



THE RESEARCHER

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Welcome to the April 2014 issue of The Researcher

In this issue we publish an article by Sarah Parle of UNHCR Ireland on the topic of credibility assessment.

A regular contributor to The Researcher, Patrick Dowling of the RDC, writes on the dangers faced by Polio vaccination workers in Pakistan.

Barrister, Majella Twomey discusses persecution versus prosecution in Irish refugee law.

Writing on the COI Networks, Christophe Hessels of EASO, explains the structure and objectives of the networks.

David Goggins of the RDC writes on Eritrea, one of the world's most secretive countries.

The issue of human trafficking is presented by David Gilbride of the Anti-Human Trafficking Unit, who examines the extent of the problem and highlights legislative developments.

A selection of UNHCR photos by Annibale Greco depict suffering in the Central African Republic.

Many thanks to all our contributors. Contributions for future issues can be sent to the email address below.

Elisabeth Ahmed
Refugee Documentation Centre (Ireland)

Disclaimer

Articles and summaries contained in the Researcher do not necessarily reflect the views of the RDC or of the Irish Legal Aid Board. Some articles contain information relating to the human rights situation and the political, social, cultural and economic background of countries of origin. These are provided for information purposes only and do not purport to be RDC COI query responses.

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Assessing Credibility in a Practical Context



Sarah Parle, Protection Intern, UNHCR Ireland

Abstract

This article examines recent developments in relation to credibility assessment in asylum and refugee determination procedures, namely the launch of the UNHCR, Hungarian Helsinki Committee, International Association of Refugee Law Judges and Asylum Aid (UK) project *Towards Improved Asylum Decision-Making in the EU* (also known as the CREDO project), its launch in Ireland in December 2013, and the work of UNHCR with the Irish authorities in the practical implementation of one of the key CREDO outputs, *'Beyond Proof: Credibility Assessment in EU Asylum Systems.'*

1. Introduction

Credibility assessment can often be one of the most taxing aspects of asylum decision-making. The Office of the United Nations High Commissioner for Refugees (UNHCR) has a supervisory responsibility under its Statute and Article 35 of the 1951 Refugee Convention and in that role it noted a trend across EU Member States for negative decisions on international protection at first instance as a result of findings that key elements of the applicants' statements were not credible. In addition, while recognizing the different national legal traditions within the EU, UNHCR noted a lack of a common understanding of and approach to credibility assessment among Member States.

In response, UNHCR, in partnership with the Hungarian Helsinki Committee, the International Association of Refugee Law Judges and Asylum Aid (UK), launched *Towards Improved Asylum Decision-Making in the EU* (also known as the CREDO project), which aimed to contribute to better structured, objective, high quality and protection-orientated

credibility assessment practices in asylum procedures conducted by EU Member States.¹

The CREDO project acknowledges its own limitations – the initiative does not examine other important aspects of the credibility assessment process such as the methodology, quality and/or standards for certain methods of credibility testing such as age assessments, expert and forensic evidence, medical reports, and COI.² Neither does the report look at the role and impact of the interpreter in the assessment of credibility.³ Additionally, CREDO focuses on the assessment of credibility in the asylum procedure in general terms and does not address in depth the specific considerations linked to claims based on religious conviction or sexual orientation and/or gender identity.⁴ CREDO, rather, aims to clarify some key concepts and identify some specific insights into how credibility is assessed in EU asylum procedures and therefore constitutes a solid foundation for further research and discussion.

UNHCR held the Irish launch of CREDO in December 2013 and has subsequently engaged in training both legal practitioners and protection decision-makers. This article examines the efforts of UNHCR and partners to develop practical tools for quality credibility assessment and looks at how the core principles of CREDO are being implemented practically through engagement with the Irish authorities. The first section aims to unpack the complexities of the credibility assessment process, identifying key challenges facing decision-makers and outlining the need for a multi-disciplinary and

¹ For further information see Hungarian Helsinki Committee, 'CREDO – Improving Credibility Assessment in EU Asylum Procedures': <http://helsinki.hu/en/credo-%E2%80%93-improving-credibility-assessment-in-eu-asylum-procedures>. CREDO has three key outputs: UNHCR, 'Beyond Proof: Credibility Assessment in EU Asylum Systems', Full Report, May 2013, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=519b1fb54&skip=0&qury=Beyond%20Proof>.

(hereinafter 'UNHCR, Beyond Proof'. A summary report also available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=51a704244&skip=0&qury=CREDO%20SUMMARY>); Hungarian Helsinki Committee, 'Credibility Assessment in Asylum Procedures - A Multidisciplinary Training Manual', 2013, Volume 1, available at: <http://www.refworld.org/docid/5253bd9a4.html>); International Association of Refugee Law Judges (IARLJ): IARLJ, 'Assessment of Credibility in Refugee and Subsidiary Protection claims under the EU Qualification Directive Judicial criteria and standards', 2013, available at: http://www.iarlj.org/general/images/stories/Credo/Credo_Paper_March2013-rev1.pdf

² UNHCR, Beyond Proof, pp. 16-17

³ Ibid.

⁴ Ibid.

structured approach to credibility assessment, in order to ensure legally sound decisions. The second section discusses the work of UNHCR with the Irish authorities focusing on the practical implementation of the key principles of the CREDO report.

2. Theory

2.1 Challenges of credibility assessment – the need for a multi-disciplinary approach

The task facing decision-makers involved in credibility assessments is by no means simple. The factors and circumstances of each individual case span many disciplinary fields - neurobiology, psychology, gender and cultural studies, anthropology, etc. – thus requiring the need for a multi-disciplinary approach to credibility assessment. Research indicates that human memory, behaviour, and perceptions vary widely and unpredictably, are frequently reconstructed and are affected by a wide range of factors and circumstances which need to be kept in mind when assessing credibility.⁵ The CREDO report outlines that factors such as fear and lack of trust,⁶ gender,⁷ cultural background and customs,⁸ education,⁹ stigma and shame,¹⁰ may affect the applicant's decision and capacity to disclose relevant information. Therefore the individual and contextual circumstances of the applicant must be taken into account in all aspects of the examination of the application. In addition, decision-makers need to cross geographical, cultural, socio-economic, age, gender, educational, and religious barriers, as well as take account of different individual experiences, temperaments and attitudes.

The question of what constitutes a 'normal' memory can also be problematic. It is widely assumed that human memory, behaviour and perceptions conform to a *norm*, and that deviations from this norm may be indicative of a lack of credibility. However, scientific

⁵ See generally UNHCR, *Beyond Proof*, pp. 56-73.

⁶ UNHCR, *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, December 2011 (re-issue), para. 198. available at: <http://www.refworld.org/cgi-bin/txis/vtx/rwmain?page=search&docid=4f33c8d92&skip=0&qury=UNHCR%20Handbook%20on%20Procedures>

⁷ UNHCR, *Beyond Proof*, pp. 69-70.

⁸ *Ibid.* pp. 66-67.

⁹ *Prosecutor v. Alfred Musema (Judgement and Sentence)*, ICTR-96-13-T, 27 January 2000, para. 103 cited in P Levrincova, 'Did It Really Happen? Testimonies before the International Criminal Tribunals and Refugee Status Determination', dissertation, Charles University, Prague 2010, p. 125. See also R Byrne, 'Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from the International Criminal Tribunals', *International Journal of Refugee Law*, vol. 19, no. 4, December 2007, pp. 609-38; Also see generally UNHCR, *Beyond Proof*, p. 68.

¹⁰ UNHCR, *Beyond Proof*, pp. 72-73.

research in the field of psychology has shown that the assumptions that interviewers and decision-makers commonly make may not accord with what is now known about human memory, behaviour, and perceptions. On the contrary, the research indicates that there is no such norm, that human memory, behaviour, and perceptions vary widely and unpredictably, and that they are affected by a wide range of factors and circumstances.¹¹

It is also important to note that experience of traumatic events can have an impact on applicant's submission of information. Studies have also shown that applicants who have lived through traumatic events may experience dissociation.¹² The applicant may experience dissociative amnesia – that is, an inability to remember some or all aspects of the trauma, because the event, or aspects of the event, were never initially encoded. Dissociation may be a reason why there is a lack of detail, vagueness, incoherence, or gaps in an applicant's recall.¹³

The CREDO report also highlights that it is crucial for decision-makers to be aware of their own thinking processes:

"It is vital that decision-makers neither prejudge credibility nor approach the task with skepticism or a refusal mind-set, for otherwise they may distort the gathering of the facts and the assessment of the applicant's statements. In addition, the repetitive nature of the task may affect the decision-maker's ability to remain objective and impartial. Routine exposure to narratives of torture, violence, or inhuman and degrading treatment can take its psychological toll on decision-makers. Examiners interviewed by UNHCR testified to the psychological stress of repeatedly

¹¹ J Cohen, 'Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers', *International Journal of Refugee Law*, vol. 13, no. 3, 2001, pp. 293-309.

¹² Dissociation is described as the "disruption in the usually integrated functions of consciousness, memory, identity, or perception of the environment", American Psychiatric Association, *Diagnostic and statistical manual of mental disorders* (4th edn), Washington DC: American Psychiatric Association, 1994; D Bogner, J Herlihy, C Brewin, 'Impact of Sexual Violence on Disclosure during Home Office Interviews', *British Journal of Psychiatry*, vol. 191, no. 1, 2007, pp. 75-8.; See for references, J Cohen, 'Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers', *International Journal of Refugee Law*, vol. 13, no. 3, 2001, pp. 293-309.

¹³ J Herlihy, S Turner, 'The Psychology of Seeking Protection', *International Journal of Refugee Law*, vol. 21, no. 2, 2009, pp. 171-92 at p. 178; see also European Asylum Curriculum Module 7, section 4.2.5.

listening to and/or reading accounts of claimed persecution.”¹⁴

Although CREDO focuses on the assessment of credibility in general terms the challenges it identifies are often further highlighted when we consider specific considerations linked to claims such as sexual orientation or gender identity. A workshop on sexual orientation, gender identity and human dignity at the recent European Database of Asylum Law (EDAL) conference¹⁵ concluded that credibility assessments in lesbian, gay, bisexual, transgender, intersex (LGBTI) asylum claims vary greatly across the EU. Experts spoke of the fact that many credibility assessments of LGBTI refugee claims are based on superficial understandings of the experiences of LGBTI persons, or on inaccurate or culturally inappropriate stereotypical assumptions, leading to ill-founded decisions.¹⁶ For example, asylum seekers are often questioned on their knowledge of ‘gay life’ or ‘gay culture’, in the country of origin and in the country of asylum.¹⁷ Such questions often lead to a rejection when the answers do not match the assumptions on how a ‘true’ LGBTI person behaves.¹⁸

2.2 Credibility indicators

The Asylum Procedures Directive obliges Member States to ensure that applications for international protection “are examined and decisions taken individually, objectively and impartially.”¹⁹ This begs the question as to how objectivity and impartiality are to be ensured. As outlined in the CREDO report, national legal jurisdictions have utilised a number of credibility indicators as outlined below against which the applicant’s statements and any other evidence

¹⁴ UNHCR, *Beyond Proof*, p. 79.

¹⁵ The Conference, entitled ‘Reflections on the Current Application of the EU Asylum Acquis’, was held at the Hilton Charlemont Hotel, Dublin, on 17-18 January 2014. For further information see: <http://www.asylumlawdatabase.eu/en>.

¹⁶ For further information see ‘EDAL Conf 2014 - Workshop: Sexual Orientation, Gender Identity and Dignity in the Asylum Acquis - discussion notes’, available at: <http://www.asylumlawdatabase.eu/en/content/edal-conf-2014-workshop-sexual-orientation-gender-identity-and-dignity-asylum-acquis>

¹⁷ Jansen, Sabine, ‘Credibility, or how to assess the sexual orientation of an asylum seeker’, available at: <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/Credibility%20of%20sexual%20orientation%2C%20%20presentation%20Sabine%20Jansen%20at%20EDAL%20conference%20Jan%202014.pdf>

¹⁸ *Ibid.*

¹⁹ Council of the EU, *Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status*, 2 January 2006, OJ L 326; 13 December 2005, (Asylum Procedures Directive) pp. 13-34, available at: <http://www.refworld.org/docid/4394203c4.html>

submitted are assessed in an effort to promote an objective and structured approach.

Sufficiency of detail and specificity

Sufficiency of detail and specificity are commonly relied upon credibility indicators.²⁰ In research conducted by UNHCR, decision-makers were found to have had unrealistic expectations regarding the level of detail the applicant should (be able to) provide regarding past events and facts. As outlined above, it is therefore essential that decision-makers have an appropriate level of understanding about how human beings record, store, and retrieve memories, as a number of common assumptions about memory are incorrect. Further, it is vital that decision-makers also understand how an applicant’s individual and contextual circumstances may influence his or her ability to provide details.²¹

Internal and external consistency

Internal consistency relates to consistency in the material facts asserted by the applicant.²² Its use as an indicator is based on the assumption that a person who lies is likely to be inconsistent in his or her testimony. Consistency is referred to as a possible indicator of credibility by UNHCR,²³ the European Court of Human Rights,²⁴ the UN Committee against Torture,²⁵ the International Criminal Tribunals²⁶ and the European Asylum Curriculum (EAC).²⁷

For example, the European Court of Human Rights accepts a certain degree of inconsistency in the

²⁰ UNHCR, *Beyond Proof*, p. 148

²¹ *Ibid.* p. 148

²² *Ibid.* p. 149

²³ UNHCR, ‘Note on Burden and Standard of Proof in Refugee Claims, 16 December 199’, para. 11, available at:

<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=3ae6b3338&skip=0&qury=Note%20on%20Burden%20of%20Proof>

UNHCR, *Handbook*, para. 197: “Allowance for such possible lack of evidence does not, however, mean that unsupported statements must necessarily be accepted as true if they are inconsistent with the general account put forward by the applicant.”

²⁴ *Said v. The Netherlands*, no. 2345/02, ECtHR, 5 July 2005, para. 51; *M. v. Sweden*, no. 22556/05, ECtHR, 6 September 2007.

²⁵ CAT General Comment No. 1: Implementation of Article 3 of the Convention in the Context of Article 22 (Refoulement and Communications), 21 November 1997, A/53/44, available at:

<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=453882365&skip=0&qury=General> para. 8 (g) states “Are there factual inconsistencies in the claim of the author? If so, are they relevant?”; See for example,

A.K. v Australia, CAT/C/32/D/148/1999, 11 May 2004, para. 6.2.

