



**UNHCR**

**United Nations High Commissioner for Refugees**  
Haut Commissariat des Nations Unies pour les réfugiés

**LEGAL AND PROTECTION POLICY**

**RESEARCH SERIES**

**Political Rights of Refugees**

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**UNHCR Consultant**

**DEPARTMENT OF INTERNATIONAL PROTECTION**

**PPLA/2003/04**  
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## EXECUTIVE SUMMARY

The extent to which refugees can engage in political activity in the country of asylum is a matter of some controversy, not least the question of what constitutes a political act. However the right to hold and express a political opinion is fundamental in nature and indeed it is the suppression of this right that often leads to refugee situations. This paper examines the scope of political rights of refugees in the context of international law, as well as current State practice before going on to make a number of recommendations about best practice.

The 1951 Convention Relating to the Status of Refugees ('1951 Convention') is silent on the question of political activity of refugees, save to note that such persons are required to respect the laws of the country of refuge. Therefore, the legal framework is derived principally from international human rights law and customary law on State responsibility, neither of which make much distinction between the position of aliens (including refugees) and that of citizens. The impact of the principle of self-determination and the development of international sanctions against terrorist activity are also very relevant. The complex interaction of these fields of law appears to produce three categories into which political activity may fall:

- (a) activities that the host State is obliged to allow;
- (b) activities that the host State is permitted to allow within its sovereign discretion;
- (c) activities that the host State is obliged to prevent.

Category (a) includes those activities guaranteed by human rights law. Category (b) covers activities which, whilst not the subject of human rights protection, are equally not prohibited in international law. This may include activities that the host State is entitled, but not obliged, to restrict under specific exceptions to its human rights commitments (in the interests, for example, of national security or public order). Category (c) mainly covers activities prohibited in international law in order to ensure respect for the sovereignty of other States. Such prohibitions are consistent with respect for human rights guarantees.

On analysis, it seems that participation in political organisations with a peaceful agenda is protected under international human rights law. However, the position is far more complicated where a political organisation in the country of asylum gives support to a movement involved in violent activities elsewhere. As for participation by refugees in political organisations directly engaged in violent activity, the host State would seem to be under an obligation to prevent refugees on its territory carrying out attacks in third States, subject to any considerations of self-determination. With regard to voting rights, these are neither guaranteed for refugees (or indeed any alien) in the host country nor necessarily in their country of origin.

As might be expected, State practice in respecting the political rights of refugees is varied, often dependent on the extent to which the political rights of citizens are observed. There are many countries where no distinction is made between the political rights of aliens and nationals, but in some States restrictions on freedom of political expression appear to have been imposed against certain groups of refugees simply on the basis of preserving friendly relations with the governments of their country of origin. In terms of electoral participation, very few States allow refugees (or any aliens) to vote in national or municipal elections and there are often restrictions on such persons voting in elections in their country of origin. In recent years, however, a significant development has been the participation, with international encouragement, of refugees in elections that are part of the peace process in their country of origin.

Refugees, like other aliens, are entitled to the same freedom of expression, association and assembly as citizens. However, the granting of political rights is often seen as a threat to the national cohesion of the country of asylum or to its relations with the country of origin. This is despite the fact that international law makes provision for protecting the legitimate security concerns of the country of origin and respecting the sovereignty of other States. In doing so, it does not discriminate between refugees and any other person in the country of asylum. That being said, refugees should be made aware of their responsibilities to their country of asylum and the legitimate limits that may be placed on politically-motivated behaviour. Yet many of the risks associated with political activity of refugees should be acknowledged as primarily a problem caused by a small minority of persons, in many cases of dubious eligibility to refugee status. The behaviour of a few does not justify excessive restrictions placed on the innocent majority.

# POLITICAL RIGHTS OF REFUGEES

1. The extent to which refugees can engage in political activity in the country of asylum is a matter of some controversy. In certain circumstances the presence of refugees may be perceived as a threat to domestic harmony, generating negative attitudes towards their involvement in matters of a political nature. From a legal point of view two distinct perspectives arise. Firstly, the impact of human rights and refugee law, granting particular rights to refugees, whilst taking into account the legitimate security interests of the host community. Secondly, the responsibility of States under international law for injurious activities carried out by aliens, including refugees, within their territory. It transpires that the political rights of refugees rests on a delicate balance between protecting the essential human dignity of such persons and the need for States to respect each other's sovereignty and to protect their own community in general. Moreover, the wide spectrum of activities that may fall under the umbrella of "political" serves to add to the complexity of the legal framework.

2. This paper analyses the scope of political rights of refugees in the context of current international law. It also examines contemporary State practice. Finally, it sets out some recommendations for State practice.

## I. THE LEGAL FRAMEWORK

### A. Rights of Refugees Guaranteed in International Law

#### 1. *The Refugees Convention*

3. The 1951 Convention relating to the Status of Refugees ('1951 Convention') has no explicit provision dealing with the political rights of refugees. However, Article 2 makes it clear that refugees have duties to the country of asylum, including respect for its laws and for measures taken for the maintenance of public order. This merely reflects the general rule that aliens fall within the territorial sovereignty of the host State. The reference to 'public order' confirms that the country of asylum is entitled to restrict the activity of refugees (in particular, that of a political nature)<sup>1</sup> where this is necessary to protect the vital interests of the State. The extent to which such activities can lawfully be restricted will principally be determined by the limits of relevant human rights law, as discussed below in paragraph 11.

4. The 1951 Convention does lay down specific standards for the treatment of refugees in certain areas, but only one of these is relevant to the question of political

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<sup>1</sup> See Robinson, *Convention relating to the Status of Refugees: Its History, Contents and Interpretation* (1953) at page 60.

rights.<sup>2</sup> Article 26 requires that refugees lawfully within the territory be granted freedom of movement subject to any regulations generally applicable to aliens. For matters other than freedom of movement Article 7(1) must apply. This states that:

Except where this Convention contains more favourable provisions, a Contracting State shall afford to refugees the same treatment as is accorded to aliens generally.

5. As a consequence, refugees are to be afforded the same political rights as other aliens in the country of asylum.<sup>3</sup> Furthermore, the rights covered by Article 7(1) are subject to Article 3 which therefore prohibits any discrimination between refugees in the enjoyment of political rights solely on the basis of their race, religion or country of origin. Finally, by virtue of Article 7(3), refugees shall continue to enjoy any additional rights to which they were entitled (for example, as a result of domestic laws in the country of asylum) at the date of entry into force of the Convention for the State in question. Thus, subject to any pertinent provisions in regional instruments, reference to international human rights law is necessary in order to flesh out the standards set out in the 1951 Convention.

### Regional refugee instruments

6. The 1969 Organisation of African Unity ('OAU') Convention Governing Specific Aspects of the Refugee Problem in Africa ('OAU Convention'), like the 1951 Convention, specifically states that refugees must respect the laws of the country of asylum (Article III(1)). However it goes further by (a) proclaiming that refugees must not take part in any subversive activities against an OAU member State (Article III(1)) and (b) requiring all States parties to prevent refugees from attacking other OAU States or engaging in activities likely to cause tensions between such States (Article III(2)).

