feature

Europe: fortress or refuge?

plus:

- international response to Darfur
- new High Commissioner for Refugees
- interview with Walter Kälin
- articles on Syria, Georgia and Nigeria
- challenging camp design guidelines
- land rights for refugees

from the editors

FMR23 focuses on **asylum in Europe** *but also contains a substantial number of non-theme articles. You will notice some changes to the layout as we have decided to draw attention to some key developments of interest to the humanitarian community before the feature theme section. Articles highlighted in this issue include reflections on slow progress in providing protection and assistance in Darfur, the process of selecting the new head of UNHCR and an interview with Walter Kälin, the UN Secretary-General's IDP representative.*

We are indebted to Dr Heaven Crawley (Director of AMRE Consulting and former Associate Director at the UK's Institute for Public Policy Research) for her invaluable assistance in soliciting, selecting and editing the feature theme articles. These explore Europe's slow progress towards a common asylum policy and challenge arguments put forward by the anti asylum and immigration lobby.

Publication and distribution of this issue have been assisted by a grant from UNHCR's Bureau for Europe.

The first issue of our French edition **Revue de la migration forcée** *has been published and welcomed by francophone readers. This issue will also be published in French. Further publication will be funding-dependent. If you are able to suggest would-be funders we would like to hear from you.*

In response to numerous suggestions, we have decided to publish a special FMR supplement focusing on **lessons learned from the tsunami***. This supplement will be distributed in July, printed in and posted from Sri Lanka. We have received an excellent range of articles from agencies in all tsunami-affected states and from international organisations and are not looking for further submissions.*

The theme section of FMR24, to be published in September, will explore **prospects for peace in Sudan***. We are particularly keen to receive articles – in either English or Arabic – from Sudanese authors. Deadline for submission: 15 June.*

For further information about these and other future issues, visit: www.fmreview. org/forthcoming.htm

With best wishes

Marion Couldrey & Tim Morris
Editors, Forced Migration Review

Front cover photo: Asylum seekers in Pavshyno detention centre near Mukachevo, Ukraine. UNHCR/L Taylor

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Interview

Walter Kälin, Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, co-director of the Brookings-Bern Project on Internal Displacement, and professor of constitutional and international law at Bern University, Switzerland, was interviewed by the FMR Editors in February 2005.

Professor Kälin, in September 2004 you were appointed the 'UN Secretary-General's Representative on the human rights of internally displaced persons'. Your predecessor, Dr Francis Deng, did not have the words 'human rights' in his title. Does this indicate a change in the mandate?

When Dr Deng's mandate was created by the UN Commission on Human Rights in 1992, there was acknowledgement that internal displacement was a serious human rights problem but in the absence of a treaty on the rights of internally displaced persons, or any provision in a human rights convention explicitly guaranteeing the rights of IDPs, it was almost impossible to assert that IDPs as such had human rights. Of course, as human beings, IDPs when they become uprooted do not lose their human rights but it was unclear what these rights specifically meant in the context of displacement. Since 1998, the Guiding Principles on Internal Displacement have identified the human rights that are of special relevance for IDPs and have spelled out, in more detail, what is implicit in these guarantees. The change in title of my mandate suggests that the concept of the human rights of IDPs is, at least in principle, accepted today by the international community and indicates a certain redirection of the mandate as it puts more emphasis on the protection of the rights of IDPs.

How do you see your work interfacing with that of other key IDP actors such as the OCHA Inter-Agency Internal Displacement Division (IDD) and the Global IDP Project?

We have complementary mandates and cooperate with each other on the basis of a tripartite Memorandum of Understanding, signed in November 2004, which spells out our respective roles. IDD's main focus is to support UN country teams in developing and implementing a collaborative response to situations of internal displacement; the Global IDP Project continues to run its database and conduct training on the Guiding Principles; while I focus on advocacy for the rights of IDPs. Our cooperation translates into specific actions. For example, I am planning to conduct some country missions jointly with IDD and, as part of my mandate to mainstream the human rights of IDPs into all relevant parts of the UN system, I have asked the Global IDP Project to submit relevant information on the human rights situation of IDPs to treaty bodies on a regular basis with a hope that those bodies will address the issue of internal displacement more regularly in the future.

As one of the key drafters of the Guiding Principles on Internal Displacement, how would you assess current understanding and use of the Principles by governments? What are the prospects of their wider incorporation into international and national law?

The Guiding Principles on Internal Displacement have increasingly gained acceptance. Some states, such as Angola, Burundi, Colombia, Liberia, Peru, the Philippines and Sri Lanka, have included references to the Guiding Principles in their domestic laws or policies, and others may follow. Georgia has revised some of its laws that were in contradiction with the Guiding Principles. In Colombia, the Constitutional Court has cited the Guiding Principles as part of the legal framework applicable to cases of displacement. These are all encouraging developments.

However, efforts to make the Guiding Principles effective on the domestic level should go beyond general references in legal and policy documents. One of my priorities will be the development of a handbook to show law and policy makers how to translate general principles into specific norms and thereby provide domestic authorities with detailed guidance on how to develop a national legal framework. My hope is that this will encourage governments to do more to implement the Guiding Principles at the domestic level. This, I believe, is the most promising approach to strengthening the normative framework at a time when the international community is still not ready to adopt a binding instrument that accords with the protection level set forth in the Guiding Principles. Of course, this initiative does not exclude the possibility of a binding instrument once a sufficient number of states have developed national policies and laws. It may even become possible to first draft a binding instrument at the regional level and then eventually to take it up to the international level.

the challenge is to make [the Guiding Principles] operational

Many international organisations and NGOs use the Guiding Principles but here too the challenge is to make them operational by incorporating them into policies relevant to displacement and building up organisational capacities. One very important aspect of mainstreaming the Guiding Principles is to identify their relevance for UN peacekeeping and civilian missions in countries with internal displacement. Despite the complexity of such missions and their limited and focused mandates, I feel that more could and must be done to integrate the human rights of IDPs into their activities.

Many governments, including those of states with some of the world's highest IDP populations, are still reluctant to use the term 'IDP' or to protect and assist the displaced in line with the Guiding Principles. How do you plan to address these constraints?

The Representative has a range of tools at his disposal. The most evident is persuasion and I have begun to engage a number of governments in dialogues on displacement in their countries. From my predecessor I have learned that governments, which initially did not acknowledge IDPs in their countries, often came around through dialogue to recognising the problem and to adopting policies to address the situation. Undertaking missions to affected countries is another important means of influencing government policy as it enables the Representative to engage with a wide range of actors, both governmental and non-governmental, in discussions about displacement. In April, I will undertake my first full-scale country mission to Nepal. In cases where governments are reluctant to extend an invitation, it may be necessary to engage senior UN officials, the Inter-Agency Standing Committee and donor governments to encourage greater access. The publication of reports can also have impact, since the reports become documents of the Commission on Human Rights and the General Assembly. Further, the issuance of public statements can have effect. My first public statement, which garnered press attention, was on Darfur and protested against the forcible relocation of IDPs. Meetings are also valuable in raising consciousness to protection issues and mobilising the different actors to press for change.

In many parts of the world IDPs live in areas controlled by non-state actors. Can more be done to assist and protect them?

First, it is important to insist that governments allow access to areas of their countries controlled by non-state actors. Even though working with non-state actors in the post 9/11 world has become especially sensitive and complex, concerted efforts need to be made by UN agencies to gain access to IDPs or to work with church groups and NGOs to reach these populations. It should be unacceptable for large numbers of IDPs to be inaccessible to international aid, with the result of massive loss of life, as was the case in Angola and now Darfur. Second, it is important to make the non-state actors aware of their responsibilities under international law toward IDP populations, so that they do not bar access or otherwise violate IDP rights. To remind non-state actors of their responsibilities toward IDPs, seminars on the Guiding Principles can be a useful vehicle, such as the one held with the SPLM/A in Sudan in 2002, organised by UNICEF and the Brookings-Bern Project on Internal Displacement.

Isn't it anomalous that IDPs are not represented by a single UN agency, analogous to UNHCR? In an ideal world, should they be? If so, what are the prospects of this happening?

For the timing being, the UN is promoting the so-called 'collaborative approach' which was recently reaffirmed by its Inter-Agency Standing Committee in a policy document entitled 'Implementing the Collaborative Response in Situations of Internal Displacement'. This approach has its strengths and weaknesses. On the one hand, it makes sure that all agencies share the responsibility of responding to the worldwide crisis of displacement which is probably too big for one single agency to deal with, and

Hazara IDPs from Bamyan, Afghanistan.

UNHCR/P Benatar

it has the potential of drawing upon the multitude of experiences and specialised knowledge of each of the agencies. On the other hand, the collaborative approach makes it very difficult to hold an agency accountable if IDPs are neglected, and it fails if none of the agencies assumes a leadership role or if others contest that role. Even in an ideal world it is difficult to imagine one single agency that would be able to respond effectively to the needs of all IDPs, including those displaced by natural or human-made disasters or development projects, to address protracted situations where development may become more relevant than humanitarian issues, or to make sure that IDPs can vote when elections are conducted with the involvement of the UN. What we need are clear rules to establish which agency would do what and in what kinds of situation. For example, it is obvious that UNHCR is the organisation with the most experience and capacity to protect and assist persons displaced by armed conflict who are in camps or to organise IDP returns in safety and dignity after the end of the conflict. Indeed, it is difficult to understand why there should not be at least a presumption that the High Commissioner for Refugees should assume responsibility in such situations.

Critics argue that the IDD, OHCHR and UNHCR have played, or been allowed to play, only a minor role in the ongoing Darfur crisis. They suggest that response to the IDP crisis in Darfur only confirms that the UN's 'collaborative approach' is failing IDPs, especially as regards protection. Are these criticisms fair?

I agree with those who say that the collaborative approach has not worked well in Darfur. By contrast, it has been successful in the case of the tsunami disaster. The problem in Darfur was that the collaborative approach allowed agencies to say "no" to playing specific roles, especially in the area of protection, and gave the government the possibility to opt for solutions that it found the least threatening. Despite this slow and tortuous beginning, the Secretary-General reported to the Security Council in March that the numbers of human rights observers and staff "working on protection issues" have increased. However, the total remains less than 100 and not all have the training needed to carry out protection functions effectively.

Darfur has been high on the international media agenda but what other hidden or forgotten crises concern you? And how should the UN and international community be responding?

There are many forgotten crises and it is difficult to rank them according to their seriousness. The figures and protection needs of displaced persons in DRC and northern Uganda certainly reach those in Darfur or even surpass them. In Somalia, where there is no functioning government, IDPs are largely forgotten and aid often cannot reach them because they are in regions inaccessible to the international community. Large numbers of IDPs are also off limits in Burma. There are, in addition, protracted situations of displacement, like in the South Caucasus where large numbers of IDPs remain displaced for more than a decade

and become largely forgotten despite the hopelessness and abject poverty in which they live. Each situation has its unique features and there are no easy recipes for the UN. However, public relations campaigns are needed to shine the spotlight on forgotten crises. So too is a better integration of IDP issues into the policies and guidelines of the different international agencies as well as the engagement of the donor community in bringing attention to these situations. Steps also should be taken to involve political actors in addressing the root causes of these crises and to help build capacities at the local level to address them more effectively.

For several years FMR has played a role in drawing attention to IDP issues and publicising the GPs. Do you have any thoughts on how we may better do so?

I have read FMR for a long time and am impressed by the relevance of the topics chosen and the high quality of contributions. Your circulation of the magazine in Spanish and Arabic and your recent decision to add a French version are important steps to making your information available to a wider readership. Many of the articles are important tools for researchers, students, activists, governments and international agencies – and a long time after their publication. An electronic archive organised around main themes, with titles of relevant articles immediately visible and easily retrievable, would be helpful.

Walter Kälin (walter.kaelin@oefre.unibe.ch).

Global Migration and Gender Network

Following a recent workshop on the gender dimensions of international migration, the Global Commission on International Migration (GCIM) has established a Global Migration and Gender Network. Its purpose is to enable practitioners and researchers to share information and ideas on this issue on a regular basis.

The new Network will circulate a regular e-newsletter (also available on GCIM website www.gcim.org) to all network subscribers, incorporating links to relevant documents, news of forthcoming conferences and publications, book reviews and opinion pieces. The first edition of the newsletter will also contain the report of the workshop.

To subscribe and/or contribute to the Network, please email Rebekah Thomas at rthomas@gcim.org

"To understand the reality of international migration and to be able to advocate more effectively for migrant rights, it is essential that we take full account of gender issues: not only the situation of migrant women but also the way that migration affects men and children and changes relationships within the family. I very much welcome the establishment of the Global Network on Gender and Migration, which should provide a dynamic new means for us to share information and ideas on this important topic."

(Mary Robinson, Executive Director, Realising Rights: The Ethical Globalisation Initiative)

The international response to Darfur

by Roberta Cohen

Darfur is regularly debated by the UN Security Council, African Union forces have been deployed and some 9,000 humanitarian workers are trying to help over two million displaced people. Clearly, Darfur cannot be described as a 'forgotten emergency'. Why, then, does fighting persist and the needs of many of the uprooted go unmet?

Hundreds are still dying each day in Darfur from starvation, disease and violence. With fighting continuing between rebel forces and government troops, more and more people are being driven from their homes, joining the ranks of the 2.4 million already internally displaced and the 200,000 refugees in Chad. Government military attacks continue on black African farming communities and on IDP camps, supported by the Janjaweed militia. Women and girls continue to be raped searching for firewood outside the camps while those inside remain totally dependent on international aid.

Being on the world agenda has not yet led to meaningful steps to end the fighting or even adequately to address the needs of those uprooted. So what is it that has impeded the international response, and what positive elements can be identified that can be built upon in responding to this and future emergencies?

One reason the international community finds the Darfur problem difficult to address is that state reliance on excessive force against ethnic or racial groups seeking greater autonomy is not unique to Sudan. Other governments bent on maintaining the dominance of a particular ethnic group have also waged brutal wars against their own populations. The Russian Federation, for example, has conducted a scorched earth campaign against the Chechens. A veto-wielding permanent member of the Security Council, Russia has opposed diplomatic pressure or sanctions against the Sudanese government for fear of setting a precedent.

A second reason for the lack of strong international response is the absence of tools and structures available to the international community to address internal crises. Other than the International Committee of the Red Cross, which is often denied entry into internal strife situations, there exists no international machinery readily available to protect civilians caught up in violence within their own countries. There is a Genocide Convention[1] but there are no international mechanisms for preventing genocide or mass killings and no enforcement machinery.

Only during the last decade of the 20th century did the international community become involved in trying to assist and protect persons uprooted and at risk within their own countries. International involvement

IDP mother and daughter return from collecting wood in the bush, outside Manjura camp, Darfur.

with internally displaced persons (IDPs) is therefore still *ad hoc* and fledgling. While there is a Representative of the UN Secretary-General on the human rights of internally displaced persons it is a voluntary position and the small internal displacement division within the Office for the Coordination of Humanitarian Affairs (OCHA) is non-operational. On the ground, there are increasing numbers of international humanitarian organisations and NGOs that provide material aid to IDPs but little in the way of protection of IDPs' physical security and human rights.[2] In Darfur, an area the size of France, the Secretary-General reports only 26 international staff with protection responsibilities and 16 human rights observers.[3]

By and large, the international community can be relied upon to respond effectively to famines or to natural disasters. In cases of genocide, large-scale massacres or 'ethnic cleansing', as in Darfur, international action is dependent on whether states consider it in their interests to take the risks required. In 1999 the UN Secretary-General spoke of a "developing international norm in favour of intervention to protect civilians from wholesale slaughter"[4] and a recent high-level UN panel talks of an international "responsibility to protect"[5] but in fact only in a small number of cases has the Security Council authorised the use of force to protect IDPs and other civilians at risk. Nor is there any international enforcement machinery, whether a standby police force or a rapid reaction military force, to protect IDPs in camps or on return home. There is not even assurance that perpetrators of crimes against humanity in Darfur will be prosecuted before the International Criminal Court (ICC) despite a Security Council resolution referring such cases to the court.

Wider interests stymie humanitarian intervention

The geopolitical concerns of Security Council members constitute a further impediment to strong action. Algeria and Pakistan, which have close political ties to Arab and Islamic governments, have worked to delay and weaken international action on Darfur. As the main foreign investor in Sudan's oil industry, China holds a 40% share in the international consortium extracting oil in Sudan.[6] China has abstained on resolutions threatening sanctions against Sudan, in particular against its petroleum sector, and threatened to use its veto against resolutions if they were too strong.

The US and the EU have also had reasons to avoid confrontation with Sudan. Even though the US did initiate action in the Security Council, it feared, like the EU, that pressing the Sudanese government too far on Darfur could jeopardise the peace agreement about to be finalised between north and south. The US had invested heavily in the peace process and did not want to give any excuse to Sudan to walk away from it. Sudan played this card skillfully, using the progress it made in the north-south peace process to deflect attention from the situation in Darfur. A further impediment to robust action is the secondary status of Africa itself. By and large, western governments do not consider it to be in their national or strategic interest to take the political, financial or military risks needed to stop killings on the African continent. While they readily denounce the atrocities and provide generous humanitarian help, the costs of becoming involved in trying to stop the killings are considered too high.

US threats to veto any Security Council resolution referring war crimes in Darfur to the ICC – only lifted at the end of March – deadlocked the Security Council. Moreover, fallout from the US invasion of Iraq has had significant impact. Although Iraq was not occupied for humanitarian or human rights reasons, the Bush Administration fell back on this rationale when no weapons of mass destruction could be found. US expressions of concern about Darfur have therefore been met with much scepticism in the Arab and Muslim worlds and encouraged speculation that the US was preparing to invade another Islamic state. The whole idea of humanitarian intervention to protect civilians in Darfur was undermined by the US action in Iraq, even though the situation in Darfur had deteriorated to the point where humanitarian intervention should have been an option to consider.

All these factors have worked to enfeeble the international response. It took more than a year for the Security Council to adopt a resolution on Darfur, which it finally did in July 2004. No sanctions were introduced until March 2005 and then only symbolic ones (travel bans and asset freezes) even though Sudan had failed to halt attacks against its civilian population or to disarm and prosecute the Janjaweed. Moreover, abstentions by China, Algeria, Pakistan and Russia weakened the authority of the resolutions.

Nonetheless, some positive features have emerged from the crisis. Diplomatic pressure, when exerted, has produced results. Visits to Darfur by Secretary-General Kofi Annan and US Secretary of State Colin Powell in July 2004 led the Khartoum regime to significantly, but not entirely, lift restrictions on humanitarian organisations – they still lack access to some 500,000 IDPs. The government also allowed entry to international human rights monitors and to the UN team investigating whether genocide had occurred. Furthermore, the government resumed talks with the Darfur rebels, under the auspices of the African Union (AU) although little progress has been made. More pressure is needed now, ideally from countries like China and members of the Arab League as well as from the US.

The role played by the AU offers promise

The role played by the AU, if developed to its full potential, also offers promise. With the international community unwilling to act, the AU came forward to try to stop the violence in its own region. After helping to negotiate the April 2004 ceasefire between the Darfur rebels and the government, the AU deployed several hundred unarmed observers to monitor it. When the fighting continued, the AU deployed armed peacekeepers to protect the monitors and then expanded the numbers to be sent in and the mandate itself so that its police and troops could increase security for IDP camps and IDP returns, and protect civilians under 'imminent threat'. Rwanda's President, Paul Kagame, even announced publicly that Rwandan troops would not stand by if civilians were attacked.

UNHCR/K McKinsey

a whole and the racial composition of those who view themselves as Arab.[7] Enabling Sudan to reflect its diversity is one sure way of resolving the Darfur crisis and bringing the displaced home.

The continuing violence in Darfur makes it abundantly clear that there is a long way to go before an international system to protect people caught up in violence in their own countries can be put in place. Nonetheless, there are elements to build on.

