

# Testing the Faithful:

## Religion and Asylum Summary Results of Survey

A Briefing Paper Prepared for the  
Roundtable on Religion-based  
Persecution Claims

November 2002

# Religion and Asylum

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## Lawyers Committee for Human Rights

### ABOUT US

#### **Lawyers Committee for Human Rights**

Since 1978, the Lawyers Committee for Human Rights has worked in the U.S. and abroad to create a secure and humane world by advancing justice, human dignity and respect for the rule of law. We support human rights activists who fight for basic freedoms and peaceful change at the local level; protect refugees in flight from persecution and repression; promote fair economic practices by creating safeguards for workers' rights; and help build a strong international system of justice and accountability for the worst human rights crimes.

William D. Zabel is Chair of the Board of the Lawyers Committee, Tom Bernstein is the President of the Board, Michael Posner is the Executive Director, Michael McClintock is the Director of Program, and Elisa Massimino is the Director of the Washington, D.C. Office.

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## **Overview of Survey on Religion and Asylum**

Around the world, people are persecuted because of their religions and beliefs. Some are forced to flee their home countries and seek refuge in other states. The international refugee protection regime – a regime based upon the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol -- recognizes that refugees who flee from religious persecution are entitled to protection. Yet many victims of religious persecution face significant hurdles as they strive to seek asylum. At the same time, religious persecution claims have become even more complex and varied in the years since the 1951 Convention was initially entered into in the wake of World War II.

In preparation for an October 2002 Expert Roundtable on Religion-based Persecution Claims,<sup>1</sup> the Lawyers Committee for Human Rights distributed a simple survey to asylum practitioners in the U.S., Canada and Europe.<sup>2</sup> The purpose of the inquiry was to learn, from the perspective of asylum seekers and their representatives, the issues that asylum seekers have encountered in seeking asylum based on religion. While the vast majority of the 80 responses received were from U.S. practitioners, the Lawyers Committee also received responses from practitioners in other countries, including Canada and Finland. The responses concerned adjudications of asylum claims as well as refugee status determinations made in connection with decisions to resettle refugees.

The responses to the survey highlight many, but by no means all, of the issues that are sometimes presented in the course of the adjudication of asylum claims based on religion. In order to illustrate some of these issues, this paper includes case profiles which are based on the information provided to us in response to the survey.

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<sup>1</sup> The Roundtable, which was held in Baltimore, Maryland on October 30-31, 2002, was co-sponsored by the United Nations High Commissioner for Refugees (UNHCR) and Church World Service. *See* Thomas Abraham, "CWS Cosponsors Roundtable on Religious Persecution, Refugees, Nov. 4, 2002," available at [www.churchworldservice.org/news/](http://www.churchworldservice.org/news/). The Roundtable brought together experts who examined issues relating to religion-based refugee claims.

<sup>2</sup> A brief discussion of the methodology of the survey, and a copy of the questionnaire, is included as Appendix A to this report. The Lawyers Committee extends its thanks to all those who responded to the survey.

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#### *Summary of Survey Results*

Asylum seekers who seek protection based on religious persecution repeatedly reported being questioned or quizzed about their religions. This type of questioning was reported by individuals whose asylum claims were based on a religious conversion, as well as by asylum seekers who reported that they had always been members of a persecuted religious group.<sup>3</sup>

In some cases, asylum seekers reported that adjudicators sought levels of information and detail that the asylum seekers did not, for a variety of reasons, have. The explanations for this lack of knowledge varied, but were compelling. Asylum seekers who had not had a high level of education or schooling in their religion knew basic information about their religions, but often did not have knowledge of a more complex, formal or obscure nature. For instance, a Tibetan Buddhist monk was asked the name of the founder of his particular order – information that an expert later explained would be known by a religious scholar, but would not generally be taught to all monks. Similarly, another asylum seeker knew – and recited by heart for the adjudicator -- the words of “The Lord’s Prayer” but knew the prayer as “The Our Father” rather than by the formal name that is sometimes used for the prayer in the English language. Some asylum seekers have been asked to recite, and in some cases have been challenged if they cannot recite, various facts such as the names of all of Jesus’ disciples (posed to a Chinese Christian) or the names of all of the 12 imams (posed to an Iraqi Shi’ite Muslim).

Asylum seekers also reported that because of the repression of their religion, and the accompanying restriction on, or lack of, religious schooling, they had not been educated in their home countries regarding certain aspects of religious history or formal observances.

