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# HUMAN RIGHTS

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# BRIEF

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## Plight of France's *Sans-Papiers* Gives a Face to Struggle Over Immigration Reform

by Christian E. O'Connell

Three years after the passage of severe anti-immigration statutes, the French government is considering reforms to the controversial legislation known as the Pasqua laws. At stake is the fate of thousands of undocumented aliens, called *sans-papiers* (the paperless), who originate primarily from poor African nations.

The Pasqua laws were enacted in 1993 at the instigation of then-Interior Minister Charles Pasqua, whose vigorous endorsement of "zero immigration" set the tone for recent French policy in refugee and asylum matters. Touted by supporters as an effective and necessary tool to combat clandestine immigration, the legislation encompassed a broad panoply of severe measures. These measures included a toughening of visa requirements, a reduction in the number of visas issued, an expansion of police enforcement powers, an extension of the permitted detention period, and a narrowing of the administrative review scheme. These and other provisions caused a significant number of legitimate aliens to become illegal.

A few provisions contemplated in the original law were struck down in 1993 by the French Constitutional

Court. Since that time, however, legislators have proposed unsuccessfully such additional measures as fingerprinting visa applicants from those countries deemed to pose a high risk of clandestine immigration, restricting access to medical and social services, and extending the maximum permissible period of pre-deportation confinement from 10 to 45 days. Successful subsequent modifications have made it a felony to provide assistance to illegal aliens.

The Pasqua laws also contain one notorious gap that has trapped thousands of immigrant families in a legal conundrum: undocumented parents of children who are French citizens cannot legally be expelled, but are prevented by the Pasqua laws from receiving residence papers.

In the last year, France has significantly stepped up its enforcement activities, thereby intensifying public controversy over the Pasqua laws. French authorities staunchly advocate strict application of the laws. President Jacques Chirac asserts that "[a] strong political signal has to be sent so that those persons likely to immigrate illegally will know that they will have no luck in France." A recent poll in the French daily *Le Monde* suggests that a majority of voters agree — 67% of those polled opposed relaxing the immigration laws.

Humanitarian opposition to aspects of the Pasqua laws has been led by the

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## Mediation in the Federation of Bosnia-Herzegovina

by Peter H. Backes\*

The General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Agreement) of December 14, 1995, ended the war in Bosnia-Herzegovina, but the implementation of the Agreement has been successful only in its military aspect. The Implementation Force (IFOR), no longer under a weak UN-structure but a determined NATO command, was the decisive element in ending the fighting and has prevented the return of war ever since. The civil implementation of the Dayton Agreement, however, has created severe difficulties, particularly with regard to issues of freedom of movement and the right of

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Roman Catholic Church, a host of human rights NGOs and several public entities. Monique Chemillier-Gendreau, a professor of international law at the Université de Paris-VII, notes that the

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1993 act was conceived in the legal framework of a WWII-era statute that is "outdated and full of aberrations."

Advisory opinions from the Conseil d'État (France's highest administrative court) and the National Consultative Commission on Human Rights (NCCHR), an independent government agency, warn of the danger of promoting negative public opinion toward foreigners. They also suggest that in some respects the enforcement scheme may violate Article 8 of the European Convention on Human Rights (right to a normal family life), as well as principles of asylum and of judicial oversight. Previously, a UN special rapporteur reached a similar conclusion in a report to the General Assembly.

At the heart of the current debate has been the celebrated six-month struggle of several hundred asylum-seekers to obtain the right to remain in France. This group of refugees, mostly from Mali, first attracted international attention in March 1996, when they occupied the Saint-Ambroise church in Paris to demand residence papers. They were swiftly evicted without incident, and a small number were subsequently deported. But in June, some 230 of the Africans took refuge in another Paris church, the Saint-Bernard. To negotiate their position with the

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French authorities, the Africans appointed a "college of mediators" composed of eminent French academics, jurists, ecclesiastics, and human rights activists.

During the summer standoff, the Interior Ministry examined the dossiers of the Saint-Bernard aliens and granted visas to 22 of them. Of the rest, some were deemed subject to expulsion under the Pasqua laws, while others, whose children were entitled to French citizenship, were caught in the legislative gap. In the early morning hours of August 23, 1996, weeks after negotiations between the mediators and the Chirac administration had broken down, French security forces staged a raid on Saint-Bernard. Sweeping aside a crowd of protesters and breaking



The *sans-papiers* camping out in the St. Ambroise Church in Paris.

down the church doors, one thousand officers arrested and evacuated the *sans-papiers*. Doctors from the humanitarian organization Médecins du Monde, who had provided care to the *sans-papiers* during their protest, condemned the French police for the brutality with which the expulsion was allegedly carried out, noting that several of the Africans forcibly removed from the church had been severely weakened by a prolonged hunger strike.

Judges presiding over subsequent legal proceedings against the *sans-papiers* of Saint-Bernard faulted the government with over 300 instances of proce-

Hearings revealed that the police had separated people inside the church by skin color, inadvertently taking into custody a number of black French nationals.

dural violations in this most dramatic application to date of the Pasqua laws. Hearings revealed that the police had separated people inside the church by skin color, inadvertently taking into custody a number of black French nationals. Certain other detainees had been isolated from counsel. Legal aid attorneys from the nonprofit Immigrant Workers' Information and Support Group reported at least one instance where prosecutors produced falsified administrative documents to support their case.