7. No definition of "subversive", "attacking" or "likely to cause tensions" is given in the OAU Convention. It is, therefore, possible, and arguably desirable, to interpret the limits on political activity set out in Article III in line with the human rights obligations of OAU States. However, there is evidence that some OAU States have adopted a rather sweeping approach to Article III, interpreting it as prohibiting any political activity with respect to the refugee's country of origin, or indeed any political activity whatsoever.<sup>4</sup>

8. The 1984 Cartagena Declaration on Refugees does not make any specific recommendations on the political rights of refugees. It merely states in Conclusion 8 that Central American States should establish a minimum standard of treatment for refugees based on the provisions of the 1951 Convention, its 1967 Protocol and the American Convention on Human Rights. Given that the latter treaty essentially mirrors the International Covenant on Civil and Political Rights with respect to

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<sup>2</sup> Article 15 about the right of association is only concerned with non-political organisations and is thus not relevant in this context.

<sup>3</sup> The exception being freedom of movement where, as discussed above, equality with treatment of aliens depends on the refugee in question lawfully being in the territory.

<sup>4</sup> See paragraph 73 below. UNHCR in its 'Note on International Protection' (13 September 2001, AC.96/951) refers to the Article III prohibition on subversion without comment as to its scope.

provisions relevant to political activity, the Cartagena Declaration does not seem to have any impact on the question of political rights of refugees in that region.

## 2. *Customary international law and treatment of aliens*

9. Prior to the emergence of human rights law (and contemporary refugee law), limited protection existed for aliens under international law, reflecting their generally low status in society. However, it has long been recognised that the State of nationality is entitled to demand that the host country treat the former's citizens in a manner compatible with the minimum standard set down in customary international law. This right of the country of origin stems from its retention of personal supremacy over expatriate nationals, even though the host State possesses territorial supremacy.<sup>5</sup>

10. The debate continues as to what exactly constitutes the "international minimum standard". It would appear to at least require that an alien receive equal treatment before the law and in respect of protection of his person and property. However, there is no obligation to accord aliens political rights equal to those enjoyed by citizens. Moreover, those duties that do exist are owed to the country of origin and not to the individual alien. The relationship between refugees and the government of their country of origin is complicated. It is therefore unclear how the principle of diplomatic protection could be applied in their case.<sup>6</sup> For these reasons, in so far as the political rights of refugees are concerned, customary international law on the treatment of aliens appears to be of little relevance.

## 3. *Human rights law*

11. The emergence of human rights law over the last fifty years has had a tremendous impact on the position of aliens, and therefore refugees, in international law. In general, human rights law does not distinguish between aliens and citizens. The notable exception is with regard to the right to participation in an electoral process.

### Right to vote and stand for election

#### *In country of asylum*

12. Article 25 of the 1966 International Covenant on Civil and Political Rights ('ICCPR') only guarantees the right to vote and to stand for public office for citizens of a country. No such right is given to aliens residing in that territory.<sup>7</sup> This is consistent with the general view that participation in elections is an expression of one's intimate relationship with the State, evidenced by citizenship.

13. Not surprisingly, regional human rights instruments follow a similar approach on voting rights, for example Article 13 of the African Charter on Human and People's

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<sup>5</sup> See Oppenheim's *International Law* (1992), Volume 1, Parts 2-4, page 903.

<sup>6</sup> The issue of what State, if any, is able to assert a complaint under customary international law regarding treatment of refugees incompatible with the international minimum standard is currently under consideration by the International Law Commission in its study of the law governing diplomatic protection.

<sup>7</sup> Of course, if a refugee obtains citizenship of the host State through naturalisation, he/she will benefit from this right.

Rights and Article 23 of the American Convention on Human Rights. The European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR'), however, appears to take a different path. There is no explicit provision in the Convention itself on participation in elections. Yet Article 16 explicitly authorises restrictions on the enjoyment by aliens of certain Convention rights (such as freedom of expression) when it comes to involvement in political activity. This is discussed further below. Article 3 of Protocol 1 of the ECHR (adopted two years later) states:

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

The European Court of Human Rights has recognised that limitations on participation in the elections are implicit in this provision. Indeed, in its judgment in Matthew-Mohin and Clerfayt v Belgium the Court seemed to consider that voting rights belonged to citizens of the State only.<sup>8</sup>

14. Although States are not obliged to give aliens the right to vote, they do have discretion to allow them to participate in elections. In some cases States may undertake to provide voting rights to resident aliens pursuant to a particular treaty arrangement. For example, the 1992 European Convention on Participation of Foreigners in Public Life at Local Level<sup>9</sup> requires State parties to allow foreigners who have lawfully been resident in their territory for five years the right to vote in local elections. Article 8b of the Treaty on the European Community (EC Treaty) provides that EU citizens are entitled to vote and stand as candidates in municipal elections in EU States of which they are not nationals, so long as they are resident there.

#### *In country of origin*

15. As for the participation of refugees in elections in their country of origin, Article 25 of the ICCPR states that citizens have the right to vote and stand for election 'without unreasonable restrictions'. Accordingly, Article 25 recognises that States should be allowed to set certain conditions, such as age limits, on the voting rights of citizens. The Human Rights Committee<sup>10</sup> in its General Comment 25 (1996), while noting that Article 25 prohibited arbitrary discrimination between citizens, considered that a registration requirement, itself dependent on residence, would be justifiable. In general terms a linkage between the right to vote and residence makes sense in terms of logistical practicalities and the fact that those no longer living in the State tend to have less of an immediate stake in its political future.

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<sup>8</sup> See Paragraph 54 of judgment dated 2 March 1987: "(T)he phrase 'conditions which will ensure the free expression of the opinion of the people in the choice of the legislature' implies essentially – apart from freedom of expression (already protected by Article 10 of the Convention) – the principle of equal treatment of all *citizens* in the exercise of their right to vote and their right to stand for election." (Emphasis added)

<sup>9</sup> This Council of Europe treaty, which entered into force in 1997, currently only has 6 States party to it.

<sup>10</sup> This Committee was established pursuant to Article 28 of the ICCPR.

16. However, the particular situation of refugees needs to be taken into account when determining what is a reasonable restriction.<sup>11</sup> Unlike other expatriate citizens, refugees have not left their country of origin voluntarily. Moreover, they will often be keen to return in the near future and their chances of doing so may be heavily dependent on political changes in their country of origin. Accordingly, it does not seem reasonable to exclude refugees from voting in their country of origin, particularly if this rewards persecutory activities on the part of the authorities there.

17. Thus, although it appears that States do have the right to limit voting in general to those citizens habitually resident in their territory, there is arguably a case to be made for special provision in relation to refugees.<sup>12</sup> Residency requirements could be waived in their case and facilities for voting from abroad provided. Of course, there may be refugees who will be reluctant to exercise their opportunity to vote because of concerns about contact with the authorities in the country of origin. However, this is unlikely to be the case where, following a mass exodus as a result of internal strife, elections are taking place as part of a peace process. In any case, the mere fact that a refugee has voted in elections in the country of origin should not, in itself, constitute grounds for invoking the cessation clauses in the 1951 Convention.

