

# Seeking Asylum

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**The concept of asylum goes back thousands of years, yet today's asylum seekers are seen as a serious threat to national security. America's War on Terror has resulted in new policies that further marginalise and exclude the politically and socially displaced of this world. Are new patterns of immigration law reform creating a world without refuge?**

*One morning they dragged me from my urine smelling, cramped cell and brought me to a room where they beat the soles of my feet and then tied my ankles to the chair rungs. Two women speaking Swahili entered the room. They put an electric generator in the middle of the room—tied one wire to the inside of my leg and then came at me with the other end held between clamps. The woman who held the charged cable trembled and dropped the live wire on my inner thigh, just missing my genitals and causing me to defecate, vomit and urinate everywhere. I passed out.*

Congolese asylum-seeker in the United States describing his persecution

Refuge is a concept that has always intrigued me, from the days when my feet hung off the wooden hard-backed pews in the predominantly Jamaican church I once attended, to the international human rights career I pursue advocating for the rights of vulnerable populations. What is most compelling about the marginalized within our societies — refugees, internally displaced populations, and asylum-seekers, for example — is that they represent the worst of what could happen to any one of us. Grave abuses of human rights occur every day, in every part of the world, and against people like you and me. Indeed, human beings continue to be capable of incredible acts of brutality towards one another, without conscience, without mercy, without end.

Asylum is an age-old concept. In the turbulent days of establishing city-states post-Exodus, Moses was commanded to provide the Israelites a place of protection for those running from attackers, so that there would be some provisions in a society that did not always protect the innocent. The challenge then was to reach the nearest city, within the walls of which, an individual could find safety until the time of trial. If the judge found the applicant for asylum to be innocent of wrong-doing or harm to others, there was relief and security. If an applicant was found to be guilty, however, the price was forced removal from the 'city of refuge', and return to the original homeland, regardless of his or her fate. In the waiting period between the request and the decision, the asylum-seeker was presumed innocent.

The drive for self-preservation has changed little since those ancient days. Individuals face enormous threat and insecurity, and continue to be persecuted for reasons of race, religion, nationality, political opinion or membership in a particular social group. Having lost the protection of their governments, and having suffered enormous violence and trauma, many will flee their countries as a last resort, travelling miles under precarious conditions in order to find safety in someone else's backyard. Yet, while the act of seeking asylum is not new, fair and just treatment of the most vulnerable is increasingly being sacrificed in the name of preserving homeland security. Arriving in a country to request asylum is only the first challenge. Today, in the limbo period between the request and the decision, the asylum-

seeker is no longer seen as innocent. S/he is burdened with the task of disproving a presumed guilt that falsely associates the foreign-born with terrorism.

Applying for asylum and refugee consideration is one of three ways to enter the United States; the others include employment and family-based options. Historically, the United States has been a land of refuge, opening wide its golden door. I am, in fact, the great-grand-daughter of Polish immigrants, one of whom refused to serve in the occupying Austro-Hungarian army and fled overland through Europe to

stolen in the twilight, hostage to armed men, men who forced her to listen to the holy words of her prophet, as she was laid on top of and forced apart, raped again and again. I know a man who says he looks at ceilings and starts to tremble. He spent months hanging eight hours a day, inverted like a hog, suspended from a beam in the ceiling. When he was released and lowered to the ground, he was attached to the back of a jeep and forced to run on beaten, swollen feet. He claims the worst of what he suffered was not physical. What haunted most, he confessed, was the humiliation of running in circles in front of merciless army officials, clapping and

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escape being forcibly drafted. He did not lie to find a safe haven in America, because he didn't have to. He wasn't treated as a criminal, nor was he detained upon arrival. He followed the immigration regulations, received his papers in due course, and settled in Florida with his family to make his contribution to society as a productive farmer. But the immigration system has changed in the last hundred years, and drastically so for asylum-seekers post-September 11.

Who are asylum-seekers? For those who work with these vulnerable populations, it is not easy to dismiss the stories they tell. It is difficult to forget the business woman who went to open her shop on a Tuesday only to discover a decapitated head lying there, as lifeless as the morning newspaper. It was more than a warning, it was my nephew, is what she said. A middle-aged man, refusing to mute the western rock 'n roll songs he played on his beloved guitar in the town square, unknowingly traded dreams of democracy, he claimed, for twenty years of hard labour. Now he sits begging for asylum, his wilful youth swallowed up within iron gates and communist principles.

There is the young woman who could no longer remember the nights she closed her eyes to sleep peacefully beside her gentle husband. She was

cheering his unsteady movements, laughing at their man-made beast, reduced to a lumbering animal struggling against the inevitable, a black man's slaughter.

People continue to flee their homelands, this fact has not changed. According to the BBC, however, among industrialized nations, the US and Canada recorded the biggest drop in the number of asylum seekers in the last five years – together they received 54% fewer asylum requests than in 2001 (2006). Applications in Australia and New Zealand saw an even sharper fall, dropping by 75% in the same period (BBC, 2006). Yet despite the lower numbers, acts of persecution are not decreasing in the world, and seeking asylum in the United States is among the most gruelling of immigration processes upon which to embark.

Asylum-seekers today are approached implicitly and explicitly as serious threats to national security. The Real ID Act approved in May 2005 challenges the tenets of international refugee law and builds upon the myth that from the most vulnerable, we have the most to question, and perhaps the most to fear. The slightest inconsistency in an asylum claim can result in denial, even if the inconsistency does not relate directly to the basis for the claim. Oddly enough, the terrorist acts of September 11, from which new

legislation continues to spew, were not carried out by those who requested asylum or had such applications pending. In fact, why would a terrorist apply for asylum?