²⁶ *Prosecutor v. Juvenal Kajelijeli (Judgment and Sentence)*, ICTR-98-44A-T, 1 December 2003, paras. 39–40

²⁷ EAC Module 7, section 3.2.

statements and documents submitted by the applicant, as long as the “basic story [is] consistent throughout the proceedings” and that “uncertainties do not undermine the overall credibility of his [or her] story.”²⁸

The UN Committee against Torture has consistently noted that complete accuracy is seldom to be expected of victims of torture or those suffering from post-traumatic stress disorder.²⁹

Consistency of statements and other evidence provided by the applicant with independent, objective, reliable, and time-appropriate country of origin information (COI) is also an important credibility indicator.³⁰

Plausibility

The credibility indicator ‘plausibility’ is also listed in Article 4(5) (c) of the Qualification Directive: “the applicant’s statements are found to be [...] plausible.”³¹ UNHCR’s Handbook states: “The applicant’s statements must be coherent and plausible, and must not run counter to generally known facts.”³² The Beyond Proof report highlights that nevertheless there are uncertainties surrounding the meaning of ‘plausibility’:

“an assessment of whether facts presented by an applicant seem reasonable, likely or probable, or make ‘common sense’ risks becoming intuitive, based on subjective assumptions, preconceptions, conjecture, speculation, and stereotyping, rather than accurate, objective, and current evidence”.³³

As UNHCR’s research has shown decision-makers’ judgements about whether asserted facts were plausible were often based on subjective assumptions, preconceptions, conjecture, and speculation rather than on independent, objective, reliable, and time-appropriate evidence. If plausibility is to be used as an

²⁸ *R.C. v Sweden*, no. 41827/07, ECtHR, 9 March 2010, para. 52

²⁹ *Alan v. Switzerland*, CAT/C/16/D/21/1995, 8 May 1996. *Kisoki v. Sweden*, CAT/C/16/D/41/1996, 13 May 1996; and *C.T. & K.M.v. Sweden*, CAT/C/37/D/279/2005, 17 Nov. 2006.

³⁰ UNHCR, *Beyond Proof*, p. 175.

³¹ European Union: *Council of the European Union, Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 30 September 2004, OJL 304/12, available at:

<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4157e75e4&skip=0&qury=Council%20Directive%202004/83/EC%20of%2029%20April%202004>

³² UNHCR, Handbook, para. 204.

³³ UNHCR, *Beyond Proof*, p.177

indicator of credibility, it is important that the assessment is conducted with reference to the entirety of the evidence and other indicators of credibility. A decision-maker may err if he or she rejects an application for international protection on the grounds of implausibility alone, especially where the evidence is otherwise internally consistent and there is an absence of contradictory evidence from COI or other expert evidence.³⁴

Demeanour

The Beyond Proof report advises serious caution in the determination of credibility by reference to demeanour because it has a subjective basis that will generally reflect the views, prejudices, personal life experiences, and cultural norms of the decision-maker.³⁵ UNHCR advises it should not be relied upon as an indicator of credibility or non-credibility.³⁶

Indeed, the danger of over-reliance of demeanour as a credibility indicator was highlighted in an Irish judicial review decision in January 2014. The applicant’s case was documented and supported “to an unusual level” but was nonetheless refused on credibility grounds. In her decision, Ms Justice Clark stated that:

“The Court is satisfied to a very high degree that documents clearly capable of corroborating or confirming the truth of the applicant’s account were disregarded in favour of a heavy reliance on the applicant’s demeanour which the Tribunal Member did not favour.

.....

[W]hen reviewing this quite extraordinary decision on the day of the hearing, the only conclusion which the Court could draw for the Tribunal’s decision not to recommend that the applicant should be declared a refugee is that the Tribunal Member simply did not like the applicant.”³⁷

2.3 A Structured Approach to Credibility Assessment

International protection determinations should adopt a structured approach. UNHCR recommends that they be conducted in two stages. Stage one is the gathering of relevant information, the identification of the material facts of the application and the determination of which

³⁴ UNHCR, *Beyond Proof*, p. 184

³⁵ *Ibid.* p. 186

³⁶ *Ibid.* p. 190

³⁷ *A.A.M.O (Sudan) v. Refugee Appeals Tribunal & anor*, [2014] IEHC 49, Ireland: High Court, 17 January 2014, available at: <http://www.refworld.org/docid/532876544.html>

of the applicant's statements and other evidence can be accepted. Stage two is the analysis of the well-founded fear of persecution and real risk of serious harm. The credibility assessment takes place at stage one.³⁸

Taking into account the complexities associated with credibility assessment at this first stage and the lack of a consistent approach throughout EU Member States, UNHCR has translated the legal and theoretical concepts into practical flowcharts and checklists to assist decision-makers and to support a fair assessment of credibility in the asylum procedure. These include a six-step structured approach to credibility assessment, designed to ensure high quality, legally-sound decision-making. The steps are as follows:

1. **Gather all the facts**
2. **Determine the material facts**
3. **Assess the credibility of each material fact**
4. **Categorise the material facts – application of the standard of proof**
5. **Consider the benefit of the doubt**
6. **Clearly determine the facts of the claim**

A detailed discussion of these steps is not possible within the confines of this short article, but a number of aspects are worth emphasising. Firstly, when gathering the facts, the duty to substantiate the application lies 'in principle' with the applicant.³⁹ However, as the Court of Justice of the European Union (CJEU) stated in *M.M. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, "it is the duty of the Member State to cooperate with the applicant at the stage of determining the relevant elements of that application."⁴⁰ Cooperation implies, among other things, that the applicant and decision maker work together towards the common goal of gathering as much relevant evidence as possible in order to have a solid basis for the decision maker to assess the credibility of the asserted material facts. As the CJEU notes in the *M.M* decision: "The second stage relates to the legal appraisal of that evidence, which entails deciding whether, in the light of the specific facts of a given case, the substantive conditions laid down by [the Qualification Directive] for the grant of international protection are met".⁴¹ While the first stage is a shared duty, the Court notes that "an examination of the merits of an asylum

application is solely the responsibility of the competent national authority".⁴²

Secondly, material facts are analyzed in Ireland on the basis of three categories using the balance of probabilities as the standard of proof. First, *accepted material facts* are those which are consistent, sufficiently detailed, and plausible – whether or not they are supported by documentary or other evidence. These facts meet or exceed the standard of being accepted on the balance of probabilities. Second, *uncertain material facts* are those which are unsupported by documentary or other evidence, and about which an element of doubt remains. These facts do not meet the balance of probabilities standard but, once the benefit of the doubt has been considered, may reach the threshold of the balance of probabilities and, thereby, be accepted. Third, *rejected material facts* are those which, after taking into account individual and contextual circumstances, lack sufficient details and are inconsistent and implausible, not supported by COI and do not meet the balance of probabilities standard.⁴³

Finally, on the question of the benefit of the doubt, it is worth noting that this principle reflects the fact, as the UNHCR Handbook notes, that "[i]t is hardly possible for a refugee to 'prove' every part of his case and, indeed, if this were a requirement the majority of refugees would not be recognized. It is therefore frequently necessary to give the applicant the benefit of the doubt". When considering whether to apply the benefit of the doubt to any remaining uncertain material facts, the decision-maker must take into account the applicant's individual and contextual circumstances, his or her effort to substantiate the application, and the explanations given for any apparent lack of credibility, as well as whether the applicant's statements are on the whole coherent and plausible and do not run counter to generally known facts.⁴⁴

3. Practice

UNHCR held the Irish launch of CREDO at a high profile event in December 2013.⁴⁵ With guest speakers that included Fadela Novak-Irons, UNHCR Policy Officer for Europe and one of the report's authors, and Jane Herlihy, Executive Director, Centre for the Study of Emotion and Law (CSEL), the conference provided a unique opportunity to explore this challenging area in some depth. David Costello, Refugee Applications

³⁸ See further: *M. M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012, available at: <http://www.refworld.org/docid/50af68c22.html>

³⁹ UNHCR, *Beyond Proof*, pp.104-105.

⁴⁰ *M. M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, supra n.38, para. 65

⁴¹ *Ibid.* para. 64

⁴² *Ibid.* para. 70

⁴³ UNHCR, *Beyond Proof*, p. 261

⁴⁴ *Ibid.* p. 261

⁴⁵ See UNHCR webstory: <http://www.unhcr.ie/news/irish-story/credibility-assesment-in-eu-asylum-systems>

Commissioner and Barry Magee, Chairman of the Refugee Appeals Tribunal (RAT), as well as the Irish Refugee Council's Nick Henderson, also presented valuable insights on the topic.

At the invitation of the Irish authorities and as part of its supervisory function, UNHCR has been engaged since 2011 in a quality initiative with the Office of the Refugee Applications Commissioner (ORAC).⁴⁶ In continuing to draw on best practice developments and initiatives globally and in Europe UNHCR has sought to incorporate the outputs of the CREDO project in that initiative. Since the CREDO launch in December, UNHCR has also assisted in providing training to case workers and decision-makers from both ORAC and the Refugee Appeals Tribunal with the aim of establishing a common understanding and approach to credibility assessment.

Recognising the role early legal advice can play in enhancing the quality of decision-making, UNHCR has also engaged in training staff from the Refugee Legal Service (RLS). UNHCR has provided training to the above bodies through a series of participatory sessions centred on the six-step structured approach. The training utilises the development of practical tools for decision-makers such as check-lists which will change and adapt as the system evolves.

4. Conclusion

Credibility assessment in asylum procedures is one of the most challenging areas of asylum law. The factors and circumstances of each individual case span many disciplinary fields which require decision-makers to take a multidisciplinary approach to credibility assessment with consideration of the individual and contextual circumstances of the applicant if accurate decisions are to be ensured.

The CREDO project is an important first step towards clarifying some key concepts and identifying some specific insights into how credibility is assessed in EU asylum procedures and therefore constitutes a solid foundation for further research and discussion, including research into more specific considerations linked to asylum claims such as sexual orientation or gender identity etc.

Taking into account the complexities associated with credibility assessment and the lack of a consistent

approach throughout EU Member States, UNHCR has translated the legal and theoretical concepts into practical flowcharts and checklists to assist decision-makers and legal practitioners in Ireland and to support a fair assessment of credibility in the asylum procedure. It is envisaged that these tools, such as the six-step structured approach to credibility assessment, will help to ensure high quality, legally sound decision-making.

Against the backdrop of the introduction of the new subsidiary protection process at ORAC and a newly constituted Refugee Appeals Tribunal, development in the enhancement of quality credibility assessment is timely in this very interesting period of development. UNHCR's credibility assessment work with the Irish authorities in training members of ORAC, RAT and the RLS is a clear example of the commitment and determination of all stakeholders to the development of better quality, efficient and consistent credibility assessments and improved quality decision-making in refugee and subsidiary protection determination procedures.

⁴⁶ For further information on UNHCR's quality work in Ireland see: <http://www.unhcr.ie/our-work-in-ireland/quality-initiative-in-ireland>



Killing in the Name: The Taliban, Polio and Pakistan



Patrick Dowling, RDC

Introduction

In August 2004, the World Health Organisation were optimistic that the global elimination of polio was possible by the end of that year.⁴⁷ An official from UNICEF in April 2005 was confident that 2005 would see the last case of polio in Pakistan.⁴⁸ In 2014 the World Health Organisation lists Pakistan among the remaining countries in the world where polio is considered “endemic”.⁴⁹ Also in 2014 the World Health Organisation named a city in Pakistan as the “world's “largest reservoir” of polio”.⁵⁰ In January 2014 six policemen were among the victims of a militant attack in Charsadda in Khyber Pakhtunkhwa province, targeting the vaccination program for polio in Pakistan; it was the second such attack in two days, after three health workers were killed in Karachi.⁵¹ Attacks on health workers engaged in the polio vaccination program for Pakistan have increased significantly since a ban issued by the Taliban against the programme in 2012.⁵² This article explores the effect the Taliban edict has had upon the treatment of polio in Pakistan.⁵³

⁴⁷ BBC News (3 August 2004) *Polio 'to die out by end of year'* <http://news.bbc.co.uk/2/hi/health/3533618.stm>

⁴⁸ IRIN News (28 April 2005) *Pakistan: Country moves toward polio-free status before year's end* <http://www.irinnews.org/report/28568/pakistan-country-moves-toward-polio-free-status-before-year-s-end>

⁴⁹ The Nation (17 January 2014) *Peshawar world's 'largest reservoir' of polio: WHO* <http://www.nation.com.pk/national/17-Jan-2014/peshawar-world-s-largest-reservoir-of-polio-who>

⁵⁰ *ibid*

⁵¹ Deutsche Welle (22 January 2014) *Violence hampers polio eradication in Pakistan* <http://www.dw.de/violence-hampers-polio-eradication-in-pakistan/a-17379181>

⁵² The Nation (14 January 2014) *Pakistan to continue with war on polio* <http://www.nation.com.pk/national/14-Jan-2014/pakistan-to-continue-with-war-on-polio>

⁵³ There is not a uniformity amongst the Taliban in dealing with the issue of polio and vaccination, see:

Dawn (23 January 2014) *Paralysing Pakistan* <http://www.dawn.com/news/1081980/paralysing-pakistan/print>;

Taliban ban and killings

Pakistan along with Nigeria and Afghanistan, are the only countries in the world where polio is deemed endemic.⁵⁴ Militant opposition to polio vaccination campaigns in Pakistan has contributed to polio's status in that country.⁵⁵ In June 2012 a Taliban leader in North Waziristan, Hafiz Bahadur, banned polio vaccinations, which led to other militant and tribal leaders and clerics in the region adopting the same stance.⁵⁶ Since 2012 the Taliban have been prominent in opposing the vaccination.⁵⁷

Various reasons have been postulated by militants for advocating a prohibition on the polio vaccination including: that the vaccine contains pork ;⁵⁸ that the

Dawn (22 January 2014) *Taliban's change of heart on polio vaccination*

<http://www.dawn.com/news/1081820/talibans-change-of-heart-on-polio-vaccination>;

The Telegraph (13 May 2013) *Taliban renounces war on anti-polio workers*

<http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/10053981/Taliban-renounces-war-on-anti-polio-workers.html>

⁵⁴ BBC News (13 December 2013) *Three killed in separate Pakistan polio shootings*

<http://www.bbc.co.uk/news/world-asia-25361887?print=true>

⁵⁵ *ibid*

⁵⁶ IRIN News (18 July 2012) *Pakistan: Taliban block polio efforts*

<http://www.irinnews.org/printreport.aspx?reportid=95894>;

Program on Humanitarian Policy and Conflict Research (21 August 2012) *Taliban vaccine ban: new setback for polio prevention in Pakistan*

<http://reliefweb.int/report/pakistan/taliban-vaccine-ban-new-setback-polio-prevention-pakistan>;

The Guardian (17 July 2012) *Shooting of UN doctor imperils Pakistan's campaign against polio*

<http://www.theguardian.com/world/2012/jul/17/shooting-un-doctor-pakistan-polio>;

Militant and religious resistance against polio vaccinations predates 2012, see:

IRIN News (17 July 1998) *Pakistan: Militants hampering anti-polio drive as new case confirmed*

<http://www.irinnews.org/report/79297/pakistan-militants-hampering-anti-polio-drive-as-new-case-confirmed>;

The Guardian (26 June 2012) *Taliban leader bans polio vaccinations in protest at drone strikes*

<http://www.theguardian.com/world/2012/jun/26/taliban-bans-polio-vaccinations/print>;