18. State practice, as described in paragraph 69, indicates that this is an area where policy and law are evolving. Although traditionally States appear to have acted on the basis that participation in elections can be limited to resident citizens, more recently the interests of refugees has started to be taken into account. As described in paragraph 70 below, in the cases of Kosovo and Bosnia and Herzegovina, the international community has been keen to involve refugees in elections that will shape the future of these entities.

#### Freedom of conscience

19. The holding of a political opinion is naturally the precursor to any political activity, but does not constitute external conduct in itself. Therefore, this right is not relevant in the current discussion.

#### Freedom of expression

20. This is the external manifestation of the right to freedom of thought/conscience and is central to the ability of individuals to carry out any meaningful political activity. The guarantee of freedom of expression in Article 19(1) of the ICCPR is universal in coverage – aliens, including refugees, fall within its scope.<sup>13</sup> However, this right is not without limitations. As with many other provisions of the ICCPR, Article 19 explicitly acknowledges that the interests of the wider community need to be balanced against the interests of any one individual. Article 19(3) states that freedom of expression may be subject to restrictions necessary for respect of the rights and reputations of others or for the protection of national security, public order,

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<sup>11</sup> The Human Rights Committee does not appear to have done so when formulating General Comment 25 (1996).

<sup>12</sup> Apart from those whose refugee status has expired on the acquisition of a new nationality.

<sup>13</sup> The Human Rights Committee in General Comment 15 (1986) stressed that States must ensure that aliens enjoy freedom of expression to the same extent as citizens.

public health or public morals. In essence, these restrictions are not concerned with the effect of any political statements on a third State, but rather the interests of the host State.<sup>14</sup>

21. Therefore, the right of aliens to express their political opinions, whether these be on matters pertaining to their country of origin or to the host country, is not absolute. However any restrictions would appear to be the same as that for citizens given Article 2(1) which prohibits any discrimination in the enjoyment of ICCPR rights on the grounds, *inter alia*, of national origin or race. Any imposition of greater restrictions on aliens rather than on citizens would appear to constitute unlawful discrimination in the absence of any reasonable, objective justification.

22. Certain forms of expression are expressly prohibited by the ICCPR. Article 20 states that all propaganda for war shall be prohibited. Moreover “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” Accordingly, the country of asylum is under a duty to prevent any individual or political organisation, including those run by refugees, from engaging in such behaviour.<sup>15</sup>

23. The approach taken to freedom of expression in the ECHR deserves special attention. Like Article 19 of the ICCPR, Article 10 of the ECHR guarantees freedom of expression for all persons in the territory subject to restrictions necessary in a democratic society in the interests of “national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.” However, Article 16 appears to introduce further restrictions when it comes to the position of aliens. Article 16 states that nothing in Articles 10, 11 (freedom of assembly and association) or 14 (non-discrimination) prevents the imposition of restrictions on the political activity of aliens.

24. At first sight, Article 16 seems to allow rather sweeping inroads into the political rights of aliens and, in particular, their ability to express political views. Indeed it has been criticised as being in essence contrary to Articles 1 and 14 of the ECHR (guaranteeing equal rights for all).<sup>16</sup> Unfortunately the lack of case law on Article 16 leads to an uncomfortable level of uncertainty regarding the ambit of this provision. The only case of significance, Piermont v France,<sup>17</sup> is not particularly illuminating. The Court did not have to explore the nature of Article 16 because it concluded that the applicant, being a national of an EU state in the territory of another EU state whose residents took part in elections to the European Parliament of which she was a member, did not qualify as an ‘alien’ in the particular context and therefore the provision could not apply.

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<sup>14</sup> In contrast, it would seem, to the concerns behind customary international law on State responsibility for injurious activities of individuals (see paragraph 35 below).

<sup>15</sup> Article 4 of the International Convention on the Elimination of all Forms of Racial Discrimination requires States to prohibit organisations that promote racial discrimination.

<sup>16</sup> See Helene Lambert, *Position of Aliens in Relation to the European Convention on Human Rights*, Council of Europe Human Rights Files No. 8 (revised) (2001). The Parliamentary Assembly of the Council of Europe has called for the revocation of Article 16 (Recommendation 799 (1977)). (Such recommendations do not have any legal effect).

<sup>17</sup> Judgment of 27 April 1995.

25. Nevertheless, given the Court's approach to other restrictions on ECHR rights, it would seem that Article 16 must be interpreted narrowly. As one member of the European Commission of Human Rights concluded in the Piermont case, Article 16 does not give States unfettered discretion; in particular, the principle of proportionality must be respected.<sup>18</sup> The fact that no equivalent to Article 16 can be found in the ICCPR also points towards a narrow interpretation of the former. Indeed, it is arguable that Article 16 represents a rather outdated view of the limited rights of aliens, superseded by the provisions of the later ICCPR. For those States which became party to the ECHR after ratifying the ICCPR, Article 53 of the ECHR<sup>19</sup> would prevent Article 16 being invoked in order to limit pre-existing rights under the ICCPR. However, several States<sup>20</sup> ratified the ICCPR expressly reserving the right to apply the Covenant in line with Article 16 ECHR. Moreover, many States became party to the ECHR long before ratifying the Covenant.

26. It is still arguable, though, that Article 16 should be construed in a very limited fashion so as to bring it into line with the approach embodied in the ICCPR. Thus the suggestion by various commentators<sup>21</sup> that Article 16 should be interpreted as only allowing restrictions on activities directly affecting the political process, such as voting and standing for election, would appear to be sound. Such a reading would be consistent with the general thrust of the ICCPR, as it would limit voting rights along the lines of Article 25 ICCPR. Perhaps Article 16 should be seen as attempting to protect the State's discretion to restrict electoral rights given that the ECHR, at the time of adoption, contained no express provision on such rights.<sup>22</sup> The State's legitimate interest in restricting other forms of political activity that might have an adverse effect on national security, for example, is appropriately dealt with in the express limitations built in to the relevant substantive provisions of the ECHR.

### Freedom of assembly

27. The coming together of individuals is often an important prerequisite for political activity. Aliens, like citizens, benefit from the right of assembly under Article 21 of the ICCPR subject to restrictions necessary in the interests of "national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others".

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<sup>18</sup> See Lambert, *ibid.*

<sup>19</sup> Article 53 of the ECHR states: "Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any agreement to which it is a Party."

<sup>20</sup> These States include Austria, Belgium, France and Germany.

<sup>21</sup> See Harris, O'Boyle and Warbrick, *Law of the European Convention on Human Rights* (1995) at page 510 and Nuala Mole, *Problems Raised by Certain Aspects of the Present Situation of Refugees from the Standpoint of the ECHR*, Council of Europe Human Rights Files No. 9 (revised) (1997) at page 47.

<sup>22</sup> There appear to have been a variety of reasons for this omission, notably the view held by many experts that the right to political participation was outside the traditional scope of human rights and therefore outside the proper remit of the ECHR. See Steiner, *ibid.* at page 94. As mentioned above, even Article 3 of Protocol 1 to the ECHR does not include any specific guidance on eligibility to vote or stand for election.