Greater attention should be paid to strengthening the AU and supporting a role for it in promoting the security of IDPs on the continent – a step not only important for Darfur but for the more than 12 million IDPs in Africa. Governments and civil society around the world whose voices have been influential on Darfur should now press for the expansion of the north-south peace agreement to Darfur and oppose the going forward of any economic aid and investment or debt relief for Sudan's government until the conflict and displacement currently overwhelming western Sudan are brought to an end.

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The next issue of FMR will focus on Sudan. Deadline for submissions: 15 June.

UNHCR protection assistant, Rihab Kamal, talks with displaced Masselit woman, Riyadh IDP camp, El Geneina, West Darfur.

At the same time, AU forces have done little in fact to protect IDPs because the Sudanese government has opposed an AU protection role and the AU mandate is insufficiently strong. Nor does the AU have adequate resources or staff to do the job. To date, it has been able to field only 2,300 monitors, troops and police to Darfur but even the 7,700 intended would be far too small for an area which, experts say, needs as many as 50,000. The organisation has few aircraft or vehicles to transport its police and troops and insufficient communications equipment, tents, boots and other basic equipment. Western and other countries have tended to exaggerate the capability of the AU because they do not want to become involved in a more robust way. Nonetheless, they have pledged funds and logistical support and are also airlifting AU troops into Darfur, albeit slowly. This combination of regional involvement backed up by international support has the potential to become a more viable permanent arrangement for responding to conflict and displacement in Africa. Regional involvement, moreover, has proved a more palatable arrangement for the Sudanese government than international forces. Still, matters have reached such a pass that bringing in international peacekeepers to bolster the AU forces is now being considered.

Another development worth noting is the attention being paid to political solutions to the crisis. Whereas in most humanitarian emergencies the main focus of the international effort is to deliver aid, in this crisis international pressure brought about a north-south peace agreement in January 2005, which could provide the basis for addressing the conflict in Darfur. The north-south agreement provides for power and wealth sharing between the government and southern black African tribes with annexes extending to ethnic groups in Abyei, the Nuba Mountains and the southern Blue Nile. Certainly, an annex could be negotiated for Darfur. Moreover, southern Sudanese leader John Garang, soon to become Vice President, has promised to promote a fair and just settlement in Darfur.

The agreement, if carried out, should move Sudan in the direction of becoming a multi-ethnic, multi-racial and multi-religious society, an important development given that more than 50% of Sudan's population is black African. Francis Deng, former Representative of the Secretary-General on Internally Displaced Persons, and a southern Sudanese, has noted that the efforts of the ruling Arab-Islamic minority to depict Sudan as an Arab Muslim country distorts realities of the country as

1. www.preventgenocide.org/law/convention/text.htm
2. See interview with Walter Kälin on page 4 and *Protect or Neglect: Toward A More Effective United Nations Approach to the Protection of Internally Displaced Persons*, Brookings-SAIS Project on Internal Displacement and the Internal Displacement Division, OCHA, 2004. www.brook.edu/fp/projects/idp/protection_survey.htm
3. Report of the Secretary-General to the Security Council on the Sudan, S/2005/140, 4 March 2005, para.26.
4. www.un.org/News/Press/docs/1999/19990920.sgsm7136.html
5. *A more secure world: Our shared responsibility,* Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, United Nations, 2004 www.un.org/secureworld
6. Peter S Goodman,'China Invests Heavily in Sudan's Oil Industry', *Washington Post*, December 23, 2004. www.genocidewatch.org/SudanChinaInvestsHeavily23December2004.htm
7. See FMR22, www.fmreview.org/FMRpdfs/FMR22/FMR2225.pdf

Selecting the new High Commissioner for Refugees

by Manisha Thomas and Ed Schenkenberg van Mierop

Dogged by allegations of sexual harassment, Ruud Lubbers resigned as head of UNHCR in February 2005. The UN Secretariat is to be commended for a new approach to recruitment but concerns remain about the level of transparency and the future relevance of the agency.

When High Commissioner Ruud Lubbers resigned, Fred Eckhard, spokesman for the UN Secretary-General, promised that the process of selecting a new UNHCR head would be "transparent and rapid". Mark Malloch Brown, the UN Secretary-General's Chef de Cabinet, wrote to a number of NGOs, including the International Council of Voluntary Agencies (ICVA), asking them to suggest candidates. Within a month, a short list of eight candidates was announced.

Several of the criteria set out by the Secretary-General's office reflected qualifications that ICVA had highlighted as important during the process of selecting the High Commissioner for Refugees (HCR) in 2000.[1] These included experience of managing complex organisations, understanding of basic refugee law and knowledge of ongoing debates around voluntary and forced migration and IDPs. The UN's clarification of required skills[2] and willingness to consult with the NGO community in making a major appointment this time around were highly welcome.

While there has been great progress made since the sudden appointment of Ruud Lubbers took the international community by surprise in 2000, there are still a number of issues that remain of concern:

■ There was never any indication of how many candidates were put forward in total.

■ It is unclear if there was a procedure for giving refugees a say in the selection of the person charged with ensuring that they receive international protection. The Secretary-General's office said that "the views of the refugee community on the candidates will be sought informally". Despite ICVA asking for clarification on how their views would be sought, it remains unclear if such a process was undertaken.

■ UNHCR staff seem not to have been asked their opinions as to what kind of a leader they would like.

■ It was unclear whether the short-listed candidates met agreed criteria and the extent to which member states' interests and horse-trading shaped the short-list. Not all of the short-listed candidates seemed to meet all of the criteria set out in the letter requesting candidates to be put forward.

■ ICVA received no details why only one of its three nominated candidates was short-listed.

■ The expected timetable for interviews and appointment has not been adhered to. António Guterres was announced as the new HCR only on 24 May.

In ICVA's newsletter, *Talk Back*, issues central to the future role of UNHCR were highlighted, candidates were invited to respond and their responses have been published. Among the issues to which attention was drawn were the following:

■ **Falling numbers of refugees and asylum seekers.** Some argue that the agency dug its own grave when it reported recently that 2004 had seen the lowest number of asylum seekers in industrialised countries since 1988.

■ **The migration management agenda.** What should UNHCR do as states throw refugees and asylum seekers into the same 'migration' basket?

■ **Convention Plus and the High Commissioner's Forum.** Will these initiatives – launched by Lubbers – succeed in combining protection with solutions?

■ **Restrictive state policies.** UNHCR must respond to governments that are determined to keep asylum seekers away from their borders and tackle the xenophobic prejudices they have often helped to feed.

■ **Protection challenges.** Rhetoric about protection and assistance being two sides of the same coin

Left: António Guterres. Right: Ruud Lubbers

cannot disguise the fact that, magically, the sides of the coin are often rolling in two different directions. The separation between UNHCR's Department of Operational Support (DOS) and the Division of International Protection (DIP) must be bridged. Without strong leadership to instil such a culture of protection within the organisation, there will continue to be a false dichotomy between the delivery of assistance and protection by UNHCR staff.

- **UNHCR's role in protecting IDPs.** UNHCR, along with other humanitarian organisations, has been involved in elaborating the collaborative approach to IDPs yet there is much confusion over UNHCR's role. Guidelines are sufficiently vague so that UNHCR can do anything or nothing with regard to IDPs as it suits the agency. The new HCR will need to quickly elaborate a clearer and more effective policy on IDPs, an urgency heightened by the fact that the Inter-agency Internal Displacement Division will report later this year on how the collaborative response is working.

- **Threats to humanitarian space in conflict situations.** The humanitarian agenda of UNHCR must be pushed forcefully in the midst of competing security and geopolitical agendas and the increasing trend within the UN to try to merge political, humanitarian, human rights and development agendas into integrated missions.

- **Collaboration with NGOs.** UNHCR is unique within the UN system for efforts it has made over the years to work with NGOs. However, it is one thing to have policies and meetings about partnership and another to operationalise partnerships on a daily basis in a way that does not treat NGOs as mere implementers.

- **Relations with the International Organization for Migration (IOM).** UNHCR-IOM clashes over approaches and strategies have become more common, particularly in Darfur. IOM involvement in Darfur has had significant protection implications, a role for which it is totally unequipped. Other areas where UNHCR's pro-tection mandate and IOM's pragmatically oriented service areas may clash relate to the asylum-migration nexus and repatriation movements. The new HCR needs to be prepared to challenge IOM's policies and programmes.

- **Zero tolerance of sexual abuse.** The ability to respond to allegations with independent and confidential investigations must be ensured in order to guarantee that those who have been abused or exploited are not afraid to come forward.

- **UNHCR's role in supervising the 1951 Refugee Convention.** While many states are wary of being supervised in the fulfilment of their responsibilities under the Convention, there is a need to ensure that states are living up to those obligations. UNHCR's responsibility in fulfilling this function is one that has been rather narrowly interpreted to date. If UNHCR protection reports make note of violations of the Refugee Convention, they are not currently made public and it is unclear how far UNHCR takes up issues of concern with states.

All short-listed candidates[3] responded to ICVA and their replies were published in Talk Back (7-2 and 7-2a). We provided such a forum in the hope that the stakeholders of UNHCR would be able to get a better idea of who the candidates are and in the hope that the views of the candidates would help to inform the final process of selecting the next High Commissioner.

António Guterres will have to face the challenge that has always plagued UNHCR: is it an organisation for refugees or for states? Challenging states on their responsibilities to refugees and asylum seekers in order to ensure effective and quality protection must be one of the HCR's top priorities. The position of High Commissioner requires the ability to balance the interests of refugees and the interests of states. Without the support of states, UNHCR cannot survive as its budget depends on states agreeing to the agency's programmes. If António Guterres caters too much to states' interests, the result could be a situation where refugees suffer at the expense of political interests and priorities.

António Guterres' vision for the future of UNHCR is at www.icva.ch/cgi-bin/browse.pl?doc=doc00001363#guterres

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Talk Back is online at www.icva.ch

1. www.fmreview.org/FMRpdfs/FMR08/fmr8.16.pdf

2. "The criteria that these candidates will be evaluated against at interview will include: strong diplomatic, political and fund-raising skills; thorough knowledge of refugee issues, including basic refugee law and debates about forced migration and internally displaced persons; proven skills in the management of complex organizations; a leader who will unflinchingly champion the cause of refugees, understand and respect basic refugee law and the rapidly evolving debates about voluntary and forced migration and internally displaced persons; and possesses the communication and coalition-building skills to create consensus and stimulate effective campaigns". www.un.org/News/briefings/docs/2005/db050324.doc.htm

3. The short-listed candidates were: Emma Bonino (member of the European Parliament); Hans Dahlgren (Sweden's State Secretary for Foreign Affairs); Gareth Evans (former Australian Foreign Minister); António Guterres (former Prime Minister of Portugal); Søren Jessen-Petersen (Danish head of the UN Interim Administration Mission In Kosovo); Bernard Kouchner (former French Minister of Health); Kamel Morjane (Tunisian, Assistant High Commissioner for Refugees) and Mark Verwilghen (Belgian Minister of Economy, Energy, Foreign Trade and Scientific Politics).

The International Council of Voluntary Agencies (ICVA), founded in 1962, is a global network of human rights, humanitarian, and development NGOs, which focuses its information exchange and advocacy efforts primarily on humanitarian affairs and refugee issues. ICVA attempts to influence policy and practice to reflect humanitarian principles and human rights through information exchange and advocacy.

For further information or to enquire about membership, please contact: ICVA, 26-28 avenue Giuseppe Motta, 1202 Geneva, Switzerland. Tel: +41 (0)22 950 9600. Fax: +41 (0)22 950 9609. Email: secretariat@icva.ch. To receive *Talk Back*, please email talkback@icva.ch with "subscribe" in the subject line.

speaker's corner

Who should drive humanitarian responses?

by Nick Cater

From refugee flows to earthquake relief, it is invariably local groups which are on the humanitarian frontline. Should international agencies reinvent themselves as solidarity and advocacy networks and start letting Southern NGOs take the lead?

Grateful for fully-funded appeals and gushing media coverage, hundreds of international agencies have descended on tsunami-affected countries.[1] This is despite the fact that in the main the region has functioning governments, military forces and emergency services, active Red Cross and Red Crescent Societies, extensive faith networks and countless local NGOs and community groups.

It is part of the standard rhetoric of international aid agencies that they have long-standing local partners. It is an indictment of past practice and lack of trust that so few felt able simply to send their partners some of the cash that flowed so speedily into their coffers. When expatriate staff flew in, they found indigenous organisations, temples, churches, mosques, local businesses and diaspora-funded do-gooders getting to work almost everywhere.

From Sudan to Sri Lanka, international aid appears caught in a time warp, unable to notice the fundamental changes underway in the skills, capacities and aspirations of the rapidly expanding number of local and regional NGOs. The latter are eager to play their full role in disasters, development and advocacy and are only held back by a lack of sustained funding and resultant difficulties in retaining trained staff due to higher salaries on offer elsewhere. Even in Africa, where once

international agencies might have argued that there was a dearth of indigenous NGOs, civil society is growing fast and taking on tasks ranging from AIDS awareness to agricultural extension advice. African NGOs now have experience in running refugee camps, providing psychosocial counselling, administering feeding programmes and much more.

African NGO symposium

While the inter-governmental initiative on good humanitarian donorship launched in Stockholm in 2003 seems to be making limited progress[2], representatives of hundreds of African NGOs gathered in December 2004 in Addis Ababa to discuss their future. They came at the invitation of the African Union and one of the continent's leading indigenous relief agencies, Africa Humanitarian Action (AHA). Founded in the wake of the Rwanda genocide by Dr Dawit Zawde, a former President of the Ethiopian Red Cross Society, AHA now has offices, trustees and supporters across the continent.

In a positive sign that some donors and major agencies are listening to the concerns of grassroots organisations, the Addis Ababa symposium was supported by the Japan International Cooperation Agency, the Swedish International Development Agency, the UN Economic Commission for Africa, the International Planned Parenthood Federation and UNHCR.

The meeting agreed to establish a Centre for Humanitarian Action as an African-led think tank, research centre and information exchange on issues around humanitarian and natural disasters. It intends to facilitate communication between African humanitarian agencies and their international counterparts, advise African NGOs on how to mobilise new and additional resources, and work to enhance good governance and management within Africa's humanitarian sector.

Many delegates expressed a deep sense of frustration at the foot-dragging reluctance of the North to allow African NGOs the resources to get on with the job to which they are committed. The final resolution urged donors to channel at least 25% of humanitarian aid through local NGOs, with a minimum of 10% of grants for overheads rather than the unsustainable 5% often on offer from UNHCR and other funders.

The proliferation of international aid agencies and the emergence of new donors – with sets of complex reporting requirements to add to the existing burden of recipient NGOs – is denying emerging civil society the space, funding and staff to thrive and grow. Chances of delivering local, appropriate, immediate and cost-effective assistance for displaced people are being lost. There is an almost predatory link between the South's calamities and Northern agencies' need for a 'good disaster' to grab media attention and funding for their salaries, perks, plane tickets, hotels, four-wheel drives, satphones and interpreters.

It is clearly in everyone's interest to have a fully-funded, well functioning

and sustainable local frontline for humanitarian action. Local NGOs must be allowed to take over the driving seat of aid. Some are already developing their own capacity to generate domestic and international funds via commercial enterprises, direct grants, payments for outsourced state welfare services and cross-border Internet-based philanthropy. Local agencies need significantly more funding, some of which can come by diverting it away from Northern aid agencies. The latter can then pursue a supportive fundraising and advocacy role for their frontline partners in the way that many faith-based networks are already doing.

Civil society in the South is demanding the opportunity to take on more responsibility. In the words of Dawit Zawde: "Today's international aid system is skewed in favour of the Northern agenda and cannot respond adequately to the priorities of organisations in the South. Africa has long been depicted as a hopeless zone of conflict, famine and displacement that lacks capacity to respond adequately to crisis. This perception supports an aid paradigm that marginalises and erodes local capacity, casting African actors as sub-contractors to their international counterparts. Tackling the crises, conflicts and disasters in Africa

should be, first and foremost, the responsibility of Africans."

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1. This theme will be explored at greater length in the forthcoming special FMR supplement on the tsunami response, due out July.
2. www.un.org/News/Press/docs/2003/eco-soc6072.doc.htm

Human resources neglected prior to repatriation

by Atle Hetland

Since 2002 more than three million refugees have returned home to Afghanistan, mostly from Pakistan and Iran, in UNHCR's largest assisted repatriation exercise. Unfortunately, some 75% of them have returned having never received any formal schooling, either prior to becoming refugees or in exile. For all the years of their displacement the international community knew that sooner or later repatriation and reconstruction would ensue. How could UNESCO, UNICEF, ILO and other organisations with education as part of their mandates allow this to happen? Why did they not sound the alarm when UNHCR reported these shortcomings? NGOs and the Pakistani authorities must also bear some responsibility. Why were Pakistan's professional, academic and scientific institutions not involved in educating Afghans?

Afghanistan's reconstruction is being delayed by lack of trained personnel. They would have been available had we – the 'experts' and 'advisers' – done our jobs properly. Instead, we effectively ignored literacy training, vocational and technical training, teacher training and capacity building. We have done little to involve Pakistani and Afghan scholars or institutions and have neither recognised the abilities, nor done

much to build the capacity, of local organisations. ACBAR, the Agency Coordinating Body for Afghan Relief, with offices in Peshawar and Kabul, has done excellent work in involving Afghans. However, there are very few examples of institutional development programmes and long-term inter-university and other institutional linkages between NGOs and institutions, and Pakistani and Afghan institutions.

There is scope for the situation to improve. With donor funding and NGO support, Pakistani and Afghan professionals and government officials could together draw up plans for rapid action. Much training can be done in countries bordering Afghanistan rather than in more distant and costly locations. Afghanistan cannot afford the time it would take to wait until its institutions are fully equipped to undertake the necessary training.

Southern Sudan is facing the same problem. In the late 1990s, I coordinated the Turkana Development Forum. The forum brought together 'experts', politicians, donors, NGOs and refugees in order to provide educational assistance – especially secondary and technical education, peace education and reconstruction planning – for the Turkanas in

Kenya, the Karamajong in Uganda and the southern Sudanese. But although the donors expressed agreement with the Forum's aims and took many chartered flights from Nairobi to the Sudanese border to 'assess the situation', no funding was allocated. Now, when peace finally seems to have come to southern Sudan, the consequence could be more than just delayed development: the whole fragile reconstruction and peace process may be in jeopardy. Had there been greater involvement of the professional institutions in the host country this would not have happened.

Donors must learn to take a back seat, to allow the involvement of local professional institutions and to heed their advice. We need to learn from the past and identify mistakes and their consequences. As donors step back from setting priorities they can put on centre stage those who should already be there: local institutions, governments and the refugees and returnees themselves.

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Introduction:
Europe – fortress or refuge?

by Heaven Crawley

The theme articles in this FMR challenge Europe's leaders to ensure that development of a common European asylum policy focuses on tackling the root causes of forced migration and on providing protection and integration and not simply keeping asylum seekers out of Europe.

On 1 May 2004 ten new countries joined the European Union,[1] increasing the EU's overall membership to 25 countries with a combined population of around 500 million. This date also marked the end of the five-year 'transitional period' for the implementation of the Amsterdam Treaty provisions on a common EU immigration and asylum policy.