South Asia Terrorism Portal (2 December 2013) *Extremist Epidemic*

<http://www.ein.org.uk/members/country-report/extremist-epidemic>

⁵⁷ Washington Post (26 December 2012) *Where it's most dangerous to be an aid worker*

<http://www.washingtonpost.com/blogs/worldviews/wp/2012/12/26/heres-where-its-most-dangerous-to-be-an-aid-worker/?print=1>

⁵⁸ Radio Free Europe/Radio Liberty (20 December 2012) *Explainer: Why Polio Remains Endemic In Afghanistan, Pakistan, And Nigeria*

<http://www.rferl.org/articleprintview/24804097.html>;

Conservatism and education are also factors in attitudes to the polio vaccination in the tribal areas, see:

vaccine is un-Islamic;⁵⁹ that the polio drops will make children sterile;⁶⁰ and that health workers are operating as spies for the US.⁶¹ In 2014 access to parts of Pakistan that the Taliban control remain restricted for polio vaccinators and a hostile and dangerous environment to work in.⁶²

The Taliban in 2013 were responsible for 19 polio-related killings which included health workers and adjunctive police;⁶³ over 30 polio health workers have been killed by militants since mid 2012.⁶⁴ Attacks have

Dawn (6 May 2013) *First polio case in Waziristan since Taliban ban*

<http://www.dawn.com/news/812290/first-polio-case-in-waziristan-since-taliban-ban>

⁵⁹ Dawn (23 January 2014) *Paralysing Pakistan*

<http://www.dawn.com/news/1081980/paralysing-pakistan/print>

⁶⁰ Voice of America (22 January 2014) *Pakistan: Waziristan Strikes Are Not Start of Offensive*

<http://www.ein.org.uk/members/country-report/pakistan-waziristan-strikes-are-not-start-offensive>;

The Economist (22 December 2012) *Killing disease*

<http://www.economist.com/node/21568773/print>;

An article published by Reuters postulates reasons why rumours and conspiracy theories are fertile in Pakistan, see:

Reuters (23 December 2012) *Violence, fear & suspicion imperil Pakistan's war on polio*

<http://www.trust.org/item/20121223013400-7063u/?source=search>

⁶¹ The Guardian (29 January 2013) *Gunmen kill police officer protecting polio workers in Pakistan*

<http://www.theguardian.com/world/2013/jan/29/pakistan-polio-vaccines-gunmen-shooting>;

This theory gained currency after the CIA operation to locate Osama Bin Laden used a fake vaccination campaign to collect DNA samples, see:

The Telegraph, *op.cit.*;

IRIN News (7 January 2013) *Growing risks for aid workers in Pakistan*

<http://www.irinnews.org/printreport.aspx?reportid=97186>;

Wall Street Journal (21 January 2014) *Pakistan's Polio Crisis Poses Wider Threat*

<http://online.wsj.com/news/articles/SB10001424052702304027204579334142274363428>;

Drone attacks in the tribal regions have also contributed to an ongoing anti-American sentiment, see:

Centre for Strategic & International Studies (13 August 2012) *Eradicating Polio in Afghanistan and Pakistan*, p.7

<https://csis.org/publication/eradicating-polio-afghanistan-and-pakistan>;

Washington Post (10 January 2014) *Politicians, Muslim scholars join vaccination effort as violence hinders Pakistan polio drive*

http://www.washingtonpost.com/world/politicians-muslim-scholars-join-vaccination-effort-as-violence-hinders-pakistan-polio-drive/2014/01/10/aacf96fc-768c-11e3-a647-a19deaf575b3_story.html

⁶² Reuters (17 January 2014) *Pakistani city is world's biggest reservoir of polio viruses*

<http://www.trust.org/item/20140117105510-xzteg/?source=search>;

Wall Street Journal, *op.cit.*,

⁶³ Dawn, *op.cit.*,

⁶⁴ Wall Street Journal, *op.cit.*;

See also:

The News (22 January 2014) *31 fell victim to polio carnage in 18 months*

mostly occurred in the tribal regions of FATA and Khyber Pakhtunkhwa, and in Karachi.⁶⁵ The first attacks and killings on polio workers occurred in July 2012 in Karachi;⁶⁶ killings are still occurring into February 2014;⁶⁷ health workers and assigned police have been the principal targets.⁶⁸

Polio, paralysis and Peshawar

The World Health Organisation estimated that over 3.5 million children in Pakistan missed out on polio vaccinations as a result of immunisation programs being suspended due to killings affecting vaccination programs in late 2012: the same year the Taliban issued its ban on the polio vaccination.⁶⁹ Over a quarter of a million children in North and South Waziristan agencies in FATA were in January 2014 unreachable to the vaccinators due to the militants' ban.⁷⁰ In January 2014 the polio vaccination program was suspended in Khyber Pakhtunkhwa due to ongoing insecurity in the province.⁷¹ Also in January 2014 polio vaccination was suspended in Karachi due to Taliban

<http://www.thenews.com.pk/Todays-News-2-227804-31-fell-victim-to-polio-carnage-in-18-months>;

South Asia Terrorism Portal, *op.cit.*;

Reuters (18 October 2013) *Pakistan polio outbreak puts global eradication at risk*

<http://www.trust.org/item/20131018114018-jgde0/?source=search>

⁶⁵ The News (30 October 2013) *350,000 children miss polio vaccine due to Taliban 'boycott'*

<http://www.thenews.com.pk/Todays-News-2-211106-350000-children-miss-polio-vaccine-due-to-Taliban-boycott>;

The Nation (25 October 2013) *Battling Polio*

<http://www.nation.com.pk/islamabad/25-Oct-2013/battling-polio>;

Militant influence has remained strong in the northwestern region and also grown in Karachi, see:

Deutsche Welle, *op.cit.*,

⁶⁶ The News (22 January 2014) *31 fell victim to polio carnage in 18 months*

<http://www.thenews.com.pk/Todays-News-2-227804-31-fell-victim-to-polio-carnage-in-18-months>

⁶⁷ Dawn (12 February 2014) *Gunmen shoot Pakistani police official escorting polio team dead*

<http://monmol01.monitor.bbc.co.uk/mmu/>

⁶⁸ Radio Free Europe/Radio Liberty (28 May 2013) *Pakistan Suspends Polio-Vaccination Program After Deadly Attack*

<http://www.rferl.org/articleprintview/24999412.html>;

Health workers administering the vaccine are usually women who face additional security issues, see:

Radio Free Europe/Radio Liberty (29 May 2013) *In Fighting Polio, Information Is Half the Battle*

<http://www.rferl.org/articleprintview/25000592.html>

⁶⁹ The Daily Times (27 January 2014) *Anti-polio campaign suspended in KP*

<http://www.dailytimes.com.pk/national/27-Jan-2014/anti-polio-campaign-suspended-in-kp>;

Agence France Presse (21 December 2012) *3.5 million Pakistani children miss polio vaccine: WHO*

<http://reliefweb.int/report/pakistan/35-million-pakistani-children-miss-polio-vaccine-who>

⁷⁰ Wall Street Journal, *op.cit.*,

⁷¹ The Daily Times, *op.cit.*,

killings of health workers administering the vaccine, depriving over two million children of being vaccinated.⁷² Moreover health workers in Pakistan claim that the Taliban are affecting polio vaccination in all provinces of the country.⁷³

There has been a significant rise in the number of polio cases registered in Pakistan since the formation of the Taliban;⁷⁴ polio is prevalent in FATA and Khyber Pakhtunkhwa provinces, parts of Balochistan province and Karachi.⁷⁵ Up to early February all cases of polio from 2014 were from North Waziristan Agency where children have been unable to have the vaccine

⁷² Financial Times (21 January 2014) *Pakistan suspends polio vaccination campaign after team shot dead*
<http://www.ft.com/cms/s/0/2a6124ea-8299-11e3-8119-00144feab7de.html#axzz2t18RaDpF>;

The Daily Times (22 January 2014) *Polio campaign halted after another attack on polio team*

<http://www.dailytimes.com.pk/national/22-Jan-2014/polio-campaign-halted-after-another-attack-on-polio-team>

⁷³ Inter Press Service (3 January 2014) *Pakistan's Polio Campaign Runs Into Taliban Wall*

<http://www.ipsnews.net/2014/01/pakistans-polio-campaign-runs-taliban-wall/>;

This article also considers other reasons causing children to miss out on vaccination such as refusal by parents to allow the vaccination to be taken; cultural issues; militant influence and propaganda.

IRIN News (17 July 1998) *Pakistan: Militants hampering anti-polio drive as new case confirmed*

<http://www.irinnews.org/report/79297/pakistan-militants-hampering-anti-polio-drive-as-new-case-confirmed>;

Other issues affecting the dissemination of the polio vaccine and spread of the virus include: general insecurity and access to the tribal regions and the movement of internally displaced people and migrants, see:

IRIN News (22 January 2008) *Pakistan: Over 30 million children to be vaccinated against polio*

<http://www.irinnews.org/report/76362/pakistan-over-30-million-children-to-be-vaccinated-against-polio>;

The Nation (18 September 2013) *400,000 children miss anti-polio drops*

<http://www.nation.com.pk/islamabad/18-Sep-2013/400-000-children-miss-anti-polio-drops>;

The News (13 November 2013) *Polio on the rise in Pakistan*

<http://www.thenews.com.pk/Print.aspx?ID=126290>

⁷⁴ South Asia Terrorism Portal, *op.cit.*;

United Nations News Centre (22 January 2014) *Ban 'strongly condemns' spate of deadly terrorist attacks in Pakistan*

<http://www.ein.org.uk/members/country-report/ban-strongly-condemns-spate-deadly-terrorist-attacks-pakistan>;

Increases in the number of reported polio cases in Pakistan have also risen prior to 2007, see:

National Database & Registration Authority/NADRA (17 June 2009) *Polio Initiative*

<http://www.nadra.gov.pk/index.php/media/special-initiatives/polio-initiative>

⁷⁵ The Global Polio Eradication Initiative (2014) *Pakistan*

<http://www.polioeradication.org/Infectedcountries/Pakistan.aspx>;

World Health Organisation (Undated) *Pakistan, Polio Eradication Initiative*

<http://www.emro.who.int/pak/programmes/polio-eradication-initiative.html>

administered.⁷⁶ Prior to the ban imposed by the Taliban in 2002 in North Waziristan, there was no record of the virus in the region.⁷⁷ Since 2012 most cases of polio in Pakistan have occurred in FATA.⁷⁸

Peshawar, the capital of Khyber Pakhtunkhwa province, is, according to the World Health Organisation, the “world’s largest polio reservoir”.⁷⁹ Poor sanitation, including open sewers, has enabled the polio virus, resulting in the majority of polio cases recorded in Pakistan for 2013 deriving from that city; relatedly Peshawar also has a vast mobile population and is plagued by Taliban and militant violence.⁸⁰ A ten month old baby, Baseerat, from Peshawar - diagnosed with polio - would have been put at risk of contacting the virus, after the suspension in 2013 of the polio programme following the killing of a health worker administering the vaccine: she is already crippled in one foot.⁸¹ Many children diagnosed with polio in 2014 would not have received a dose of the vaccine.⁸² One father from North Waziristan exclaims his anguish: “the Taliban militants are responsible for my son’s (paralysis) – they placed a ban on the oral polio vaccine, so my son could never get immunised”.⁸³

⁷⁶ Dawn (11 February 2014) *New polio case in North Waziristan*
<http://reliefweb.int/report/pakistan/new-polio-case-north-waziristan>;

See also updates from:

The Global Polio Eradication Initiative

<http://www.polioeradication.org/Dataandmonitoring/Poliothisweek.aspx>

⁷⁷ Independent Monitoring Board of the Global Polio Eradication Initiative (October 2013) *Eight Report*, p.26

<http://www.endpolio.com.pk/index.php/knowledge-centre/reports>

⁷⁸ Inter Press Service (1 May 2013) *Taliban Show Patients No Mercy*

<http://www.ein.org.uk/members/country-report/taliban-show-patients-no-mercy>;

The Nation (31 December 2013) *83 polio cases reported across Pakistan*

<http://www.nation.com.pk/karachi/31-Dec-2013/83-polio-cases-reported-across-pakistan>

⁷⁹ Wall Street Journal, *op.cit.*,

⁸⁰ Reuters (17 January 2014) *Pakistani city is world's biggest reservoir of polio viruses*

<http://www.trust.org/item/20140117105510-xzteg/?source=search>;

Radio Free Europe/Radio Liberty (17 January 2014) *WHO: Peshawar Is 'Largest Reservoir' Of Polio*

<http://www.rferl.org/articleprintview/25233302.html>

⁸¹ Wall Street Journal, *op.cit.*,

⁸² Pakistan Today (11 February 2014) *10th polio case reported from North Waziristan*

<http://www.pakistantoday.com.pk/2014/02/11/national/10th-polio-case-reported-from-north-waziristan/>

⁸³ Inter Press Service (11 July 2013) *Taliban Ban Has Crippling Effects on Children*

<http://www.ipsnews.net/2013/07/taliban-ban-has-crippling-effects-on-children/>;

See also:

Polio is an incurable disease and can only be curtailed by repeated vaccination which can protect a child for life.⁸⁴ It is a highly infectious viral disease which principally affects children under five, entering the body through the mouth, attacking the nervous system, causing, irreversible paralysis in one in 200 cases, mostly in the legs.⁸⁵ The disease spreads from person to person occurring mostly in areas with poor sanitation.⁸⁶ Polio is at risk of spreading once a single child remains infected.⁸⁷

Conclusion

A father from North Waziristan after allowing his son the vaccination in 2013, was aware of the risks involved, noting that he “was really scared the militants would discover what” he was doing.⁸⁸ An administrator of the vaccine in Khyber Pakhtunkhwa province comments on the present and history of polio: “I know polio vaccination is dangerous...but this work is important...I know because my own sister was disabled by polio over 45 years ago”.⁸⁹ During the

Dawn (4 December 2013) *Four-month old polio victim dies in Pakistan*

<http://www.dawn.com/news/1060481/four-month-old-polio-victim-dies-in-pakistan>;

The News (20 January 2014) *First four polio cases in 2014 came from NWA*

<http://www.thenews.com.pk/Todays-News-13-28052-First-four-polio-cases-in-2014-came-from-NWA>

⁸⁴ IRIN News (8 May 2007) *Pakistan: Over 34 million children vaccinated against polio*

<http://www.irinnews.org/report/72026/pakistan-over-34-million-children-vaccinated-against-polio>

⁸⁵ IRIN News (18 January 2007) *Pakistan: Sharp increase in polio cases*

<http://www.irinnews.org/report/64507/pakistan-sharp-increase-in-polio-cases>;

Fatalities are rare, see:

Dawn, *op.cit.*,

⁸⁶ Inter Press Service (23 September 2011) *Pakistan: Fighting a Taliban-Polio Alliance*

<http://www.ipsnews.net/2011/09/pakistan-fighting-a-taliban-polio-alliance/>;

Time (14 January 2013) *The Polio Scourge*

http://rotary9320.org.za/polio_time.html;

Deutsche Welle, *op.cit.*;