28. As mentioned above, Article 16 of the ECHR places a specific limitation on the right of assembly guaranteed under Article 11 of the ECHR in the case of aliens. However, as noted in paragraph 26 above, in the absence of substantial jurisprudence on Article 16, perhaps the better view is that Article 16 should be read very narrowly and therefore its impact on Article 11 seems to be limited, given the restrictions built into freedom of assembly in general. As for the State's duties under Article 11, the European Court of Human Rights has noted that this consists of an obligation to take reasonable and appropriate measures to ensure that lawful demonstrations can proceed peacefully.<sup>23</sup> The imposition of unreasonable and arbitrary restrictions is prohibited.<sup>24</sup>

### Freedom of association

29. The guarantee of freedom of association in Article 22 of the ICCPR applies equally to aliens and citizens alike. This, in principle, accords refugees the right to form political organisations. However the formation or operation of such organisations may be restricted on the same grounds as Article 21. Thus, it is lawful to ban a refugee organisation that incites hatred against a particular political group in the host country where this demonstrates a risk to public order. On the other hand, the right of refugees to belong to an organisation that merely campaigns for a peaceful change of government in their country of origin would seem to be protected by Article 22.

30. The approach to freedom of association in respect of aliens under Article 11 of the ECHR is the same as that regarding freedom of assembly, discussed in paragraph 28 above. With respect to the State's ability to restrict such freedom on national security grounds, in the case of *Ozdep v Turkey*,<sup>25</sup> the European Court of Human Rights held that such action was not justified in the case of political parties that do not advocate the use of violence.

### Freedom of movement

31. Freedom of movement is guaranteed for all those lawfully within a State by Article 12 of the ICCPR subject to restrictions necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and which are consistent with other rights guaranteed by the ICCPR. This right would therefore also apply to all refugees lawfully within a State.<sup>26</sup>

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<sup>23</sup> *Plattform 'Ärzte für Leben' v Austria*, judgment dated 21 November 1988.

<sup>24</sup> *Ezelin v France*, judgment dated 26 April 1991.

<sup>25</sup> Judgment dated 8 December 1999.

<sup>26</sup> This is consistent with the approach taken in Article 26 of the 1951 Convention guaranteeing freedom of movement, to the same extent as aliens generally, only for those refugees lawfully on the territory.

### Right to privacy

32. Without any protection of privacy, an individual's ability to engage in political activity would be severely hampered. Article 17 of the ICCPR states that "no one shall be subjected to arbitrary or unlawful interference with his privacy, home or correspondence." As the Human Rights Committee has noted in its General Comment 16 (1988), Article 17 guarantees that any interference with an individual's right to privacy must be shown to be essential to those interests of society recognised by the ICCPR. Thus, a refugee is entitled to privacy, including with regard to his political life, unless interference in the form of surveillance can be justified on exceptional grounds, such as a risk to national security. Blanket surveillance of all refugees would be arbitrary and therefore unlawful.

33. By contrast, Article 8(2) of the ECHR is more specific about the grounds under which an individual's private life can be interfered with. Such interference will be legitimate if it occurs "in accordance with the law", pursues a "legitimate aim" and is "necessary in a democratic society" in the interests of national security, public safety or economic well-being of the country, prevention of disorder or crime, protection of health or morals, protection of the rights and freedoms of others.

### Peaceful enjoyment of possessions

34. Many forms of political activity are dependent on a source of financing, for example to cover the costs of publications, organising meetings. Thus the ability of an individual activist or an organisation to control funds is often of vital importance. Although the International Covenants are silent on this issue, the Universal Declaration of Human Rights does state in Article 17 that everyone has the right to own property alone or in association with others and that no one shall be arbitrarily deprived of his property. Similar provision is made in Article 1 of Protocol 1 to the ECHR.<sup>27</sup> Thus the confiscation of assets from an individual refugee or a political party would need to be objectively justified, balancing fairly the public interest against individual rights. Such confiscation may well be legitimate where, for example, it can be shown that the money is being used to support groups engaged in violent acts overseas.<sup>28</sup>

## **B. State Responsibility for Injurious acts by Individuals in its Territory**

35. In principle, where the host State is not under any obligation to permit certain forms of activity by refugees, it has discretion to allow the conduct in question. However, such discretion is limited by any obligation on the State under customary international or treaty law to constrain the activities of aliens.

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<sup>27</sup> Article 1 of Protocol 1 to the ECHR states: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject of the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

<sup>28</sup> See the discussion of subversive activities in para. 41 below.

## 1. *Treaties of Friendship*

36. Certain bilateral or regional treaties of friendship obligate the States concerned to limit the political rights of exiles in their territory<sup>29</sup> or to prevent foreigners on their soil from engaging in subversive acts.<sup>30</sup> However, such obligations should be read in the light of the human rights commitments of the States concerned.

## 2. *Customary International Law*

37. It is clear that the granting of asylum does not constitute a hostile act for which a State owes responsibility under international law to the country of origin.<sup>31</sup> However, under customary international law,<sup>32</sup> a State is responsible for the acts of private persons, including refugees, who are on its territory where:

- (a) the individual's conduct is deemed injurious to another State, and
- (b) the State has failed to show "due diligence" with respect to regulating the individual's behaviour.

The host State is under no greater duty with respect to the acts of refugees than it would be for any other person on its soil.<sup>33</sup> Where the State breaches its responsibility, it is under an obligation to pay compensation to the injured country.

### Due diligence

38. The host State is not strictly liable for all acts of individuals within its territory – this would be entirely unrealistic. Instead it is required to act with "due diligence". Due diligence requires the host State to prevent the individual's acts where opportunity to do so exists or to apprehend and punish the perpetrators. In both cases, the State is expected to take all reasonable measures in the prevailing circumstances, but the exact approach is left to the State's discretion. Clearly liability is established where the State has actively encouraged or assisted the individual's actions.<sup>34</sup>

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<sup>29</sup> For example, see 1966 India – Pakistan Treaty of Friendship, 5 International Legal Materials 320 (1966).

<sup>30</sup> See 1978 Protocol on Non-Aggression of the Economic Community of West Africa. The interpretation of acts of subversion is also discussed in paragraphs 6 and 7 above in relation to the OAU Convention.

<sup>31</sup> See the preamble to the 1951 Convention, the preamble to the UN Declaration on Territorial Asylum 1967 (GA Res. 2312 (XXII)), as well as Article II(2) of the 1969 OAU Convention.

<sup>32</sup> The International Law Commission's draft Articles on the Responsibility of States for Internationally Wrongful Acts adopted in 2001 appears to be of little assistance here as the latter is concerned with acts carried out by, or under the direction of, organs of the State.

<sup>33</sup> See Grahl-Madsen, *The Status of Refugees in International Law* (1972), Volume II at page 147.

<sup>34</sup> Indeed, where the State has used private individuals as an indirect method of coercion calculated to influence the conduct of a third State in matters within its sovereign discretion, this may constitute unlawful intervention. This would be the case where the host State actively provides support in the way of funding and training to rebel military groups from another State with the aim that they will attack the government of the latter. See Oppenheim's *International Law* (1992) at page 434.

39. In determining whether the host State has satisfied its duty several factors are relevant, in particular the foreseeability of the individual's conduct, the resources available to the State and the physical difficulties of combating the risk.<sup>35</sup> Political constraints are not a relevant factor – otherwise States would often be able to evade their responsibilities on the grounds of domestic unpopularity.