Requests for asylum are among the most scrutinized applications in the immigration process. Asylum-seekers are subject to extensive background checks, forced removal while their asylum cases are pending, and mammoth impediments to obtain work authorization. Asylum-seekers cannot obtain employment authorization until their case has been granted or a time-clock runs out in their favour. These time restrictions range from 180 days to several years, depending on whether or not there is an appeal of a denial, or a backlog in the decision-making process. New legislation currently being bandied about the U.S. House of Representatives holds potential reinforcement measures for even stronger detention mandates than those that already exist for asylum-seekers (the Department of Homeland Security has the mandate to detain anyone requesting asylum and the US is the only country in the world aside from Australia that regularly detains asylum-seekers) and deportation for anyone carrying false documents.

If we are to presume that the majority of asylum-seekers are liars or worse, i.e. criminals seeking entry to the United States for nefarious reasons, then certainly there are a myriad of other options that require less aggressive inspection and overall grief for those hell-bent on inciting terror. So again, why would asylum be the chosen route for entry?

International law established to protect the most vulnerable in our midst is vital to functioning democracies. The war on terror is not just one of countries fighting imbedded, invisible cell networks but also one that can undermine the international legal order, destabilize the rule of law, and place international policy for refugees and asylum-seekers under the severest of threats. Now, the 'cities of refuge'- which are our modern-day countries of asylum- are reinforcing the walls of a fortress that will never be strong enough, rather than protecting those in dire need of relief from persecution and human indignity. Within the last few years, acceptance rates for refugee resettlement have declined by almost 70% (Batalova, 2005). Asylum approval rates, above 70% since the Refugee Act of 1980, fell to 49% in 2001, and to just below 47% in the last year (DHS, 2006 and Kasang, 2006). The United States is not

the only country restricting protections for refugee and asylum-seekers. Amnesty International in its 2006 annual report found that 99 per cent of fast-track asylum cases in the UK were rejected, hundreds if not thousands of North Koreans were forcibly expelled from China with no ability to claim asylum, and numerous African countries, South Africa included, participated in arbitrary deportations of asylum-seekers and refugees (Amnesty International, 2006).

The Immigration Acts of various countries, including New Zealand's, are being reviewed and rewritten and one must question whether the changes made to these Acts will reflect a perspective balancing security with the protection of the most vulnerable, or one that pits the needs of the vulnerable against the demand for greater security.

Terror for Americans involves a reality of mass destruction and gruesome loss of life that none can deny was unconscionable, but its citizens have rights that are not so easily dismissed, and a government still able and willing to defend its citizens. Terror for refugees and asylum-seekers is equally- if not more-brutal, because the violence is personal and any domestic means of protection has been exhausted or denied. For those seeking refuge, oftentimes there are no second chances at mercy. Certainly in the United States, there have been errors in judgment where immigration matters are concerned. There has been a rather disconcerting history of handing out permanent residency and work authorization cards to known Rwandan *genocidaires*, Haitian junta leaders, Russian mafia leaders and even, it would seem, al-Qaeda recruits. But yet, it is the asylum process that is being blamed for domestic insecurity and these errors in judgment. With this in mind, there should be limits to the way in which acts of terror perpetrated against a country can manifest in reactionary decisions that will affect an even greater, terrorized group of people. To sacrifice the most vulnerable by revamping law and policy in the name of security will marginalize the marginalized in the world even more, producing graver threats to global security, as a consequence.

Are we to believe that asylum-seekers are our greatest threat? I have watched veiled women vehemently defend their stories and cannot believe they are brilliant actresses performing a fictionalized trauma before hapless strangers in an immigration

courtroom. Surely, the new legislation would imply they have practiced years for this in isolation, behind iron bars, and under black burqas, maybe even watching others less fortunate hung from cranes in town squares, reminders of how convincing that final scene in front of a judge must be. I walk by the stooped, raggedly clothed teenage boy making sandals from old Michelin tires in a refugee camp where rocket launchers can be heard in the distance at night and human dignity seems swallowed up by a sea of mud huts and blue plastic sheeting. Am I to be persuaded that he – and all others like him – is a rebel and will use his pocket money, not to support his five younger siblings sitting in a circle around him as he works, but to fund armed marauders bent on violence, insurgencies, and coup d'états? When he applies for refugee resettlement in the United States, is he not to be given a fair chance at making his claim instead of having to fight a pre-determined guilt that would deny him protection or relief?

My ancestors emigrated from Europe before the United Nations and the Universal Declaration of Human Rights were established to assist populations in understanding and applying certain rights and responsibilities for the stability and development of the global good. The Universal Declaration declares that,

*All human beings are born free and equal in dignity and rights (Article 1).*

And in addition that,

*Everyone has the right to leave any country, including his own, and to return to his country and ... the right to seek and to enjoy in other countries asylum from persecution (Articles 13 & 14).*

Somehow with the advent of these laws and newer definitions of terror dictating policy, the application and treatment of the politically and socially displaced of this world has reached a disconcerting level of crisis. There are exceptions that will challenge any system; we know this to be true. But the general body of law is not made to protect countries from exceptions; it is made to ensure against the rampant establishment of greater, more disastrous norms of behaviour in the world. If the fear and reality of the persecution experienced by individuals is swallowed up by an even more hideous trend in restricting dignity and human rights for the sake of security, we threaten ourselves. And in such a world, there can be no refuge.

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