From the outset, the rationale behind the development of a common European policy was that without minimum standards there would be a 'race to the bottom' as EU states adopted ever stricter policies so as not to appear a 'soft touch'. Certainly, on the face of it at least, it is logical that asylum and immigration policy should be dealt with at a European Union level – a European approach for a European issue. In practice, however, whilst efforts to harmonise were motivated partly by a desire to ensure that 'Fortress Europe' did not develop, in reality it has served only to cement this process.[2]

There are a number of complex and inter-related reasons why this has happened. The most obvious of these is the obsession – shared by most, if not all, EU Member States – with the number of asylum applications in Europe.[3] In fact only a tiny proportion of the world's 20 million refuges, asylum seekers and internally displaced ever get to Europe. In 2002 over two-thirds of these people were hosted in the developing regions of the world, with the 49 least developed countries hosting 26% of the world's refugees.[4] The UK hosts 11 persons per \$1 GDP per capita. In terms of its burden by GDP per capita the UK ranks 74th out of 155 countries in the world. By comparison Pakistan hosts 4,480 persons per \$1 GDP per capita, the DRC hosts

3,560 and Tanzania hosts 2,980.[5] In terms of population size, the UK has five refugees and asylum seekers per 1,000 inhabitants, a ranking of 56 out of 163 globally. By contrast Liberia has 124 refugees and IDPs per 1,000 inhabitants, Armenia has 105 and Afghanistan has 68.

Although other countries in the world share far greater responsibility for the globally displaced, the substantial rise in asylum applications towards the end of the 1980s and the continuing high numbers in the last decade have driven policy change in EU member states. Following the exceptional peak of intake in the early 1990s due to the crises in the Former Republic of Yugoslavia and Eastern Europe, the number of applications rose more gradually from 234,000 in 1996 to 387,000 in 1999 and 390,000 in 2000. Since that time numbers have fallen further still and in 2004 the 25 EU countries recorded 19% fewer asylum requests than in the previous year.

Despite this, there remains a conviction, shared by politicians and the public alike, that the asylum system is subject to widespread abuse and that most asylum seekers are not genuinely in need of protection but are really economic migrants in search of a better life for themselves and their families. The irony of this assumption is not only that it flies in the face of what we see happening in the world – in Iraq, Sudan, Chechnya and elsewhere – but that Europe is desperately in need of both skilled and less skilled migrants to fill gaps in the diminishing labour force resulting from lower birth rates and changes in education and employment patterns.

One of the principle aims of European policy then has been to keep out those who are viewed as imposing financial and political costs whilst simultaneously attracting economic migrants who are able to benefit the economies of EU states. Not surprisingly, this has been a difficult – if not impossible – balance to strike because it means that many individuals are prevented from accessing Europe in the first place or when they do are subject to increasingly hostile conditions. And, as some of the articles in this issue of FMR suggest, those who have been most badly affected by this process are among those who are the most vulnerable and politically and economically marginalised. The impact on children is most obvious but other groups – including women whose applications for asylum do not fit a stereotypical male 'norm' – also appear to have particularly lost out.[6]

public disquiet and hostility have been allowed to drive the direction of European policy making.

At the same time as trying to keep asylum applicants from reaching Europe in the first place, there have been discussions in virtually all Member States – and particularly those with longer migration histories – about the need to integrate asylum seekers, refugees and other groups of migrants into the economic, cultural and social fabric of the EU. Governments want better integration for those already here and for those coming in legally and are trying to establish a new balance between the right of communities to their own customs and the right of society to cohesion. But this process has proved to be equally difficult because the policies of deterrence themselves undermine the ability of asylum seekers and refugees in Europe to integrate. Moreover, there has been a wholesale failure on the part of politicians and policy makers to explain the seemingly contradictory approach that is being taken to

address the multiple and sometimes competing needs and obligations associated with the international protection and migration regimes. As a result, public disquiet and, more recently, hostility have been allowed to increase and to drive the direction of European policy making. A vicious cycle has become firmly established.

The key question that needs to be addressed in terms of the European asylum system is easier to ask than it is to answer: namely, where do we go from here? There seems little doubt that if the approach to harmonisation continues in its current direction the role of Europe in providing protection to even a small proportion of the world's displaced is likely to diminish further still. There are measures that EU states could take, either individually or collectively, to counter some of the impacts of increased external border control. One is to provide mechanisms for those seeking asylum to come to Europe through protected entry routes (as discussed briefly in relation to the issues facing Chechen asylum seekers). Another is to establish mechanisms for large-scale supported resettlement into Europe as proposed by the European Commission but yet to be developed on anything but a very small scale.[7]

Large-scale resettlement

Sixteen countries worldwide offer refugee resettlement programmes in partnership with UNHCR. Six of these are EU Member States – Ireland, Finland, Denmark, the Netherlands, the UK and Sweden.[8] Norway also has a resettlement programme. The numbers of refugees being resettled globally declined sharply after the terrorist attacks in New York in 2001. The numbers have now started to increase and in 2004 nearly 100,000 places were made available, mainly in the US, Canada and Australia. However, fewer than 5,000 of these refugees are resettled to Europe each year and although the UK began a resettlement scheme for vulnerable refugees who are in need of long-term protection – focusing primarily on those currently living in refugee camps in Liberia – since that time only around 160 people have entered the UK as part of the scheme.

In the current political climate there are concerns that the development of a large-scale European resettlement programme might be used to justify a political discourse – and ultimately change in policy approach – which distinguishes between 'legitimate' and 'illegitimate' modes of entry and implies that there is

no longer a necessity for asylum seekers to enter illegally or under false pretences because of the existence of an alternative 'gateway', although in reality this is very small and selective. These concerns are based in part on the development of a two-tier system in Australia where those who arrive in an 'unauthorised' manner are detained in remote centres and even if they are eventually granted asylum are only granted temporary status. In other words, even if a person is recognised as a refugee, they can never enjoy the same rights as someone with an identical claim who arrived on the resettlement programme.

Although these concerns are entirely justifiable given what we have seen happen in Europe over recent years, the reality is that such an approach already exists in many EU Member States. Asylum seekers who arrive spontaneously are viewed as illegitimate even in the absence of these alternatives, or where such alternatives are limited in scale. Given this context, the key issue is how to increase the scale of resettlement to provide meaningful long-term durable solutions for those in need of protection.

The European Commission has already identified an EU-wide

Albanian asylum seekers reach Italy.

resettlement scheme as one aspect of ensuring more accessible, equitable and managed asylum systems and has commissioned a study on the feasibility of setting up resettlement schemes in EU Member States or at EU level. Any resettlement schemes which are developed will need to be much more substantial than existing ones if they are to have anything other than a negligible impact (an annual European quota of 100,000 is the emerging consensus), must be treated as a complement to, rather than as a substitute for, the right to seek asylum spontaneously and should not be a substitute for the legally binding rights that attach to a refugee who has directly engaged the protection obligations of a state party to the 1951 Refugee Convention. This means that failure to access such procedures should never be used as a reason to deny an asylum seeker access to a procedure, or to draw adverse inferences about the genuineness of his/her other claim for protection. This in turn will require the concept of a 'refugee' to be reconceptualised and reclaimed.

Reconceptualising refugees

Measures to enable forced migrants to enter and settle in the EU and to contribute their often very considerable skills and energy to the European labour market will require three very significant but inter-related shifts in political thinking.

The first is a recognition that whilst the asylum determination systems of Europe have over the years come to define a 'Convention refugee' so narrowly that few now qualify, this does not mean that the majority of asylum seekers are in reality economic migrants and that they do not have protection needs. During the period 1990-2000, nearly 60% of all those seeking asylum in Europe originated from just ten countries in which there was well-documented conflict, human rights abuse and political repression.[9] Politicians and policy makers can and do argue that not all of these individuals were directly affected by these conflicts but that does not and should not be allowed to detract from the fact that these conflicts undermine the ability of the individuals concerned to live without fear. Nor should it be allowed to detract from the real-

ity that EU policies to address the root causes of these conflicts would probably have had significantly more impact on the number of applications in Europe than any number of measures to prevent asylum seekers from entering.

Secondly, it is time for EU governments to abandon the assumption that it is possible to distinguish between those seen as 'economically productive' and those viewed largely as an economic 'burden'. People are not simply units of labour but come with – or have aspirations for – family and other relationships and a desire to find a meaningful place in the society in which they live. This is often what it means to be truly integrated. Whilst employment is a very important part of this process, it is not the final or necessarily most important indicator of integration. Unless and until EU states accept their obligations towards those who are in need of protection and value migrants (economic or otherwise) for reasons that are not simply related to the contribution that they can make to economic growth but to society more generally, we are in danger of establishing a 'guestworker' system similar to that seen in Europe in the 1950s and 1960s and with similar long-term consequences.

Last, but by no means least, the language of protection and of the rights and needs of refugees needs to be reclaimed. In the European context it is rare to hear discussion of refugee issues others than in the context of debates about integration. In most political and policy discussions, and in the media 'debate' that often accompanies it, the terms 'economic migrant' and 'asylum seeker' prevail. Not only does this set up a false dichotomy between the two but it does not allow any space for discussion of the principles of protection or of the reasons why the concept of asylum is important. At the same time the term 'asylum seeker' – even more so than 'economic migrant' – has become a term of abuse with connotations that go far beyond the reality of an individual awaiting a decision on their need or otherwise for protection. The language of 'refuge' is important not only in terms of how Europe treats the people within its borders but

also in terms of our international role and responsibilities.

What is needed to generate these shifts in thinking? The articles which follow make a number of practical suggestions but what is needed

what is needed above all else is political courage

above all else is political courage: brave European leaders willing to urge public opinion towards a more nuanced and sophisticated approach to the issues of asylum and migration. Such a shift would build on Europe's powerful political and economic place in the world, acknowledge and attempt to address the root causes of international conflict and provide meaningful and long-term mechanisms for providing protection to those who are unable to get it in their countries of origin. Europe has an obligation towards the world's refugees but it also has an obligation towards itself. At the moment it appears to be fulfilling neither.

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1. These are Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia.
2. www.statewatch.org/news/2004/jun/03fortress-europe.htm
3. Zetter *et al* (2003) *The Impact of Asylum Policies in Europe 1990-2000*, Home Office Research Study 259: available at www.homeoffice.gov.uk/rds/pdfs2/hors259.pdf
4. UNHCR (2004) *Statistical Yearbook 2002; Trends in Displacement, Protection and Solutions*, UNHCR: available at www.unhcr.ch/statistics. See also 'Falling asylum figures: a wake-up call for the EU? by Raymond Hall, UNHCR Bureau for Europe, p54 of this FMR.
5. *Asylum in the UK: An ippr Fact File* (2005), available at www.ippr.org/ecomm/files/asylum_factfile_feb05.pdf
6. For a comparative analysis of gender-related persecution in national asylum legislation and practice in Europe see www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RESEARCH&id=40c071354&page=research
7. http://europa.eu.int/comm/justice_home/doc_centre/asylum/common/asylumstudy_dchr_2002_en.pdf
8. Non-EU Member States which offer resettlement programmes are: Australia, Benin, Brazil, Burkina Faso, Canada, Chile, Iceland, New Zealand, Norway and the US.
9. Castles, Crawley and Loughna (2002) *States of Conflict: Causes and patterns of forced migration to the EU and policy responses*, London: IPPR

Chequered progress towards a common EU asylum policy

by Tim Morris

Examination of the common EU asylum standards so far adopted suggests that there is still a long way to go before asylum policy and practice are harmonised and that this process of harmonisation may undermine the principles enshrined in the Refugee Convention.

The adoption of the Amsterdam Treaty by the members of the European Union in 1997 marked the beginning of a new era for asylum policy making in Europe. Title IV, Article 63 of the Amsterdam Treaty refers to the adoption of minimum standards on procedures in member states for granting and withdrawing refugee status and the establishment of EU-wide binding minimum rules on asylum and immigration. In the same year the Dublin Convention clarified that individuals claiming asylum must make their application in the first EU country that they enter.[1]

Following the Amsterdam Treaty's entry into force in May 1999, EU leaders held a summit in Tampere, Finland, in October 1999 which shaped the political guidelines that constituted the framework in which the EU's policies and legislation on asylum and immigration were to be developed. They reaffirmed the EU's commitment to the right to seek asylum. They agreed to "work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva [Refugee] Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of *non-refoulement*".[2] The Tampere conclusions also state that, in the long term, community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the EU.

The Tampere meeting endorsed an initial working document on harmonisation prepared in March 1999. It emphasised that common minimum standards would both ensure that any individual asylum applicant should receive the same decision irrespective of the EU state in which s/he lodges the asylum claim and would also act to prevent secondary migration of asylum applicants (so-called 'asylum shopping') between countries of the EU.[3]

At Tampere EU leaders confirmed the target date of May 2004, set out in Article 63, as the deadline for completion of harmonisation. This turned out to be unrealistic. Difficult negotiations slowed down the process and disappointed those who thought Tampere would usher in better protection for persons fleeing persecution and better solutions to the problems faced by governments.[4] Just prior to the expiry of the deadline, EU Justice Ministers met in Brussels and agreed to adopt a draft Directive on Minimum Standards for Member States' Procedures for Granting and Withdrawing Refugee Status (the 'Procedures Directive')[5] and a Directive on Minimum Standards for the Qualification and Status of Third Country Nationals and Stateless Persons as Refugees or as Persons who otherwise need International Protection (the 'Qualification Directive').[6]

The outcome of the harmonisation process has been rather contradictory and therefore remains unclear. On the one hand the Qualification Directive clarifies that in the determination of protection status the actor of persecution is irrelevant and can include non-state actors such as militia. This goes some way to reducing the differences in interpretation of the Convention which existed in EU states up till now. Importantly, the Directive also allows for the recognition as a refugee of those persons who have a well-founded fear of being persecuted on account of their sexual orientation or gender. At the same time the Procedures Directive – at least on the face of it – appears to set out some basic procedural guarantees to asylum applicants – including the right to remain in the EU country pending examination and in relation to examination and decision making (including legal assistance and representation, personal interview and stating of reasons for rejection). Nevertheless, the Directive has failed to achieve its overall objective of establishing a Common European Asylum System based on the full and inclusive application of the Refugee Convention. This is arguably because of fundamental weakness in the draft Procedures Directive which potentially seriously undermines the ability of asylum seekers and refugees to access protection.

Directive's shortcomings

The wide scope of inadmissible applications listed in the draft Procedures Directive leaves EU states free to refuse access to asylum procedures. It is cause for concern that:

- Article 27's definitions of the 'safe third country' concept is open to criticism due to the ambiguous stipulation of whether there is to be case-by-case examination of whether the third country concerned is in reality safe for the particular asylum applicant.
- The scope for applicants to challenge the application of the 'safe third country' concept on the grounds that s/he be subjected to torture, cruel, inhuman or degrading treatment or punishment in that country is not only minimalist but is also at variance with the general criteria for 'safe third countries' in the same Article.
- Scope for inadmissibility under the notion of so-called 'supersafe third countries' allows for refusal of substantive examination of asylum applications submitted by persons entering through certain European countries outside the EU: the criteria for designating such 'supersafe third countries' are formalistic.

- 'Safe countries of origin' are to be designated not only by EU members according to existing legislation but also through a minimum common list to be adopted by the Justice and Home Affairs (JHA) Council. Eventually, the JHA Council gave up reaching agreement on this list, postponing the decision till the abandonment of the unanimity requirement.

- While the Commission initially intended to modify the concept of 'manifestly unfounded' asylum applications in order to narrow the scope of application of accelerated procedures, the adopted Directive allows for extensive application of such procedures. This follows partly from the option to lay down national rules for such procedures to cover a wide number of situations and partly from the introduction of 'specific procedures' which allow individual EU members to derogate (ie avoid the full implementation) of the basic principles and guarantees of the Directive.

Asylum seekers from Albania arrive in Brindisi harbour, Italy.

Derogation is allowed if examination of asylum claims takes place in the context of decisions on entry into the territory at the border or in transit zones. Importantly, the scope of existing national rules may have been extended during the drafting process, since the decisive date for such rules is the time of the adoption of the Directive.

These procedural arrangements and limited safeguards regarding appeal against negative decisions imply serious risks for the legal safety of individuals. In certain circumstances this may result in merely cosmetic examination of the need for international protection. This is particularly worrying because certain EU states intending to implement these optional provisions already apply similar practices jeopardising refugee protection, while others have little experience with procedural safeguards for asylum applicants and may embrace such a fragile legal framework. The introduction of sub-minimum standards provides no effective guarantees for the thorough examination of individual applicants' need for international protection.

Diversity or evasion?

As with the Refugee Convention definition, the interpretation of the Qualification Directive (stipulating who qualifies either for refugee or subsidiary protection status) is likely to be intertwined with the concrete assessment of individual cases in which evidentiary issues play a major role. This is likely to reduce transparency. Domestic norms and practices limiting judicial review may exacerbate the transparency problem. It may become difficult to prove if EU states deviate (indirectly) from the minimum standards laid down in the Qualification Directive regarding the delimitation of persons in need of protection.

The Procedures Directive governs administrative and procedural matters where there will be more control over whether the minimum requirements have been implemented. EU countries will simply not have the same opportunities for ignoring or evading these common standards because any administrative or procedural arrangement at variance with the Procedures Directive will be readily discovered both by the individuals affected and by those bodies controlling the implementation of EU law. This might explain why EU states utilised their right of veto inherent in the unanimity requirement to insist on a vast amount of exceptions or derogations in order to ensure the possibility of maintaining domestic peculiarities. This is

no surprise given that there have traditionally been few international obligations concerning asylum procedures, due to different administrative and judicial traditions of States parties to the Refugee Convention.

the introduction of a single asylum procedure … may involve the risk of undermining the primacy of the Refugee Convention

The unanimity requirement within this policy area has now been abandoned. It remains to be seen whether the modified legislative system, allowing for future asylum standards to be adopted in the co-decision procedure under Article 251, will remedy the failures so characteristic for the harmonisation of asylum procedures.

A Single Asylum Procedure as the route to protection?

In November 2004 the EU adopted the 'Hague Programme' on the development of EU justice and home affairs policy over the next five years.[7] The Hague Programme will strengthen EU cooperation on asylum and immigration issues and specifies actions the EU will take to further co-ordinate and integrate immigration and asylum policies. It stipulates that by 2010 the EU should have a common asylum policy executed by a single EU body through a single asylum procedure. To avoid gridlock in reaching consensus, almost all decisions on immigration of the 25 EU members – including in relation to asylum – will no longer require a unanimous vote but will be taken by qualified majority.[8]

A single asylum procedure should facilitate applications for protection and save both time and money. It may prove an important deterrent to abuse of existing systems due to:

■ shorter duration of asylum procedures as a result of the joint examination of both Refugee Convention and subsidiary protection grounds
■ fewer administrative resources spent by joining the two examination procedures
■ more effective enforcement of negative decisions by denying asylum applicants the chance to postpone deportation by

introducing a new procedure on subsidiary protection grounds.
■ scope to facilitate protection and integration due to the more rapid granting of protection to those in genuine need.

However, there are some disadvantages and problems associated with the introduction of an all-inclusive or partial single procedure. One major concern is the potential for a 'watering down' of Convention refugee status. The examination of any asylum application carries the risk of an incorrect decision, a risk that might arguably be exacerbated by the current hostile climate and by an accelerated pace of decision making. The existence of separate procedures for examination on Refugee Convention and subsidiary protection grounds provides the opportunity for remedying mistakes in the former. Thus, the introduction of a single asylum procedure eliminates a structural safeguard. In addition, it may involve the risk of undermining the primacy of the Refugee Convention, due to the incentive to opt for the less demanding alternative within the same examination procedure.

The reduction of procedural safeguards may be compensated for by the higher procedural standards for the examination of subsidiary protection cases that will, in a number of EU states, follow from the extension of the scope of EU standards on asylum. However, this extension of the scope of procedural standards in turn requires an increased level of protection in terms of appeal rights. Unlike the Refugee Convention, which has no specific demands in terms of examination and appeals procedures, the human rights obligations of *non-refoulement* underlying subsidiary protection require compliance with the related right to effective remedies. This imposes on EU members the obligation to secure a right to suspension of deportation as long as the relevant legal remedy has not yet reached a conclusion. Hence, the efficiency inherent in the single asylum procedure cannot be obtained without some investment in 'fairness' in terms of enhanced procedural standards.