#### Injurious conduct

40. In considering what conduct on the part of an individual could lead to responsibility of the host State, it is clear that the latter is not obliged to suppress any criticism, or indeed propaganda, by individuals in its territory about other governments. If that were the case there would be an uncomfortable conflict with freedom of expression. Moreover in the case of refugees, this would result in effectively perpetuating the oppression meted out by the country of origin.

41. However, where the refugee becomes engaged in subversive activities aimed at the violent overthrow of the government of another State, this may trigger responsibility of the host State. Insofar as a State is obliged not to take part in any activities aimed at the violent disposal of another State's regime, it is arguably under a similar duty to prevent individuals in its territory from attempting the same. In this regard, the 1970 UN Declaration on Friendly Relations is of some political, if not strictly legal, significance. It states that:

... no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.

42. As has been noted by many commentators,<sup>36</sup> however, the dividing line between legitimate criticism and improper subversion is not always clear. However, it is fairly certain that the host State must not allow its territory to be used by refugees, or indeed anyone else, to launch military actions against the government in another State. Customary law is less clear when it comes to subversive activities falling short of military action, for example simply providing moral support for an opposition movement which has resorted to violence. The situation is further complicated by the lack of clarity with regard to the impact of the principle of self-determination.

43. Self-determination has been recognised as a principle of customary law, and not just of politics, by the International Court of Justice (ICJ) in its *Opinion on the Western Sahara*.<sup>37</sup> However, the scope and impact of the right itself in the

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<sup>35</sup> For example, the International Court of Justice in paragraph 158 of its judgment dated 27 June 1986 in the *Case concerning Military and Paramilitary activities in and against Nicaragua* commented that: "Having regard to the circumstances characterizing this part of Central America, the Court considers that it is scarcely possible for Nicaragua's responsibility for arms traffic on its territory to be automatically assumed. The Court considers it more consistent with the probabilities to recognize that an activity of that nature, if on a limited scale, may very well be pursued unknown to the territorial government."

<sup>36</sup> See for example, Oppenheim, *ibid*, at page 394.

<sup>37</sup> Opinion of 16 October 1975.

contemporary, non-colonial era is still very unclear.<sup>38</sup> Certain violent activities by nationals against their government may be seen by some as an expression of their right of self-determination. However, there does not appear to be any right of third States to aid such opposition groups in their struggle against their government.<sup>39</sup> As the ICJ held in the *Case concerning Military and Paramilitary Activities in and against Nicaragua*, such assistance would amount to unlawful intervention with the internal affairs of another sovereign State.<sup>40</sup> The question remains, though, whether the host State is merely required to refrain from assisting rebel groups or whether it is actually obliged to prevent refugees from carrying out activities injurious to their country of origin when such actions are allegedly in pursuit of self-determination.

### 3. *Obligation to suppress terrorism*

44. More recently, the growth of international legal instruments dealing with the threat of terrorism has added another dimension to the question of State responsibility for subversive activities. As the definition of a terrorist act is still a source of controversy internationally, the strategy has been to adopt Conventions obliging States to punish certain egregious acts commonly agreed to fall outside the realm of legitimate political activity.<sup>41</sup> A State party to these Conventions will be required to take action against any individual in its territory, including refugees, engaged in such activity. Moreover, the adoption of Security Council resolution 1373 (28 September 2001) in response to the September 11 attacks against the USA is of significance. Paragraph 2(d) requires all UN Member States “to prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their own citizens.” Thus the host State is required to take action against any refugee involved in such activities. However, the Resolution

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<sup>38</sup> As Crawford points out in his article ‘The Right of Self-Determination in International Law: Its Development and Future’ in Alston ‘People’s Rights’ (2001), the ICJ has never had to consider this right in a non-colonial context. Article 1 of the ICCPR does not, in itself, shed much light on the practical limits of this principle. It should be noted that with regard to State practice, there seems to have been support for the idea that rebel movements struggling against colonial/alien domination (national liberation movements) were entitled to use all necessary means to rid themselves of such oppressive regimes. See, for example, General Assembly Resolution 32/36 (1977) with respect to colonial peoples in Southern Africa, which also called upon the international community to provide moral and material support to such liberation movements. However, support for such resolutions is of limited assistance in understanding the scope of self-determination in the post-colonial era.

<sup>39</sup> See Crawford, *ibid.* at page 43.

<sup>40</sup> See paragraph 108 of the judgment dated 27 June 1986.

<sup>41</sup> For example, 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1997 International Convention for the Suppression of Terrorist Bombing, 1999 International Convention for the Suppression of the Financing of Terrorism. See the Appendix to the ‘Report of the Policy Working Group on the UN and Terrorism’, 2002 (A/57/273) and UN Secretary General’s ‘Report on Measures to Eliminate Terrorism’, 3 July 2001 (A/56/160). It is worth noting though that Article 2(1)(b) of the 1999 International Convention on the Suppression of the Financing of Terrorism implicitly contains a generic definition of terrorism, albeit confined to the question of funding.

leaves “terrorism” undefined, so the circumstances in which the obligation under paragraph 2(d) is triggered remains open to debate.<sup>42</sup>

## II. FORMS OF POLITICAL ACTIVITY

45. It can be seen from the above analysis that each form of political activity carried out by a refugee probably falls into one of the following three categories:<sup>43</sup>

- (a) activities that the host State is obliged to allow;
- (b) activities that the host State is permitted to allow within its sovereign discretion;
- (c) activities that the host State is obliged to prevent.

Category (a) includes those activities guaranteed by human rights law. Category (b) covers activities which, whilst not the subject of human rights protection, are equally not prohibited in international law. This may include activities that the host State is entitled, but not obliged, to restrict under specific exceptions to its human rights commitments. Category (c) mainly covers activities prohibited in international law in order to ensure respect for the sovereignty of other States. Such prohibitions are consistent with respect for human rights guarantees.<sup>44</sup> This complex interaction of various fields of international law means that different forms of political activity deserve individual consideration.

### A. Participation in Elections

46. Refugees do not have the right to vote in elections in the country of asylum. However, there is nothing in international law prohibiting said country from enfranchising refugees if it so wishes. Similar principles apply to the question of refugees standing for election to public office in the host State.

47. In principle, international law seems to allow for conditions of residence to attach to a citizen’s right to vote and to stand for election in his country of nationality. However, there is growing acknowledgement of the special situation of refugees and the need to take into account their interest in participating in elections in their country of origin. This appears to be an area where the law is developing.

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<sup>42</sup> For a recent example of a regional definition of terrorist acts see Article 1(3) of the EU Common Position 63/2001 on the application of Specific Measures to Combat Terrorism.

<sup>43</sup> See the analysis suggested by Corliss in: ‘Asylum State Responsibility for Hostile Acts of Foreign Exiles’, *International Journal of Refugee Law* (1990) at page 181.

<sup>44</sup> As mentioned in paragraph 41 above, the right of self-determination may though be a complicating factor.