Adjudicators, in a number of cases, seemed to think there was only one “correct” answer for a question that actually did not have one “correct” answer. For instance, in

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<sup>3</sup> In a comprehensive paper prepared for the Roundtable, Karen Musalo explained: “Adjudicators have adopted various approaches in their attempts to evaluate the truthfulness of the claim, and the sincerity of the belief. A favored approach is to test the applicant on knowledge of his or her religion. Also in favor is an attempted assessment as to whether the applicant’s acts are consistent with the claimed religious belief or affiliation.” Karen Musalo, “Claims for Protection Based on Religion or Belief; Analysis and Proposed Conclusions,” October 2002, at 81.

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one case a Tibetan Buddhist monk was denied asylum after he told an asylum officer that he carried 113 prayer beads, when the adjudicator believed that 108 beads was the only correct answer.

In other cases, the information that the adjudicator was seeking was either incorrect or was inaccurate because it was based on the adjudicator's own knowledge of the religion as practiced in the adjudicator's own country or on the religion as practiced in a different region, or different branch of the religion. In one case, for instance, asylum was initially denied to a Jewish asylum seeker from the former Soviet Union because he could not describe certain motions, that were described in a U.S. publication on Judaism. In another case, an adjudicator challenged a Tibetan Buddhist's failure to identify the "three main books" -- a concept that was relevant to Buddhism as practiced in India, but not to Tibetan Buddhism.

We received several reports of cases in which adjudicators asked asylum seekers to demonstrate their faith: by reciting doctrine such as the 10 Commandments (a request made to an Iraqi Chaldean), by demonstrating prayers (in one case for a half hour, until the translator finally objected), and, in another case, by requesting that the asylum seeker, a Tibetan Buddhist, demonstrate the manner in which he would prostrate himself before entering a Buddhist temple.

In examining whether the asylum seeker's treatment amounts to persecution, some adjudicators seem to consider the fact that the applicant's right to practice his or her religion freely was or would be impinged if returned. Others did not. One adjudicator told an applicant -- a Chinese Christian -- that if she would just be quiet about her religion if she was returned to her home country, she would be fine.

In reviewing the information provided by practitioners, it is clear that the tone and the manner of questioning are often critical factors in leading the asylum seeker to view the conduct of the adjudicator as inappropriate. Does the adjudicator indicate in tone or words that he or she doubts the applicant's sincerity? Does the adjudicator raise his or her voice when the asylum seeker does not know the answer to the question posed? Does the adjudicator offer his or her own opinion about the sincerity of the applicant's faith?

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One refugee, who insisted that he did not think the adjudicator's comments or questions were inappropriate, explained that "I think it's their job to be mean."

Some adjudicators have offered their own opinions about the conduct of asylum applicants with respect to their religions and the consistency of their conduct with the tenets of their religions. For instance, a U.S. immigration judge concluded that a Somali Muslim's conduct – in fleeing for his life without burying the bodies of his murdered family members – was somehow inconsistent with his religious obligations. An INS trial attorney, in another case, accused a Christian convert of not being a good Christian because he was not willing to die for his faith.

On the other hand, in some other cases, practitioners and refugees reported that they encountered adjudicators who were respectful in their questioning or receptive to learning about a religion with which they had previously not been familiar. For instance, one practitioner reported that U.S. immigration judges were generally receptive to learning about religions that they are not familiar with. Refugees who were interviewed, by UNHCR and/or by U.S. immigration officers, in Ethiopia and Egypt reported being treated fairly in their interviews.

Although positive comments and examples were sought by the survey (which requested information about both inappropriate and appropriate questioning, and asked for examples of constructive and appropriate ways in which religious issues have been addressed in the course of adjudications), the majority of responses related to incidents in which the conduct of the adjudicator or other government representative was believed, by the individual responding to the survey, to be inappropriate. This does not mean that most adjudicators do not handle religious claims appropriately. To a certain extent, attorneys who are troubled by the conduct of a determination may be more likely to take the time to respond to a survey and voice their concerns, than those who have positive information to share. At the very least though, it is clear that while some decision-makers handle religious claims appropriately, others do not.

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#### ***Findings and Recommendations***

From the information gathered in the course of the Lawyers Committee's survey, it is clear that formal guidelines could help to ensure that religion-based asylum claims are assessed in an appropriate manner.<sup>4</sup> UNHCR and states, including the United States, should take steps to prepare and issue such guidelines. Guidance is needed not just with respect to legal standards, but also with respect to (1) the manner of questioning, (2) the need for additional training and resources on religions and religious issues, and (3) religious, cultural and gender sensitivity.