ECRE welcomes the proposal for steps towards the development of a single asylum procedure as further progress towards a Common European Asylum System. However, ECRE cautions that this must be based on the full and inclusive application of the 1951 Refugee Convention and other international human rights law instruments as originally set out in Tampere at the outset of the harmonisation process. In this respect, ECRE reiterates its grave concerns about the standards contained in the Procedures Directive, which are capable of interpretation and application in a manner inconsistent with international refugee and human rights law. It is vital that EU states view developments towards a single asylum procedure as a means to improve both the quality and efficiency of decision making, rather than as an opportunity to further reduce standards of protection to the lowest common denominator, thereby putting at risk the lives and safety of individuals fleeing persecution.

Tim Morris is one of the FMR editors. We are grateful for information and comments provided by Jens Vedsted-Hansen of the University of Aarhus Law School, Denmark (email: jvh@jura.au.dk) without whom this article could not have been written.

1. www.irishrefugeecouncil.ie/factsheets/dublin-convention4.html
2. www.europarl.eu.int/summits/tam_en.htm
3. http://aei.pitt.edu/archive/00001277/
4. The European Council on Refugees and Exiles assessment is at: www.ecre.org/positions/Tampere_June04_full.doc
5. http://register.consilium.eu.int/pdf/en/04/st14/st14203.en04.pdf
6. www.eurunion.org/news/press/2004/20040069.htm and further discussion of the Directive on p56.
7. www.statewatch.org/news/2004/nov/hague-annotated-final.pdf
8. For the EU a qualified majority is when at least 55% of EU members, including at least 15 countries and comprising states which make up at least 65% of the EU's population, are in agreement.

The Forced Migration Online team at the RSC has produced a resource page on **Asylum in Europe** to complement this feature section. See: www.forcedmigration.org/browse/thematic/asylum.htm

Towards the integration of refugees in Europe

by the European Council on Refugees and Exiles

The guiding principle for national integration policies in Europe should be a mainstream approach to refugee integration where possible and the provision of specialised services where necessary.

Refugee integration is a dynamic two-way process, in which individual refugees, governments and society work together towards building a cohesive society. This process begins from day one. Integration relates both to the conditions for and actual participation in all aspects of the economic, social, cultural, civil and political life of the country, as well as to refugees' own perceptions of acceptance by and membership in the host society.

The focus in the current refugee integration debate, however, is often limited to individuals not living up to integration expectations held by host societies. Part of the challenge to facilitate integration of refugees lies in the fact that refugees share many integration needs with other migrants and resident third-country nationals but are also likely to have special needs as a result of their displacement and their treatment in the asylum determination process. Refugee integration is closely related to the reception phase and the quality and length of the asylum determination procedure. The European Council on Refugees and Exiles (ECRE) recommends that the reception phase should be recognised as an integral part of the integration process of refugees.

Creating a welcoming society

Research on public perceptions about refugees has shown that people who are least in favour of ethnic diversity live in mostly ethnically homogeneous areas. There is little public understanding of the reasons why refugees have to flee. Reporting on asylum issues is an emotive and sensitive area and all too often the media revert to the use of imprecise language and stereotypes when describing refugee issues. Over the last few years a climate of intolerance and xenophobia has emerged in some European countries, opposing the integration of refugees and exploiting the public's fear of 'the other'. Such an attitude – based on racism rather than facts – is unacceptable and highly counter-productive to the development of a cohesive society.

Political leadership is needed to shift the focus from deterrence, numbers and costs to asking how to most effectively meet European states' international legal obligations. The fears and needs of host communities need to be taken seriously but policy makers must refrain from playing out fears of different population groups against each other – or from avoiding the topic all together.

In order to promote a welcoming society to facilitate refugee integration, ECRE recommends that:

- Education at schools, colleges and in the workplace should promote respect for differences and highlight the benefits of cultural diversity.
- Policy makers and governments should take more responsibility for ensuring accurate and balanced public information on refugee issues.
- Governments should identify and counteract misinformation, in particular where it incites fear and mistrust of refugees, and explain clearly that refugees are people in need of protection.
- European governments should seek to introduce national anti-discrimination legislation and systems to monitor refugee access to the labour and housing markets as well as to health, social, education and other community services.
- Easily accessible systems should be introduced for lodging complaints about discrimination.
- Anti-discrimination legislation must be backed up by penalties reflecting the seriousness of the crime committed, and by public awareness campaigns highlighting direct, indirect and institutional discrimination.
- States must work to ensure that refugees are made aware of, and can access, their rights.

Political and socio-economic integration

The aim of political integration is to bring about conditions which allow refugees to participate in all aspects of the political life of the host country. There are, however, significant political differences among states with regard to equal opportunities for refugees.

One key question is whether refugees should be identified and treated separately. Integration initiatives could either address refugee-specific needs or act as 'bridges' to mainstream provision. They could be combined with services provided to migrant or minority groups, with the overall objective being the eventual incorporation of refugee perspective(s) in minority and equality policies. Any positive action must be time-limited according to individual need, with clear exit strategies and geared towards equal opportunities.

With regard to political integration, there are many challenges to refugee participation in politics. In some countries, where refugees have the right to vote at the local level, refugee issues are placed higher on the political agenda with politicians becoming more responsive and aware of the concerns of this group. In Ireland, for example, where asylum seekers/refugees were allowed to vote and stand for vote in local elections in June 2004, the political debate was changed; refugee-related issues were debated and members of the immigrant and refugee community were successfully elected.

ASYLUM IN EUROPE

UNHCR/E Dagnino

Albanian asylum seekers arrive at Brindisi, Italy.

Refugees may face a number of barriers to socio-economic integration resulting from their experiences of flight and involuntary exile: lack of knowledge of the language of the host country, isolation and separation from family members and physical and mental health problems relating to past trauma. Failure by governments to address these functional barriers to integration can result in the marginalisation of refugees and can impact negatively on society as a whole.

Lack of access to the labour market during the initial period of arrival in a country of asylum seriously hinders refugee integration in the long term. In addition, very few European countries allow asylum seekers to work while they await a decision on their application for asylum. Vocational training, recognition of qualifications, education and language tuition are important factors in the process of achieving gainful employment [see article pp33-35] and vocational training can also play a significant role with regard to refugee empowerment and integration.

Refugees can suffer from a range of health problems relating to their experiences of war, political persecution, torture and imprisonment and the conditions of escape from their

country of origin. Physical and mental health interventions need to take into account the range of circumstances of refugees' lives.

Housing provision impacts on a number of other integration outcomes, such as health, education and employment. Refugees should be allowed the same freedoms as nationals to choose where to reside.

Integration interventions need to be targetted at the particular age-related needs of refugee children, young people and older refugees. A gender perspective aimed at meeting the particular needs of refugee women, while recognising the difficulties faced by refugee men, should also be incorporated,

Many European governments rely on NGOs for the delivery of integration services to asylum seekers and refugees. Information exchange and communication can help in putting together the different approaches and ideas so that they complement each other rather than compete against each other, to the detriment of services.

ECRE argues that:

■ Refugees should be entitled to long-term residence rights regard-

ing family reunification, freedom of movement, access to employment and education.

■ The right to vote and stand for election at the local, national and European level should be granted to refugees after a maximum of three years' residence. (Participation at the local and European level is allowed in Denmark, Sweden, Finland and Belgium.)

■ Citizenship is an important policy instrument for facilitating integration. European governments should give consideration to Article 34 of the Convention Relating to the Status of Refugees and the Council of Europe's Recommendation 564 (1969) on the Acquisition by Refugees of the Nationality of Their Country of Residence and in particular facilitate the naturalisation of refugees.

■ EU legislation currently limits the right to family reunification to people meeting the criteria of the 1951 Refugee Convention. It should be extended to apply to any person not covered by the 1951 Refugee Convention but nevertheless in need of international protection.

■ Any restrictions on employment should be lifted at the earliest possible stage and no later than six months from the time of the

initial application for asylum.

- Study grants should be made available and qualifications more readily recognised.
- Health providers should, as far as possible, develop culturally sensitive services that reconcile European norms of health with non-Western health orientations.
- Training for professionals, including doctors, nurses, teachers, interpreters and others, on refugee and cross-cultural issues should be made available at educational establishments and in the workplace.
- States should ensure the involvement of all sectors of the refugee population, including special needs/vulnerable groups, in the design, implementation and evaluation of integration programmes.
- Government authorities and NGOs delivering services to asylum seekers and refugees should work in partnership with responsibilities clearly outlined.

The final steps of the integration process happen in inter-personal relationships at the local level – in the neighbourhood, at the workplace, in the education of their children and as friends. Policy makers need to be aware of the inter-personal dimension of integration by creating opportunities for these types of interaction at the local level.

Cultural integration

Cultural diversity is a characteristic feature of today's democratic Europe. European societies differ considerably, however, in the degree to which they embrace cultural diversity and in the ways they deal with both recent newcomers (refugees and migrants) and established foreigners and minorities in general. Europe's own history as a refugee-producing region must not be forgotten, nor the fact that both migration within Europe and inward migration to Europe have contributed to the growing wealth, not the impoverishment, of Europe. This should be acknowledged in integration policies both at the national and at the European level.

'Culture' is not a static concept but is constantly evolving. To provide for cultural integration it is not necessary that all individually perceived notions of one particular culture in a

country be acquired. There are, however, a number of core values that underlie the cultures of democratic European countries: human rights, the principle of equity, the protection of minorities, democracy, the separation of state and church and the rule of law.

Religion plays a major role for many asylum seekers and refugees and this can pose both opportunities and challenges to societies. Newly arrived groups might revitalise already existing religious groups but their beliefs might also come up against a separation of state and church in secularised Western societies. Religious organisations in the host society can promote religious tolerance, respect and understanding between members of different faiths, provide services for newly arrived refugees as well as provide opportunities to get in contact with others already established in the community.

Refugees have cultural ties in more than one country. Although primarily a political and legal matter, dual citizenship can be seen as a tool to acknowledge these 'trans-national' or 'multiple' identities. Some countries have recognised dual citizenship as a possibility to attract international economic cooperation through foreign direct investment or tourism. In European countries, however, the belief persists that dual citizenship poses questions of loyalty and belonging.

- Different inter-religious platforms should be established to strengthen the knowledge of religion(s) among government staff, journalists and the public, including school pupils.
- The role of religious organisations in promoting respect and understanding and providing essential services should be recognised and drawn on by policy makers.
- Refugees should be allowed to continue to hold their original nationality where possible (ie be granted dual citizenship).

Conclusion

The recommendations above cannot present a panacea for all integration challenges in all countries. However, all countries must improve their integration efforts and realise the importance of developing cohesive societies. Equally, individual refugees

need to be aware of their responsibilities towards their host countries with regard to common values. Refugees themselves are the most important actor in refugee integration and integration initiatives should include their input, knowledge and expertise. In order to assure that refugee voices are heard in the integration debate the empowerment of refugees is crucial.

Towards a European Resettlement Programme

In this paper ECRE calls for Europe to substantially increase its resettlement activities at both national and European level and thus take a fairer share of the large number of refugees worldwide in urgent need of resettlement. ECRE suggests how a joint European resettlement programme could be developed and how it could function, on the basis of the views and experience of ECRE member agencies. The paper looks at how commitments to resettle a certain number of refugees could be set and shared by states, as well as what criteria should be used to target agreed commitments. It addresses the resettlement process in some detail and suggests how identification, processing, decision making and pre-departure activities could be adjusted in the context of a European resettlement programme.

Paper online at www.ecre.org.

Europe looks to Africa to solve the 'asylum problem'

by Heaven Crawley

The drive to reduce the number of asylum seekers in Europe and to secure durable solutions for the 'asylum problem' has provoked controversy about 'extra-territorial processing'. The most effective and durable solution, however, is to address the root causes of the initial flight.

Since 1999 Europe has embarked on a long – and often painful – process of policy harmonisation designed to deliver a common European asylum policy. The recent history of European migration policy has been dominated by two objectives that are pulling in opposite directions. On the one hand, the ageing populations and changing labour markets of most European countries have created employment opportunities for both high- and low-skilled labour migrants. On the other, there has been growing concern about the 'asylum problem' – despite the reality that the number of people seeking asylum in the EU is steadily decreasing. Many politicians, policy makers and members of the public believe that asylum is being (mis)used as a means of gaining access to the EU and that this reduces the efficiency of EU labour markets, involves substantial expenditure on processing and welfare and undermines public confidence in Europe's ability to control its borders.

As these developments have taken place in Europe, UNHCR and others have encouraged states to address the root causes of forced migration and to devise durable solutions to forced migration which enable people to remain in their regions of origin rather than make long and often dangerous journeys to access protection. For many years UNHCR has made efforts to link humanitarian assistance with the development process in less prosperous regions of the world. Most recently UNHCR has attempted to establish a comprehensive framework for refugee protection and to address the root causes of forced migration through its Global Consultations on International Protection, and subsequent Agenda for Protection and 'Conven-

tion Plus' initiative. This focuses on the strategic use of resettlement, measures to address irregular secondary movements of refugees and asylum seekers and the targeting of development assistance to achieve durable solutions.

The desire of countries in Europe to reduce the number of asylum seekers for which they are responsible and the concerns of UNHCR that durable solutions be found have come together – in a rather unexpected and worrying way – in recent European discussions about so-called 'extra-territorial processing'.

Proposals to process applications in Africa

Early in 2003 the European Council – the main EU decision-making body whose meetings are attended by EU leaders or senior ministers – received two proposals, one from the UK government and one from UNHCR, each mapping out their ideas for a future European Asylum System.

The UK's proposal was circulated to EU ministers by the UK Prime Minister, Tony Blair, and was entitled 'New International Approaches to Asylum Protection'.[1] It had two separate but inter-related elements:

- **Regional Protection Areas (RPAs)** – to be established in regions of origin. Asylum seekers from certain countries could then be returned to their home regions where 'effective protection' could be offered to them, and where they would be processed with a view to managed resettlement in their home regions or, for some, access to resettlement schemes in Europe.

- **Transit Processing Centres (TPCs)** – to be established along major transit routes into the EU, close to EU borders, to which those asylum seekers arriving spontaneously in the UK or another EU member state would be removed and where their claims would be processed. Those given refugee status could then be re-settled in participating EU states whilst other would be returned to their country of origin.

UNHCR's proposal – which has been widely viewed as an attempt to ameliorate the most damaging aspects of the UK proposal – was presented as the 'EU prong' of its wider Convention Plus initiative. The 'EU prong' proposes separating out the groups that are clearly abusing the system, and sending them to one or more reception centres somewhere within the EU, where their claims would be rapidly examined by joint EU teams.

talking tough on asylum has become very popular for politicians

The UK proposals provoked a public and political outcry because they were seen not as a genuine initiative to address the causes of formed migration but as a populist attempt to be seen to be 'tough' on asylum. In the UK, as in many other countries in Europe, talking tough on asylum has become very popular for politicians of all political persuasions. Although the UNHCR proposals received a more favourable reception than the British proposals, they were regarded with caution by some who were concerned that the notion of setting up a parallel determination process represented a retreat away from the principles of the 1951 Refugee Convention.

What happened to the proposals?

Although not entirely new, the UK proposals provided the catalyst for an intense debate within and outside Europe about the future of the international protection regime.

The European Commission, the EU's executive arm, responded to both sets of proposals by publishing a document which effectively rejected the UK proposals as unworkable and instead set out its own approach for establishing more accessible, equitable and managed asylum systems in Europe. The Commission reiterated that any new approach should aim to enhance international protection rather than shift responsibility for it elsewhere, and should be underpinned by ten key principles – including the need to fully respect international legal obligations of Member States, the need to improve the quality of asylum decision making in Europe, and a recognition that the most effective way of addressing the refugee issue is by reducing the need for refugee movements. The Commission also strongly recommended an EU-wide resettlement scheme to enable refugees to travel legally to the EU to access protection and durable solutions.

Although the UK's proposals were rejected at the European level, individual European countries – and to some extent the Commission itself – have continued to look to Africa to solve the 'asylum problem'.

Immigration officers searching trucks for illegal immigrants at Dover Docks, Kent, UK.

The UK Government, for example, has continued discussions 'behind the scenes' with a number of EU countries (most notably the Netherlands and Denmark) in an attempt to establish a 'coalition of the willing'. In April 2004 the UK government indicated that it had moved away from the idea of Regional Protection Areas and was instead looking to develop 'migration partnerships' with third countries in the region of origin. Tanzania, Kenya and Somalia have been identified as possible countries with whom such partnerships might be established. Although it is not clear what any partnership might consist of or how it might be implemented, it has been reported that these proposals may involve plans to process asylum seekers in their own region of origin in a scheme possibly linked to extra development aid and assistance. The Dutch and Danish governments have shown particular interest in the UK's proposal for extra-territorial processing, both governments having previously put forward similar agendas.

Germany objected strongly to the UK's proposals but in October 2004 put forward its own plans to set up transit camps in North Africa where

EU officials would receive and examine asylum applications. According to the German proposal, those found to be refugees in Africa would be allowed to settle in European countries although they would not be given the same status afforded by European law. Those deemed not to be at risk would be sent back to their country of origin.

Although no country has explicitly vetoed the proposals, they appear to be deeply divided over the practicalities of such a plan, with France, Sweden and, to a lesser extent, Ireland being strongly opposed to proposals for processing asylum applications outside Europe. The German proposals, however, are strongly backed by the Italian government which has recently called on Libya to block efforts by two million people allegedly waiting to cross the Mediterranean. As part of a unilateral agreement between Italy and Libya, the Italian government is planning to send 150 police officers to Libya to help train their Libyan counterparts. In addition, Libya will be purchasing military equipment and vehicles from Italy – including airplanes, boats, helicopters and jeeps needed to block the trafficking of illegal im-

migrants into Europe. Italy has said that plans to set up transit camps in Libya will go ahead, no matter what the opposition to them.

Although it has indicated that it is keeping an open mind about the various proposals, it is worth nothing that the European Commission has also proposed funding a scheme to help Mauritania, Morocco, Algeria, Tunisia and Libya to develop their asylum laws and train personnel capable of processing asylum claims in close cooperation with UNHCR. Unlike the proposed transit camps, the Commission-funded centres would not be allowed to process asylum claims for Europe. Rather, having signed up to 1951 Refugee Convention, countries which pick up asylum seekers – presumably on their way to Europe – will process the applications themselves and determine whether the individual concerned is in need of protection in that country. Should asylum seekers fail to claim asylum and instead enter Europe, they will be deemed to have passed through a 'safe third country' and will be required to return there for their asylum application to be considered. Although the pilot scheme should not be confused with the various proposals for transit centres and is in many ways quite different, this initiative, when seen alongside the others outlined here, suggests that Europe is continuing to look to Africa for solutions to its perceived 'asylum problem'.

The end of protection in Europe?

Recent developments in asylum policy and practice in Europe have multiple implications. A number of organisations including Amnesty International and UNHCR have expressed concern about the countries in which the transit camps are proposed to be located. Whilst they may be the most appropriate from a geographical point of view, several of the countries – most notably Libya and Algeria – do not themselves live up to international human rights standards and cannot therefore be expected to safely house asylum seekers whilst a decision is being made. Moreover, experience shows that large-scale refugee camps, wherever they are located, often have their own internal difficulties in terms of both service provision and

security, and in some cases lead to instability in the surrounding area. There are also concerns that the quality of decision making may not be sufficient to ensure that those who are in need of protection are identified and not returned to their countries of origin. Even in European countries initial decisions are often wrong. Between 30 and 60% of all people with refugee status in the EU are only recognised as such after appeals against initial decisions which have denied them refugee status.

