconsistencies in a refugee claimant's presentation of the facts because complete accuracy is seldom to be expected from victims of torture.

2- obligation to ensure that security of a refugee claimant is not endangered, even if there could be some doubts about the facts as adduced by him or her.

3- consideration of medical reports which corroborate bodily scars compatible to torture wounds and diagnosis of Post Traumatic Stress Disorders.

4- consideration of findings of UN Special Rapporteurs and Special Representative with respect to general human rights conditions of countries where the claimant alleges a fear of return.

5- considering irrelevant the nature of the activities in which the person has been engaged; i.e. membership and activities with organizations characterized as "terrorist".

6- considering relevant not only a person's acts committed in the country of origin before his flight from the country, but also activities undertaken by the person in the receiving country.

7- consideration of whether or not the country where the complainant is returned to is a party to the Convention and whether the person would have the legal possibility of applying to the Committee for protection in that country.

8- considering that the existence of a consistent pattern of violations of human rights, where the claimant alleges a fear of return, lends force to the Committee's belief that the person concerned would be personally at risk of being subjected to torture in the country to which he would be expelled.

Decisions referred to:

M. v. Switzerland, No. 13/1993, K. v. Canada, No. 15/1994, A. v. Switzerland, No. 21/1995, A. v. Switzerland, No. 34/1995, P. v. Sweden No. 39/1996, K. v. Sweden, No. 41/1996, T. v. Sweden, No. 43/1996.

Endnotes

1. Views of the Committee against Torture under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment - Seventeenth session - concerning Communications No. 43/1996, Date of communication: 7 March 1996 (initial submission), Date of decision: 15 November 1996.

2. Views of the Committee against Torture under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment - Eighteenth session - concerning Communications No. 34/1995, Date of communication: 26 October 1995, Date of decision 9 May 1997.

3. Human Rights Watch/Helsinki, *Swedish Asylum Policy in Global Human Rights Perspective*, September 1996 Vol. 8, No. 14(D).

4. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

5. As stated in the Committee's View and indicated in an unofficial translation of the Appeal boards' decision in the Human Rights Watch September 1996 report (above note 3), the medical records showed different accounts by T. concerning the objects used to inflict injuries during his torture. T. variably stated that the burn on the back of his tight was inflicted by a hot metal object, and by a gas burner. He also stated that the cut on his shoulder was inflicted by a key, a knife and a sharp object.

6. above note 1 par. 10.3.

7. ibid.

8. above note 2, par. 9.6.

9. above note 2, par. 9.7.

10. above note 2, par. 9.5.

11. ibid.

12. above notes 1 & 2, par. 10.4 and, par. 9.9 respectively.

Recent Reports Designate Turkey an "Unsafe Third Country"

The "safe third country" notion is an important factor in today's European asylum policy. The basic element of this doctrine is to deny an asylum seeker access to a substantial refugee status determination procedure in a particular State, on grounds that s/he had already found protection, or could reasonably have been expected to find protection in another country.

Turkey adopted asylum regulations in 1994. Since then, some European countries have used the existence of formal regulations in Turkey as an excuse to refuse entry, or access to normal asylum procedures, to Iranians who pass through Turkey .

Other countries which do not yet practice "safe third country" rules, have occasionally considered the Iranian asylum seekers' refusal to apply for asylum in Turkey on their way, as an unacceptable delay in applying for asylum, and as conduct that is inconsistent with a well-founded-fear of persecution.

In reality, however, the protection of Iranian asylum seekers in Turkey has deteriorated since the establishment of formal regulations. Both the letter of the regulations and its inflexible implementation, as well as a series of other arbitrary practices by Turkish officials, have made Turkey an unsafe country of asylum for Iranians.

The following reports by two international organizations validate the fear of Iranians who, despite having the "opportunity" to apply for temporary asylum in Turkey, refuse to do so, and, instead, move on to other countries.

TURKEY: Refoulement of Refugees - A Protection Crisis

Amnesty International, September 1997

In this report Amnesty International states its grave concerns about the state of protection for asylum-seekers of non-European origin in Turkey. Despite its influential status as a member of the Executive Committee of the UNHCR and its commitment to refugee protection as a party to the Refugee Convention, Turkey has consistently failed to abide by the most fundamental principle of refugee protection *nonrefoulement.* This principle forbids the return of a person to a country where s/he would be at risk of persecution.