## **B. Participation in Political Organisations with a Peaceful Agenda**

48. Given the reasons for which individuals become refugees, it is unsurprising that many of them will become politically active while in exile. Campaigning for change in their country of origin may, indeed, be the only way of increasing the chances of being able to return home eventually. In general, participation in such political organisations is guaranteed by a refugee's human rights, in particular the right to freedom of expression and association. If the situation were otherwise the "oppressive system in their country of origin would be watertight".<sup>45</sup> Such organisations are entitled to carry out a wide range of activities, including publicising their views through the media, holding peaceful demonstrations<sup>46</sup> and sending representatives to highlight their concerns before governments and international organisations. Moreover, host State toleration of, or indeed support for, such organisations will not place that State at risk of violating its obligations against any State whose authorities are the subject of the group's criticism.

49. Similarly, refugees are entitled to join organisations concerned with domestic politics in the host State, for example those that wish to promote the position of foreigners in society. The fact that refugees do not have the right to vote or stand in elections does not mean that they have no right to express their views on matters of concern in the country in which they reside.

## **C. Participation in Organisations which Promote Hatred or War**

50. However, where political organisations are involved in spreading hatred of a particular group on national, racial or religious grounds such as to constitute incitement to violence or discrimination, the host State is obliged under Article 20 of the ICCPR to prevent them from doing so.<sup>47</sup> A similar obligation exists where a political group advocates a war of aggression contrary to the restriction on the use of force in the UN Charter.<sup>48</sup> There is no violation of the refugee's rights if he or she is prohibited from joining such organisations.

## **D. Participation in Organisations which Provide Support to Persons Involved in Subversive, Violent Acts against another State**

### Political/Moral support

51. Here the boundary between legitimate and illegitimate conduct becomes rather blurred. An organisation of exiles (which in some cases may even designate itself as a 'government in exile') may well support the overthrow of the regime in the country of origin or indeed another third state. Where the support consists merely of publicly backing groups involved in an armed struggle, it is questionable whether the host

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<sup>45</sup> See Grahl-Madsen, *ibid.*, Volume II at page 147.

<sup>46</sup> However, the State is entitled to require organisations, including those run by refugees, to obtain permission first before holding a public demonstration. However, if permission is refused this must be justifiable under one of the specified grounds of restriction in the relevant human rights instrument.

<sup>47</sup> Article 4 of the International Convention on the Elimination of all Forms of Racial Discrimination is also relevant. See paragraph 22 above.

<sup>48</sup> See the Human Rights Committee's General Comment 11 (1983) on Article 20 ICCPR.

State is obliged to crack down on such an organisation. The situation would be different if the organisation was clearly advocating full-scale war between States, as then the host State would be obliged to prevent such views being aired.<sup>49</sup> Short of that its activities must be tolerated, unless the authorities can show that in some way the group poses a threat to the national security or public order of the host State. If that is indeed the case, the host State would be entitled to take necessary measures proportionate to the risk. Intervention could, for instance, be justified where calls for persons to commit violent acts in another State may inflame a section of the host population because of ethnic affiliations.

52. The approach of the European Court of Human Rights in this matter is illuminating.<sup>50</sup> In determining whether restrictions on freedom of expression are justified under Article 10(2) of the Convention,<sup>51</sup> the Court has emphasised that a narrow interpretation is required given that this right is a lynch pin of any healthy democratic society. At issue is whether in the circumstances the measure was proportionate to the legitimate aim pursued and whether the State's reasons were relevant and sufficient.<sup>52</sup> In balancing the individual's interest against the needs of society, the following factors are significant – the nature and severity of the restriction, duration of restriction, public interest for and against expression, nature of the expression (tone, balance, relevance to public debate).

53. When it comes to statements that may threaten national security and public safety the Court seems to be influenced by the potential impact of the statement in question. For instance in *Zana v Turkey*,<sup>53</sup> the Court accepted in principle that arresting and prosecuting an individual for making statements supportive of the illegal terrorist organisation, the PKK, could be justified on the grounds of national security and public safety. However, in order to determine whether such action was necessary and proportionate (and therefore in line with Article 10(2)), the Court assessed the likely impact of these statements. The applicant had been Mayor of a key city in a region being wracked by violence at the relevant time. Although his statements were ambiguous as to whether he supported the violence, in the context and given his public position, the Court considered that his pronouncements could have exacerbated the unrest. Accordingly the measures taken against him were justifiable.

54. Thus, where an organisation's support for a particular movement in a third State is likely to cause violence in the host State (for example, because of ethnic affiliations or the effect on regional stability), arguably the host State has discretion to take action against that group. Prohibiting the making of public statements may suffice, but in more extreme circumstances it may be necessary to shut down the whole organisation.

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<sup>49</sup> See paragraph 48 above.

<sup>50</sup> Although the Court has not thus far considered the interaction of Articles 10 and 16 of the ECHR, its approach to the restrictions permitted under Article 10(2) is in itself instructive.

<sup>51</sup> Article 10(2) states in relation to the freedom of expression: "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of other,..."

<sup>52</sup> See the Court's judgment in *Sunday Times (No. 2) v UK*, 26 November 1991.

<sup>53</sup> Judgment dated 25 November 1997.

### Humanitarian assistance

55. The exiled group may choose to support persons engaged in violence abroad by providing them with humanitarian aid, that is supplying them with medicine, clothing and basic food supplies. On the face of it this may seem rather subversive as such material assistance is arguably of greater value to the recipients than mere political/moral support. However, in the *Case concerning Military and Paramilitary activities in and against Nicaragua*, the International Court of Justice held that purely humanitarian support given by a State to rebels fighting in another State was not necessarily a violation of international law.<sup>54</sup> However, in order to qualify as humanitarian, such assistance must be solely aimed at alleviating human suffering or protecting human life, and it must be given without discrimination. The giving of ostensibly humanitarian aid to only one party of an internal conflict could actually constitute unlawful interference in the affairs of another sovereign State.

56. It is not clear whether similar reasoning would necessarily apply where the host State allows refugees in its territory to send humanitarian assistance to persons fighting against the government in their country of origin. If assistance was being given to all needy victims of the internal strife in that State, then the host State would arguably not be under any duty to prevent such activities. Indeed, it is arguable that aid to only one side of the conflict may still be permissible, and non-discriminatory, in circumstances where the motivation is clearly humanitarian and the other party is not in similar need of assistance. However, where aid is only being given to those associated with the rebel movement and the objective appears to be to strengthen their fighting capability, rather than relieve suffering, this may be construed as a form of subversion that the host State must act against.

### Financial/logistical support

57. Where the exiled group provides significant financial or logistical support (information-gathering, equipment) to individuals involved in a violent struggle against a government in a third State, this would arguably amount to subversive behaviour. The host State is obliged to take reasonable measures to crack down on such activity, subject to any considerations relating to the right of self-determination. Moreover, where the recipients of such support are engaged in terrorist activity, the host State may well be under an obligation to prevent and punish such activity pursuant to UN Security Council Resolution 1373 (2001).

58. Proscribing fundraising activities or the transfer of funds to the intended beneficiaries should not necessarily be problematic in terms of human rights commitments. Although there is no right to peaceful enjoyment of property in the ICCPR, Article 17 of the UDHR prohibits arbitrary interference with private property. Preventing funds from being channelled to armed non-governmental movements abroad is arguably in the public interest and therefore not arbitrary. As for banning the giving of logistical support, no human rights obstacle appears to exist.