See also:

<http://www.polioeradication.org/Polioandprevention.aspx>

⁸⁷ Reuters (18 October 2013) *Pakistan polio outbreak puts global eradication at risk*

<http://www.reuters.com/article/2013/10/18/us-polio-pakistan-idUSBRE99HODE20131018>;

Time, *op.cit.*,

⁸⁸ The Guardian (2 April 2013) *Battling Pakistan militants' ban on polio vaccines in North Waziristan*

<http://www.theguardian.com/global-development/2013/apr/02/pakistan-militants-polio-north-waziristan>

⁸⁹ IRIN News (4 December 2013) *Pakistan's polio fight goes under the radar*

<http://www.irinnews.org/printreport.aspx?reportid=99265>

1980s and into the early 1990s Pakistan had made strident efforts administering the vaccine and combatting the disease.⁹⁰ And by the mid 2000s polio was almost eradicated in the country.⁹¹ This effort was significantly affected by the Taliban ban in 2012 which both put the lives at risk of those administering the polio vaccine and those concurrently not receiving the drops.⁹² UNICEF in 2014 issued a booklet of religious decrees in support of administering the vaccine in order to combat one of the reasons militants use for opposing the immunisation program.⁹³ Preceding this in the same vein in late 2013, the Dar-ul-Uloom Haqqaniya mosque, issued a religious decree, through its leader Mullah Sami-ul-Haq, who holds considerable influence over the Taliban, that the polio vaccine was not un-Islamic and that it was legitimate for parents to allow their children to receive it.⁹⁴ Health workers during January 2014 in a number of towns in Khyber Agency in FATA were able to continue the vaccination program after security was increased to curb the militant threat.⁹⁵ A mother from Swat in Khyber Pakhtunkhwa is aware of the Taliban threat but says nevertheless: “I will do all I can to protect my children - since I have seen how terrible a sickness polio can be”.⁹⁶

⁹⁰ *ibid*

⁹¹ Inter Press Service (3 May 2012) *New projects dispel myths and spread the truth about vaccines*

<http://reliefweb.int/report/pakistan/new-projects-dispel-myths-and-spread-truth-about-vaccines>;

See also:

World Health Organisation, *op.cit.*,

⁹² Wall Street Journal, *op.cit.*,

⁹³ Inter Press Service (3 January 2014) *Pakistan's Polio Campaign Runs Into Taliban Wall*

<http://www.ipsnews.net/2014/01/pakistans-polio-campaign-runs-taliban-wall/>

⁹⁴ Radio Free Europe/Radio Liberty (10 December 2013) *Leading Pakistani Seminary Backs Polio Vaccine*

<http://www.rferl.org/articleprintview/25195701.html>;

Washington Post, *op.cit.*;

See also:

Inter Press Service (3 May 2012) *New projects dispel myths and spread the truth about vaccines*

<http://reliefweb.int/report/pakistan/new-projects-dispel-myths-and-spread-truth-about-vaccines>;

Neighbouring India's efforts to eradicate polio were aided considerably by the assistance of Muslim clerics, see:

The Guardian (18 December 2012) *Polio vaccination workers shot dead in Pakistan*

<http://www.theguardian.com/world/2012/dec/18/polio-vaccination-workers-shot-pakistan>

⁹⁵ Agence France Presse (13 January 2014) *Pakistan region to extend polio drive despite threats*

<http://reliefweb.int/report/pakistan/pakistan-region-extend-polio-drive-despite-threats>

⁹⁶ IRIN News (3 November 2010) *Pakistan: Polio cases continue to climb*

<http://www.irinnews.org/report/90965/pakistan-polio-cases-continue-to-climb>

Persecution Versus Prosecution in Irish Refugee Law



Majella Twomey, Barrister

Confusion often arises in asylum law when there is a lack of clarity as to whether an asylum seeker is fleeing prosecution as opposed to persecution. If someone is fleeing their own country due to the fact that he or she will be prosecuted for breaking a national law, can they seek refuge in another country? What if the impending prosecution amounts to a breach of the applicant's fundamental human rights? An example of such a situation would be a homosexual who is being returned to a country where homosexuality is illegal and where he or she might face a lengthy term of imprisonment or the death penalty merely due to his or her sexual orientation. Another example might be a woman who has breached the one child policy in China, who might, consequently, suffer from harsh penalties if returned home. It is clear, in cases like this, that there is an overlap between the terms persecution and prosecution. The question then, really is, when does prosecution become persecution?

Reference to the UNCHR guidelines is instructive in this respect.⁹⁷ Paragraph 56 of the handbook on procedures and criteria for determining refugee status, states that persecution must be distinguished from punishment for a common law offence. It states that individuals fleeing from prosecution or punishment for such an offence would not normally fall within the definition of a Convention refugee. Paragraph 56 goes on to state that refugees are victims of injustice and not fugitives from justice.

However, it is clear that obscurity can, sometimes, arise in relation to the difference between persecution

⁹⁷ UNHCR Handbook on procedures and criteria for determining refugee status.

and prosecution.⁹⁸ This is dealt with in paragraph 57. It refers to the fact that a person guilty of a common law offence might be subjected to excessive punishment, which might, therefore, amount to persecution within the Convention. In addition to this, penal prosecution for a Convention definition might, in itself, amount to persecution.⁹⁹

Furthermore, there may be cases where a person, might be in fear of prosecution for a common law crime, but may also have "well-founded fear of persecution". Paragraph 58 of the UNHCR handbook states that in such cases the person concerned is a refugee. However, the UNHCR handbook states that it may be necessary to consider whether the crime in question is so serious that it might exclude the individual from benefitting from the Convention.¹⁰⁰

The issue of persecution versus prosecution was assessed by the Irish courts in the case of *A.B. v Refugee Appeals Tribunal & The Minister for Justice, Equality and Law Reform*.¹⁰¹ In that case, the applicant, who was a lawyer from Afghanistan, claimed a fear of returning to his own country because of his membership of and activities with the Hezb-I-Islami organisation and the Taliban. He said that he had taken part in military activities which were in opposition to the Karzai regime and NATO forces.

The Applicant worked as an investigator and prosecutor in Helmand province. This was his job up until 2001, when the NATO forces arrived. Subsequently, he was involved in combat for four years. He took over the command of a group of Mujahadeen fighters, which his deceased father had previously controlled.

The Office of the Refugee Applications Commissioner (ORAC), at first instance, found that the applicant was fleeing prosecution and not persecution. The matter was appealed to the Refugee Appeals Tribunal (RAT), which agreed with this assessment. The RAT also concluded that as the applicant was not a refugee, that the issue of exclusion for criminal activity did not arise. It is significant that the RAT stated that if this applicant had been a refugee that the exclusion clause

⁹⁸ Article 9.2(c) of The Qualification Directive states that prosecution which is disproportionate or discriminatory may be persecutory. Article 9.2 (e) refers to prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2) as being persecutory.

⁹⁹ Ibid, Paragraph 57 of handbook

¹⁰⁰ Ibid, Paragraph 58 of handbook.

¹⁰¹ 2011 IEHC 412

would have been invoked due to his senior position in Hezb-I-Islami and the Taliban.

The applicant judicially reviewed the RAT on the ground that the Tribunal had failed to carry out the individual assessment of the applicants actions as required by the Court of Justice in another case, *B. & D*¹⁰², in relation to whether exclusion applied.

The High Court held that the Tribunal had concurred with ORAC that the applicant was not a refugee as he was fleeing prosecution and not persecution. In relation to the statement made by the RAT in relation to exclusion, the High Court found that this was an ‘obiter observation’ on a secondary issue. Ultimately, the High Court found that there was no obligation on the RAT to make an assessment of the applicants’ individual responsibility, as was set out by the Court of Justice of the European Union in the *B & D* case. The decision of the Tribunal to refuse the applicant refugee status was upheld due to the distinction which had been made between persecution and prosecution.

Not every situation of a fear of prosecution as opposed to persecution in an applicant’s home country will, however, lead to his or her asylum case being denied. If the prosecution in question would lead to a breach of an applicant’s fundamental rights, particularly rights which cannot be derogated from, then the level and scale of such prosecution may amount to persecution. Paragraph 59 of the UNHCR handbook refers to this. It states that:-

*‘In order to determine whether prosecution amounts to persecution, it will also be necessary to refer to the laws of the country concerned, for it is possible for a law not to be in conformity with accepted human rights standards.’*¹⁰³

An applicant should not, for example, have to shield his sexual identity in his country of origin for fear of prosecution owing to homosexuality. *In A v MJELR*¹⁰⁴, this issue was assessed. The applicant feared persecution due to prosecution, in Nigeria, because he was homosexual. The applicant’s claim failed at the RAT and at the subsidiary protection stage and a deportation order was issued. The reasons for these decisions were grounded upon the fact that the applicant could hide his homosexuality and, consequently, avoid persecution or prosecution.

The applicant claimed that he feared the police and the possibility of falling victim to the death penalty. He had expressly stated that that he could not live in Nigeria without showing his sexuality. Ryan J in the High Court stated that:-

“Homosexuals are entitled to freedom of association with others of the same sexual orientation and to freedom of self-expression in matters that affect their sexuality. It is a breach of fundamental rights to compel a homosexual person to pretend that their sexuality does not exist or that the behaviour by which it manifests itself can be suppressed. Persecution does not cease to be persecution for the purposes of the Refugee Convention because those persecuted can eliminate the harm by taking avoiding action. Having said that, the persecution must be State sponsored or condoned in order to engage Refugee Convention rights and simple discrimination or family or social disapproval is not sufficient. ..”

Ryan J, ultimately quashed the decision to affirm the deportation order. This decision in this case is highly significant in the context of homosexual applicants from countries, such as Uganda, where harsh laws are meted out due to sexual orientation. Ryan J placed specific emphasis on the right of freedom of expression and said that there is not an onus on an individual fearing persecution in that respect to take steps to avoid harm.¹⁰⁵

When a decision maker is evaluating whether a law is, in fact, persecutory, they will have to look at the law in question and assess it in the context of International Human Rights. Paragraph 60 of the UNHCR handbook is useful, in this respect, by stating that:-

‘in such cases, due to the obvious difficulty involved in evaluating the laws of another country, national authorities may frequently have to take decisions by using their own national legislation as a yardstick. Moreover, recourse may usefully be had to the principles set out in the various international instruments relating to human rights, in particular the International Covenants on Human Rights, which contain binding commitments for the States parties and

¹⁰⁵ See also *M(H) v Minister for Justice* [2012] IEHC 176, where Cross J makes a correlation with individuals concealing their religious beliefs in some situations, “If it is unreasonable, as it is, to insist that a homosexual should conceal their practices and identity so as not to run foul of a state that persecutes such activities, so much more so is it unreasonable and wrong to suppose that a sincere religious convert should be expected to hide their beliefs should they return to a hostile environment so as to avoid persecution.”

¹⁰² (Case 57/09 and Case 101/09)

¹⁰³ UNHCR Handbook on procedures and criteria for determining refugee status

¹⁰⁴ [2010] IEHC 519

are instruments to which many States parties to the 1951 Convention have acceded.'

The issue of the fate of failed asylum seekers and their fear of prosecution due to their status as a failed asylum seeker was investigated in *Kouaype v Minister for Justice, Equality and Law Reform*¹⁰⁶. In that case, Clarke J investigated the fate of a failed Cameroonian asylum seeker and whether or not the Minister had properly assessed if the applicant would face difficulties on his return. Clarke J noted that there was country of origin information before the Minister which stated that the authorities in Cameroon are not informed when a failed asylum seeker is returned. It was found that the said country of origin information also suggested that such returnees would not be routinely detained, questioned or stopped. The Court also found that the relevant information suggested that there was no law in Cameroon which could prosecute a failed asylum seeker. He said that this was so, even if the State was on notice of the names of such returnees. Clarke J concluded that, in the circumstances, it was open to the Minister to take the decision that this issue which was raised was not one which would substantially alter the applicant's claim. It is noteworthy that if the country of origin information disclosed that legislation existed to prosecute a failed asylum seeker, and if such information had been ignored, then Clarke J may well have taken a different view. The significance of up to date country of origin information is illustrated here.

In some circumstances the laws in a particular country will amount to persecution for specific groups of people. High profile members of the Ahmadi, in Pakistan, for example, may be prosecuted for preaching and apostasy. Whether prosecution in cases like this amounted to persecution was explored by Irvine J in *FUR v. Minister for Justice, Equality and Law Reform and Another*.¹⁰⁷ In that case, the applicant's claim was due to fears that if he were returned to Pakistan he would be persecuted due to his membership of the Ahmadi movement. The RAT rejected the applicant's claim on the grounds that he was not a high profile member and that internal relocation might be an option for him.

In the High Court Irvine J accepted that there were numerous discriminatory laws and practices in Pakistan restricting the religious practices of this minority group and discriminating against them. Irvine J, in assessing persecution, said that "*attacks on property, while amounting to harassment, do not of*

themselves constitute persecution for the purposes of the Refugee Convention."

Judge Irvine also evaluated the manner in which the RAT assessed the relevant country of origin information. She said that the country of origin information made reference to the absence of State protection in Rabwah for Ahmadi, and she accepted that the RAT was aware of this and did not raise issue with it. Irvine J also stated that the country of origin information disclosed that there are blasphemy laws which allow for the prosecution of Ahmadi. The information, she said, also referred to the consistent harassment and discrimination of Ahmadi in Pakistan. Ultimately, however, Irvine J upheld the decision of the RAT on the basis that the applicant was not a high profile member of the Ahmadi and because of the possibility of internal relocation.

In the more recent case of *M.A U-H -v- Minister for Justice & Equality & ors*¹⁰⁸, Clark J took a different approach in relation to Ahmadi in Pakistan and seemed to assert that the entire Ahmadi community face persecution due to the oppressive laws against them. Clark J took the view that the RAT may have been correct in deciding that there is a functioning police force and judiciary in Pakistan but she said that it was equally clear, from country of origin information, that the authorities do not protect Ahmadi facing criminal charges and harsh penalties such as the death penalty under the blasphemy laws. Clark J found that there was no effective State protection for Ahmadi in Pakistan. The State, in that case, argued that surrogate protection was not needed because if Ahmadi practice their faith in private that they do not face any problems.¹⁰⁹ Clark J assessed the opinion of Advocate-General Bot in *Federal Republic of Germany v Y (C-71/11), Z (C-99/11)*¹¹⁰, which said that requiring people to avoid persecution by abstaining from practising religion in public upon returning home is not compatible with human rights guarantees.

Clark J went on to state that the Court was very doubtful that the country of origin information disclosed that only Ahmadi followers with high profiles are at risk. The High Court concluded that the blasphemy laws are targeted at each and every member of the Ahmadi community. This case highlights how prosecution can be interpreted as persecution for Convention purposes if the prosecution arises as a

¹⁰⁸ [2012] IEHC 572

¹⁰⁹ Contrast this view to that of Cross J in *M(H) v Minister for Justice* [2012] IEHC 176, footnote 9 above

¹¹⁰ 19th April 2012

¹⁰⁶ [2005] IEHC 380

¹⁰⁷ [2009] IEHC 355

consequence of an individual or group of individuals manifesting their religious beliefs.