The new Turkish asylum regulations, especially the five day rule, is criticized. According to this rule, persons wishing to seek asylum are required to approach the authorities within five days of arriving in the country. Those who enter the country illegally and who, for whatever reason, fail to comply with this requirement, are liable to immediate deportation without any consideration of their asylum claims.

Amnesty highlights cases, even some who were recognized by the Turkey Branch of the UNHCR as refugees, but were detained by the Turkish authorities and sent back to their country of origin despite interventions and protests by the UNHCR. Many cases of Iranians who were refouled to Iran, as well as those who were deported to Northern-Iraq after succeeding to access and receive resettlement assistance from the UNHCR in Turkey, are noted.

The report would have provided a more realistic picture of the precarious situation of asylum seekers and refugees in Turkey, had Amnesty also investigated and reported the large number of *refoulements* involving ex-Northern-Iraq refugees who were summarily deported in 1996-1997 and were not allowed to access the asylum procedures.

The report makes several sound and urgent recommendations to the Turkish Government to improve its asylum procedures. In addition, Amnesty International asks other states to refrain from returning asylum-seekers to Turkey on the basis of "safe third country".

TURKEY: Refoulement of refugees - A Protection Crisis, September 1997, AI Index: EUR 44/31/97 can be obtained from Amnesty's Secretariate (1 Easton St., London, WC1X 8DJ, UK, Tel: 44-171-413-5500 Fax: 44-171-956-1157) or from Amnesty's Offices in your country. An electronic version is available at: <http://www.amnesty.org/ailib/aipub/1997/EUR/44403197.htm>

"Safe Third Country" Policies in European Countries

Danish Refugee Council, November 1997

The **Country profiles** section of this report intends to provide a picture of each European State as both a rejecting and receiving refugee country on the "safe third country" ground.

Since Turkey's asylum regulations do not contain any "safe third country" provisions, the report concentrates on Turkey as a receiving country.

The report notes three of the most restrictive rules practiced since the 1994 regulations became effective: the 5 day rule to submit applications for asylum, the geographical limitation for undocumented asylum seekers to apply to governorate of the province where they entered the country, and the requirement, announced in May 1995, that asylum seekers must present an identity document in order to have their claims reviewed. Failure to comply with any of the above results in deportation without an asylum hearing.

Many asylum seekers have been refouled due to the inflexible implementation of these instructions. Confirmed incidents of refoulement of UNHCR-recognized Iranian refugees in 1995 amounted to more than the previous three years together.

Other noted problems include 1-the local official's ignorance of the procedure and of the basic principles for the protection of refugees, 2-the authorities lack of co-ordination, and, most importantly, 3- a practice of preventing access to asylum procedures by summary rejections at admission points (borders and airports).

Since the Asylum Regulation was put into effect, some 3,000 asylum seekers chose not to approach the authorities at all, and only registered with the UNHCR.

The report notes that " it is not surprising that many are afraid to attempt to register an application with the authorities," considering the many instances of deportation and refoulement rumored amongst the asylum seekers coming to Turkey.

"Safe Third Country" Policies in European Countries, Editors: Nina Lassen and Jane Hughes, November 1997, ISBN 87-7710-265-7 can be obtained from the Danish Refugee Council (Borgergade 10, P.O. Box 53, DK-1002 Copenhagen Denmark, Tel: 45-33735000, Fax: 45- 33328448) . An electronic version of the report is available at: <http://www.drc.dk/eng/pub/safe3rd/turkey.htm>.

Support our Projects

The Iranian Refugees' Alliance (IRA Inc) helps Iranian asylum seekers and refugees in several ways.

Our advocacy project provides practical help to asylum seekers and refugees and advances their rights both in the US and abroad.

We provide intensive counseling to refugee applicants on how to present their claims. If necessary, we provide expert evidence in the form of affidavits or support letter, and if possible, by participating as witnesses at refugee hearings. Translation and interpretation is provided whenever necessary.