Also, from the individual case profiles, it seems clear that whether or not an asylum seeker can pass a "quiz" on the teachings or details of his or her religion does not necessarily prove or disprove that he or she adheres to, or is perceived as adhering to, a particular religion.<sup>5</sup> Indeed, in the cases we learned of, which generally involved asylum seekers who were ultimately recognized as refugees, there were typically valid explanations for the asylum seeker's inability to pass the "quiz." This kind of a "quiz" approach, which can lead to inaccurate conclusions and can unfairly penalize asylum seekers who have not had access to religious education, should be abandoned.

Some alternate, and more appropriate, approaches that were identified included using narrative questioning, eliciting detailed information about the asylum seeker's practice of religion (for example, describing in detail the asylum seeker's place and manner of worship) and experiences of persecution, and seeking corroborating information in those cases where it is available. During the Roundtable discussions, some experts recommended the use of narrative questioning, including open-ended questions that allow asylum seekers to explain the personal significance of their religion to them, the practices they have engaged in, and other facts relating to their persecution. In more complex cases, an adjudicator can seek out expert testimony, including the testimony of

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<sup>4</sup> Many of the participants in the Roundtable discussions also urged that guidelines be issued on the handling of religious persecution claims.

<sup>5</sup> In an expert paper prepared for the Roundtable, T. Jeremy Gunn concluded that "Claimants knowledge about the doctrines, rituals, and histories of their religions *may or may not* be relevant to the merits of their claims of persecution." T. Jeremy Gunn, "The Complexity of Religious Persecution," October 24, 2002, at 52.

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an expert who could confirm, based on his discussions with the individual, the veracity of the individual's statements.

States and UNHCR should provide adjudicators with extensive information on religions and religious persecution. Adjudicators should be directed to consult this information, and should be afforded sufficient time to consult this information and conduct additional research if necessary. Adjudicators should not be consulting their own personal resources and relying on their own understandings of how they think a particular religion is practiced.<sup>6</sup>

In some cases, adjudicators' misunderstandings about religion are only cleared up after an asylum seeker's legal representative submits testimony from an expert on the particular religion. But many asylum seekers cannot afford to retain legal counsel or expert testimony. As a result, in some cases, this kind of confusion is never cleared up. While adjudicators should be encouraged to seek more information, including expert testimony, they should also consider the fact that many genuine refugees may not have the resources to obtain this kind of evidence.

Adjudicators should also be provided with guidance on the legal aspects of religion-based claims. Guidance on the complex legal issue of "nexus" (the requirement that the feared persecution be on account of religion, race, nationality, political opinion, or social group membership) would be particularly helpful as those who are persecuted for reasons of religion are sometimes denied asylum because of unduly restrictive interpretations of this legal requirement.<sup>7</sup> Thorough legal guidance on religion-based claims would better inform adjudicators so that they would make determinations consistent with the law. It might also help to make clear to adjudicators that individuals have the right, under international law, to freely practice their religions, and might

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<sup>6</sup> In his paper, Jeremy Gunn urges, as a principal recommendation from his research, that "perhaps more than in any other area of refugee law, adjudicators need to be careful and not arrive at conclusions based solely upon their own experiences." *Id.* at 4.

<sup>7</sup> Karen Musalo, in her paper, examines the nexus issue and its impact on religion-based claims, and offers some useful suggestions concerning this requirement. *See* Musalo, "Claims for Protection Based on Religion or Belief," at 61-81.

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discourage inappropriate comments to the effect that asylum seekers should just “keep quiet” about their religious beliefs.<sup>8</sup>

As noted above, guidance should also be provided with respect to the tone and manner of questioning. Questioning on the issue of religion – indeed questioning in general – should be conducted in a sensitive and respectful manner. Raised voices, and the proffering of comments about the individual’s sincerity or commitment to his or her religion, are not appropriate. Neither are requests for demonstrations of prayers or practices.