At a more strategic level, there are issues around whether the 'asylum problem' has been correctly identified and therefore whether transit camps are the solution. As indicated earlier, the problem for Europe has been identified in terms of the numbers of asylum seekers and the associated cost of processing applications. In terms of numbers, whilst the proportion of asylum seekers entering Europe through Africa is not insignificant, it does not represent the greatest proportion of applications. Large numbers of asylum seekers also come from other regions of the world where there is conflict and political repression.

In 2003 and 2004 the largest number of asylum seekers to Europe came from the Russian Federation, Serbia and Montenegro, Turkey, China, India, Iraq and Iran. Although there were some African countries in the list of top refugee-producing countries – including Nigeria, the DRC and Somalia – these did not count for a significant proportion of the overall total. Moreover, there is evidence that existing policies which have tried to prevent people from accessing Europe have simply pushed people underground and increased their vulnerability.

Similarly, in terms of cost it appears that analyses of the 'asylum problem' and the proposed solution are not in line with one another. Whilst it is true that the estimated $10bn spent each year by the industrialised states on their asylum systems is substantially greater than the $1.1bn that UNHCR spends on the 20 million refugees and displaced persons

in less prosperous countries around the world, any new system of transit camps for processing asylum applications outside Europe is likely to be very expensive, particularly if developed in parallel with systems for spontaneous arrivals. These resources could arguably be devoted to more effectively addressing the underlying causes of forced migration.

Perhaps most significantly the proposals have raised concerns that the concept of extra-territorial processing undermines the principles of international protection itself and could spell the beginning of the end of any meaningful refugee protection in Europe. Many NGOs have commented that the UK's 'new vision' proposal bears striking similarities to the highly controversial Australian 'Pacific Solution', under which the Australian government persuaded Nauru and Papua New Guinea to permit the establishment of Australian-funded detention centres where asylum seekers were held, pending determination of their status.[2] In the same way it is feared that camps in North Africa and elsewhere could be used by Europe to dodge its responsibility to deal with refugees and asylum seekers.

At the very least the current policy discussions and tone of the political debate send a very negative message to other countries in the world

Europe has prioritised fighting illegal immigration over fighting the root causes of refugee flight and improving refugee protection in third countries

hosting much larger numbers of refugees and asylum seekers than those in Europe. Both historically and at the current time, the overwhelming majority of refugees are located in the developing world, close to their countries of origin. It is arguably here that political effort and financial resources should be focused. These efforts should aim at addressing the root causes of forced migration flows and at supporting neighbouring countries in protecting those who have no choice but to leave their countries of origin.

Joining up European policies

Since the early 1990s the EU has recognised that it needs a

comprehensive approach to migration, addressing political, human rights and development issues in countries and regions of origin and transit, and that this requires combating poverty, improving living conditions and job opportunities, preventing conflicts, consolidating democratic states and ensuring respect for human rights, in particular the rights of minorities, women and children.[3] In reality, however, Europe has prioritised fighting illegal immigration over fighting the root causes of refugee flight and improving refugee protection in third countries. This has resulted in lack of coherence between the EU's measures to integrate migration issues into external policies and its human rights and development objectives.

Proposed new approaches to tackling the 'asylum problem' similarly fail to take a genuinely long-term view of forced migration issues – because of the institutional context in which policy making takes place and domestic political electoral pressures. It is also due in significant part to

a number of 'gaps' (institutional, financial and conceptual) that have obstructed efforts in this area for the past 50 years. These gaps are due in large part to differences in policy objectives and targets, where for instance powerful economic interests stand to lose if human rights and poverty reduction policies are given priority.

The most effective and durable solution to Europe's 'asylum problem' is to address the root causes of the initial flight. Although this is widely understood and accepted, it is proving difficult to turn rhetoric into reality. Tackling the underlying causes of forced migration is not easy. But if it can be achieved it offers rewards that go way beyond headlines in the national press.

There remains huge unused and untapped potential for 'joined up' policy making in Europe that establishes coherence across the EU's policies in the areas of conflict prevention, Common Foreign and Security Policy, trade, humanitarian

and development aid policy, and Common Agricultural Policy. With its great comparative advantage deriving from its presence in numerous geographical locations, sectors and policy fields, the EU is well positioned to take a lead in the migration-development field. The question which remains is whether it has the political courage to do so.

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1. The UK proposal can be found at www.refugeecouncil.org.uk/downloads/policy_briefings/blair_newvision_report.pdf

2. See FMR 13 www.fmreview.org/FMRpdfs/FMR13/fmr13.7.pdf

3. Tampere European Council 15/16 October 1999, Presidency Conclusions (para 11), available at www.europarl.eu.int/summits/tam_en.htm

Asylum seekers from various countries at the Sangatte Red Cross centre, near Calais, France.

Integration and dispersal in the UK

by David Griffiths, Nando Sigona and Roger Zetter

It is often suggested that Refugee Community-based Organisations (RCOs) play a key role in assisting refugee adaptation and integration in the UK. But what happens when the reception policy for asylum seekers and refugees is fundamentally changed?

When asylum seekers and refugees were relatively few in number in the UK, RCOs were considered to be prime movers in facilitating their integration. 'Integration' is the process of 'getting used to' the new environment, of individual adaptation, but also implies a longer-term, two-way process between refugees and the receiving society. RCOs provided material assistance and facilitated access to the labour market and to the social support systems of the host country. To a greater or lesser degree they also provided political solidarity for their members in exile.

However, alongside the increase in the number of asylum seekers in the 1990s came the development of increasingly hostile policies of deterrence and restrictionism towards forced migrants. Part of this policy shift has involved fundamental changes to the process of providing welfare support and housing to asylum seekers whilst they are waiting for their applications to be decided.

Dispersal

The UK's Asylum and Immigration Act 1999 marked a radical shift in British asylum policy by introducing new procedures for the reception and accommodation of asylum seekers pending their claim for status determination in the UK. A previously decentralised system which allowed asylum seekers to live where they wanted to – typically, where they had access to social networks and communities – and to access the mainstream welfare benefits system was replaced by a centralised process.

A new agency, the National Asylum Support Agency (NASS), was established within the Immigration and Nationality Department of the Home Office. The Act withdrew asylum seekers completely from all benefit entitlements and charged NASS with the mandatory dispersal of all asylum seekers, away from the pressurised housing areas of the southeast to areas of surplus in the older industrial cities in the Midlands, the north and Scotland. Accommodation is contracted mainly from private landlords and some local authorities in so-called 'cluster areas' where services are coordinated by Regional Consortia of local authorities, NGOs and accommodation contractors. Approximately 41,500 asylum seekers were dispersed in 2004.

This new regime has had many far-reaching impacts and has been subject to sustained criticism. This criticism stems partly from the fact that the messages coming from the UK Home Office are mixed. Alongside the tightening of asylum policies and the introduction of dispersal, the Home Office has introduced a refugee integration strategy (introduced initially in 2000 and elaborated further in 2004 and 2005). Refugee integration, like dispersal, is based upon the principle of developing regional refugee strategies coordinated by local authority consortia and involving RCOs as potential partners. However, recent research carried out in London and two dispersal regions (Birmingham in the West Midlands and Manchester in the Northwest)[1] suggests that dispersal has had a marked effect on the community-based organisations supporting refugees and asylum seekers, and that these effects are not always positive.

Integration or marginalisation?

The increase in the size and diversity of refugee communities and in the number of RCOs, particularly in the dispersal regions, are among the most significant outcomes of dispersal. Dispersal has brought to the regions new ethnic/national groups – from francophone Africa, Kosovo and Bosnia, for example – as well as groups that were well established in London but had no foothold in the dispersal areas. In many cases, the growth in the number of RCOs has intensified networking between refugee organisations, local authorities and the main NGOs involved in dispersal. And there is strong anecdotal evidence to suggest that RCOs make a vital contribution in meeting the welfare needs of their communities.

Our community is very isolated, very vulnerable and contains many people who speak little English and do not understand the British system. By running a drop-in fortnightly, it will enable us to provide advice, interpretation and sign-posting for asylum seekers. But also it will act as a social event for lonely and isolated Iranians.

(Iranian refugee)

The Iraqi society is a simple society... There are stronger family and neighbourhood ties and support. In the UK...[you] have to do everything by yourself. The only way to get support, if you don't know how the system works here, it's your community. If you have a proper community [organisation], with a small management, some paid workers able to translate and support you and a venue to gather together, life could be much easier.

(Iraqi Kurdish refugee)

The RCOs, in some cases, also provide training and routes into paid employment. Some Somali organisations have set up internet cafés, for example. By helping asylum seekers and refugees understand the welfare system, RCOs are assisting their integration into the structures of the receiving society.

However, some of the effects of dispersal policy have been paradoxical because RCOs operate within a set of external constraints. Thus the local authorities, NGOs and the main funding bodies in London and

The city council decides this is how we are going to tackle the problem and we are forced to fit a square peg into the round hole.

(Somali RCO)

There is a huge problem of representativeness. Local authorities want to have one RCO speaking for [a] community and this often is not possible due to social, cultural and historical reasons.

(Refugee Action)

the regions still dominate how new RCOs get established and are 'legitimised' – or not, as the case may be. Institutionalised support can skew decision-making capacity and agenda setting in favour of the pre-existing major players involved in the dispersal process. It is perhaps less a partnership of old and new, than a patron-client relationship, or at least a matter of getting past existing gatekeepers.

The structure of the dispersal regime also inhibits RCOs' wider potential as agents of integration for those with Convention refugee status. Conceived within the broader rationale of deterrence and the control of welfare costs, dispersal is predicated upon an institutional model involving the Regional Consortia, NGOs and the private and voluntary sectors. RCOs have only a secondary role within these

Liberian family (part of UK resettlement programme for vulnerable refugees) at orientation meeting with Migrant Helpline aid worker, UK.

new arrangements as representatives of their particular 'communities'. As a result it is very hard to access funding. This is a major impediment to developing structures and capacities to help their communities settle in and integrate.

Beyond meeting basic needs?

Despite the positive benefits associated with the development of RCOs in the dispersal regions, most RCOs at present simply do not have the resources which would enable them to contribute to the long-term integration of refugees. Their role has been and continues to be essentially 'defensive' – plugging the gap and meeting essential needs – rather than being actively engaged in the development of individual and community resources. In our study, only a very small minority of RCOs have the resources to run the education, training and employment programmes which would promote long-term integration into the labour market.

There are additional factors which also cast doubt on the role that RCOs are often assumed to play in assisting refugee adaptation and integration in the UK. One of these is the important distinction that emerges between formal and informal networking in refugee communities. There is, for example, a notable resistance on the part of specific refugee groups to formalising and institutionalising their networks. Not wishing to be part of formal channels or to participate in the competitive funding-driven

Support groups want to apply to all refugee organisations the same templates but they don't really know how to relate with the communities individually. They look at them as a whole but they never go to talk with them.

(Sierra Leone women's group)

model of the British voluntary sector are the primary reasons given. But in an environment which they rightly perceive to be increasingly hostile towards refugees and asylum seekers at both national and local levels, the wish to reduce 'visibility' and remain on the margins cannot be ignored.

In any case, formal organisations are only the visible part of a larger picture which includes a vast network of informal, transient, unnamed and unofficial forms of social organisation. The degree to which formally constituted RCOs are at the centre of official refugee networks, or peripheral to the main 'informal' sources of community activity, with respect to how integration takes place, is thus very uncertain. In the current context, it cannot be assumed that formally constituted RCOs are automatically the hub of community activity and the prime movers in fostering integration in community members.

If integration is judged in terms of a two-way process between refugees and the receiving society, then this

UNHCR/H J Davies

We have small funding for training and bits and bobs of things but we are struggling with funding. And one of the biggest drawbacks is the big funders tend to [say]: 'Oh, you don't have a track record.'... Filling in the forms because some of the questions are not straight-forward... We were strug-gling to understand what is the outcome, output, input, you see... Some-times we don't know what they want.

(Sudanese RCO)

does not appear to be the agenda of the dominant regional agencies and institutions relating to RCOs. Their role in assisting refugee integration is given as a policy objective but, as the RCOs remain junior partners in the local consortia, they receive little substantive support. There is a wide gulf between policies which claim to promote community representation, integration and equal opportunities and the actual outcomes for specific ethnic groups. What is happening to RCOs, particularly in relation to funding constraints and their rela-tionship to mainstream agencies, is rooted in the broader structural in-equalities which continue to hamper ethnic minorities in the UK.

Conclusion

This evidence suggests that far from being central to the integra-tion of refugees in contemporary Britain, formally constituted RCOs may have been forced into a role which perpetuates their marginality as service providers on the edges of their communities. In such a situa-tion, informal networks may be more important than formal organisations in the integration process. But we should not ignore the fact that this is often a strategy of last resort. Although newly developing organisa-tions in the dispersal regions may choose to set up outside recognised channels, the possibilities for doing so are limited and heavily dependent on local resource availability.

Above all, the integrative poten-tial of RCOs is severely limited by the emphasis on deterrence and control in asylum and immigration policy. RCOs are players on a stage set designed by others. This raises important questions about how the limitations in the role assigned them can be overcome and about whether more transparent forms of partner-ship can flow from improved rec-ognition of the skills and capacities they undoubtedly possess.

There is a seemingly intractable tension between participating and organising independently as refugee communities, on the one hand, and acceptance within official networks and social relations, on the other. In the past, the broader framework of migrant incorporation centred on multicultural race relations as a principal determinant of the ways in which refugees, as other migrants in earlier era, organised in Britain. As policy and practice harden, even the phrase 'refugee community organi-sation' risks becoming a pejorative term.

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1. Zetter, Griffiths and Sigona 'Refugee Com-munity Based Organisations in the UK: A Social Capital Analysis', 2004. ESRC Research Grant R000239583. The research report is at www.brookes.ac.uk/schools/planning/dfm/rco.htm

Is Europe failing separated children?

by Diana Sutton and Terry Smith

The European Union's Hague Programme[1] aims at "strengthening freedom, security and justice" within the EU in the next five years. What is likely to be the impact of this and other European policy developments on separated children?

Separated children are children under 18 years of age who are outside their country of origin and separated from both parents or from their previous legal or custom-ary primary caregiver. Some children are totally alone while others may be living with extended family mem-bers. All such children are separated children and entitled to international protection under a broad range of in-ternational and regional instruments The Separated Children in Europe Programme (SCEP) is a joint initiative of some members of the Interna-tional Save the Children Alliance and UNHCR. In 2003 SCEP published a re-port analysing policies and practices within 14 EU member states.[2] SCEP welcomed the EU's reaffirmation at the summit in Tampere in 1999 of the right of individuals to claim asylum but expressed concern that regulations and guidelines emerging from the EU have mainly focused on deterrents and the tightening of controls rather than advancing an individual's rights.

There is little evidence of a strong rights-based approach to children at EU level as immigration control appears rather to take precedence

over the 'best interest' of the child principle in the Convention on the Rights of the Child (CRC).[3] Although the EU adopted a resolution on 'unaccompanied minors who are nationals of third countries' in 1997 it is relatively weak and does not provide a framework for improved protection or care. The Hague Programme will also follow a security-led agenda including the introduction of more measures to restrict access to the EU and greater emphasis on finding solutions outside the EU. Those of us advocating full implementation of the CRC are critical of measures which are purportedly designed to assist separated children but which in reality might put them at greater risk.

Current EU asylum policy and children

In the move towards a common EU asylum policy [see article pp17-19] a number of Directives and Regulations have emerged. Some may improve provision for children but many of these initiatives have been watered down and opportunities to meet the needs of refugee and migrant children have been missed. A number of themes emerge from the Directives:

Guardianship

The SCEP advocates that adult representation should be provided at all stages of the asylum process for all separated children under the age of 18. Separated children may not fully understand the asylum determination procedure, or may feel frightened and intimidated by it. While a number of Directives consider guardianship provision for separated children, the application of the phrase 'or any other appropriate representation' invariably follows each mention of guardianship. This considerably weakens these references and is inconsistent with SCEP's Statement of Good Practice. The Directive on Minimum Standards in Asylum Procedures allows for unaccompanied children to be interviewed as part of the asylum process without requiring the presence of a representative present. It further weakens the guardianship provision by outlining circumstances where no representative should be appointed to act on behalf of a separated child

(these include where a separated child is likely to turn 18 before a decision on their asylum claim is made, when they can receive free legal advice or if they are married).

Placements for children

The Temporary Protection Directive includes reference to the need to find 'appropriate placements' for unaccompanied children. The Directive notes that where possible this should preferably be with adults within their family or with whom they travelled to Europe – but it also deems accommodation in reception centres to be appropriate. This is worrying as it is difficult to see how children's needs can be adequately met in such a setting.

Decision-making processes

Within the recent Directives there are some references to seeking views from separated children but only one reference to child-specific forms of persecution. The reference to child-specific persecution is a useful development but limited if the burden of proof still rests with the child who may have difficulties in understanding, or explaining, why they have claimed asylum. It would have strengthened the Directive if it had included the need to apply the 'benefit of the doubt' when children are attempting to prove their circumstances. Similarly, there is no reference to the age and maturity of the child and how these will impact on a child's ability to accurately comprehend the circumstances of their departure from their country of origin and how to convey this to the investigating authorities.

Family reunification

The Directive on Family Reunification narrowly defines the family unit, restricting it to parents and siblings. This fails to appreciate the cultural importance within some communities of the extended family and the harsh realities of life for many unaccompanied children, some of whose parents may be dead, missing or imprisoned. There are restricted rights for children aged over 15 years who may have to demonstrate that they are dependent upon their parents and unable to live alone or support themselves. There is also a

provision to submit children over 12 years old to an integration test and to deny those who fail it the right to reunification. This is inconsistent with the provisions of the European Convention on Human Rights (Right to Family Life) and CRC Article 1. In all cases the child's 'sponsor' will need to have held a residence permit for a minimum of one year.

Within the text of the Regulation Allocating Responsibility For Examining Asylum Applications in the EU, there is improved scope for family reunification, including provision for the children of an applicant to join their family in Europe. The regulation also allows – if humanitarian grounds dictate and it is practically possible – for separated children to be reunited with family members in another member state. As the definition of family again excludes 'extended' family members, many separated children may be denied reunification with their principle carer. Furthermore, where a separated child has travelled through more than one EU state, the state where the child claims asylum will be responsible for processing the claim. This Directive should thus provide safeguards to separated children both regarding adherence to 'best interests' and stability. Regrettably, however, member states appear to be ignoring many of the provisions of the Directive.

Within the Minimum Standards for Reception Directive there is a call for prompt family tracing and a recommendation that those working with separated children should receive training. This is welcomed. SCEP emphasises, however, that family tracing should be done in a confidential manner that does not expose the family to danger and in a manner that reflects SCEP's Statement of Good Practice.

Return

The Directive on the Definition of a refugee and other forms of protection states that asylum seekers may be able to return to their country of origin if they can return to an area of the country (perhaps not where they have previously lived) that is deemed to be safe. Similarly they may be returned if the view is that non-state bodies active in the country can offer protection. This does not seem an

appropriate response for children who should only be returned to the care of a named individual who is both willing and able to care for them and where they will have opportunities for their further development.

Looking ahead

The Hague Programme is setting the framework for the EU's response to asylum and migration in a number of areas. The second phase of harmonisation – due for completion by 2010 – aims to establish a common asylum procedure and uniform status for those granted asylum and subsidiary. A study will look at the feasibility of joint processing of asylum applications both within and outside the EU. The proposals to process applications outside the territory of the EU are concerning for children. Given that children are potentially extremely vulnerable, holding them in external processing

Disturbingly, the Hague Programme makes no mention of conflict prevention

centres alongside adults and without adequate systems for their protection could be dangerous and damaging to their long-term development.