We give advisory opinion to lawyers representing Iranian refugees. We facilitate contact and exchange of information between lawyers and refugee advocates in different countries who work on Iranian asylum cases.

Our Documentation center provides material concerning human rights in Iran as well as published decisions on Iranian refugee claims.

We study the implementation of national and international law in relation to Iranians refugees and make sound policy analyses in order to prevent abuses of their rights.

We assist Iranian asylum seekers who have exhauseted their domestic remedies, and been denied justice, to take their complaints to international tribunals.

Our humanitarian projects in Turkey have helped hundreds of under-served Iranian asylum seekers since 1994.

The operation expenses of IRA Inc. are principally met by voluntary contributions from the public. Any and all donations are greatly appreciated.

All contributions to IRA Inc are tax-deductible to the full extent that the law allows. You can support our efforts by becoming a volunteer and/or by:

- Making a direct contribution in a single payment.
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Please fill out the form below and make your checks payable to IRA INC. Send them to:

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New York, NY 10276-0316 USA

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. defending and promoting the rights of Iranian asylum seekers nationally and internationally.
3. 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.
4. preventing forceful return of Iranian refugees as prohibited by international law and assisting their resettlement in safe countries if necessary.
5. 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.

YES I WANT TO SUPPORT THE IRANIAN REFUGEES' ALLIANCE

❑ Here is my gift of:

❑$25 ❑$50 ❑$100 ❑$250 ❑ $_____

❑ I like to help on a regular basis. I understand there is no obligation, but I will try to send a (❑bi-monthly, ❑quarterly, ❑semi-annual) pledge of:

❑$25 ❑$50 ❑$100 ❑$250 ❑ $_____

❑ I like to be on IRA's mailing list.

❑ I like to receive information on IRA's humanitarian assistance projects to Iranian asylum seekers in Turkey.

❑ I also like to be on IRA's Volunteer list:

1. Please list any volunteer experience you've had in the past:

_____

_____

2. What is your availability? (M, T, W, Th, F, Sat, Sun, Eves)

3. Foreign Languages:

4. Please check those that interest you:

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❑Office Work	❑News Database	❑One-on-One guidance

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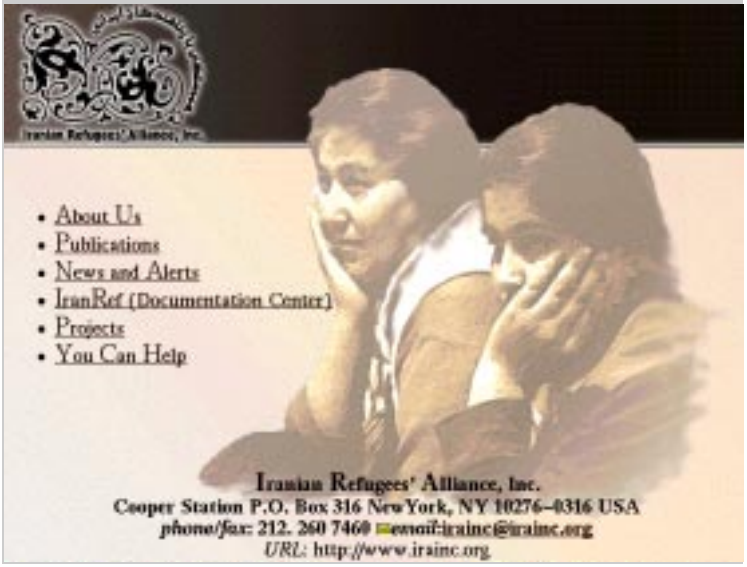

Iranian Refugees' Alliance, Inc.

Documentation Center

Iranian Refugees' Alliance's Documentation Center is established primarily to provide refugee claimants with documentation such as human rights reports, newspaper clippings, scholarly articles which can be used as evidence in prevailing their claims. In addition, the Center holds a growing collection of published decisions on Iranian refugee claims in European Countries, US, Canada, New Zealand and Australia as well as published decisions of international human rights tribunals on relatedmatters.
Partial index of the Documentation Center can be viewed at the following website:

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

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