The differing attitude of the Courts between these two cases may be reconciled by looking at the Judgment of McDermott J in *M.R. v. The Minister for Justice*¹¹¹, where he makes reference to new information relating to Ahmadi which has been published since 2008. He states that;-

“though there were some Ahmadis for whom it would not be safe to relocate, on the information available in 2008 such a conclusion could be reached on the consideration of the individual’s personal circumstances”.

McDermott J also referred to a judgment of Clark J, *S.R. (Pakistan) v. Refugee Appeals Tribunal & Ors*¹¹², and states that;-

“It is clear from the judgment of Clark J. in S.R. that further country of origin information in respect of the plight of the Ahmadis in Pakistan has become available since 2008”.

McDermott J also quotes paragraph 24 of SR Judgment which states that; -

“...objective information before this Court, which was also before the Tribunal indicates that Ahmadi Muslims in Pakistan are only safe if they conceal their religion”.

A prosecution may, in fact, be a disguised persecution¹¹³. Paragraph 59 of the UNHCR handbook makes reference to this. It states that :-

‘Often, it may not be the law but its application that is discriminatory. Prosecution for an offence against “public order”, e.g. for distribution of pamphlets, could for example be a vehicle for the persecution of the individual on the grounds of the political content of the publication.’

In *R.B.D. v. Minister for Justice Equality & Law Reform*¹¹⁴. Clark J stated that one of the applicants in that case was not just afraid of being convicted of a crime she did not commit, but also she was in fear of being picked for a politically-motivated, unfounded prosecution due to the fact that she was a political activist. Consequently, and due to the country of origin

information before her, Clark J held that the finding by the RAT that this was a fear of persecution as opposed to prosecution, was unsustainable, when the context was examined.

The possibility of a future prosecution due to matters which have arisen since an applicant left his own country must be considered in the context of whether this may lead to Convention persecution. In *Q F C v. Refugee Appeals Tribunal*¹¹⁵, Cooke J held that the RAT had failed to consider the circumstances facing a Somalia woman, on return, who had had a child outside of her own country by a man who was not her husband. Her evidence was that she had a fear of being stoned to death. Cooke J was of the view that the fear of future persecution arising out of a possible prosecution should have been properly assessed notwithstanding the fact that there were credibility issues on the part of the applicant.

While there is a distinction between persecution and prosecution, there will be some circumstances where the breach of the human right in question is so fundamental that the prosecution will, in fact, amount to Convention persecution. These cases must be approached with caution and a detailed investigation must be carried out to assess whether the prosecution is one which is prosecution in name only and labelled as such in order to cover up a more serious and grave persecution. If, however, the prosecution feared is due to the breach of a law as a result of a criminal act and which prosecution is in line with international norms, it is unlikely that such a prosecution could fall within the Convention.



¹¹¹ [2013] IEHC 243

¹¹² [2013] IEHC 26

¹¹³ *R.B.D. v. Minister for Justice Equality & Law Reform* [2014] IEHC 48

¹¹⁴ *Ibid*

¹¹⁵ [2012] IEHC 4

European Asylum Support Office COI Networks



Christophe Hessels, EASO

Short history of the EASO COI Network Approach

With the experience of previous regional and EU-wide Country of Origin Information (COI) networks in mind, and taking into consideration the limited capacity of the European Asylum Support Office (EASO) to produce its own COI products, a working party on Knowledge Management¹¹⁶ elaborated a proposal for a network approach for the COI function in EASO. This network approach was adopted in the EASO Management Board meeting on 4 February 2013.

The approach includes three layers. The first layer is the “COI Strategic Network” (StratNet), which is mandated to discuss strategic level issues, to clarify national resources available according to national priorities, and to give advice on the future of the network approach. The second layer – and core of the system – is constituted by the “COI Specialist Networks”, in which participants can discuss COI on a specific country of origin or topic on a regular basis in order to generate knowledge and build the capacity of the participants. The third layer is the end-user, being staff members of decision or policy making asylum authorities or COI units in the EU+ countries.¹¹⁷

The first StratNet meeting, held in April 2013, marked the initiation of this process. During this meeting, the decision was made to start with three pilot COI Specialist Networks on Syria, Somalia and Pakistan. For the Syria network, a kick-off meeting was held in June 2013, for Somalia and Pakistan, kick-off meetings were held in September 2013. After consultation of the

¹¹⁶ The following European states participated in the working party, together with EASO and the European Commission: France, Germany, Norway, Poland and Switzerland (chair).

¹¹⁷ The EU+ countries are the EU Member States plus Norway and Switzerland.

StratNet, EASO decided in November 2013 to start 4 new COI Specialist Networks in 2014, namely Afghanistan, Iraq, Iran and the Russian Federation. For the network on Iraq, the kick-off meeting was held in January 2014.

Structure and objectives

• The COI Strategic Network:

As the involvement of national experts in a COI Specialist Network may have an impact on national resources, StratNet participants should hold a senior position of responsibility in their national authorities, which allows them to take direct decisions on COI matters without having to report further in their hierarchy. The typical members of the StratNet are Heads of COI Units in the national administrations/institutions. In case no COI Unit exists, the member is the official responsible for managing COI activities in the national administration.

During the first StratNet meeting in April 2013, possible objectives and tasks of the StratNet were discussed: sharing information with a specific focus on certain topics; providing strategic input (e.g.: input for yearly plans of COI Specialist Network activities); initiating networks or discussions on the basis of the needs (country of origin or thematic topics such as gender or the use of social media); discussing and deciding on the activities for countries of origin that are not covered by the networks (e.g. practical cooperation workshops); determining which information to exchange; determining criteria to assess COI Specialist Networks activities (how to measure their impact) and extracting key principles for their functioning; discussing the potential funding of projects (e.g. under the Asylum and Migration Fund); among other possible activities.

• The COI Specialist Networks:

COI Specialist Network participants are country-specific researchers interested in interacting with other network participants in order to increase common knowledge on the specified country. The network is also a capacity building environment; therefore EU+ countries can nominate COI researchers with limited experience on the specified country to the network, provided their commitment to participate actively. The participation in a specialist network is voluntary. Although it is recommended for this participation to be medium to long-term in order to guarantee a level of continuity, the level of participation of national experts remains subject to the availability of national resources.

The participants in the COI Specialist Networks have to be responsible for COI in their national authorities for the country of origin covered by the network. Participants in Specialist Networks are individually nominated by their respective StratNet member.

• The general objectives in the network approach are:

1. Generate knowledge;
2. Enhance efficiency;
3. Improve quality;
4. Build capacity;
5. Foster solidarity;
6. Commit voluntarily;
7. Adopt a European perspective.

By bringing specialised people together and aggregating their knowledge in the field of the speciality, a new level of knowledge can be generated. The COI Specialist Networks focus on discussing specific topics or issues relevant to the country of origin and sharing information on these topics with each other.

As different COI specialists from different EU+ countries often focus on the same topics, which are relevant for the asylum caseload from the respective country of origin, there is, without cooperation, a high risk of duplication of efforts in researching and producing COI. Therefore, it is one of the main goals of the network approach to avoid duplication and to enhance a high level of efficiency in dedicating efforts and time to the different information needs. In an ideal COI network, only one specialist works on one specific topic and delivers a high quality product which covers the needs of and is accessible to all other specialists and end-users.

Common quality standards should be guaranteed, as outlined in the Common EU Guidelines for processing COI and in the EASO COI Report Methodology. In case a network produces a COI product, these standards will have to be applied and a quality review will be organised by EASO.

Not only experts can take part in a network. Researchers with limited experience in researching the respective country can take part, as long as they have the intention to specialise in researching the country of origin and they are willing to participate on a long-term basis in the network. For these researchers, but also for the experts, the contact with other specialised researchers will be a way of building up capacity in the field of research. As sources, useful information and assessments can be shared, the new researcher has

quick access to qualitative information selected on the basis of the experience of the other specialists. This capacity building feature of the networks is based on the important principle of solidarity. It will be inevitable that some participants deliver more input than what they might directly receive out of the network. The common benefits are situated in the long-term goals of this strategy, which are part of the efforts in achieving a Common European Asylum System (CEAS).

Taking into account the available staff resources in the EU+ countries, it is important to clarify that taking part in the specialist networks or in the activities of these networks is voluntary and depends on the available time a researcher has within his or her national office.

A last principle, but not the least, is the European perspective. The needs and priorities have to be set within the network, keeping in mind the common needs of the different EU+ countries and this might not always coincide with specific national needs.

Determination methodology for the selection of countries of origin

A country determination methodology allows for an objective basis for discussions, while leaving substantial space for direct qualitative input from EU+ countries. This methodology is based on an analysis of available and validated quantitative data (Eurostat), on caseload and decision practices, which are indicators of the relevance of the caseload on a European level.¹¹⁸

The quantitative data alone are insufficient to analyse the real needs for COI. The relevant countries of origin are thus subject to a more elaborate discussion between EU+ countries and EASO in the StratNet meeting on

¹¹⁸ Firstly, a selection of countries of origin (citizenship) is made based upon caseload. Not only the number of applicants and pending cases are relevant, but also trends (increase) and the number of EU+ countries affected by the respective asylum flows. A top ten ranking is made based on balanced scores for these indicators. Secondly, a study is made of the decision practices for this top ten ranking. The criterion of 'Standard Deviation Decision Rates' is used, because this can be an indicator of differences in decision practices. It should be noted that differences in the profiles of the asylum seekers can cause differences in decision rates, which then do not indicate different practices. As this cannot be studied by looking at the numbers, this should be done in the next phase of the determination methodology, i.e. the qualitative input by the StratNet.

In the near future it should be possible to add to this layer the criteria of processing time (possible indicator of difficulties in decision making process) and positive appeal decisions (indicator of overturn by appeal courts; possible indicator of difficulties in the decision making process). The data for both indicators are currently unavailable or insufficient.

the priorities on which to dedicate the efforts of establishing specialist networks.

Activities of the COI Specialist Networks

It has been agreed in the StratNet that each specialist network should perform the following basic tasks: 1. mapping COI needs, existing COI products and planned COI activities; 2. assessment of sources; 3. sharing information; 4. reflexion on innovation in collecting, sharing and presenting information.

Furthermore, the networks are expected to contribute to common COI production. EASO has developed, in consultation with the StratNet, a plan including possible scenarios of jointly drafting different types of COI reports. These scenarios intend to deliver a European COI product which will be published and can be used by all end-users of COI in Europe. The process of this joint production will include a quality review which will be based on the existing common COI methodological guidelines.

Additionally, a role is foreseen for the specialist networks in a query system in which each EU+ country can address the others within the network with specific COI queries. The replies will be compiled and made available to all EU+ countries.

Finally, the specialist networks can decide themselves to engage in certain activities, such as: organising a seminar or workshop, possibly facilitated by EASO; giving input to terms of reference of reports or Fact-Finding Missions; amongst others.

The Common COI Portal

The COI Specialist Networks will communicate their activities and results to the end-users. The Common COI Portal (CP) will play a central role in the communication strategy. In the upload area of EASO, each network has its own folder in which products, meeting reports, agendas, and other relevant documents are uploaded and made available to all asylum authorities in the EU+ countries.

The kick-off meetings of the COI Specialist Networks

For each specialist network a kick-off meeting was held. In the kick-off meeting of the Syria network (27-28 June 2013), twelve COI researchers from EU+ countries participated; in the meeting of the Somalia network (5-6 September 2013), there were 14 researchers; 12 researcher participated in the kick-off meeting for Pakistan (26-27 September 2013); and 11 were present for the network on Iraq (21-22 January 2014). Although not all members could attend all meetings, general attendance levels were high.

The dynamics of the respective networks proved to be different. For example, the Somalia network already existed in an informal way. The researchers mostly knew each other and were involved in joint activities in the past, such as expert meetings. In the Pakistan network, hardly anyone knew the other researchers. Therefore, it was very useful for them to meet in Malta (at the EASO premises) in order to benefit from the networking opportunity. The feedback received on the kick-off meetings was very positive. In all networks, participants are actively sharing information and networking. This was positively assessed by EASO, and the intensification of contacts will be the basis to enhance cooperation among the participants with concrete activities, such as organising expert meetings or jointly producing COI reports.

During these kick-off meetings, the general framework and goals were explained by EASO to the participants. There were discussions and agreements on how to communicate in the future; what to expect from each other; and possible ways of cooperation. A key part of the discussions concentrated on the respective countries of origin. In each kick-off meeting, a presentation on the findings of a recent Fact-Finding Mission (FFM) initiated the discussions on the topics at stake in the country of origin. In the Syria meeting, a presentation was given on the joint Norwegian/Swedish Fact Finding Mission to Turkey and Iraq, which addressed several questions regarding Syrian asylum applications (April 2013). In the Somalia meeting, the Danish and Norwegian colleagues gave a presentation on their joint Fact Finding Missions to Nairobi, Kenya and Mogadishu, Somalia, from 17 to 28 October 2012 and from 16 April to 7 May 2013. The Pakistan meeting started with a presentation on the Austrian Fact Finding Missions to Pakistan, which took place from 8 to 16 March 2013. Finally, in the Iraq meeting, the Swedish colleague presented findings of the joint Norwegian/Swedish Fact-Finding Mission to Iraq in November 2013.

After these presentations, the participants made a list of COI needs or priorities. They also provided information on the products they have that address these needs and on future plans for new products or activities. Furthermore, a list of specialised sources was compiled and discussed.

Joint efforts can contribute to an enhanced cooperation in the field of COI. The establishment of the COI networks is an important step in this regard and will hopefully lead to the creation of a real European COI community.

Eritrea – The North Korea of Africa?



RDC Researcher David Goggins investigates Africa's most secretive country

Introduction

In 1993 Eritrea gained its independence from Ethiopia after a long and bloody war. At first it appeared that the new country would be a democracy with the human rights of its citizens enshrined in a new constitution which had been ratified by the national assembly in 1997. Then in 1998 a border dispute with Ethiopia over ownership of a small area around the town of Badme led to a bitter two year war which cost tens of thousands of lives on both sides. In the aftermath of this war the ruling PFDJ party postponed promised elections, introduced mass conscription and imposed severe restrictions on basic freedoms.

It is this lack of freedom and basic human rights, the militarisation of the population and the prevention of citizens from leaving the country which has led commentators to suggest that Eritrea is now the North Korea of Africa. A typical example of such comments may be seen in an article from the Israeli newspaper Haaretz which states:

“Eritrea truly deserves its nickname as the ‘North Korea of Africa’. Limitations on freedom of movement are just the tip of the iceberg in this East African country that is among the harshest dictatorships in the world.”¹¹⁹

Historical Background

Eritrea is a country which has had to endure a long fight for its independence. During the late 19th century the independent chiefdoms of the region were unified into a single entity by the Italians, who formally established a colony in 1890. Italian rule ended in 1941

with their defeat by the British, who then administered the country for the next 10 years. In 1952 the fate of Eritrea was decided by a United Nations resolution which established a federation with Ethiopia against the wishes of many Eritreans. In place of the promised autonomy the Eritrean people suffered years of discrimination culminating in 1962 with the illegal annexation of their country as a province of Ethiopia. This resulted in the Eritrean people taking up arms and engaging in a fight for their independence which lasted for the next 30 years. The Eritrean rebels finally achieved success in 1991 despite the absence of any assistance or support from the outside world.