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<sup>54</sup> See paragraphs 242-243 of the judgment dated 27 June 1986.

59. A decision on the part of the host State to shut down such organisations altogether could be problematic, in so far as the freedom of expression and right of association of its members are affected. Where the organisation is also involved in legitimate political activity, for example commenting on public affairs in another country, not allowing it to pursue such activities could be unlawful unless a credible risk to national security or public safety in the host State can be established.

#### Organisations which are involved in violent acts against a third State

60. This is the most extreme form of behaviour in which refugees could take part.<sup>55</sup> The host State is arguably under a customary law duty to take reasonable measures to prevent persons in its territory from using it as a launch pad for violent incursions into another State. Moreover, it may well also be under a treaty obligation to punish persons in its territory who have committed violent acts against another State if the conduct falls within the scope of one of the Conventions concerned with international terrorism. An obligation to prevent and punish violent acts against another State by a refugee may also flow from UN Security Council Resolution 1373(2001).

61. As mentioned above, it is unclear to what extent considerations of self-determination absolve the host State of any responsibility for such acts being carried out by refugees in its territory. It may be worth recalling the treatment of rebel movements such as SWAPO (the South West African People's Movement). While in exile in Angola, SWAPO was recognised as the legitimate representative of the Namibian people by much of the international community. Thus, despite SWAPO being openly involved in a violent conflict against the government of Namibia, it was allowed to organise itself in Angola, and indeed aid to Namibian refugees was officially channelled through SWAPO. In this instance it seems to have been accepted that tolerating the activities of SWAPO in Angola did not incur responsibility on the part of the host State for SWAPO's violent activities against Namibia. Perhaps this was a reflection of the strong international push for decolonisation at the time. Similarly military units of the African National Congress were allowed to operate from many African countries. Again this may have reflected the belief that, given the apartheid regime in South Africa at the time, the ANC was involved in a legitimate struggle for national liberation.

### **III. OVERVIEW OF CURRENT STATE PRACTICE**

#### **A. Voting Rights**

##### In host State

62. As one would expect, given the historic position of non-citizens, the vast majority of States do not give aliens, including refugees, the right to vote. Enfranchisement is

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<sup>55</sup> Where combatants are using the host State as merely a resting place from military activity in their country of origin, they do not fall within the definition of refugee. Such activity is therefore not relevant to the issue considered in this paper. It should be noted, though, that refugee status is not compatible with the taking up of arms.

still considered to be a privilege of citizenship, reflecting the allegiance between an individual and his/her State of nationality. In this context, the United Kingdom and New Zealand stand out, as these countries do allow certain aliens the right to vote in all elections, including those at national level. For example in the United Kingdom, for historical reasons, all resident Commonwealth and Irish citizens are able to vote. This would seem to cover a significant portion of the refugee community.

63. A few States have permitted foreign residents to vote in local elections, considering that they have a legitimate interest in decisions made at that level. This is the case in Ireland, Sweden, Iceland, Norway, Denmark, Finland, the Netherlands, and Peru. However, this is a very recent development, in the case of Western Europe stemming from the 1980s.<sup>56</sup> In many of these countries refugees benefit from the voting rights given to foreign residents.<sup>57</sup> By contrast, refugees are unlikely to benefit from the local election voting rights guaranteed to citizens of EU States living in another EU State.

64. The situation in France is a reminder of how controversial the question of voting rights for foreigners can be. Although François Mitterand advocated as far back as 1982 that the right to vote in local elections be extended to foreign residents, this reform has never taken place. In large part this is due to the sensitivity with regard to the impact such a change would have on the constitutional position of citizens established by the French revolution. Despite that, foreign residents are allowed to vote and stand in elections to a variety of local bodies dealing with social institutions, such as school and housing boards.<sup>58</sup>

65. In a significant number of States, the authorities have made formal arrangements for non-citizens to participate in domestic political life even if they do not have the right to vote. The nature of such arrangements varies. For example, in the Netherlands, the National Consultation Structure for Minorities allows for a two-way dialogue between ethnic minority groups and the Government. It is chaired by the Minister of the Interior and discusses matters of policy that he/she places on its agenda. Several minority groups (including refugee organisations) participate in this body, and they receive government funding. Such groups have direct contact with Parliamentarians.

66. By contrast in the United Kingdom, there is no provision for special group representation in the parliamentary process. However, there is no general restriction on individual's forming groups along national, ethnic or religious grounds. The Commission on Racial Equality is a government-funded but independent body, charged with promoting race relations and equal treatment. It maintains relations with a large body of immigrant groups but its Commissioners are individuals chosen on their own merit rather than as representatives of particular organisations.

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<sup>56</sup> See 'Political and Social Participation of Immigrants through Consultative Bodies', Council of Europe, 1999.

<sup>57</sup> See 'Position on the Integration of Refugees in Europe', European Council for Refugees and Exiles, December 2002. However refugees would have to satisfy the legal requirement of a certain length of residence.

<sup>58</sup> See Council of Europe (1999), *ibid.*

67. It should be noted that such arrangements are not in reality an alternative to voting rights. Firstly, such arrangements are often established in States where foreign residents have some voting rights. Secondly, consultative arrangements are a mechanism for channelling the collective views of immigrants/refugees, either through organisations or representative individuals. Unlike voting, such structures do not give individuals a true opportunity to make their own voice heard.

#### In country of origin

68. Practice with regard to participation in elections of expatriate citizens is, as one would expect, extremely varied. On the one hand, States such as the US and the UK permit expatriates to vote in national elections.<sup>59</sup> By contrast, legislation in India guarantees the right to vote only to resident citizens. The systems in Bosnia and Herzegovina (BH) and in Kosovo are of particular interest in so far as refugees are concerned.

69. Under Article IV of Annex 3 to the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement), any citizen aged 18 or over of Bosnia and Herzegovina, irrespective of current residence, is entitled to vote in elections there as long as he or she was resident in the country at the time of the 1991 census. Article IV acknowledges the right of refugees to vote, noting that this signifies an intention to return. The Agreement does not set any cut-off period after which those citizens, including refugees, resident abroad will lose their eligibility to vote. Indeed Article 323 of the 2000 Bosnian National Election Rules permits Bosnian refugees abroad to register to vote even if they failed to register for earlier elections held pursuant to the Dayton Agreement. Such persons are entitled to register to vote in the municipality in which they were resident on 6 April 1992. Similarly, under the Constitutional Framework for Kosovo,<sup>60</sup> out-of-country voting is permitted. UNMIK Regulation No. 2002/11 provides for persons from Kosovo living abroad and recognised as refugees after 1995 to be eligible to vote in municipal elections.

70. Thus, although in general, States do not appear to be under an obligation *per se* to grant all non-resident citizens the right to vote in national elections, in the situations of Kosovo and Bosnia and Herzegovina it appears that the international community considered participation by refugees desirable. Such participation reflected the massive nature of the exodus; if refugees were excluded from the democratic process, its legitimacy would be compromised. Moreover, in both Bosnia and Herzegovina and Kosovo, it was hoped that political developments would allow refugees to return in the near future, therefore their stake in the political process was extremely high. It should also be noted that participation of refugees in Bosnian elections is still permitted now, over five years from the adoption of the Dayton Agreement.