The Programme contains a new emphasis on the external dimension of asylum and migration. The aim is to improve the capacity of non-EU states with regard to migration management and refugee protection, to promote better access to durable solutions and to address the practical problems associated with the return of migrants and failed asylum seekers. There will be a continued emphasis on linking migration and development debates which may not necessarily be positive. We may see more 'conditionality clauses' – only narrowly defeated previously – linking development aid directly to managed migration. Disturbingly, the Hague Programme makes no mention of conflict prevention, a significant omission given that research commissioned by SCEP and by others has established that most children move and travel in order to flee conflict.

The Programme states that if migrants do not chose to return voluntarily they should be returned

involuntarily. The Council will begin discussions early in 2005 on minimum standards for return procedures, which will take into account special concerns regarding public order and security. Specifically, the proposals will include the launch of a European Return Fund and a special representative for a common readmission policy. In addition there will also be regional- and country-specific return programmes. SCEP has prepared a position paper on the return of separated children which sets out the case for voluntary return and placing decisions within the context of the best interests of the child.[4] Return should only go ahead where it is demonstrably in the child's best interests following careful assessment, planning and preparation. Liaison must take place with appropriate authorities in the country of origin and children should only be returned to their families or other named carers. Where a carer cannot be identified, it is difficult to see how institutional placements can adequately support an unaccompanied child through the difficult process of transition and reintegration following return. In such circumstances return should not be pursued as a durable solution.

Powers to exchange information across borders between law enforcement agencies will be strengthened. This may have important positive implications for children, for example, facilitating information exchange about people with a record of abusing children in order to prevent them from working directly with children. Currently this is not done and there have been recent cases of paedophiles crossing borders undetected and taking up employment with children. However, there are negative implications as well: to what other uses will the information be put and how will it be protected? Children who testify against their traffickers, for example, do so at great personal risk. Such information needs to be kept confidential to avoid potential reprisals to the child and their family.

In the immediate future we can expect to see a strong security-driven agenda on asylum and migration policy and a strong returns programme. In order to achieve positive

protection measures for children it is essential that:

■ EU member states pursue policy harmonisation at the highest level of current practice and apply the standards outlined in the CRC and SCEP's Statement of Good Practice
■ decision makers ensure that the child's best interests are included in all future legislation: separated children are children first and foremost
■ the 1997 Council Resolution on Unaccompanied Minors who are Nationals of Third Countries be updated, made stronger and given binding legal force
■ children should not be held in external processing centres alongside adults and without adequate systems for their protection
■ trafficked children be perceived as victims rather than criminals and interventions be informed by child protection procedures rather than the maintenance of immigration control: the recommendations set out in the excellent EU expert group on trafficking's report must be adopted.[5]

Children need the highest protection standards. A common system must not simply entrench member states' lowest common denominator policies and laws but must look at best practice and the most effective way of protecting children.

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1. www.statewatch.org/news/2004/nov/hague-annotated-final.pdf

2. www.separated-children-europe-programme.org/separated_children/publications/reports

3. The CRC is the world's most widely ratified convention. Unanimously adopted by the UN General Assembly in 1989, its 54 articles encompass children's civil, political, social and economic rights. See: www.unicef.org/crc

4. www.separated-children-europe-programme.org/separated_children/publications/reports/return_paper_final.pdf

5. http://europa.eu.int/comm/justice_home/fsj/crime/trafficking/fsj_crime_human_trafficking_en.htm

Dutch 'safe zone' in Angola

by Joris van Wijk

The civil war that raged in Angola until 2001 displaced millions of people. From August 1998 until April 2001 the Netherlands granted temporary status to all Angolans seeking asylum. Over roughly the same period, some 11,000 Angolans – of whom more than half were unaccompanied minors – applied for asylum in the Netherlands. None were forcibly repatriated.

The fact that few returned encouraged friends and family back home to believe the Netherlands to be a tolerant, welcoming country. It seemed that young Angolans could travel to the Netherlands, be granted temporary status and be able to study, merely by virtue of coming from war-torn Angola. Coming from the province of Cabinda, for example, where fighting was ongoing, strengthened their claim, as did being politically active for the UNITA rebels.

Dutch asylum policies seemed particularly welcoming to unaccompanied minors. Firstly, minors benefited from better reception facilities, including access to education. Asylum seekers over 18 with temporary status did not have access to language lessons or general education as they were expected eventually to return home. Secondly, the Dutch courts stated that unaccompanied Angolan children could not be repatriated as Angola lacked 'adequate reception facilities' – ie there were no safe orphanages in Angola to accommodate repatriated children.

Creating a 'safe zone'

In response to the increasing number of asylum claims by unaccompanied Angolan minors the Ministry of Justice decided to finance the modernisation and expansion of the *Mulemba* orphanage in Luanda, thereby creating the required 'adequate reception facility'. The Dutch Minister of Immigration and Integration officially opened the orphanage in September 2003 and the Immigration Department started repatriating Angolan minors. By January 2005 more than 600 Angolans – including many unaccompanied minors – had returned to Angola.

Strikingly, only one of these children is known to have taken shelter in the orphanage; most preferred to seek out members of their (extended) family. The project, however, is considered a success by the Dutch authorities. Unaccompanied minors from Angola applying for asylum can now legitimately be denied temporary (or any other) status because of the existence of the orphanage. Other European countries – including Belgium and Switzerland – have taken note and are considering funding a number of beds in the *Mulemba* orphanage in order to create their own safe zones.

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Unaccompanied minors, Luanda, Angola

Joris van Wijk

Wasted human resources: employers ignore refugees' potential

by Berend Jonker

Many refugees experience great difficulty finding employment. When they do find work, it is often well below their capacity. Doctors, lawyer and teachers work as cleaners, taxi drivers or sales assistants. How can refugees find suitable jobs and how can employers benefit more from refugees' skills?

Across Europe, employers are experiencing difficulty in recruiting both skilled and unskilled staff. The overall employment rate in the EU stands at 63.4%, significantly below the level of 72% in the US. Meeting the EU's goal of raising this to 70% by 2010 requires the creation of 20 million jobs. The number of elderly persons in Europe is set to grow dramatically – from 61 million persons aged over 65 in 2000 to an estimated 103 million in 2050. At the same time the European Union receives over 350,000 asylum applications per annum. It thus makes both economic and social sense to better utilise this huge potential.

The RESOURCE Project

The Refugees' Contribution to Europe (RESOURCE) Project is a joint initiative of European refugee agencies in all (pre-expansion) EU states except Denmark. Through desk research and interviews with employed refugees in 14 countries, the project analysed practices and policies affecting refugees' participation in the European labour market. It has particularly focused on how refugees' skills, qualifications and working experience are being used in sectors of the labour market – health and social care, IT and engineering – currently experiencing skills shortages.

The Project interviewed 297 refugee professionals (up to 25 in each country). They were asked about their pathways to employment and how they had overcome difficulties. Two thirds of the interviewees were male, 138 were between 30-39 years old,

44 were younger and 105 were older. The majority came from Africa and the Middle East but also included refugees from the borders of Europe, Asia and Latin America.

Almost all interviewees were educated before they arrived in their host country. 76% had studied at a higher professional or academic level, of which 63% had completed their studies and 14% were still studying. Before arriving in the EU, four-fifths of interviewees were using their skills in their countries of origin – 33% were working in health, 14% in engineering and 5% in IT. Many had built up considerable working experience. In the host countries, 260 refugees (88%) were in paid employment at the time of the interview. (It should be noted that this does not necessarily represent the usual situation of refugees in Europe where many refugee professionals are unemployed or under-employed.)

Although conditions for refugees vary from country to country, there is great similarity in successful pathways to employment in each country.

Personals skills and networks

Almost unanimously, those interviewed believed that their own skills, competence and personality were the most important factors that helped them find suitable employment. The characteristics mentioned include determination, perseverance, motivation, positive thinking, self-confidence, initiative, patience, flexibility, sense of humour, good social and communication skills, expertise,

occupational skills, language skills, dedication and having a strong work ethic. They stressed the importance of taking every job opportunity and setting realistic goals.

We learned how to persevere and endure. This is our most important skill, which should be valued more. We learned how to survive.
(Kenyan teacher in the UK)

Many refugees suffer from a lack of confidence when they first arrive in the host country. They often feel isolated and unable to compete with locals for jobs. To regain their confidence it is important that refugees start integrating into society by following language courses or doing voluntary work, for example, as soon as possible after arrival. Social networks and moral support from family, friends, community, social workers and careers advisors are also seen as important factors. In many cases, social and professional networks led directly or indirectly to job opportunities.

Language skills

Most interviewees agreed that adequate language skills are essential when seeking work or trying to continue training or education. Good communication skills are particularly important in the health and social care sector, and speaking the host language fluently is therefore vital. Many of the interviewees at times still felt insecure and vulnerable in their current jobs because of their language skills.

80% of the interviewees had skills in three languages or more – an advantage in many jobs, in particular in health and social care services and IT. In Ireland, many interviewees found employment in the voluntary sector working with immigrants because of their knowledge of other languages. Engineers and IT specialists stressed the importance of

Learning the language is the most important thing of all in Finland. Many think they can cope with using English. Yes, they can cope in everyday life but not in working life.

(Iranian health professional in Finland)

learning the technical or business language in their profession. Unfortunately it is not always possible to access appropriate language courses. Many courses are too slow or simplistic for highly educated people. Additionally, in some countries, such as the Netherlands, there were long waiting lists for languages courses.

Additional studies in the host country

Many interviewees mentioned additional studies in the host country (vocational, higher education and practical training on the job) as key to finding suitable employment. Through such studies they became accustomed to the ways and standards of working in the host country and, more importantly, obtained qualifications that were – in contrast to their third country qualifications – recognised by employers. Those interviewed also found that studying gave them confidence through updating their knowledge and building up networks in their professional field. Unfortunately in many countries there is a lack of free or affordable training courses; those on offer are often aimed at less skilled work and do not build on refugees' prior skills and working experience. Accessing higher education is also difficult. Most higher education

Only Finnish education is valued here… if you have a certificate from somewhere else, however valuable it may be, the Ministry of Education will not accept it and employers will not value it either.

(Refugee from Somalia working in IT in Finland)

institutions have strict requirements and procedures for allowing foreign students to enter their courses; these requirements may not take into account the fact that refugees cannot always prove their qualifications, or produce original documents.

Particularly in countries with less developed welfare systems, the need

to earn a living interfered with any study plans and in countries where interviewees could access unemployment benefits, the obligation to apply for any kind of job seriously hindered training possibilities. Furthermore, lack of accessible scholarships or grants to pay for fees, books, equipment, travel, childcare and basic living costs prevented many interviewees from studying.

Support from voluntary organisations and refugee community groups

Many interviewees mentioned that support from NGOs and refugee community organisations (RCOs) was essential in helping them find employment. Initially, many benefited from services such as information provision, housing support, legal assistance, financial support and language courses. Later on, services such as careers advice, job search courses, support with job applications, grants for study/training, arranging job placements or voluntary work and mentoring programmes were helpful. NGOs and RCOs also played an important part in giving moral support and providing relevant networks that sometimes indirectly led to employment.

The job search process in host countries is often different from in their home countries. In many cases those interviewed had failed to get jobs because they did not have enough knowledge of the recruitment process (such as applications and job interviews). Therefore schemes that offered individual employment support were particularly helpful in the job search process.

In contrast to support from the voluntary sector, most interviewees (in all countries) receive no or little useful support from governmental organisations in their attempts to enter the labour market. Employment agencies in many countries were considered ineffective because of their lack of knowledge of refugees' specific needs and the value of their diplomas, their focus on the low-income sector and their strict

regulations that are not designed for refugees.

Prior qualifications and work experience

It is up to the employer to assess whether a particular individual is qualified to meet workplace requirements. The problem is that most employers are not familiar with foreign qualifications. Some professions – such as the medical profession – are known as 'regulated' or 'registered' professions. Access to these requires a process of recognition and registration with the appropriate authority. The systems of recognition vary from country to country but are often complex, expensive and, above all, time-consuming. These procedures may involve periods of further training or study, working under supervision, examinations or a combination of all of these. Most interviewees who have been through recognition procedures have found that their diplomas were not recognised or only partially recognised.

For such reasons most interviewees felt that their prior education and work experience were underestimated by employers and therefore of little value in the job-seeking process. What really counted were additional studies and working experience in the host country. Once they were working, however, their employers started to value their prior skills and experience which had given them, for example, self-confidence and skills of communication and management.

Work experience in the host country

Most interviewees agree that it is very difficult to get into suitable employment without work experience in the host country. One interviewee said: "You cannot get a job because you do not have working experience – but how can you build up working experience without a job?" This vicious circle is difficult to break but most interviewees eventually found ways to do so.

Many mentioned volunteering as a successful way to build up work experience in the social sector. In other sectors, interviewees had to take a couple of steps down the ladder. Experienced engineers, who back home had been supervising many employees, started working on the shop floor again, working their

way up within the company. Others were able to gain some experience through work placements as part of their studies or through recruitment agencies.

In countries where refugees are not entitled to welfare benefits (such as Greece, Italy and Spain), the interviewees were often forced to accept low-skilled and badly-paid jobs. In countries where refugees receive unemployment benefits, some interviewees were not allowed to accept voluntary work or work placements. Many interviewees were in a situation where they had to do manual jobs during the day while trying to improve their chances by studying at night.

Bureaucracy and discrimination

Many interviewees were confronted with lengthy asylum determination procedures and poor reception conditions. In most countries they were not allowed to work as asylum seekers, or could only apply for a work permit after a certain period. During the asylum procedure, opportunities to undertake language tuition, vocational training or education were often limited. Financial difficulties and finding a place to live were additional obstacles. Clearly, this long waiting period had a damaging influence on their self-esteem and confidence, seriously hindering their integration process.

Many interviewees experienced prejudice in the job-seeking process as well as in the workplace and in daily life. Being responsible for a family in combination with a lack of childcare facilities (especially for single mothers with young children) were mentioned as barriers to employment. Some older interviewees found that their age presented an additional barrier. The combination of age and the inevitable gap in their employment record because of becoming a refugee made their position as job seekers even more disadvantaged. Finally, red tape and bureaucracy in general were mentioned as further obstacles.

Conclusion

Refugee agencies need to make the business case for refugees. European member states need to take on board refugees' experiences in the job market and develop policies and measures that make the pathways to employment quicker and easier. Instead of considering asylum seekers and refugees as a threat or a burden to society, we should acknowledge that these new citizens may contribute substantially to their host country. This approach requires a major change in attitude and policy towards these new immigrants: to encourage rather than discourage, to include rather than exclude.

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Albania – Europe's reluctant gatekeeper

by Ridvan Peshkopia

Post-communist Albania has become a transit point for refugees, asylum seekers and economic migrants. Asylum policies and procedures put in place under UNHCR and EU tutelage are fragile and serve the interests of Europe, not Albania.

Prior to 1990 Albania was isolated from East and West, strictly controlled all movement across its borders and did not recognise the 1951 Refugee Convention. Border controls collapsed as the post-communist authorities were keen to allow Albanians to leave the poverty-stricken country. People smuggling – both across the Adriatic Sea to Italy and over the Albanian-Greek border – increased dramatically. The smuggling industry has been boosted by the ease with which Albanian visas can be obtained, Albania's dire need for foreign currency and high rate of corruption among public officials.

In the early 1990s UNHCR persuaded Albania and other newly-elected Balkan governments to sign up to the Refugee Convention. The new regimes were eager to extend and forge new connections with the international community and the Albanian parliament rapidly ratified the Convention in 1992. However, it took a further six years – and the threat of a mass outflow of Kosovar refugees – before the Office for Refugees (OfR), a small unit of the Ministry of Local Government, was established. The status of OfR was undefined and it found itself in an asylum and immigration legislative vacuum which left it little to do in terms of establishing procedures for refugee status determination (RSD) and refugee protection.

The development of an Albanian asylum system

Albania's new Constitution in 1998 stipulated the right of asylum and the country's first law on asylum was passed. It generally meets the 1951 Refugee Convention criteria on the refugee definition, RSD and refugee protection. Under its provisions, the OfR receives asylum applications and conducts interviews and also serves as a collegial decision-making body at the first level. Rejected asylum seekers have the right to appeal to the National Commission for Refugees (NCR), an eight-member committee bringing together government agencies and representatives of two NGOs – the Chamber of Lawyers and the Albanian Committee of Helsinki. The National Commissioner for Refugees chairs the OfR and NCR.

The establishment of an asylum system based on individual applications was undermined by humanitarian catastrophes in Kosovo. Rather than considering individual cases, the

OfR responded to the needs of the Albanian government and international community to respond to the refugee crisis by accepting and then returning Kosovars as a group. In the aftermath of the massive Kosovar refugee return, OfR continued to care for some lingering Kosovar families. Procedures regarding RSD and refugee protection began to be put in place but were again set back in spring 2001 by a short-lived movement of ethnic Albanian refugees fleeing instability in Macedonia.

In October 2001 the Albanian Task Force on Asylum was belatedly established with the participation of some domestic and international actors. Its aim was to draft by-laws to fill legal gaps in refugee integration. Three by-laws drafted in spring 2002 – on education, health care and employment – were included in a law approved by parliament in August 2003. RSD procedures were established and a joint project between UNHCR, OfR and Peace through Justice, a local NGO, began to make legal assistance available for refugees and asylum seekers. In 2003 OfR was renamed the Directory for Refugees and transferred to the Ministry of Public Order (MPO), a necessary step considering that the RSD process is much closer linked with police than with local government.

In addition to the issue of determining asylum claims, the issue of providing accommodation and support for refugees and asylum seekers has long concerned the Albanian authorities and UNHCR. For years, detained, illegally smuggled people were initially kept in police stations, often without food or appropriate sanitation, dependent on the whim of the police for their needs. UNHCR provided some local NGOs with funds to arrange for accommodation of asylum seekers in privately owned houses. In October 2001 a project began to establish the first asylum seekers' reception centre. The Albanian government offered an old military barracks on the outskirts of the capital, UNHCR obtained funding through the European Commission's High Level Working Group's (HLWG) and the facility was opened in July 2003.

Illusory protection

Albania can now thus be said to have a modern asylum system, yet in many respects it is illusory and, in effect, often serves as a tool to facilitate human smuggling towards the EU. Whatever their legal status – refugees, asylum seekers or illegal immigrants – the smuggled people strive to avoid contact with public officials and police of the transit countries. Only if the police catch them, or they decide to give themselves up (in cases when they lose connections with their smugglers), do the Albanian authorities get involved.

A UNHCR-led initiative – implemented with the International Organization for Migration and the MPO – seeks to pre-screen those who have come to the attention of the authorities. Pre-screening is designed to differentiate economic migrants, victims of trafficking and asylum seekers and to provide appropriate legal and humanitarian assistance tailored to their different needs.

This system has not significantly affected the illegal influx. Instructed by smugglers, many detained people seek asylum and are provided with shelter, food, medical assistance and legal aid. Only an insignificant number of them are sufficiently patient, too poor or simply unlucky enough to go through the RSD procedure to the end. Most reestablish broken connections with smugglers and continue their journey toward the West.

Thus, rather than building a protection system for people in need, Albania, with the assistance of UNHCR and under pressure from the EU, has established a system to support illegal immigrant smuggling. None of those who have received refugee status during recent years is thought to be in Albania anymore; their whereabouts are unknown. The bulk of the 107 people whom the asylum institutions in Albania are taking care are of Kosovars, leftovers from the massive influx of 1999. All of them experience harsh social problems.

Albania's place in Europe

For Albania, asylum policy has never been part of the national agenda but has rather been the price of advancing prospects of integration into the EU. At their meeting in Seville in June 2002 EU leaders stipulated that any country entering into cooperation or association agreements with the EU must "include a clause on joint management of migration flows and on compulsory readmission in the event of illegal migration". In its eagerness to sign a Stabilization and Association Agreement with the EU in December 2003 Albania agreed to this condition. The readmission requirement will not only apply to Albanian citizens but also to immigrants from other countries known to have passed through Albania on their way to the EU.