In addition to working to improve the fairness of asylum adjudications for asylum seekers with religious and other claims, states should also lift the many barriers that limit access to asylum. As noted below, many of these barriers deprive genuine asylum seekers, including those with religion-based claims, from obtaining asylum or refugee status.<sup>9</sup>

#### ***A Note on Barriers to Asylum***

Asylum seekers, including those who have fled from religious persecution, often face a barrage of hurdles before they are even allowed to file formal applications for asylum. These hurdles, like the substantive adjudicative issues that are the focus of this paper, can prevent a deserving refugee from receiving asylum. In the U.S. for instance, various provisions of the law limit an asylum seeker’s ability even to access the asylum system. These provisions include expedited removal (a summary process which gives airport and border inspectors the authority to order deportations, a power previously entrusted only to trained immigration judges), a one-year filing deadline on asylum claims, and a provision that will, if the U.S. signs a proposed “safe third country”

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<sup>8</sup> For an overview of the right to freedom of religion under international law, *see id.* at 9-13 .

<sup>9</sup> Representatives of various faith-based groups have urged that these barriers be lifted. *See, eg.*, “Statement from Faith Representatives Following April 30, 2001 Tour of the Wackenhut Detention Facility,” issued by National Council of Churches, available at [www.nccusa.org/news](http://www.nccusa.org/news). The National Association of Evangelicals, in its May 2002 Statement of Conscience, called for enactment of the Refugee Protection Act, legislation seeking to eliminate barriers to asylum. The Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States called for the repeal of expedited removal in its final report to the Secretary of State. *See Final Report of the Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States*, May 17, 1999 at 45.

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agreement with the Canadian government, limit the ability of asylum seekers who transit through Canada to apply for asylum in the United States. That agreement will also limit access to the Canadian asylum system for thousands of asylum seekers who transit through the U.S. with the intent of seeking refuge in Canada. Across Europe, access to asylum has also been restricted by a patchwork of accelerated procedures that prevent asylum seekers from applying for asylum if they have passed through “safe-third countries” or in some cases if they are nationals of countries that are categorized as “safe.”

In Australia and in the U.S., asylum seekers who seek asylum at borders and airports are subject to mandatory detention. Australian detention practices, including its detention of children, have been internationally condemned as inconsistent with international law. Under the U.S. detention system, arriving asylum seekers are mandatorily detained in detention facilities or jails across the country. While they are technically eligible to apply for parole, many are detained for months or longer while they wait for their asylum cases to be resolved.

Among the cases taken up by the Lawyers Committee’s *pro bono* legal representation program, for example, are cases of asylum seekers who fled religious and other forms of persecution – including a Sudanese Christian, an Iraqi Shi’ite Muslim, and a Tibetan Buddhist – and who were detained for months in the U.S. while their asylum cases were pending. Just a few weeks ago, another client of the Lawyers Committee’s *pro bono* program, an active member of the underground Roman Catholic Church in China was granted asylum and finally released after being held for three months in a detention facility in the United States.

### **Case Profiles: Asylum and Religion**

The individual case profiles below illustrate some, but not all, of the issues that have arisen in asylum claims involving religion. The information in the profiles was provided, in most cases, by attorneys who represent asylum seekers and illustrates these issues from the perspective of asylum seekers.

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#### 1. Quizzing and looking for the “correct” answer

In many cases, asylum seekers who seek protection based on religious persecution reported being questioned or quizzed about their religions. This type of questioning was reported by individuals whose asylum claims were based on a religious conversion as well as by asylum seekers who reported that they had always been members of a persecuted religious group. In some cases, asylum seekers reported that adjudicators sought levels of information and detail that they did not, and often could not reasonably have been expected to, have. Asylum seekers who had not received formal or advanced religious education did not necessarily have knowledge of a more complex, formal or obscure nature. In other cases, because of the repression of their religion, and the accompanying restriction on, or lack of, religious schooling, asylum seekers had not been educated in their home countries regarding certain aspects of religious history or formal observances. In other cases, adjudicators seemed to think there was only one “correct” answer for a question that actually did not have one “correct” answer. The following profiles illustrate some of these issues:

- An asylum seeker from Russian Tatarstan was raised in a non-religious, Muslim family and reported that he had converted to Evangelical Christianity. A U.S. immigration judge asked the asylum seeker a series of questions directed towards the differences between Evangelicalism and Orthodoxy. In particular, the officer asked the asylum seeker what version of the Bible he used, and how it was different from the Orthodox bible. The asylum seeker responded that he did not know the difference because he had never been Orthodox. The judge then determined that the asylum seeker did not know the tenets of his religion because the asylum seeker did not know the name of “The Lord’s Prayer” in English. In response to the judge’s questions, the asylum seeker perfectly recited the Lord’s Prayer and detailed other relevant information about the prayer, but explained that he did not know the title in English. He said that they referred to the prayer as “Our Father”. The judge insisted that everyone knows that this prayer is called “The Lord’s Prayer,” and reportedly began screaming and jumping out of his chair in reaction to the asylum seeker’s lack of knowledge. The judge specifically identified the failure to know that the prayer that begins with the words “Our Father” is called the “The Lord’s Prayer” as one instance of the asylum seeker’s “failure to know the tenets of [his] religion.”