Partly as a result of such irregularities, most of those seized were released, though the cases against the majority remain open. Prime Minister Alain Juppé granted about 50 visas for humanitarian reasons, while a few people were deported immediately. Human rights groups criticized the basis on which these distinctions were made as largely arbitrary. A number of others have since prevailed in court and obtained legal status.

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The drama of the Saint-Bernard *sans-papiers* occurs at a time when France is already under fire from both the domestic and international communities for a deteriorating human rights environment.

deteriorating human rights environment. A June report issued by the Saint-Bernard mediators observed that "France is sliding into a tendency

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characterized by the blocking off and repression which has seized all of western Europe." A UN report earlier this year condemned a perceived wave of racist and xenophobic sentiment in the country, and lamented that France's "image as the homeland of human rights has been damaged." Significantly, ethnically motivated violence is rising in France, according to the NCCHR.

A new bill, announced in October in the wake of the Saint-Bernard incident, incorporates several proposed reforms of the Pasqua laws. In addition to closing loopholes in the existing legislation, the bill would ease visa requirements for spouses of French citizens and for children entering France other than via family reunion procedures. It would also provide increased protection against expulsion where humanitarian considerations are present.

Reactions to the bill by human rights organizations and other reform advocates were mixed. Some expressed concern that the situation of undocumented aliens in France would be worsened in certain respects. For example, the bill

would make it more difficult to obtain certain documents required for short-term visas, and would enhance the government's ability to oppose a judge's rejection of a deportation order. Most, however, welcomed the prospective liberalization of the 1993 provisions, as indicated by a Socialist Party spokesman who stated, "This is an acknowledgment

Sympathetic members of the European Parliament are pressing for a resolution requesting that Member States grant residence rights to immigrants who have settled in the Union for legitimate reasons, in accordance with humanitarian principles.

that the Pasqua laws were inhuman and could not be enforced."

Meanwhile, opponents of the Pasqua laws are working to take the matter to the European level. Sympathetic mem-

bers of the European Parliament are pressing for a resolution requesting that Member States grant residence rights to immigrants who have settled in the Union for legitimate reasons, in accordance with humanitarian principles. Such a measure would be symbolic, however, because coordinating policy on non-European immigrants remains essentially a matter of intergovernmental jurisdiction. Proponents of the resolution nevertheless are hoping that the crisis of France's *sans-papiers* will serve as the catalyst for progress toward a common immigration policy.

Both supporters and critics of the Pasqua laws consider that the new French bill and the European initiative will provide the occasion for much-needed dialogue on the divisive immigration issue, an issue whose legal, economic, cultural, and ethical implications loom large over western European politics. Yet many observers wonder, as Cardinal Jean-Marie Lustiger of Paris speculated after the Saint-Bernard expulsion, "was it necessary to sacrifice three hundred [people] . . . in order to obtain real political debate on such a fundamental question?"

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China) in general humanitarian aid to North Korea. In response to the UN's appeal for emergency humanitarian assistance in 1996-1997, the United States has made an initial pledge of \$6.2 million, fulfilling 38.5% of the worldwide UN appeal.

U.S. foreign policy objectives, however, are stirring debate on whether or not humanitarian aid should be given to North Korea. Some critics of U.S. aid believe that in the long-term, human rights are better served by not giving assistance to highly repressive governments. Others believe that North Korea is using conditions caused by its inherently unproductive economy to obtain international assistance while not attempting to reform its policies. For example, Dr. Bill Taylor of the Center for Strategic and International Studies, speaking before a Senate subcommittee, posited the view that North Korea's present condition is an inherent result of its economic system. He implied that North Korea has exaggerated the food shortage for the purpose of "getting as

much as they can out of the international community for humanitarian assistance."

The debate has focused on U.S. foreign policy concerns. Some foreign relations experts believe that the decision of

Policy makers need to keep in mind that while they debate the politics of communism versus capitalism, children in North Korea, ignorant of such concerns, are continuing to survive on a handful of food per day.

whether to send aid for the food shortage must take into account national security as well as humanitarian concerns. For example, Stanley Roth of the United States Institute for Peace believes that aid to North Korea should be provided but should be heavily monitored. He also indicated that aid should be given to North Korea to sustain stability in the region, since "we may decide it's in our national security interests to provide North Korea with food . . . because

we think that failing to provide food could lead them to make the desperate decision to attack the South."

Still others believe that humanitarian aid should be completely divorced from any foreign policy concerns. Former U.S. Ambassador Robert Gallucci has noted that linkage of policy issues with humanitarian assistance "[is] bad ethically, morally and . . . politically." Although the argument may be made that sanctions should be applied or aid withheld to encourage a civilian population to rebel against a repressive government, the moral grounds for such a policy must be called into question when its deleterious effects are felt so strongly by the civilian population.

Foreign policy objectives aside, it is not disputed that North Korea is suffering an acute food shortage and that recent floods in North Korea have destroyed scarce resources. Policy makers need to keep in mind that while they debate the politics of communism versus capitalism, children in North Korea, ignorant of such concerns, are continuing to survive on a handful of food per day.