Readmission poses enormous challenges, none of which are currently being addressed. Mass return of its nationals would deprive Albania of vital remittance income. And whilst the EU has the political and economic muscle to compel illegal immigrants' countries of origin in the Middle East and Central Asia to sign similar agreements, it is not clear how Albania can possibly persuade Iran, Iraq, Pakistan and Turkey to take back their nationals. Who is to pay for their needs in Albania or the costs of the increased enforcement which will be required to prevent them attempting to return to the EU? Would the presence of large numbers of readmitted asylum seekers/economic migrants affect the stability of a poor country with high levels of unemployment? Aware of the difficulties the readmission agreement might cause, the EU and Albania have agreed to delay the implementation of some clauses for a period of two years.

The Albanian authorities have reluctantly been persuaded to undertake some steps toward legislative and administrative reform but the government has other priorities. There is no reason to believe that in the near future the Albanian asylum system might really serve refugees and asylum seekers from other countries. It is instead likely to continue to fuel and facilitate human smuggling from and through Albania to EU states. Albania needs to reorient its asylum and immigration policies to serve its own, rather than EU, needs.

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Europe and the rebuilding of Somalia

by Kithure Kindiki

As Somalia stumbles towards peace, should Europe assist in refugee repatriation and reconstruction?

A million Somalis are thought to have fled their country as a result of fighting and the collapse of the Somali state following the overthrow of Mohamed Siad Barre in 1991. At the end of 2003 nearly 280,000 officially registered Somali refugees and asylum seekers lived in some two dozen countries, half of them in Kenya and a fifth in Yemen. An estimated 350,000 Somalis remain internally displaced.[1]

Somalia's transitional federal parliament – based in the Kenyan capital, Nairobi – elected Colonel Abdullahi Yusuf Ahmed as president in October 2004. This marked a successful outcome to a two-year reconciliation process sponsored by the Intergovernmental Authority on Development. There are cautious expectations for durable peace but major obstacles remain. President Yusuf has a warlord background, his ties to Ethiopia are controversial and there are reported splits within his cabinet. Plans by the African Union to deploy peacekeepers from Kenya, Djibouti and Ethiopia have sparked an angry reaction from many Somalis, including warlords and militant Islamists. There have been only limited donor pledges of support for the peace process. Somaliland, the self-proclaimed independent state in northern Somalia, which has been the destination of most returning refugees, is barred from receiving bilateral aid as it is an unrecognised nation.

However, this fourteenth attempt to end conflict in Somalia has brought together its four major clans and most of its warlords. Significant numbers of refugees have returned as UNHCR has implemented major repatriation programmes from Ethiopia and Djibouti. UNHCR is preparing to close all but one of the refugee camps it has operated in eastern Ethiopia since 1990 which at the height of displacement were home to 628,000 refugees. It estimated that 700,000 refugees have now returned to poverty-stricken Somaliland.

However, substantial and sustainable repatriation cannot be feasible without a major post-conflict reconstruction programme. After more than a decade of war and anarchy and years of drought, Somalia is one of the poorest countries in the world. There are hardly any trained health workers, minimal access to potable water and the infrastructure is in chaos. It has one of the world's highest rates of illiteracy. Refugees cannot be expected to return to live in dignity and peace without substantial international assistance.

The Somali refugee question has over the years been trapped in the general migration debate in countries of the North. It is widely believed that Somali nationals who may not necessarily be refugees use Kenya and other neighbouring countries as transit points to Europe. Somali refugees in camps in Kenya and Yemen uniformly aspire to resettlement in the West.

Somali refugees and Europe

Estimating the number of Somalis living in Europe is fraught with difficulty due to the large number who live clandestinely. Somalis have been among the top ten countries of origin for asylum applications to the EU for 15 years. It is therefore clearly in the interest of European countries to support or even initiate post-conflict reconstruction efforts. Attention should be given not only to the repatriation of Somalis from Europe but also to their return from Kenya and other major centres of onward movement to Europe.

Europe's commitment to refugee protection has been the subject of heated debate in local and international politics as well as in academic writing. While I do not support a number of policies adopted by European states on asylum, it is my argument that often the very useful role that European states play in providing resettlement for refugees and in giving financial or logistical support to the refugee protection system has been lost in this debate.

Perhaps criticism of Europe's role in refugee protection stems from a rigid interpretation of existing international refugee law, which rigidly defines state responsibilities for refugees. Beyond a common duty to provide first asylum, there is no reason to expect every state to play an identical refugee protection role. Burden sharing for refugees should be seen within the framework of 'common but differentiated responsibilities', the principle of equity in international law endorsed by the World Summit on Sustainable Development in 2002.[2] This concept indicates that the responsibilities shouldered by states need not be identical and could usefully be widened to asylum issues

On the basis of 'common but differentiated responsibilities' some states will be willing to provide temporary protection but not be disposed to the permanent integration of refugees. Traditional immigration countries such as the states of the EU provide sites for permanent resettlement for those refugees who cannot get protection in the country of first asylum yet their countries of origin cannot guarantee safe return. Yet other states may assume a mix of these roles.

Repatriation of refugees and national reconstruction of Somalia will require huge financial, logistical and human resources not available to the states hosting refugees. Europe should be involved in post-conflict reconstruction in Somalia and in refugee repatriation efforts, not on the basis of the more informal processes of discretionary charity or voluntarism but as an avenue for European states to make a valued contribution to the international refugee protection system.

Repatriation and reconstruction requirements

The international community, and particularly the EU, should seize the

opportunity offered by this window of peace to:

■ assist the transitional government to relocate from Nairobi to Mogadishu as soon as possible
■ invest significantly in peace and reconstruction
■ send peacekeepers to disarm militia and deny warlords opportunities to regroup and disrupt peace
■ ensure that international support is coordinated with Somalia's government and promotes national ownership of the peace process
■ work closely with governments of states hosting Somali refugees and asylum seekers
■ channel assistance through clan elders approved by the leaders of the dominant movements in the respective areas: this could restore order and enable future district and local authorities to acquire legitimacy.

Rushed repatriation would be disastrous. Immediate large-scale return of refugees from Kenya could trigger new conflicts over access to already limited natural resources in southern Somalia. Host countries should be financially supported to implement five-year repatriation programmes. Plans should be made for phased hand-over of refugee camps and other infrastructure from the UN and NGOs to host government. Returnees should be given substantial inducements, perhaps in the form of generous start-up or equipment grants. They should not be pressured to return prematurely by any reduction in food rations or water supplies to refugee camps.

There is a need to facilitate fact-finding delegations from each host country, comprising refugee representatives of the major clans (including women) to visit potential areas of return as soon as the new government establishes a base in Somalia. They could assess the situation on the ground and discuss with their communities the modalities of return.

Alongside support for repatriation, European and other Northern countries should continue to

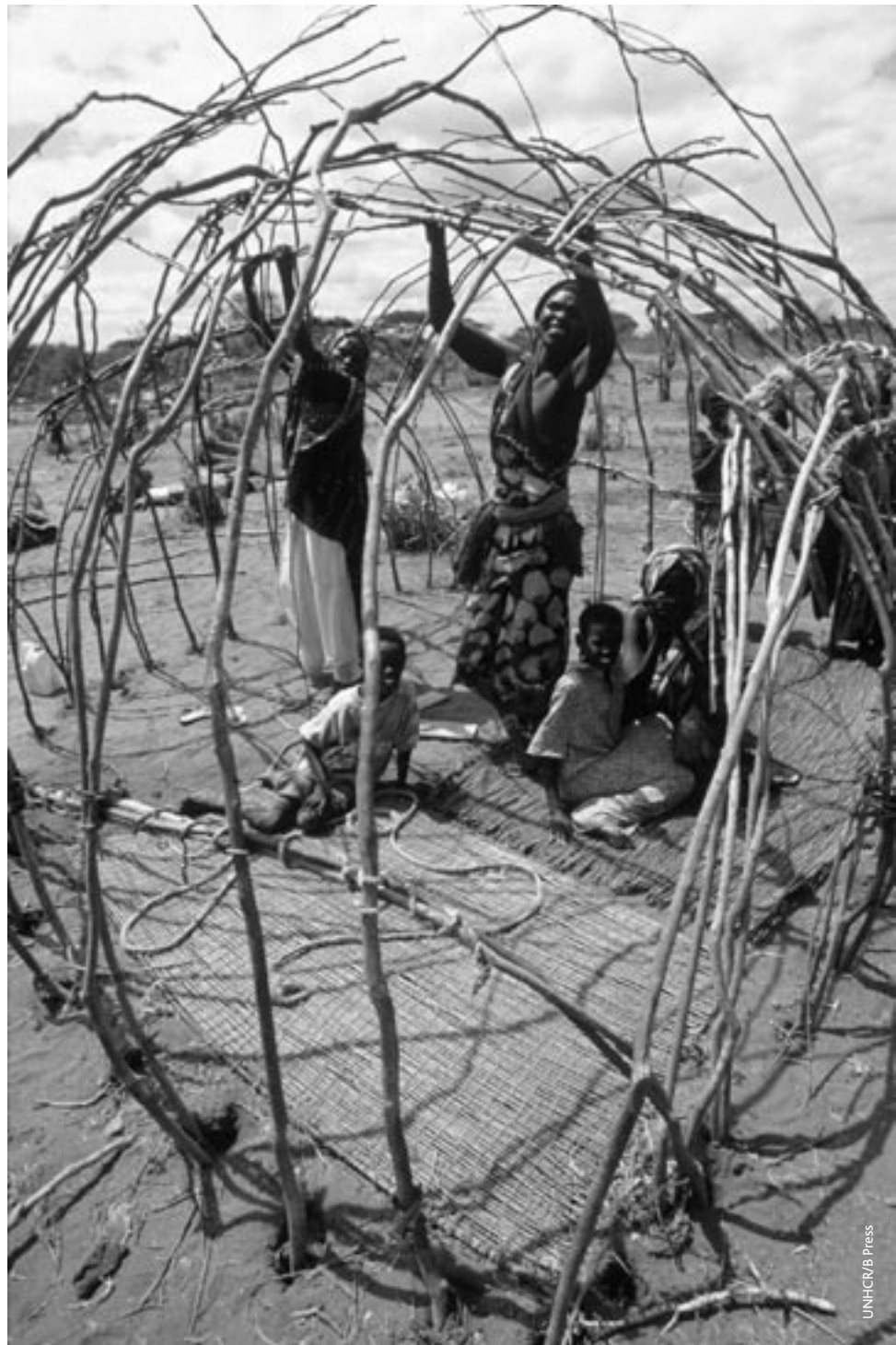*Somali refugees at Hagadera camp, Kenya.*

accept resettlement submissions for individual cases of Somali refugees who meet the resettlement criteria, and for whom resettlement and not repatriation is the most appropriate durable solution. However, publicised programmes such as those promoting group resettlement to Europe, America, Australia and other developed countries should be put on hold once the mass repatriation programmes commence. Local integration should be promoted for those Somali refugees who are too old to return or who have established strong social or economic links in the asylum countries.

Refugee repatriation will not succeed unless additionally supported by a

sustained post-conflict strategy. Rehabilitating Somalia's battered roads, ports and other infrastructure, re-establishing education and health services, undertaking effective demining and demobilisation, establishing property restitution mechanisms and building civil society and public sector capacity can only happen if there is substantial international assistance.

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Chechen refugees denied access to Europe

by Martin Rozumek

A decade of conflict has forced an estimated 350,000 people to flee Chechnya. For Chechen asylum seekers Central Europe has become the transit point for those seeking entry to the EU. Expansion of the EU has failed to offer protection and imposed further burdens on asylum systems in new member states.

The tiny republic of Chechnya proclaimed its independence from Russia in late 1991, a declaration that went unrecognised by Russia and the international community in general. Since then, Chechen civilians have lived through two major waves of conflict: the first between 1994 and 1996, when an estimated 50,000 people were killed and the capital city of Grozny was largely destroyed and the second from 1999 when Russian troops re-entered Chechnya in response to a series of bombings in Moscow and Dagestan blamed on Chechen insurgents. More than 600,000 people were displaced between 1999 and 2000, many for the second time (having returned after fleeing the first wave of conflict in 1994). Significant numbers of the displaced found temporary – and often precarious – shelter in the neighbouring province of Ingushetia.[1]

210,000 Chechens – more than 20% of the population of Chechnya – remain displaced within the Russian Federation.[2] Chechnya continues to suffer from insecurity and human rights abuses. In March 2005 Human Rights Watch noted that "Chechnya continues to be the single largest human rights crisis in Europe and the only place on the continent where civilians are killed and 'disappeared' on a daily basis as a result of an armed conflict".[3] The ongoing Russian 'cleansing' campaign and enforced closures of camps for Chechen IDPs in the neighbouring republic of Ingushetia are well documented.[4]

Chechen asylum seekers in Europe

The consequences of the war in Chechnya have inevitably spilled across borders with implications for the refugee protection regime in Europe. According to UNHCR statistics, around 120,000 Russian citizens sought asylum in the industrialised countries from 2000-2004. In both 2003 and 2004 asylum seekers from the Russian Federation were the largest group of people claiming asylum in the countries of Europe. Although statistical information on asylum seekers from Chechnya is not separately recorded from that on asylum seekers from other parts of the Russian Federation, UNHCR estimates that the vast majority of asylum seekers from the Russian Federation are Chechens.[5] Today Chechens comprise the largest single group registered with official refugee status determination (RSD) systems operated by the Czech Republic, Poland and Austria.

Clearly, 30-40,000 Chechens cannot keep arriving at Europe's doorstep every year without causing a policy reaction. This policy reaction is most clearly being seen in the newest EU member states, which have less experienced asylum systems but are receiving nearly as many Chechens as more traditional asylum countries. Further, it is the accession states that now make up the new 'frontiers'of the EU and which are expected to protect Europe's borders.

One of the consequences of this process is that whilst Europe heads towards harmonisation of asylum policy there are inconsistencies in the way in which Chechen asylum seekers are currently dealt with in the countries where they seek protection. Moreover, despite concerted efforts on the part of EU Member States to reduce multiple applications for asylum, the same asylum seeker from Chechnya can be registered in Poland, the Czech Republic and Austria. Many of those who have arrived in Poland over recent years have either been refused asylum or have become increasingly frustrated about the way in which their applications have been dealt with and about the facilities that are available to them during the determination process.

Unable to return home a group of Chechens headed for the Czech Republic in 2003 in the hope that their applications would have a better chance there. All of the Chechens who had claimed asylum in Poland and who submitted new asylum claims with the Czech border authorities were allowed to enter the

Chechen asylum seekers, Vysni Lhoty reception centre for new arrivals, in northern Moravia, Czech republic.

regular Czech RSD system. Ironically those asylum seekers from Chechnya who had entered the country from Poland but had not applied there were rejected by the Czech Ministry of Interior on the manifestly unfair grounds that they could apply for asylum in Poland and would be able to do so if returned to Poland.

The approach taken by Austrian asylum authorities towards Chechen asylum seekers followed that of the Czech Republic. Prior to May 2004 Austria did not consider the Czech Republic to be a safe third country for return due to a two-year ban on re-submission of a new asylum application in the Czech Republic and a legal provision to terminate the RSD process if an asylum seeker left or attempted to leave the country illegally. These provisions still form part of the Czech asylum law. In October 2003 Austria ended its policy of *non-refoulement* of asylum seekers to the Czech Republic despite the fact that there were no changes introduced into the Czech Asylum Act. The expectation now is that if asylum seekers from Chechnya enter Austria from the Czech Republic they can be returned there. And if they entered the Czech Republic from Poland without claiming asylum in Poland, they can again be returned.

A legal limbo

As a consequence of these processes, many Chechen asylum seekers in Europe find themselves in a legal limbo whilst different countries decide what to do about their applications for protection. Many Chechens left Poland because they found themselves without legal protection or status. Similarly asylum seekers from Chechnya who move from the Czech Republic to Austria can find themselves in this position. This situation can sometimes result from the deliberate attempts of some countries to absolve themselves of responsibility for determining these claims.

The Czech Aliens Police in the South Bohemian border town of Ceske Velenice previously facilitated, rather than deterred, the unauthorised entry of Chechen refugees to Austria. The town became known in the North Caucasus as an easy entry point to the EU. In October 2003 a group of eight asylum seekers from

Chechen asylum seekers in library, Vysni Lhoty reception centre for new arrivals, in northern Moravia, Czech Republic.

UNHCR/L Taylor

Chechnya arrived at the Austrian border post and claimed asylum. The Austrian border police officials conducted interviews with the asylum seekers, filled out the necessary asylum claim forms but did not allow the Chechen asylum seekers to enter Austrian territory. The asylum seekers were told to return to a Czech refugee camp to await the result of the Austrian RSD border procedure. However, by the end of the year none had heard the results of their asylum claims in Austria.

Subsequently, a larger group was neither granted entry to Austrian territory nor allowed to submit their asylum applications. The Austrian Interior Minister stated that the refugees from Chechnya had been told that refugee reception centres were full and had voluntarily returned to the Czech Republic without claiming asylum in Austria. In fact, as interviews with the Chechens confirmed, all the returned Chechens had claimed asylum in Austria but had been served with three-year expulsion orders by the Austrian authorities. Some subsequently appealed against the expulsion decisions and complained of their inhumane treatment. In early 2004 Austria changed its policy and again allowed Chechens to apply for asylum.

Czech treatment of the returned Chechens was in line with the provisions of the Czech Asylum Act. The RSD procedure of the returned Chechens was terminated and they were told that they had to wait two years to submit a repeat asylum application. The authorities resolved

to expel the returned Chechens from Czech territory. Only because most of the group appealed against the decision were they allowed then to stay in the Czech Republic. However, as a result, no country would make an assessment on the merits of asylum applications lodged by them. Czech NGOs have campaigned to find a solution for the Chechens in the Czech Republic either on basis of a new Temporary Protection Act or a toleration regime. So far, there has been no response from the Czech government

The need for a 'protected entry' solution

The international community is currently failing to protect those fleeing from human rights violations in Chechnya. Neither Ingushetia nor the rest of the Russian Federation can be considered as adequate internal flight alternative destinations.[6] Efforts to reduce the number of asylum seekers in Europe adopted by EU states make the access of Chechen refugees to effective protection extremely difficult and expensive. We are close to a situation in which almost every application for asylum in Europe could be rejected as inadmissible or manifestly unfounded.

Part of the problem stems from the fact that Poland and the Czech Republic are still seen by most asylum seekers as only transit countries and the treatment that their applications receive in these countries often reflects this. Both the Czech and Polish asylum laws must be amended to come into line with provisions of the

1951 Convention to ensure that asylum claims are dealt with in a regular RSD procedure. The safe third country notion must be implemented on an individual basis.

Before any country can be designated as safe, an assessment of individual protection needs must be carried out for every single asylum seeker. The fact that a country is an EU Member State, a signatory to the 1951 Convention and other international human rights conventions, and has an asylum system in place, does not necessarily mean that it is a safe place of return for all asylum seekers arriving from a particular country. The fact that asylum seekers from Chechnya are rarely granted asylum in either of these countries – despite extensive evidence of on-going conflict and persecution in their country of origin – is illustrative of this problem. Moreover, the Austrian government (as well as the German government) could well be in breach of their *non-refoulement* obligations as they have effectively denied entry and RSD procedure to individuals coming from the Czech Republic and Poland.

What is also clear, however, is that the asylum system being created in Europe, particularly when combined with the enlargement of the EU and the inevitable uneven distribution of asylum seekers across EU Member States, has itself generated new problems both for receiving countries and for individual refugees and asylum seekers in need of protection. Since 2004 many of those who are genuinely in need of protection and who have sought asylum in Poland and the Czech Republic have remained underground and turned to the services of smugglers to reach territories of countries more likely to recognise their needs and grant them refugee status. The Dublin II Regulation provides the legal basis for establishing the criteria and mechanism for determining the State responsible for examining an asylum application in one of the Member States of the EU. In order to save their lives Chechen refugees are forced to bypass it.