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- A Shi'ite Muslim from Iraq was initially denied asylum in the U.S. because he could not name the 12 imams as demanded of him by an immigration judge. The asylum seeker was able to name the most famous imams. But the judge concluded that this knowledge was insufficient and said that he found it appalling that a Muslim would not know the names of the 12 imams. The asylum seeker was eventually granted asylum on appeal.
- A U.S. asylum officer rejected a Tibetan Buddhist monk's application for asylum because the officer found that the monk's answers did not correspond to the "correct" answers he had on his checklist. First, the monk responded "incorrectly" when asked how many prayer beads he carried. Instead of the 108 beads answer the officer was looking for, the monk replied that he carried 113 beads. (One expert later explained that 108 is a minimum number of beads and that there can in fact be 112, 113, or any other number of beads.) Next, the officer asked the monk how many times he prostrated himself before entering the temple. The monk replied that people generally did it 3 times, but that any number more than that is also acceptable. The officer was looking for the monk to say that 3 was the correct answer. Following the interview, the asylum officer said he had no reason to believe the monk was credible and turned down his application based on these reasons. The monk was subsequently granted asylum by an immigration judge.
- A Chinese Evangelical Christian sought asylum in the U.S. and was detained upon his arrival. The immigration judge, during the asylum hearing, asked numerous questions that appeared to be directed at assessing the asylum seeker's credibility as a Christian. The asylum seeker was, among other things, asked to name a miracle performed by Jesus and to provide the names of all of Jesus' disciples. The attorneys for the asylum seeker did not feel the judge was necessarily inappropriate in his questioning, though the judge did note that he had extensive Catholic schooling.
- A U.S. asylum officer asked a Tibetan Buddhist monk for the name of the founder of his order. The monk did not know the answer. In fact, it was later explained that this kind of information would only be known by a religious scholar, and/or monk who had studied for many years. The information regarding the founder was not an important concept to those who adhered to this particular Buddhist order. The question therefore had no bearing on the religious dedication of the monk.
- One refugee who now lives in the U.S. explained, in his own words, his experience during his U.S. asylum interview: "My family is a devout member of the Church of Jesus Christ of Latter-day Saints or the Mormons as many people here call it. I was born and grew up in Indonesia. When I applied for asylum, the

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interviewer asked how did my family join the church, what did the missionaries do, how many members, and why my family joined. I thought those questions were appropriate although he seemed to doubt all of my answers. I don't think there were any inappropriate comments, questions or activities. I think it's their job to be mean.”

#### **2. Requests for demonstrations**

We received several reports of cases in which adjudicators asked asylum seekers to demonstrate their faith, for instance by reciting prayers or by performing certain movements. In one case, a Tibetan monk was asked to demonstrate the manner in which he prostrated himself before entering a Buddhist temple. In another case, a Jewish man was asked to demonstrate some gestures that the adjudicator believed accompanied certain prayers. In another case, a woman from Sierra Leone, who had testified that her father had forced her to study Islam, was asked to quote portions of the Quran. In yet another case:

- An Iraqi Chaldean who sought asylum in the U.S. was asked about church history (see next page), and was then asked to demonstrate prayers and recite the Ten Commandments. The officer then asked the asylum seeker if he knew anything about praying, and asked the man to demonstrate his prayers in front of the officer. The man went through a few of the basic prayers. Then the officer asked the asylum seeker to recite the Ten Commandments. The asylum seeker did. The officer again asked him to demonstrate more types of prayer. This demonstration went on for about a half hour and stopped only when the translator refused to continue translating the asylum seeker's prayers. The man was granted asylum.

#### **3. Applying the adjudicator's own knowledge of religion**

In still some other cases, the information that the adjudicator was seeking was either incorrect or was inaccurate because it was based on the adjudicator's own personal knowledge of the religion as practiced in the adjudicator's own country or on the religion as practiced by a particular branch of the religion distinct from that of the asylum seeker.

