

Asylum religious or sexual: which is more real?

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[I]n a push to move detainees out of Australia, the Australian authorities often took a reckless view of the dangers and discrimination faced by people on immediate arrival or indefinitely in the countries to which they were sent. The perils they faced include living again in great fear of being killed by authorities or by combatants in virtual war zones; fear of arrest, imprisonment or torture; fear of persecution on *Refugee Convention* grounds ... The protection of refugees and asylum seekers is not a legal issue only; it is a moral issue, because fundamental human rights and human lives are at stake. [*Researchers at the Edmund Rice Centre (ERC) for Justice and Community Education, in a recent study of 40 asylum seekers rejected for asylum in Australia.*]

The UN Convention on Refugees says applicants for asylum must have “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” in their home country.

In February 1999, two Bangladeshi men arrived in Australia from Dhaka claiming refugee status. They said they had been forced to leave their home, had lost their jobs and had been sentenced to death by stoning by a religious council. What were their reasons for being so fearful? They feared they would continue to be persecuted because of their homosexuality.

Originally the Refugee Review Tribunal (RRT) rejected their claims, saying that if the men were discreet, they could avoid problems when they went home. But the High Court of Australia found that the RRT should have considered what might happen if the men lived openly as a homosexual couple. In December 2003, the High Court found by a 4-3 majority that homosexuality could be a basis for a refugee claim.

According to barrister for the men, Brue Levet, “to say to a homosexual: ‘Be discreet about it, you’ll be alright’, was about the equivalent of saying to Anne Frank if she turned up to Australia: ‘Go back to your attic ... keep hiding and you’ll be ok.’”

A 26-year-old Iranian asylum seeker arrived in Australia by boat four years ago. He was held in Curtin detention centre in Western Australia and later at the Baxter facility in Western Australia. His application for asylum was based upon the expectation that he would be persecuted and perhaps killed in Iran on the basis of his Christian faith. But while most of us were enjoying the recent Christmas break, the man (now 30) was deported back to Tehran.

Converting from Islam to Christianity is indeed punishable by death in Iran. According to Refugee Action Coalition, the man has a “high likelihood” of being killed in Iran, where Christian converts are routinely persecuted and often put to death. The Australian response to Iranian Christian asylum seekers, is unusual: “It’s pretty much accepted in most countries that converts will face persecution if their conversion is discovered when they return to Iran,” said Amnesty International’s refugee coordinator in Australia, Graham Thom.

In a similar case in August 2002, the Federal Court in South Australia heard an appeal

against an RRT decision concerning another Christian asylum seeker. The man arrived in Australia early in 2000, claiming political asylum on the basis of his opposition to the Iranian regime. The RRT denied the man's political claim because it found his evidence not to be credible. The man also became a Christian while in Australia, a conversion to which Father Jim Monaghan of Woomera Roxby Downs Catholic Church testified by letter to the Tribunal. Therefore the man also now feared that being Christian would constitute an additional threat to his safety. The Tribunal accepted that the applicant was indeed genuinely Christian, but what is of interest is its response to this part of the man's story. Here is how the Federal Court tells it:

The Tribunal accepted the applicant's claim that he is a genuine Christian convert and that he has become a faithful member of a Christian group at the Detention Centre. However, it concluded that the applicant would not bring his conversion to the attention of the Iranian authorities on return to Iran or subsequently. On the basis of independent country information indicating 'little prospect of problems with the authorities unless a returnee declares on return his new affiliation' the Tribunal found that the applicant's fear of persecution by reason of his religion was not well-founded.

We should note that such a massive change as Christian conversion is hardly unlikely, given the absurd lengths of time that applicants are held in detention centres. The sheer slowness of the system encourages the kinds of change in a person's life that will alter and complicate their claim to asylum.

But the main point to note is the bizarre strategy devised by the Tribunal for handling Christian faith. The man should go home, and not "declare ... his new affiliation" or "bring his conversion to the attention of the Iranian authorities on return to Iran or subsequently".

The Federal Court upheld the RRT's decision to deny asylum. But on appeal, the Full Federal Court disagreed with the decision and commented on the very real risk that Iranian authorities would independently discover the applicant's Christian conversion. (We are not sure if the in-principle question of whether the applicant should have been *expected* to hide his Christianity was addressed by the Full Court.)

Most of us are unfamiliar with the various legal structures involved in reviewing asylum cases, and our retelling of these stories involves several such structures—the RRT, the Federal Courts and the High Court. The Office of the Minister for Immigration also plays an important role. Although we cannot be certain we have understood the facts and circumstances of these judgments correctly, it does seem clear that the various officers of various courts differ as to what constitutes a valid asylum claim. Nonetheless, we will risk a general comment in the light of these stories.

It is clearly immoral for any government or governmental authority to expect asylum seekers who are genuinely Christian to lie to authorities in home country about their religious faith, or to be expected to downplay or hide that faith. Such expectations obviously contravene the UN Convention, and more importantly, deny one of the central aspects of Christian belief, which is to "declare the praises of him who called you out of darkness into his wonderful light" (1 Peter 2:9).

The RRT's advice that a Christian asylum seeker should return home and *not* "declare ... his new affiliation" is, on the face of it, a disturbing imposition of a secularist understanding of 'religion' upon Christian believers. Some officers of the law seem to

think that religion is merely a kind of cultural afterthought, like a preference for (say) a new fashion in clothing.

It is worth comparing the High Court's overturning of the RRT's decision about the homosexual men, to the RRT's advice to a Christian man. In their ruling about the homosexual men, the High Court said:

By declaring that there was no reason to suppose that the appellants would not continue to act discreetly in the future, the tribunal effectively broke the genus of homosexual males in Bangladesh into two groups—discreet and non-discreet homosexual men in Bangladesh. By doing so, the tribunal fell into jurisdictional error that renders its decision of no force or effect.

Clearly, the RRT also routinely breaks the 'genus' of Christian believers in Iran into discreet and non-discreet, and so has similarly erred. Rejected Christian asylum applications might need to be reviewed in the light of the High Court's decision. If they are not, a situation will have arisen in Australia where commitment to a homosexual partner is considered more 'authentic' than commitment to Christ. At a minimum, officers of the law must accept that these two different commitments each constitute a claim about what is the core 'identity' of the asylum seekers involved. It would be highly disturbing if religious 'identity' came to be seen as more doubtful than sexual 'identity'.

We're going to keep looking into this area as time permits, to make sure we're getting our facts right. We don't yet have any suggestions about how to respond to these developments. But the first step, as always, is to begin to notice what is happening.

*Andrew Cameron & Tracy Gordon,
for the Social Issues Executive, Diocese of Sydney*

Sources/Further Reading:

Australian Federal Court, *Firuzibakhsh v Minister for Immigration & Multicultural & Indigenous Affairs* found online at: <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/federal%5fct/2002/982.html?query=title+%28+%22firuzibakhsh%22+%29>

"Gay asylum bid clears first hurdle," *The Age* December 9 2003.

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