A referendum held in April 1993 resulted in an overwhelming vote in favour of independence. A transitional legislature appointed Isaias Afwerki, leader of the dominant rebel group the Eritrean People's Liberation Front (EPLF) as president. The EPLF reinvented itself as a political party called the People's Front for Democracy and Justice (PFDJ) which subsequently became the sole political party to be permitted in the new country.

Between 1998 and 2000 Eritrea suffered heavy casualties in an inconclusive border war with Ethiopia. Commenting on the effects of this war the International Crisis Group states:

“The conflict was devastating for Eritrea, politically and economically. It shattered any chance for significant growth and greatly exacerbated the government's militaristic and authoritarian tendencies.”¹²⁰

This war and unresolved issues with Ethiopia provided the justification for the deferment of democracy in place of autocratic rule by Isaias Afwerki, who has remained as the country's only president since independence without ever actually been elected by the people. The constitution which had been ratified in 1997 was never put into effect and the proposed elections were postponed indefinitely. The PFDJ has remained as Eritrea's only recognised political party.

Curtailed Human Rights

Instead of the post-war transition to democracy that many Eritreans had hoped for the government of Isaias Afwerki became increasingly authoritarian from 2001 onwards. Perceived political opponents were arrested and detained in inhuman conditions. All Independent newspapers, TV and radio stations were closed.

¹¹⁹ Haaretz (7 September 2012) ‘The North Korea of Africa’: Where you need a permit to have dinner with friends

¹²⁰ International Crisis Group (21 September 2010) Eritrea: The Siege State

National service was extended indefinitely. Describing this situation Human Rights Watch states:

“Since 2001 widespread systemic human rights violations have become routine, including arbitrary arrest and detention, torture, extrajudicial killings, and severe restrictions on freedom of expression, freedom of worship and freedom of movement.”¹²¹

Similarly, International Crisis Group states:

“Conditions are worsening dramatically. Since the 2001 crackdown that ended a brief period of public debate, jails have been filled with political prisoners and critics, religious dissidents, journalists, draft evaders and failed escapees.”¹²²

Arbitrary Detention

Since the 2001 government crackdown a great many Eritreans have become victims of politically motivated arrests. Regarding these arrests Human Rights Watch states:

“Arrests occur frequently. It is estimated that there are between 5,000 and 10,000 prisoners whose “crime” is that they are suspected of not being fully loyal to the regime or are family members of persons deemed politically untrustworthy. Few of those detained are formally charged, much less tried, for their alleged offenses.”¹²³

Referring to the use of arbitrary detention by the Eritrean authorities Amnesty International states:

“Throughout the 20 years of Eritrea’s independence the government has systematically used arbitrary arrest and detention without trial on a vast scale to crush all actual and suspected opposition, to silence government critics, and to punish anyone who refuses to comply with the restrictions on human rights imposed by the government. This practice began immediately in the days after de facto independence in 1991 – before Eritrea’s independence was officially recognised – and continues to this day.”¹²⁴

¹²¹ Human Rights Watch (April 2009) Service for Life: State Repression and Indefinite Conscriptation in Eritrea

¹²² International Crisis Group (21 September 2010) Eritrea: The Siege State

¹²³ Human Rights Watch (September 2011) Ten Long Years: A Briefing on Eritrea’s Missing Political Prisoners

¹²⁴ Amnesty International (9 May 2013) Eritrea: 20 years of independence, but still no freedom

Amnesty International also notes that these detentions are not recorded and there is no acknowledgement by the government of any such detentions.

The most prominent of these detainees were the eleven members of a group known as G15, which included former government ministers, former ambassadors and three army generals who were arrested on 18 September 2001 after the publication of an open letter calling for the convening of the provisional national assembly and the PFDJ central council, and which also criticised the president’s authoritarian actions.¹²⁵ Despite never been charged with any offence these prisoners have been held incommunicado since their arrest and denied all contact with their families, lawyers and the outside world. There are unconfirmed reports that many of these prisoners have died in detention.

For an estimate of the current number of political prisoners held in detention see the most recent US Department of State country report for Eritrea which states:

“An international nongovernmental organization (NGO) reported that the government held at least ten thousand suspected political prisoners and prisoners of conscience, including opposition politicians, journalists, members of registered and unregistered religious groups, and persons suspected of not completing national service or evading militia practice.”¹²⁶

Judiciary

The absence of an independent legal system permits the authorities to act with impunity. The current status of the judiciary is defined by Freedom House as follows:

“The judiciary, which was formed by decree in 1993, is understaffed, unprofessional, and has never issued rulings at odds with government positions.”¹²⁷

Referring to the lack of due process within the Eritrean legal system Amnesty International states:

“with no known exceptions, none of these political prisoners or prisoners of conscience has been charged

¹²⁵ For more details on the G15 group see Human Rights Watch (September 2011) Ten Long Years: A Briefing on Eritrea’s Missing Political Prisoners

¹²⁶ US Department of State (27 February 2014) 2013 Country Reports on Human Rights Practices - Eritrea

¹²⁷ Freedom House (16 March 2013) Freedom in the World 2013 – Eritrea

or tried, given access to a lawyer or been brought before a judge or judicial officer to assess the legality and necessity of the detention. There is no independent judiciary in Eritrea, and there are no avenues for individuals or their families to legally challenge this system of arbitrary detention.”¹²⁸

Prison Conditions

There are numerous reports from former detainees of the ill-treatment of persons in detention. According to these reports detainees are often held in underground cells or shipping containers where they are exposed to extremes of temperature. Prisoners are routinely beaten and tortured, poorly fed and denied medical treatment. Many are said to have died as a result of harsh treatment, although this is never acknowledged by the authorities.

Regarding deaths in custody Amnesty International states:

“Due to the complete absence of transparency over detention practices, lack of independent monitoring, and the authorities’ refusal to confirm reports of deaths in detention, it is not possible to know how many detainees have died in arbitrary detention in Eritrea’s prisons.”¹²⁹

Independence of the media

There is no independent media in Eritrea and there is extensive censorship of government controlled media sources.

Commenting on this Human Rights Watch states:

“Since 2001 Eritrea has been in the grip of a media blackout. All independent newspapers, radio and television outlets have been shut down. Eritrea is the only country in Africa without an independent media outlet.”¹³⁰

A similar assessment is made in an Amnesty International report which states:

“Since the 2001 open letter, freedom of expression has been severely restricted in Eritrea. According to former residents, there is almost no public discussion of the

actions of the government, human rights or other topics deemed to be ‘sensitive’.”¹³¹

The Committee to Protect Journalists has identified Eritrea as the most censored country in the world, with an even worse record for freedom of the press than North Korea. Referring to the imprisonment of journalists the CPJ states:

“The Red Sea nation is the continent’s leading jailer of journalists; the detainees include independent reporters and editors swept up in the 2001 crackdown, along with numerous state media journalists who have somehow violated the government’s strict controls.”¹³²

Freedom of Religion

The Eritrean government officially recognises four religions. These are the Orthodox Church of Eritrea, Sunni Islam, the Roman Catholic Church and the Evangelical Church of Eritrea. All four religions are subject to government interference. Adherents of unrecognised religions are at risk of detention, particularly if they are members of the country’s small Jehovah’s Witnesses community.

The situation for religious nonconformists is highlighted in an Amnesty International report which states:

“In the 20 years since Eritrea became independent, thousands of people have been arrested for practising a religion not recognised by the state.”¹³³

This report elaborates on the treatment of Jehovah’s Witnesses as follows:

“Jehovah’s Witnesses have been exposed to especially harsh treatment at the hands of the state. In 1994 Jehovah’s Witnesses were stripped of basic citizenship rights based on their refusal to vote in the independence referendum – as their faith demands political neutrality – and based on a refusal to perform the compulsory military period of national service, as their faith prohibits bearing arms. Many Jehovah’s Witnesses have been arrested for conscientious objection to military service, and have been indefinitely detained, without charge or trial.”¹³⁴

¹²⁸ Amnesty International (9 May 2013) Eritrea: 20 years of independence, but still no freedom

¹²⁹ *ibid*

¹³⁰ Human Rights Watch (April 2009) Service for Life: State Repression and Indefinite Conscription in Eritrea

¹³¹ Amnesty International (9 May 2013) Eritrea: 20 years of independence, but still no freedom

¹³² Committee to Protect Journalists (14 February 2013) Attacks on the Press in 2012 - Eritrea

¹³³ Amnesty International (9 May 2013) Eritrea: 20 years of independence, but still no freedom

¹³⁴ *ibid*

Corroboration of this treatment may be found in the 2013 US Commission on International Religious Freedom report on Eritrea which states:

“President Isaias issued a decree in October 1994 specifically barring Jehovah’s Witnesses from obtaining government jobs, business licenses, and government-issued identity and travel documents. He reportedly viewed them as rejecting the duties of Eritrean citizenship, due to their refusal on religious grounds to participate in the 1993 independence referendum or to perform mandatory national military service. Without Eritrean identity cards Jehovah’s Witnesses cannot obtain legal recognition of marriages or land purchases.”¹³⁵

Referring to the number of Jehovah’s Witnesses in prison the US Department of States’ religious freedom report for Eritrea states:

“In January the Jehovah’s Witnesses’ Web site asserted that 48 members of the group remained imprisoned in the country. In December Human Rights Watch asserted that 56 Jehovah’s Witnesses were incarcerated, including 12 arrested during the year while attending a funeral and three who had been held since 1994. Eleven were reportedly in their 70s and 80s.”¹³⁶

National Service

A Social Watch report published in 2012 makes the astonishing claim that:

“Although the country has never conducted a census, the proportion of the population forced into military service appears to be exceedingly high. One recent study estimated the country’s population at 3.6 million. In 2010 the Eritrean army had an estimated 600,000 troops, which would be an extraordinary 16.6% of the total population.”¹³⁷

Referring to compulsory national service Amnesty International states:

“In 1995, the government issued the Proclamation of National Service (No. 82/1995) under which national service, which encompasses active national service and reserve military service, was declared mandatory for men and women between the ages of 18 and 50. Active

national service is compulsory for all citizens between the ages of 18 to 40, followed by addition reserve duties. The initial national service period is 18 months long, generally consisting of six months’ military service followed by 12 months’ deployment in military or government service. However, this period is frequently extended indefinitely. Much of the adult population of Eritrea is currently engaged in mandatory national service; many of them have been conscripted for over ten years.”¹³⁸

In a paper presented to the Swiss Federal Office for Migration Dr. David M. Bozzini, an academic at the University of Leiden in the Netherlands, states:

“Eritrean citizenship is regulated by the Nationality proclamation and involves completion of national duties but more broadly, citizenship is also fundamentally associated with nationalistic engagements and other militaristic values. The fighters who fought for independence are national heroes. Nowadays, citizens who did not participate in the struggle for liberation must serve the country in the National Service.”¹³⁹

See also paper by Dr. Bozzini which states:

“Since 1998 and the two years war against Ethiopia, National Service has been indefinitely extended and no demobilisation program has taken place. Young Eritreans are still assigned to civil and military duties for an unknown period of time.”¹⁴⁰

Describing the treatment of national service conscripts Human Rights Watch states:

“By law all Eritreans are required to spend 18 months performing national service, usually though not always, in purely military duties. In fact the government has made national service an indefinite way of life for many Eritreans, forcing them to serve as conscripts for years at a time and without limit. National service conscripts are often subjected to torture and other abusive forms of discipline. Many are forced to endure unhealthy living conditions and paltry remuneration that equates to just a few US dollars per month. Conscripts who attempt to escape their service face imprisonment, torture, and other forms of human

¹³⁸ Amnesty International (9 May 2013) Eritrea: 20 years of independence, but still no freedom

¹³⁹ David M. Bozzini (26 February 2012) National Service and State Structures in Eritrea

¹⁴⁰ David M. Bozzini (2011) Low-tech Surveillance and the Despot State in Eritrea

¹³⁵ US Commission on International Religious Freedom (30 April 2013) USCIRF Annual Report 2013 – Countries of Particular Concern: Eritrea

¹³⁶ US Department of State (20 May 2013) Eritrea 2012 International Religious Freedom Report

¹³⁷ Social Watch (2012) Eritrea: Engineering a failed State

rights abuse. Their family members also face harassment and reprisal.¹⁴¹

National service does not necessarily mean enlistment in the army, as explained in a Human Rights Watch report which states:

“National service conscripts can be assigned to jobs across every sector of the economy, not just military service. They work as skilled professionals, civil servants, manual laborers, and even as footballers. Their labor is not given freely, their term of service is often indefinite and prolonged, and in many cases they earn less than half of Eritrea’s published minimum wage of 1,000 Nakfa (US\$67) per month. Some conscripts are deployed to work for companies owned or controlled by the military, the ruling party, or influential government officials. Human Rights Watch believes that as a result, foreign investors in Eritrea’s burgeoning minerals sector risk complicity in the system of coercion and abuse that the national service program has become.”¹⁴²

Referring to the treatment of national service conscripts employed by the state-owned Segen construction company this report states:

“Conscript pay is inadequate to support a family. Our interviewees stated that conscripts received 450 naïf per month, equivalent to \$30 at the official exchange rate or less than half that at the black-market rate. They also said that conscripts were poorly fed and housed; one of the conscripts we interviewed said that food was consistently inadequate and that meat was “out of the question.” The former non-conscript Segen employee we interviewed described conscripts as plainly emaciated. Another said that they had no access to latrines of any kind. Overall, in the words of one former Bisha worker, the conscript laborers “live[d] a dehumanized, neglected and diminished way of life.”¹⁴³

Corruption

The US Department of State country report on Eritrea contends that official corruption is a problem and occurs with impunity. Referring to demands for bribes this report states:

“There were reports of police corruption. Police occasionally used their influence to assist friends and

¹⁴¹ Human Rights Watch (January 2013) *Hear No Evil: Forced Labor and Corporate Responsibility in Eritrea’s Mining Sector*

¹⁴² *ibid*

¹⁴³ *ibid*

family in facilitating their release from prison. Police reportedly demanded bribes to release detainees. Reports indicated corruption existed in the government’s issuance of identification and travel documents, including in the passport office. Individuals requesting exit visas or passports sometimes had to pay bribes.”¹⁴⁴

The 2014 Bertelsmann Stiftung Transformation Index (BTI) delivers the following verdict:

“Wealth is concentrated in the hands of a few corrupt army officials and PFDJ cadres who control the command economy and are engaged in contraband trade and illegal activities such as human trafficking. It is believed that large sums of money have been transferred to Chinese bank accounts under the names of the president and his son.”¹⁴⁵

The Economy

The BTI observes that:

“Eritrea remains one of the world’s poorest countries and poverty is endemic.”¹⁴⁶

Human Rights Watch rates Eritrea’s economy as follows:

“Eritrea is one of the world’s poorest countries and ranks 177th out of 187 countries in the 2011 Human Development Index. The country’s economy has been a shambles since the disastrous 1998-1999 border war with Ethiopia. The World Bank estimates that Eritrea’s per capita GDP actually shrank between 2000 and 2008.”¹⁴⁷

Remarking on the business environment in Eritrea Freedom House states:

“Government policy is officially supportive of free enterprise, and citizens are in theory able to choose their employment, establish private businesses, and operate them without government harassment. However, few private businesses remain in Eritrea, and the country is ranked 182 out of 185 in the World Bank’s October 2012 *Doing Business* report.