- An Evangelical Christian from Kyrgyzstan who was seeking asylum in the U.S. was asked a series of questions regarding details of worship and communion. The asylum seeker's counsel believed that the questions posed were legitimate and

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fair, but reported that the immigration judge interpreted the answers based on her own experiences with such matters as they arise in Evangelical Christianity in the United States.

- A U.S. immigration judge was prepared to deny asylum to one Tibetan monk because he could not specify the “three main books” of Tibetan Buddhism. The confused monk replied that there were many important books and recited the names of a few. The judge, who was sure that he knew that there were three main books, found the applicant not to be credible and was prepared to turn down his application for asylum. The attorney for the monk contacted an expert in the field who explained that the judge was applying the concepts of Buddhism as practiced in India, and that while Indian Buddhists use three main books in their prayers, Tibetan Buddhists do not. After learning of the expert’s conclusions, the judge apologized for his mistake and the monk was eventually granted asylum.
- A U.S. immigration judge questioned a Tibetan Buddhist monk with a series of questions from an Indian Buddhist text. The monk could not understand the judge’s questions. The judge, as a result, concluded that the asylum seeker was not a monk. The attorney representing the monk obtained an expert to explain to the judge that the text he was using was vastly different in content from the texts used by the Tibetan monks. The judge acknowledged his mistake and granted the monk asylum.
- The documentary film “Well Founded Fear,” included clips from the asylum office interview of a woman from Romania who was seeking asylum in the United States based on religious persecution. The asylum officer asked her questions regarding her religion, including the name of the head of the Anglican Church. The woman asked if he meant the overall head or the head in Romania, and the officer replied that he meant the overall head. The asylum seeker replied that the Bishop of Gibraltar was the head of the Anglican Church, and stated that currently, it is Bishop John. The asylum officer denied her application because he found her not to be credible. As he said outside the interview, “How many Anglicans do you know who don’t know that the Archbishop of Canterbury is the head of the Anglican Church?” The film revealed, at the end, that, indeed, the Bishop of Gibraltar was the head of the Anglican Church in Europe. The woman was subsequently granted asylum by an immigration judge.

#### **4. Failure to take into account effects of repression of religion**

In some cases, asylum seekers reported that because of the repression of their religion, and the accompanying restriction on, or lack of, religious schooling, they had

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not been educated in their home countries regarding certain aspects of religious history or formal observances. For instance:

- An Iraqi Chaldean who sought asylum in the U.S. was asked about church history. The immigration officer asked the asylum seeker for the name of the founder of the Chaldean church. The asylum seeker told the officer that he did not know and asked whether the officer had meant the pope or the priest. The officer repeated that he was looking for the name of the founder of the Chaldean church from centuries ago. The asylum seeker stated that he did not know and explained that because of the Iraqi government's restrictions, members of his church are often denied the chance to learn about their church's history.
- A Jewish man from the former Soviet Union was questioned about his religious knowledge in seeking asylum in the United States. The man's Jewish observances had been minimal because of the historical repression of his religion and the fear he had lived in. The asylum seeker was asked a series of questions by the immigration judge relating to particular motions that, according to the judge, accompany certain prayers and ceremonies. The asylum seeker was not able to describe these outward observances as they were described in a United States originated manual on Jewish observances and practices which the judge had consulted. The judge found the asylum seeker not credible because he was not able to describe these motions in accordance with the manual. The asylum seeker was eventually granted asylum on appeal.

#### **5. Adjudicators' receptivity to learning about religions**

In some cases, practitioners reported that they had encountered adjudicators who were respectful in their questioning as well as adjudicators who were receptive to learning about a religion with which they had previously not been familiar. For instance:

- One practitioner reported that: In the U.S., immigration judges and officers often confuse Mandeans from Iran and Iraq with Christians. Mandeans are not followers of Christ, they follow John the Baptist. Their customs and rituals are different from those of Christians. It was reported however that immigration judges are generally open to learning about this religion which they agree they know little about. The judges have asked general background questions to learn about the religion so that they have a foundation upon which to ask the asylum seeker specific questions.

#### **6. Ability to practice faith freely**

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In examining whether an asylum seeker's treatment amounts to persecution, some adjudicators seem to consider the fact that the applicant's right to practice his or her religion freely was or would be impinged if returned. Others did not.