71. In the situations mentioned above, refugee confidence in the election process was facilitated by two factors. Firstly, the process was supervised by an international body. Secondly, the context was a process of fundamental political change following

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<sup>59</sup> In the UK, there is a cut-off date of 15 years from leaving the country (sections 1 and 3 of the Representation of the Peoples Act 1985 as amended).

<sup>60</sup> Annexed to UNMIK (UN Mission in Kosovo) Regulation 2001/9 pursuant to Security Council resolution 1244 (1999).

a period of armed conflict in the country of origin. Where such conditions do not exist, it is less likely that refugees will be willing to participate in elections for fear of placing themselves or their families at risk of harassment and persecution from the authorities in the country of origin.

## **B. Other Aspects of Political Activity**

72. As for the ability of refugees to express publicly their political views, either individually or in a group, this depends greatly on the extent to which freedom of expression is generally respected in a State.<sup>61</sup> In many countries, no distinction tends to be drawn between the right of political expression of citizens and that of aliens.<sup>62</sup> However, there are still a significant number of States where aliens are prevented from freely expressing their views. For example, it was only in 1992 that the South African courts overturned as discriminatory, and therefore unconstitutional, legislation prohibiting aliens from taking part in speeches and discussions at public meetings about the internal politics of Bophutswana.<sup>63</sup> In Ethiopia, for example, refugees are prohibited from taking part in any political activity that may be construed as contrary to the security and stability of their country of origin.

73. States are clearly entitled to restrict the freedom of expression of refugees where there is a risk to the national security<sup>64</sup> or public order of the host State. However such justification does not seem to lie behind some of the examples of state practice, particularly where whole groups of aliens (including refugees) have been subject to restrictive measures apparently on the basis of nothing more than their nationality or ethnicity. Often the aim appears to be the preservation of good relations with the country of origin of the refugees. This would appear to be the case with those African countries which take a very broad view of Article III of the OAU Convention.<sup>65</sup> Indeed, as one NGO has commented, the attitude of such States in relying on that provision unfortunately appears to reflect an attitude “in direct conflict with the freedom of expression provisions in international human rights treaties and the African Charter, with which the refugee instruments are supposed to be in harmony.”<sup>66</sup> For example, refugees have been expelled from Zimbabwe simply for criticising the regime in the host country or in their country of origin. As discussed

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<sup>61</sup> With respect to the situation in African States, Article 19 in their report, ‘Voices in Exile: African Refugees and Freedom of Expression’ (2001) noted: “Not surprisingly, those governments that have a generally poor record of respect for human rights are more likely to be restrictive of refugee rights. But this is not universally the case...”

<sup>62</sup> According to Tiburcio in *The Human Rights of Aliens under International and Comparative Law* (2001), many countries have legislation granting freedom of speech to everyone. Examples given include Belgium, Canada, Chile, USA, Mexico, Liberia, Italy, Germany, Poland, Thailand and Turkey. States where legislation expressly limits such rights to nationals include Algeria, Cuba and India.

<sup>63</sup> See the judgment in *Nyamakazi v President of Bophutswana* 1992 (4) SA 540 (BGD).

<sup>64</sup> In the current climate of concerted action against terrorism, there is clearly a risk that States may discriminate against certain refugees simply on the basis of their particular ethnicity or nationality, rather than because of reliable evidence that a particular individual poses a risk to the national security/public safety of the host State. See UNHCR, ‘Addressing Security Concerns without Undermining Refugee Protection’ (2001) and Amnesty International, ‘Rights at Risk’ (2002).

<sup>65</sup> See paragraph 7 above.

<sup>66</sup> Article 19, *ibid.*

above where such activity is likely to cause violence in the host country, States have sufficient discretion to take necessary action. However, other peaceful political activities should be tolerated and not seen as inconsistent with the humanitarian nature of asylum.

74. Again, although many countries respect the rights of assembly and association for aliens, there are instances where such rights are severely restricted or dependent on the nationality of the refugee. For example, in Tanzania, there is a legal prohibition on meetings of more than five refugees. This tends to be enforced for all gatherings of a political nature except for those to which the government is sympathetic. By contrast, although aliens are prohibited from being active in political parties in India, in practice peaceful demonstrations are tolerated.<sup>67</sup>

75. The requirement in many countries for refugees to remain in designated camps can exacerbate the situation with regard to political activity. On the one hand, it can make it easier for the authorities to enforce restrictions on legitimate political activity (for example by monitoring interaction between refugees). At the same time, it can fuel tensions between refugees of different political outlooks. For example, in the Great Lakes refugee crisis of the 1990s, victims of persecution often found themselves living in the same camps as powerful political forces from their home country who continued to exercise repressive control over them.<sup>68</sup> This level of intimidation not only made it impossible for refugees to express their genuine political views, but in some cases led to violent attacks or forced conscription into military groups.<sup>69</sup> Instances of extremist groups being able to indulge in “hate speech” propaganda from within refugee camps have also been reported.<sup>70</sup>

76. In many countries, refugees (like citizens) are prohibited from providing finances to political groups that they support but which are considered terrorist by the host State. For example, in the United Kingdom section 15 of the Terrorism Act 2000 criminalises, *inter alia*, the receiving of money intended to be used by the LTTE (Tamil Tigers movement in Sri Lanka).<sup>71</sup>

#### IV. CONCLUSIONS

77. The exercise of certain political rights is fundamental to the human dignity of refugees. Although they have no right to vote in their country of asylum, their refugee status does not preclude them from being able to express political opinions and

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<sup>67</sup> See Tiburcio, *ibid.*

<sup>68</sup> Article 19, *ibid.* give the example of Rwandan camps in Eastern Zaire where Rwandan forces and Hutu militia exercised political control over the refugees housed with them, suppressing any alternative political viewpoints.

<sup>69</sup> See Crisp, ‘Africa’s Refugees: Patterns, Problems and Policy Challenges’, UNHCR Working Paper No. 28 (2000) at page 11 on similar problems in Kenyan refugee camps.

<sup>70</sup> See Article 19, *ibid.* at page 25 describing the activities of anti-Tutsi RTLM radio in refugee camps.

<sup>71</sup> As a result of the LTTE being designated as a ‘proscribed organisation’ by the Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2001.

engaging in a meaningful political life. Indeed, refugees, like other aliens, are entitled to the same freedom of expression, association and assembly as citizens. The granting of political rights is, however, often seen as a threat to the national cohesion of the country of asylum or to its relations with the country of origin. This need not be the case. International law also makes provision for protecting the legitimate security concerns of the country of origin and respecting the sovereignty of other States. In doing so, it does not discriminate between refugees and any other person in the country of asylum.

78. It is important that refugees are made aware of their responsibilities to their country of asylum and the legitimate limits that may be placed on politically-motivated behaviour. Yet many of the risks associated with political activity of refugees should be acknowledged as primarily a problem caused by a small minority of persons, in many cases of dubious eligibility to refugee status. The behaviour of a few does not justify excessive restrictions placed on the innocent majority.