¹⁴⁴ US Department of State (27 February 2014) 2013 Country Reports on Human Rights Practices - Eritrea

¹⁴⁵ Bertelsmann Stiftung Transformation Index (BTI) 2014 (1 January 2014) Eritrea Country Report

¹⁴⁶ *ibid*

¹⁴⁷ Human Rights Watch (January 2013) *Hear No Evil: Forced Labor and Corporate Responsibility in Eritrea’s Mining Sector*

Successful private businesses have been expropriated by government officials, without compensation.”¹⁴⁸

Education

Freedom House delivers the following judgement on Eritrea’s university system.

“Eritrea’s university system has been effectively closed, replaced by regional colleges whose main purposes are military training and political indoctrination.”¹⁴⁹

With respect to secondary education Amnesty International states:

“All children were required to complete their final year of secondary education at Sawa military training camp, a policy which affected children as young as 15. At Sawa, children suffered poor conditions and harsh punishments for infractions.”¹⁵⁰

Fleeing Abroad

Despite restrictions on leaving the country and the dangers associated with illegally crossing the border many Eritreans feel that they have no choice but to flee abroad.

In relation to the flight of young Eritreans the BTI states:

“The majority of Eritrea’s youth has considered fleeing the country and living abroad as a far more attractive alternative than fulfilling the extensive demands of the state and government without enjoying rights and benefits in return.”¹⁵¹

Expanding on the effects of this exodus the BTI states:

“Many teachers, doctors and other qualified personnel trapped in the ranks of the national service program have fled the country, rendering state institutions and public services increasingly weak.”¹⁵²

The dangers for Eritrean refugees is elucidated in a report from the Civil-Military Fusion Centre which states:

¹⁴⁸ Freedom House (16 March 2013) Freedom in the World 2013 – Eritrea

¹⁴⁹ *ibid*

¹⁵⁰ Amnesty International (23 May 2013) Annual Report 2013 – Eritrea

¹⁵¹ Bertelsmann Stiftung Transformation Index (BTI) 2014 (1 January 2014) Eritrea Country Report

¹⁵² *ibid*

“The journey is arduous at best. Eritrean refugees face fear of death as they cross the Eritrea-Sudan border, as national border guards are ready to shoot to kill. Life as a refugee in destination countries is not always better.”¹⁵³

A CNN report offers the following explanation for the departure of Eritreans:

“For refugees the answer is simple – what they’re leaving behind is much, much worse.”¹⁵⁴

Explaining his own reason for leaving the country an Eritrean who crossed into Sudan said:

“Things grow worse by the day”¹⁵⁵

Trafficking of Refugees

There are credible reports of Eritrean asylum seekers who have reached Sudan being kidnapped by criminal gangs known as Rashida and trafficked into Egypt, allegedly with the collusion of local security forces. Pertaining to this Human Rights Watch states:

“Trafficking victims described several cases to Human Rights Watch in which Sudanese police and soldiers arbitrarily detained Eritreans and handed them over to traffickers.”¹⁵⁶

These victims of trafficking are often sold to Beduoin criminal gangs operating in the Sinai peninsula who subject them to ill-treatment which includes beatings, burnings, rape and other forms of torture with the purpose of extorting money from relatives in the Eritrean diaspora. Human Rights Watch portrays the typical methods used by traffickers to induce payment of a ransom as follows:

“A common technique traffickers use is to hold a mobile phone line open to their hostages’ relatives as they physically abuse their victims. The relatives hear the screams and the kidnappers demand the ransom for the victims’ release. Many Eritreans have told the UN, non-governmental refugee organizations, activists, and journalists of their experiences of rape, burning,

¹⁵³ Civil-Military Fusion Centre (May 2013) Destination Unknown: Eritrean Refugee Torture and Trafficking

¹⁵⁴ CNN.com (4 October 2013) Opinion: Europe must be open to refugees fleeing persecution

¹⁵⁵ Agence France Presse (22 May 2013) Eritrea: Little to smile about, 20 years from freedom

¹⁵⁶ Human Rights Watch (February 2014) “I Wanted to Lie Down and Die”

mutilation and deformation of limbs, electric shocks, and other forms of violence.”¹⁵⁷

Eritreans in Exile

Eritreans who succeed in leaving the country are still not beyond the reach of the government. Referring to the methods used to put pressure on exiles to contribute to their estranged nation Human Rights Watch states:

“There are a variety of ways in which the Eritrean government exerts pressure on exiles for both financial and political reasons. The government expects all Eritreans in the diaspora to pay a two percent tax on income. While taxing expatriates may be a legitimate state function, the manner in which the Eritrean government coerces individuals into paying this income presents serious human rights concerns. If refugees or other Eritrean expatriates do not pay the two percent tax then the government typically punishes family members in Eritrea by arbitrarily detaining them, extorting fines, and denying them the right to do business by revoking licenses or confiscating land.”¹⁵⁸

Returned Asylum Seekers

There are credible reports that those asylum seekers who fail to gain refugee status abroad and are returned to Eritrea are at risk of ill-treatment. Amnesty International depicts the treatment of returnees as follows:

“Testimonies of returned asylum-seekers indicate that the act of claiming asylum is perceived by the authorities as involving a criticism of the government and – as with all other forms of dissent – is therefore not tolerated. Forcibly-returned asylum-seekers interviewed by Amnesty International were tortured both as a form of punishment for perceived criticism of the government, and for the purposes of interrogation. According to accounts given by escaped detainees, Eritrean security officials were particularly interested in how asylum seekers fled the country, who assisted them, and what they said against the Eritrean government during their asylum application process. Returnees have reported that under torture, or threat of torture, they were forced to state that they have committed treason by falsely claiming persecution in asylum applications.”¹⁵⁹

¹⁵⁷ *ibid*

¹⁵⁸ Human Rights Watch (April 2009) *Service for Life: State Repression and Indefinite Conspiration in Eritrea*

¹⁵⁹ Amnesty International (9 May 2013) *Eritrea: 20 years of independence, but still no freedom*

Conclusion

One verdict on the current situation in Eritrea comes from Amnesty International which states:

“Twenty years on from the euphoric celebrations of independence, Eritrea is one of the most repressive, secretive and inaccessible countries in the world”¹⁶⁰

Regarding the current perception of president Isaias Afwerki International Crisis Group states:

“Escapees complain of a lost grip on reality. In most Eritrean’ eyes, he is no longer the stout-hearted, beloved leader of the nation-at-arms, but a mentally unstable autocrat with a bad temper and an alcohol problem.”¹⁶¹

Contemplating the prospects for Eritrea after the president has gone International Crisis Group states:

It is difficult to predict what an eventually post-Isaias Eritrea will look like: after and in spite of 21 years of forceful nation building, fault lines, especially of ethnicity, region and religion (Christians versus Muslims) are still there, some deeper than before. Since the state lacks any institutional mechanisms for peaceful transition of power or even a clearly anointed successor, instability is to be expected, with the corrupt army the likely arbiter of who will rule next.”¹⁶²

Of necessity this article can only give a brief overview of the human rights situation in Eritrea. Readers who require further information may wish to know that all documents referred to in this article can be obtained upon request from the Refugee Documentation Centre.

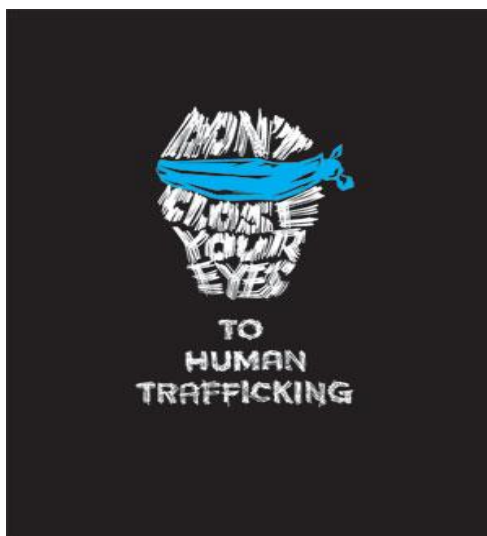


¹⁶⁰ Amnesty International (25 June 2013) *Torture in Eritrea: “Every night you hear shouts and cries of people being beaten”*

¹⁶¹ International Crisis Group (21 September 2010) *Eritrea: The Siege State*

¹⁶² International Crisis Group (28 March 2013) *Eritrea: Scenarios for Future Transition*

Human Trafficking is a Crime in Ireland – Don't Close your Eyes



David Gilbride, Anti-Human Trafficking Unit
Department of Justice and Equality

What Is Human Trafficking?

Trafficking of human beings is the acquisition of people through the use of force, coercion or other means with the aim of exploiting them. It has three distinct elements:

- the act (recruitment, transfer, transport);
- the means (threat or use of force, coercion, abduction, fraud) and
- a purpose (exploitation including prostitution of others, sexual exploitation, forced labour, slavery or similar practices, forced begging, criminal activities, or removal of organs).

It should be noted that a child/minor (i.e. a person under 18 years) cannot legally consent to being trafficked.

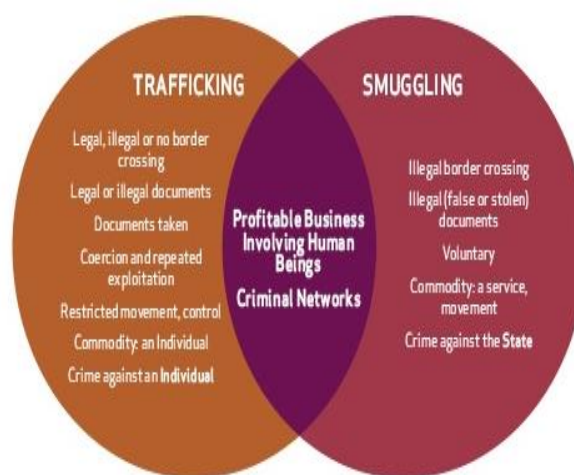
People can be trafficked into different types of situations: labour - including restaurant and hotel work, domestic work, construction, agriculture and entertainment, as well as prostitution and other forms of commercial sexual exploitation.

Trafficking vs. Smuggling

There is a general misconception that human trafficking and the smuggling of persons/illegal immigration are the same issue. This is not the case. Trafficking is a crime which infringes the fundamental rights of persons, while smuggling is a violation of legislation protecting the borders. In the case of illegal migration facilitated by a smuggler there is an agreement between the migrant and the smuggler

which ends when the migrant arrives at their destination. In the case of trafficking illicit means such as coercion, deception or abuse of a position of vulnerability are used at a certain stage of the trafficking process. In addition the transfer of the person is carried out for the purpose of further exploitation, which normally starts in the country of destination. Smuggling must take place across international borders but there is no requirement that a person must have crossed a border for trafficking to take place – it can and does take place within national borders.

TRAFFICKING AND SMUGGLING: SIMILARITIES AND DIFFERENCES



Source - International Organization for Migration, February, 2009 ©IOM

Root Causes

Causes of human trafficking in countries/regions of origin (the so called “push factors”) include:

- a low standard of living and/or lack of prospects
- abject poverty and unemployment;
- a lack of political, social and economic stability;
- situations of armed conflict and oppression;
- lack of education.

Causes of human trafficking in countries/regions of destination (the so called “pull factors”) include:

- the prospect of a better future;
- the increasing demand for cheap labour;
- the globalisation of the sex industry.

Extent Of The Problem In Ireland

It is difficult to estimate the extent of the crime worldwide, since criminal activities related to trafficking are hidden behind widespread phenomena such as prostitution or immigration. In order to provide reliable and useful data on the nature and extent of trafficking in Ireland on an on-going basis the Anti-Human Trafficking Unit (AHTU) has implemented a data strategy based on systems being developed at EU level. The goal of this strategy is to collect information on cases of possible/suspected trafficking by means of a standardised template from a variety of organisations (including NGOs, Government organisations, Garda Síochána, etc) having regard to the definition of trafficking as contained within the Criminal Law (Human Trafficking) Act 2008, as amended.

Between 1 January 2009 and 31 December 2012 a total of 249 alleged victims of human trafficking were reported to An Garda Síochána. The breakdown of these figures is 66 persons in 2009; 78 in 2010; 57 in 2011 and 48 in 2012.

Four summary statistical reports, which give greater statistical information on the victims, are available on the Government's anti-human trafficking website www.blueblindfold.gov.ie.

Know The Signs

No one willingly signs up to becoming a slave. Traffickers frequently recruit victims through fraudulent advertisements which promise legitimate jobs such as hostesses, domestic work or work in the agricultural industry. Trafficking victims can be recruited by family members and can come from rural and urban settings. However, recognising that a person may be a victim of human trafficking is a difficult task. Being familiar with some of the general indicators of trafficking will be of assistance. A list of the UNGIFT indicators of trafficking is available at www.blueblindfold.gov.ie.

How Victims Present

Victims of human trafficking may suffer from anxiety, panic attacks, memory loss, depression, substance abuse and eating disorders or a combination of these conditions. People who have suffered at the hands of traffickers may be conditioned to mask the truth and severity of the trauma which they have experienced. Victims may have been led to believe that no one will believe their story and warned to be distrustful of

people in authority and of the motives of those who are actually trying to help them.

What Has Been Done To Combat Trafficking In Human Beings In Ireland?

Ireland's efforts to combat human trafficking have developed rapidly over the past number of years, as a result not only of our international commitments but also because we are determined to identify and implement the most effective means to address this most complex and heinous human rights abuse. Some of these measures are:-

Legislative Developments

Criminal Law (Human Trafficking) Act 2008

The Criminal Law (Human Trafficking) Act 2008 was enacted on 7 June 2008. This legislation creates an offence of recruiting, transporting, transferring to another person, harbouring or causing the entry into, travel within or departure from the State of a person or providing the person with accommodation or employment for the specific purpose of the trafficked person's sexual or labour exploitation or removal of his or her organs. It provides for penalties up to life imprisonment and, at the discretion of the court, a fine for persons who traffick or attempt to traffick other persons for the purposes of labour or sexual exploitation or for the removal of a person's organs. It also makes it an offence to sell or offer for sale or to purchase or offer to purchase any person for any purpose. Penalties of up to life imprisonment and, at the discretion of the court, a fine, also apply in respect of these offences. Furthermore it is an offence for a person to solicit for prostitution a person who s/he knows or has reasonable grounds for believing is a trafficked person. The penalty can be up to five years imprisonment and/or an unlimited fine on conviction on indictment.