- One attorney reported success in winning asylum for some Christian based-claims for Chinese citizens. The attorney reported that, in the cases he had handled, once the decision-maker had accepted that the asylum seeker was credible and sincere in his or her religious belief, then the decision-maker was willing to grant protection even when the asylum seeker had not been arrested, jailed or harassed, but on the basis that the individual could not practice his or her faith freely in community with others. The attorney noted that while there was certainly a risk of harm in these cases, the key seemed to be that the lack of religious freedom was persecutory.
- A Chinese Christian woman applied for asylum in the United States after police in China arrested and tortured her because of her religious beliefs. When asked by the asylum officer during her interview why she had been targeted, the applicant replied that she ran a restaurant and one day had unfurled a banner outside the restaurant inviting patrons to join a Christmas feast. The asylum officer told the applicant that if she would just be quiet about her religion, she would be fine. While the asylum officer did not grant her case, the woman's asylum claim was subsequently granted by an immigration judge.
- An Iranian student, who converted to Christianity after arriving in Finland, was denied asylum in Finland. The student had fled Iran after he had been arrested and detained in Iran because of his political activity. In Iran, the student had grown interested in Christianity. Upon the advice of a pastor, the student did not openly practice the faith or convert to Christianity while in Iran. After he arrived in Finland, he formally converted to Christianity and became an active member of the Finnish Lutheran State Church. During his hearing, the student was asked several questions about the authenticity of his conversion. The court also questioned the student as to why he had not converted in Iran. The student's asylum application was rejected on the grounds that he would not be persecuted in Iran because Christianity is a legal minority in Iran. The counsel's argument that the right to openly practice one's faith is an essential element of freedom of religion was rejected. According to the asylum seeker's counsel, the student's freedom of religion was particularly jeopardized because Iranian authorities and militant groups are particularly harsh on Protestants and because conversion is per se a crime in Iran – apostasy.

#### **7. Accusation that asylum seeker is not living up to tenets of faith**

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Even in cases in which asylum claims are not based on religious persecution (as well as in cases in which they are), some adjudicators' mistaken personal conceptions of religions have led them to offer their own opinions about the sincerity of an asylum applicant's beliefs or about the consistency of the applicant's conduct with the tenets of his or her religion. For example:

- A Somali asylum seeker, whose family was attacked because of the family's membership in a minority clan, was forced to watch the murder of several family members and the gang rape of his sister. During his asylum hearing, a U.S. immigration judge found him to not be credible because of what the judge said were inconsistencies in the asylum seeker's testimony. Among these purported inconsistencies, was the fact that the asylum seeker claimed to be a devout Muslim yet had failed to bury his family members' bodies because he had to flee immediately to protect his own life. The asylum seeker explained to the judge that he could not have buried the bodies because there were bullets flying everywhere. The judge found this to be inconsistent with Islam and cited it as a reason for doubting the asylum seeker's overall credibility.
- A convert to evangelical Christianity from Georgia who applied for asylum in the U.S. was chastised in court by an INS trial attorney. The INS attorney told the applicant that Jesus says to follow his faith to the death, and said that the applicant was not a good Christian because he was not willing to die for his faith. The immigration judge promptly berated the INS attorney.

#### **8. Religious converts: questioning the genuineness of beliefs and absence of past persecution**

A number of the case profiles provided concerned cases of individuals who had converted to a religion after they had left their country of persecution. In these cases, (some of which are included in prior sections of this paper), adjudicators typically question the asylum seekers about the sincerity of their faith. Examples of the kinds of quizzing that sometimes occurs in religious persecution cases are included in a prior section of this paper. Another area that seems to be the subject of debate in conversion cases is the question of whether adherents of the religion to which the individual has converted are in fact persecuted in the home country.

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- An Iranian man applied for asylum in Finland based on his religious beliefs. His brother had introduced him to Christianity prior to leaving Iran. While in Iran, the asylum seeker had had contacts with Christian families but had hidden his belief. After his arrival in Finland, he had converted to the Pentecostal faith and became an active member of the church. In his hearing, before the Asylum Appeals Board, the asylum seeker demonstrated his genuine belief very strongly and showed that his denomination was Protestant. The Board concluded that, as a member of a Pentecostal Church, he was at risk of suffering serious human rights violations and was in need of international protection.
- An attorney for the U.S. INS argued, in opposing a grant of asylum to an Iranian asylum seeker who had converted to Christianity, that the State Department's assessment of the treatment of converts was incorrect. The attorney reported that a U.S. State Department report had indicated that converts in Iran are persecuted (specifically mentioning the Baha'i and Evangelicals), but that the INS attorney instead urged that a Swedish report, which broadly states that Christians in Iran are not persecuted, should be considered authoritative. The immigration judge, disagreeing with the INS attorney, noted that as a U.S. government representative, he could not deny the veracity of his own government's statements.