Criminal Law (Human Trafficking) (Amendment) Act 2013

An Amendment to the 2008 Act was enacted on 9 July 2013 the purpose of which is to facilitate full compliance with the criminal law measures in Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. To fully comply with the Directive's minimum definition of exploitation, the legislation criminalises trafficking for the purposes of forced begging and trafficking for other criminal activities. This new

legislation also defines the term “forced labour”, as used in the 2008 Act. The definition is based on that set out in International Labour Organisation (ILO) Convention No. 29 of 1930 on Forced or Compulsory Labour. In addition, for human trafficking offences, the 2013 Act contains provision to better facilitate children giving evidence in criminal prosecutions. It increases, from 14 to 18 years, the upper age threshold for out-of-court video recording of a complainant’s evidence and makes provision for video recording the evidence of a child witness (other than an accused) who is under the age of 18 years. Furthermore provision is made that where a trafficking offence (for sexual or labour exploitation) is committed by a public official during the performance of his/her duties, that fact shall be treated as an aggravating factor for the purpose of determining sentences.

Child Trafficking and Pornography Act, 1998

The 2008 Criminal Law (Human Trafficking) Act builds on the Child Trafficking and Pornography Act 1998 which makes it an offence to knowingly facilitate the entry into, transit through, or exit from Ireland of a child for the purpose of the child’s sexual exploitation or to provide accommodation for the child for such a purpose while in Ireland. It is also an offence to take, detain or restrict the personal liberty of a child for the purpose of the child’s sexual exploitation, to use a child for such purpose or to organise or knowingly facilitate such taking, detaining, restricting or use. Section 1 of the Criminal Law (Human Trafficking) Act, 2008 amends the 1998 Act by extending the definition of a child from a person under the age of 17 years to a person under the age of 18 years. The maximum penalty on conviction is raised from 14 years to life imprisonment.

Sexual Offences (Jurisdiction) Act 1996

This Act allows for the prosecution of an Irish citizen, or a person ordinarily resident in the State, who commits an act in another country which is a sexual offence against a child in that other country and if done within the State, would constitute a sexual offence against a child in the State. The penalties are a maximum of 5 years imprisonment on conviction on indictment.

Administrative Immigration Arrangements

In circumstances in which persons have no legal basis to remain in the State, protection may be granted under the Administrative Immigration Arrangements for the Protection of Victims of Trafficking through the granting of a 60 day recovery and reflection period

and/or 6 month renewable temporary residence permission, where the trafficked person wishes to assist An Garda Síochána or other relevant authorities in any investigation or prosecution in relation to the alleged trafficking. The Administrative Immigration Arrangements were established in June 2008 to coincide with the enactment of the Criminal Law (Human Trafficking) Act 2008.

The Administrative Immigration Arrangements were amended in March 2011. The changes include:

(a) a procedure to allow a person make an application to change to a longer term permission to remain in the State after 3 years of Temporary Residency Permissions or when the investigation/prosecution is complete (whichever is the shorter);

(b) arrangements to issue a recovery and reflection period for persons under 18 years for periods in excess of 60 days having regard to the arrangements in place for the care and welfare of the child;

(c) clarification that there is no right to family re-unification while on temporary residence permission (each case will be considered on its merits);

(d) a provision for those victims of human trafficking, who have been refused asylum, to allow them to have the fact that they have been identified as a suspected victim of human trafficking to be taken into account in any consideration as to whether they may remain in the country under various immigration permissions. In such cases a temporary residence permission under the Administrative Immigration Arrangements will automatically issue pending consideration of any other forms of immigration permission of which the person may wish to avail.

The Administrative Immigration Arrangements reflect the provisions in the Immigration, Residence & Protection Bill 2010.

Other measures to combat trafficking in human beings

Anti Human Trafficking Unit

The Anti-Human Trafficking Unit (AHTU) was established in the Department of Justice and Equality in February 2008. The Unit is working diligently to ensure that the Irish response to trafficking in human beings is coordinated, comprehensive and holistic. A key element of this strategy is the National Action Plan to Prevent and Combat Trafficking in Human Beings

in Ireland 2009 – 2012, published by the Minister for Justice and Equality in June 2009 and available at www.blueblindfold.gov.ie. A structured review of the implementation of the National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland 2009 – 2012 was carried out during 2011. This involved a consultation process with relevant stakeholders and the report is available on www.blueblindfold.gov.ie.

Ireland's second National Action Plan is currently being drafted having regard in particular to EU Developments on Human Trafficking, the recommendations of the OSCE Special Representative, the recommendations of the Council of Europe group of experts on Action against Trafficking (GRETA) following their visit to Ireland and the US Trafficking in Persons (TIPs) Report, all of which will serve as a roadmap for the future direction of Ireland's anti-trafficking strategy.

Other dedicated Anti-Human Trafficking Units

In addition to the AHTU there are 3 other dedicated Units in State Agencies dealing with this issue, the Human Trafficking Investigation and Co-ordination Unit in the Garda National Immigration Bureau (GNIB), the Anti-Human Trafficking Team in the Health Service Executive (HSE) and a specialised Human Trafficking legal team in the Legal Aid Board (LAB). These Units have been set up as a response to Ireland's international obligations to provide services to victims of trafficking in human beings. Dedicated personnel are also assigned to deal with the prosecution of cases in the Office of the Director of Public Prosecutions (DPP) and dedicated personnel in the New Communities and Asylum Seekers Unit in the Department of Social Protection facilitates victims moving from direct provision accommodation to independent living.

Consultative Structures

An Interdepartmental High Level Group was established by the Minister for Justice and Equality in late 2007 to recommend to him the most appropriate and effective responses to trafficking in human beings. The High Level Group comprises senior representatives from the key Government Departments and Agencies. Members from the Group engage with NGOs and International Organisations in the manner of a Roundtable Forum twice or three times per year.

In addition, the Group approved the establishment of five interdisciplinary Working Groups chaired by the Anti-Human Trafficking Unit and comprising

representatives from the relevant Government Agencies, NGOs and International Organisations to progress matters at a practical 'on the ground' level and, in turn, report to the High Level Group. Each of the Working Groups meet as the need arises.

The Working Groups deal with:

1. Development of a National Referral Mechanism
2. Awareness Raising and Training
3. Child trafficking
4. Labour Exploitation Issues
5. Sexual Exploitation issues.

In total, over 70 different Governmental, Non-Governmental and International Organisations are involved with the AHTU in anti-trafficking initiatives. The method of consultation put in place is based on that recommended by the Organisation for Security and Cooperation in Europe (OSCE) in the context of developing National Referral Mechanisms on human trafficking.

Assistance to victims of human trafficking

The National Referral Mechanism is the term used to describe:

- The process by which a suspected victim of human trafficking is identified;
- The range of assistance and support services available to potential and suspected victims of human trafficking;
- How potential and suspected victims are referred or can apply to access each of those services.

Services available under the National Referral Mechanism

Depending on the status and needs of the individual, the range of assistance and support services which are made available to victims of human trafficking in Ireland includes:

- i. Accommodation
- ii. Medical care/care planning
- iii. Psychological assistance
- iv. Material assistance e.g. Supplementary Welfare Allowance, Rent Supplement
- v. Legal aid and advice
- vi. Access to the labour market, vocational training and education (for those not in the asylum system)
- vii. Police services
- viii. Community-based services provided by NGOs
- ix. Repatriation
- x. Compensation

- xi. Permission to be in the State and/or non-removal pending a determination of an allegation of trafficking, and a Temporary Residence Permission if assisting with an investigation or prosecution
- xii. Asylum services
- xiii. Translation and interpretation when appropriate
- xiv. Access to education for children.

A Guide to the services in place for adult victims of trafficking is available at the following link:-
<http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/victimsupportcontacts-adult-en>

Information on the State services available for child victims are at
<http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/victimsupportcontacts-child-en>

Enforcement

Garda Síochána Annual Policing Plan

In 2013, An Garda Síochána in their Annual Policing Plan identify trafficking in human beings as one of the priorities with increased priority given to prevention and detection of human trafficking. It has been identified as a policing priority since 2009.

Human Trafficking Investigation and Co-ordination Unit

The Commissioner of An Garda Síochána established a Human Trafficking Investigation and Co-ordination Unit within the Garda National Immigration Bureau (GNIB) in 2009 to provide a lead role on policy issues in the field of human trafficking. The Unit acts as a centre of excellence for the organisation and oversees all investigations where there is an element of human trafficking and provides advice, guidance and operational support for investigations.

Director of Public Prosecutions (DPP)

The DPP has nominated particular prosecutors to deal with cases of human trafficking and issued them with guidelines. Their purpose is to guide prosecutors in examining which factors are to be considered in assessing whether to commence or continue with a prosecution including a consideration as to whether the public interest is served by a prosecution of a victim of human trafficking who has been compelled to commit offences (e.g. immigration or sexual offences) as a result of being trafficked.

Recent International Developments

European Union

In April 2011 **Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims and replacing Framework Decision 2002/629/JHA** was adopted with Member States having until April 2013 to transpose it. Ireland has fully transposed this Directive by way of legislative and administrative measures. The Directive adopts a comprehensive and integrated approach that focuses on human rights, victims and is gender specific.

In October 2012 the EU launched their Strategy towards the Eradication of Trafficking in Human Beings 2012 - 2016. The stated aim of this document is to set out concrete measures which will support the transposition and implementation of Directive 2011/36/EU and bring added value and complement the work done by Governments, International Organisations and Civil Society in the EU and Third countries.

Action 4 of the Strategy relates to the provision of information on the rights of victims. During the Irish Presidency of the European Union from January to June 2013 Ireland worked closely with the European Commission to implement this action. This resulted in the publication in April 2013 of a handbook 'The EU rights of victims of trafficking in human beings' which sets out the rights and supports, derived from EU law, that are available to victims. The handbook, which is drafted in simple language, should be understandable to both practitioners and victims. These rights range from emergency assistance and health care to labour rights, access to justice and the possibility of compensation. This document does not provide for the establishment of any new rights under EU law. It does however set out for the first time in a single document all of the relevant EU legislation. The Minister for Justice and Equality (who had as his priority during the Irish Presidency the issue of human trafficking and the rights of victims of this abhorrent crime) obtained the agreement of the Council of Ministers at the Justice and Home Affairs Council meeting in June 2013 for Member States to commit themselves to ensuring that information in this easily understandable format will be made available to legal practitioners and victims in all Member States.

Visit of the OSCE Special Representative and Co-ordinator

The OSCE Special Representative and Co-ordinator for Trafficking in Human Beings, Ms. Maria-Grazia Giammarinaro undertakes a wide range of tasks for the

purpose of combating human trafficking - assisting OSCE participating States in the implementation of the OSCE Action Plan to Combat Trafficking in Human Beings; providing technical assistance to participating States; cooperating with National Rapporteurs and Equivalent Mechanisms; etc.

One of the ways in which she fulfils her co-ordination and monitoring tasks is to undertake a country visit to participating States. The aim of the country visits is to map out the existing mechanisms, achievements and challenges of the different participating States. Ms. Giammarinano visited Ireland in January 2012 and arising from that visit prepared a Report in which she included a number of recommendations. The Report including the Government's response can be viewed on the anti-human trafficking website <http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/news-publications-en>

Council of Europe evaluation – GRETA

GRETA, established by the Council of Europe, is the body responsible for monitoring implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties to this Convention. GRETA regularly publishes Reports evaluating the measures taken by the Parties and those Parties which do not fully respect the measures contained in the Convention will be required to step up their action.

When evaluating a country GRETA prepares a Report on the measures taken in the country. These Reports are compiled from a variety of information sources including a questionnaire and a country visit to meet with the relevant actors (governmental and non-governmental).

The evaluation process for Ireland commenced in February 2012. A country visit took place in November 2012 and GRETA published its Report on Ireland in September 2013. A copy of this report is available on the anti-human trafficking website <http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/news-publications-en>.

United States Trafficking in Persons (TIP) Report

The U.S. Congress, under the 2000 Trafficking Victims Protection Act as amended (TVPA), requires the Secretary of State to submit an annual Report to Congress setting out the extent of efforts by Governments worldwide to reach compliance with the TVPA minimum standards for the elimination of human trafficking. Countries considered as being

countries of origin, transit or destination for victims of severe forms of trafficking are included in what is known as 'the TIP Report'. They are assigned one of three tiers. Countries assessed as meeting the 'minimum standards for the elimination of severe forms of trafficking' set out in TVPA are classified as Tier 1. This is the highest rating a country can receive.

In the last three US "TIP" Reports (2010, 2011 and 2012) Ireland has received a Tier 1 rating.

Report Suspicions Anonymously:

You can help prevent human trafficking from becoming a problem in Ireland. Be vigilant and report any suspicions or information to An Garda Síochána:

Email Blueblindfold@garda.ie

or

Call: Crimestoppers 1800 25 00 25.

Further information on this issue can be obtained from:

Anti-Human Trafficking Unit
Department of Justice and Equality
51 St. Stephen's Green
Dublin 2
Telephone 01 6028878
Email ahtudivision@justice.ie
Website-www.blueblindfold.gov.ie



UNHCR Photoset: Suffering Continues in the Central African Republic



Tens of thousands of people sought refuge at Bangui's main airport during the escalation of violence last December, hoping for protection by international peacekeepers. Aid agencies did what they could to provide them with sanitation, food and water. UNHCR/Annibale Greco



More than 54,000 people live in an impromptu camp near the airport in Bangui's M'Poko district. Conditions are squalid and humanitarian aid agencies say the site should be closed due to poor drainage, and a high risk of disease. It has become a hub for gangs, and is not safe. UNHCR/Annibale Greco



Children play soccer on the outskirts of Bangui. Thousands of children have suffered deep trauma because of the violence, and many need psychosocial support. Several child friendly spaces have been set up outside Bangui. There are growing concerns that children are being recruited by militia groups. UNHCR/Annibale Greco



Adam and his friends reconstruct Korans destroyed in militia attacks. He sought shelter with his two wives and 11 children in a school protected by peace-keepers in the western CAR town of Bossangoa. "We cannot stay here for much longer," he says. "We need to find a safe place where our lives are not in danger." UNHCR/Annibale Greco



The conflict has placed girls and women at growing risk of violence. It is particularly dangerous in the camp by the airport, which is left unguarded at night. Other sites for the internally displaced are managed by religious leaders in churches and mosques, offering some degree of protection. UNHCR/Annibale Greco



Adama, 40, in St Pierre Church in the town of Boali. She was among 450 displaced Muslims who were sheltered in the Catholic church. She had to flee to the church in January when militia attacked her neighbourhood, looting homes before torching them. "It is difficult to live here. We have been sleeping on the church pews," she said, adding that they were scared. In early March, she managed to escape to Cameroon on an evacuation convoy. UNHCR/Annibale Greco