#### **9. Adjudicator or Interpreter of Persecutors' background**

In some cases, asylum seekers have expressed concern when the decision-maker or the translator has been a member of a religious group that the asylum seeker claims to fear. In cases in which an individual has converted from one religion to another, concern was expressed that in cases where the refugee interviewer was of the first religion, the interviewer had chastised the convert for abandoning the first religion. In another case:

- A Pakistani Christian who sought asylum in Canada based on religious grounds had his case heard by a Canadian-government official of Pakistani Muslim background, and was provided with an interpreter who was also of Pakistani Muslim background. The asylum seeker did not feel safe in the hearing, and feared that the official might be biased against him.

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#### **Conclusion**

From the information provided in response to the survey, it is clear that improvements are needed to ensure that those who flee from religious persecution are afforded a fair opportunity to present their claims for asylum. The recommendations set forth earlier in this paper will help to ensure that victims of religious and other forms of persecution are treated fairly and respectfully throughout the asylum process.

## **Appendix A**

### **Methodology and Questionnaire**

In preparation for the Roundtable on Religion-based Persecution Claims, to take place in Baltimore, Maryland in October 2002, the Lawyers Committee prepared and distributed a questionnaire to attorneys and others who represent or assist asylum seekers and refugees in Canada, the U.S. and Europe. A copy of the questionnaire appears on the next page. About 80 responses were received from eight countries. The majority of the responses were received from attorneys or accredited representatives who represent asylum seekers in the United States. Many of these legal representatives work for non-profit legal organizations in the United States.

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#### **SURVEY: ISSUES ARISING REGARDING RELIGION IN REFUGEE CLAIMS**

On October 30-31, 2002 in Baltimore, a roundtable discussion on refugee/asylum claims based on religious persecution will be sponsored by UNHCR and Church World Service. The purpose of the discussion includes identifying: (1) trends and challenges in religion-based refugee claims; and (2) elements for substantive and procedural guidance in the adjudication of religion-based refugee claims.

The roundtable provides an important opportunity to discuss some of the problems and issues that can arise when asylum officers and immigration judges question refugees on their religions and religious beliefs. The Lawyers Committee for Human Rights is looking to collect examples, from refugees and their legal representatives, of issues that have arisen in asylum cases relating to religion.

We hope that this survey will be a helpful tool in pinpointing problems in the adjudication and handling of cases related to religion. We also hope that it will contribute towards efforts to define standards to guide asylum officers and other adjudicators who handle religious persecution cases.

Please provide your response, to the extent possible, by July 26, 2002 via email to Shannon Shah at the Lawyers Committee for Human Rights (email: shahs@lchr.org). Thank you in advance for your timely cooperation.

*For further information please contact:*  
Shannon Shah  
Lawyers Committee for Human Rights  
212.845.5228  
shahs@lchr.org

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**Lawyers Committee for Human Rights**

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**SURVEY: ISSUES ARISING REGARDING RELIGION IN REFUGEE CLAIMS**

Name \_\_\_\_\_

Refugee\* \_\_\_\_\_ or Attorney or Accredited Representative \_\_\_\_\_

Affiliation (if any) \_\_\_\_\_

Contact Information \_\_\_\_\_

*email* \_\_\_\_\_

*phone no.* \_\_\_\_\_

Please identify any issues that arose regarding religion in the course of the adjudication of your asylum case or the case(s) in which you acted as legal representative. In doing so, please provide information regarding any appropriate or inappropriate comments or questions that were posed to the asylum seeker, as well as any actions that the asylum seeker was requested to perform by the adjudicator. In addition, please provide general background information relating to the claim (e.g. religion, country, conversion issue, etc.) and identify the stage(s) at which these issues arose (in the airport, credible fear interview, asylum office, immigration judge, etc.).

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If you believe that any of the adjudicator's comments, questions, or activities regarding religion were inappropriate, please explain why.

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Please provide examples of constructive and appropriate ways in which religious issues have been addressed in the course of adjudications.

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*Please return the completed survey to Shannon Shah via email at shahs@lchr.org by July 26, 2002.*

\*We will not use individual refugees' names in the survey. We will use the contact information for any follow-up questions we may have.