Recent proposals to establish EU processing centres in Ukraine or Libya can neither reduce protection needs nor diminish the demand in Europe for cheap labour. The likely result of such centres is that more people will be forced to live in non-legal situations, dependent upon criminal networks. The burdens and costs of border control will be further increased.

Future asylum systems in Europe must better differentiate between the voluntary and forced dimensions of migration. States argue that the concept of asylum is widely abused by illegal migrants coming to Europe, yet offer almost no legal avenues for those who are in need of protection. People with real protection needs suffer in poverty and are forced to use illegal channels to reach the EU.

One of the solutions to be explored is an introduction of the protected entry idea in regions of origin involving Embassies of the EU Member States.[7] The EU should follow the example of the US, Canada and Australia and increase their resettlement quotas as well as rapidly introduce pro-active migration management schemes. At the same time, discussion of improved law enforcement with regard to illegal immigrants and greater focus on labour integration of immigrants would make the EU more open, fair and competitive to its newcomers.

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A new asylum paradigm: rhetoric or reality?

This research project, based at the Centre on Migration, Policy and Society (COMPAS) at the University of Oxford and headed by COMPAS senior researchers Liza Schuster and Nicholas Van Hear, explores whether a 'new asylum paradigm' (NAP) is emerging around recent policy initiatives that seek to shift asylum processing and management closer to the regions from which asylum seekers come.

Although similar ideas have been around in various forms for some time, there appears currently to be a convergence of thinking, seen in related initiatives such as the British government proposal on 'new' approaches to asylum seekers, debate within the EU on managing asylum, UNHCR's Convention Plus and recent proposals by the German, Italian and Dutch governments.

The project traces the evolution of the debate, its policy manifestations and, most important, the implications for asylum seekers and other migrants.

Project outputs to date include a number of papers by doctoral student Alexander Betts and a paper by Liza Schuster on 'New asylum paradigms: the rhetoric and the reality', exploring the manifestations of the new asylum paradigm on the ground in North Africa and elsewhere. Schuster's fieldwork in Morocco is being undertaken in conjunction with the Refugee Studies Centre at Oxford, the University of Oujda in Morocco and UNHCR.

As part of a study commissioned by the UK's Department for International Development, 'Developing DfID's policy approach towards refugees and IDPs', a wide range of documents has been collected on various aspects of the NAP. Parts of the DfID report (online at www.rsc.ox.ac.uk/dfid.html) relate directly to the NAP. Stephen Castles of the RSC and Nicholas Van Hear have taken the lead on this work, with Heaven Crawley of AMRE Consulting contributing an expert paper.

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Challenges of temporary protection in Syria

by Ann Maymann

Forced displacement is now a defining characteristic of Iraqi society and will remain so for years to come. Many have chosen to leave for neighbouring countries, particularly Syria and Jordan, but remain in a limbo of temporary protection.

Aware of US preparations for an attack on Iraq, the humanitarian community was ready to receive thousands of Iraqis expected to pour into Syria and Jordan at the end of March 2003. However, instead of arriving as expected *en masse*,[1] Iraqi refugees have arrived in dribs and drabs – threatened both by bullets and loss of livelihoods – as the situation in Iraq has continued to deteriorate.

The number of Iraqis in Syria is widely contested. The Syrian authorities estimate the number at around 400,000, other sources quote one million and Syrian taxi drivers say two million. Many are financially self-sufficient or have family connections in Syria and the majority have never approached UNHCR. As of February 2005, UNHCR has registered approximately 15,000 Iraqis since the outbreak of the war. During 2004, an average of 250 Iraqis approached UNHCR every week for registration and documentation. Christians constitute some 35% of registered Iraqis in Syria, despite the fact that in Iraq Christians constitute only around 5% of the total population.

Iraqi refugees are concentrated in urban centres, especially Damascus and Aleppo. Shia and Sunni Muslims and Assyrian and Chaldean Christians from Iraq tend to live in areas alongside other members – whether Syrian or foreign – of the same groups. The fact that they are drawn to urban centres also explains the apparent paradox that, despite increasing numbers of Iraqi refugees entering Syria, in June 2004 UNHCR closed down the refugee camp in Hassakeh province in northeastern Syria. There were only some 50 refugees left, for whom individual solutions were found in cooperation with the Syrian authorities and resettlement countries.

Iraqi refugees in Syria come from urban backgrounds and seek livelihood opportunities in familiar networks and settings. Iraqi refugees are mostly employed in the informal sector – often, men in the construction sector and women in sewing and tailoring. They pay higher house rents than Syrian nationals and there is evidence that their presence has forced up house prices and rents.

Iraqi refugees are not a new phenomenon in Syria but their sheer numbers are having an impact on the lives of Syrians. Some Syrians blame Iraqis for driving down wages, for petty crime and for prostitution. Poverty in Iraq and the impact of Islamic fundamentalism have undoubtedly forced many prostitutes to flee to Syria.

Syrian sanctuary?

In addition to the 15,000 registered Iraqi refugees, Syria also hosts some 2,500 refugees of other origins – plus around half a million Palestinian refugees (410,000 of whom are registered with UNRWA, the UN Relief and Works Agency for Palestine Refugees) who enjoy similar rights as Syrian citizens. Syria has no specific laws regulating asylum seekers and refugees. Entry, stay and exit of asylum seekers and refugees are regulated under the ordinary immigration legislation pertaining to any alien on Syrian territory. Syria, like the majority of members of the Arab League, has not signed the 1951 Refugee Convention.[2]

Prior to the war in Iraq, Iraqis with refugee status determined by UNHCR in Syria were submitted for resettlement to third countries such as Australia, Canada, the European Union, New Zealand or the US. This changed in March 2003 when UNHCR called on national states to provide temporary protection to all Iraqis whether for those already in exile or subsequent arrivals. It implied a complete ban on forced return of Iraqis including rejected asylum seekers and in turn also the temporary halt to the individual refugee status determination. Given the political sensitivities, the unpredictable developments in Iraq and the varying attitudes of both Western and regional states towards the plight of Iraqis, advocating for temporary protection status with all its flaws and incompleteness was the only viable option at hand – and was indeed effective in preventing enforced returns to Iraq.

Temporary protection status affords less protection compared to that based on UNHCR's mandate or the 1951 Convention – but is better than no protection at all. Above all, it safeguards against *refoulement.* In mass influx situations it has also been used when it has proved impossible to undertake individual refugee status determination. UNHCR first employed it in 1992 with the intention that it would provide short-term minimum protection to those fleeing conflict in ex-Yugoslavia.

In June 2001, the Directive on Temporary Protection by the European Union Ministers of Justice and Home Affairs (JHA) was welcomed by UNHCR whereby it was recognised that "temporary protection is not an alternative to refugee status under the 1951 Convention, but only a practical device aimed at meeting urgent protection needs during a mass influx situation until the individuals concerned have their asylum requests determined on a case-by-case basis"[3]. Iraqi refugees have now been under 'temporary' protection in Syria for more than two years.

Syrian authorities normally exhibit warm hospitality towards Arabs,

including Iraqis, Somalis and Su-danese. UNHCR is encouraging the Syrian authorities to continue this tradition and to offer real protection for Iraqi refugees. One tangible means is through provision of support to those sectors of society, such as health and education institutions, having to deal with the impact of the increasing number of refugees. UNHCR in collaboration with their operational partners, the Syrian Red Crescent and the Syrian Women Union, identifies those Iraqi refugees under temporary protection who require specific assistance such as emergency medical response and support for family reunification.

Syrian hospitality towards members of the huge Iraqi community is under threat not only from the pressure imposed on Syrian society and its resources but also from the US coalition and its crackdown on terrorists. In the current extremely tense atmosphere in which the US does not rule out the option of military strikes against Damascus the question remains which criteria are applied for identifying a terrorist.

In the initial registration of Iraqis under temporary protection in Syria, it emerged that some had opted to leave Iraq due to their membership of the Ba'ath party. Today it is a criminal offence even to be a party member but under Saddam Hussein's regime many joined to ensure their economic survival. There are concerns that Ba'ath associations may exclude them from refugee status. It looks now as if the concept

of 'persecution' has been taken hostage by political considerations. Just as asylum seekers have sometimes been described as 'asylum shopping' in Europe, so resettlement countries occasionally go 'refugee shopping', prioritising for example groups such as 'women at risk' or specific ethnic or religious groups. They misunderstand the complex nature of conflict in Iraq and the rapid changes in grounds for persecution.

The challenge of injecting substance into temporary protection is that, in this region, refugee status has hitherto meant resettlement. UNHCR is striving to change this perception and there are indeed positive signs emerging on institutionalising refugee protection through negotiations with authorities.

Outlook

As temporary protection begins to acquire a manifestly non-temporary status, questions arise: would the world have reacted differently if Iraq had been invaded by North Korea or Iran? Would the exodus to neighbouring countries have been characterised as a refugee situation and would Iraqis have been welcomed for resettlement out of the region?

If temporary protection is to have real value, it must form part of a comprehensive international strategy, designed to deal with both the causes and the consequences of a refugee-producing conflict. UNHCR and the UN as a whole are obviously in no position to effectively address

the causes and consequences of the present conflict in Iraq. The question is: which countries will cooperate with the UN and UNHCR to protect Iraqi civilians from an increasingly confusing and maniacal armed conflict?

When the time is ripe, one possibility would be to organise a debate at the regional or international level on the impact of the war in Iraq on civilians in order to generate creative suggestions for the amelioration of daily life whether in Iraq or in exile. Participants should include human rights groups, refugee advocates and Iraqi civilians.

While not all Iraqi civilians are at risk, many are – and they deserve our concerted attention and protection.

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2. Thirteen Arab League states are non-signatories. Those that have signed are Algeria, Djibouti, Egypt, Mauritania, Morocco, Somalia, Sudan, Tunisia and Yemen
3. 'UNHCR welcomes EU agreement on temporary protection', 1 June 2001

IDPs in the new Georgia

by Freya von Groote

Secession of the Abkhazia and South Ossetia regions of Georgia in the early 1990s displaced over a quarter of a million Georgians, many of whom remain in collective shelters. As Georgia embraces democracy, what can be done to resolve the country's protracted IDP crisis?

Abkhazia, a small strip of land in northwestern Georgia that hugs the Black Sea, has traditionally been inhabited by a mix of nationalities. By the time the USSR broke up, the Abkhaz population of Abkhazia was estimated at 18%, while Georgians comprised 45%, Russians 15%, Armenians 15% and the remainder a combination of Ukrainians, Belorussians, Jews, Greeks, Azeris and Tatars. Georgia claims that the Abkhaz leadership engaged in genocide and ethnic cleansing of the Georgian population during the 1992-1993 war.

Since 1992 the UN has passed several resolutions on Abkhazia which remain unobserved. Russia, a key supporter of the Abkhaz *de facto* authorities, has entrenched the political and military stand-off between the two sides. Georgia's buffer position between NATO and Russia shapes Russia's and the USA's keen interest in the conflict. The Abkhaz authorities have maintained *de facto* independence, determined to preserve Russian support and generally refused to negotiate with the Georgian government. The Abkhaz side accuses the UN Observer Mission of political bias.

Obstacles and opportunities

In November 2003 Georgia's 'Rose Revolution', a peaceful protest at fraudulent elections, led to the replacement of the veteran leader Eduard Shevardnadze by the pro-Western Mikhail Saakashvili. Democratisation and economic reform have ushered in changes in the role and functions of civil society and IDPs. Policies which promote top-down, state-led integration have not only changed the position of IDPs within society but also altered, if not deconstructed, the significance attributed to displaced populations. The transition offers opportunities to review Georgia's strategy of state-building and conflict transformation and to empower IDPs to actively advocate for their rights.

The viability of Georgia's democratic experiment hinges on universal civic participation and therefore, ultimately, on IDP integration. As in other displacement contexts, the issue of integration is contentious as it is associated with the possibility of compromising the principle of right to return. In the case of Georgia, however, it appears that social, economic and political integration may empower IDPs to participate in shaping policies that may eventually enable them to assert such a right.

The Abkhaz government in exile, which is supposed to represent the interests of internally displaced Georgians, is due to move its headquarters closer to Abkhazia, transferring from the Georgian capital, Tbilisi, to Zugdidi in western Georgia. It remains to be seen whether the government in exile can overcome the legacy of alleged corruption during the Shevardnadze era and truly advocate for IDP rights. The fact that its leaders are not elected but appointed by the Georgian President weakens its claim to legitimacy. The Abkhaz authorities refuse to recognise it as a negotiation partner.

Georgia continues to be overwhelmed by the economic consequences of the break-up of the former Soviet Union, the legacy of civil strife, mass displacement and anger at loss of sovereignty. Approximately 40% of the displaced population live in collective centres, often located in former hotels, schools, factories and hospitals. According to UN OCHA, 70% of the collective centres in Georgia do not meet minimum living standards. Unemployment, alcoholism, high depression and suicide rates and bad health are commonplace. An increasing number of IDPs previously living in private accommodation have moved to collective centres as a result of decreasing willingness of local families to host them and their inability to pay rents as they sink further into poverty. Georgia's privatisation programme is leading to the removal of IDPs from public buildings occupying prime real-estate sites. Until recently the Iveria Hotel in Tbilisi's main square housed thousands of IDPs and was an iconic daily reminder to Georgians and the world of the unresolved conflict. Compensation for those forced to lose their shelter has been *ad hoc.*

Return of IDPs to Abkhazia has been promoted as the only acceptable solution by the Georgian authorities and by IDPs themselves. This position resulted in the creation of special rules for IDPs which in many ways have denied them rights granted to other citizens and forced them to live under conditions of legal discrimination. It was only in 2002 that the reform of the election code restored the right of IDPs to vote in local and parliamentary elections. Distribution of entitle-

UNHCR/A Hollmann

ments – including to free electricity and public transport – has been a lucrative source of income for corrupt bureaucrats.

Many argue that IDPs have been kept in the dark about their rights and entitlements by those who have benefited from administering assistance programmes. They have helped create a dependency mentality among IDPs which has reinforced their social (self-) segregation and communal introversion. During the years of displacement IDPs have increasingly adopted a defiant, yet passive, victim identity but without developing forms of group solidarity or effective collective association. As other Georgians have also seen their living standards falling, they have come to regard the displaced with increasing irritation and fading sympathy.

Georgia's new government is undertaking a census of the IDP population with assistance from UNHCR. It is unclear whether this is a genuine planning tool, or driven by anti-corruption fervour, a need to rationalise budgets by weeding out non-existent and fraudulent beneficiaries or the desire to reduce IDP numbers and make the right to return less politically contentious.

Future prospects

Despite the political logjam, there are some grounds for optimism. The new political reality holds significant potential for the emancipation of the IDP community in the medium to long term. Integration of the IDP community into society at large could provide IDPs with a window of opportunity to realise their rights as citizens, as well as to eventually actively participate in the peace process as members of a democratic society.

Having realised that a resolution of the conflict is not imminent, the Saakashvili government has recognised the need for domestic social consolidation as a foundation stone to enable democratic dialogue and peacemaking. Grass roots and civil society organisations are gaining confidence and developing greater influence over events. The government is aware of the need to win over the increasingly embittered and fearful Abkhaz minority and to offer incentives to make return to Georgia preferable to continued reliance on Russia. IDP leaders now simply express a desire to return and do not talk of revenge. In recent years, with the improvement of a return environment supported by the international community, small groups of

Georgian IDPs have returned home spontaneously, mainly to the eastern Abkhaz district of Gali, if only on a seasonal basis.

The government is trying to break the dependency mentality of IDPs and now actively encourages donors to shift their attention from humanitarian assistance towards development. The psychological shock of the new policies is significant yet there is already evidence of attitudinal change. Some IDPs no longer hark back to memories of "how we lived" but have started talking of "how we will live again".

Actions need to be taken to maintain momentum and channel expectations responsibly:

- IDPs must be given greatly improved access to information.

- IDPs must be socially better integrated and their capacities to participate increased.

- IDPs must be more involved in the political process.

- Economic policies must be shaped with reference to the need to protect IDP rights, particularly related to housing.

What we are seeing in Georgia can be seen as the 'secularisation' of the IDP and a new social pragmatism rooted in a firm neo-liberal economic framework. The extent to which raised expectations can be reconciled with the recognition that no return will occur in the short term and the willingness of IDPs themselves to adapt to new realities cannot be foreseen. Recent developments have implications for policies in other states suffering from crises of internal displacement. The continued support of the international community is pivotal.

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IDPs from Abkhazia living in what used to be the Hotel Iveria, turned into a communal centre, Tblisi, Georgia.

Challenging camp design guidelines

by Jim Kennedy

Current guidelines for camps for displaced people need to be adapted to cater realistically for camp lifespan and population growth.

Faced with the challenges of siting and designing a refugee camp, most professionals turn to UNHCR's *Handbook for Emergencies*[1] and/or Sphere's *Humanitarian Charter and Minimum Standards in Disaster Response*[2]. These one-size-fits-all manuals set out everything from the minimum area of shelter space needed per person to the width of the firebreaks required within the camp.

Armed with these guidelines, a camp planner can negotiate for land and design a layout for a given number of inhabitants. However, it is often the case that within a year or two the camp is already overcrowded, denying both dignity to its inhabitants and space to pursue livelihoods. This is not usually the result of unexpected additional influxes of displaced people but a consequence of flaws within the guidelines themselves.

planners must take a long-term perspective

The reality is that the average lifespan of a refugee camp is close to seven years, with some camps for Palestinian refugees still on their original sites after more than 50 years. As the lifespan of a camp can never be accurately predicted planners must take a long-term perspective. While both sets of guidelines suggest an annual population growth rate in refugee camps of 3-4% they fail to act on the consequences.

UNHCR's manual recommends the promotion of economic enterprises for camp residents – but does not assign space for the workshops, home-based enterprises, granaries or tool storage which these require. In order to create a camp which provides shelter with dignity to all its residents and which will continue after many years to comply with the minimum standards set out in the guidelines, the numeric formulae they use need considerable adaptation.

The UNHCR guidelines stipulate an area of 900,000m² for a camp for 20,000 people. This provides a recommended 45m² per person which includes a plot for vegetable gardening. However, once the space stipulated as necessary for fire-breaks, non-residential buildings and buffer zones between shelters is taken into account, the 45m² quickly starts to disappear. Neither Sphere nor UNHCR give any numeric guidelines for how much area should be taken up by all the non-residential buildings – schools, clinics, warehouses, administration offices and community centres. (The UNHCR handbook provides a general guideline but no actual square metreage.)

If a camp of 20,000 refugees grows by 4% a year then it would take nine years (just two years more than the average lifespan of all camps) for the theoretical average family to grow from five members to seven members and the total population to grow to 29,605. If in year one the average land area per person in the camp follows the UNHCR guideline of 45m², by the end of the ninth year this area of land per person will have been reduced below the minimum to 32m². The area within a family shelter per person will have been reduced from the UNHCR minimum of 4.5m² to 3.2m². If just one square metre of that space is taken up by tools or materials storage for a home-based enterprise, then the area for shelter is reduced almost to the point where the refugee or IDP lacks even sufficient space to lie down and sleep.

Design from the bottom up

Caught between the lack of internal consistency in the numerical guidelines and the pressures of population expansion, the camp planner needs a different approach. The key – stated early on in UNHCR's guidelines but practically ignored thereafter – is to design and calculate from the smallest components to the largest, and from the bottom up.

Setting aside reservations about the guidelines' universal applicability, and assuming that the 4.5m² per person interior shelter space stipulated in the UNHCR *Handbook* (3.5m² according to Sphere's more austere standards) is adequate, then the necessary shelter space for a family of five would be 22.5m² – but in reality this should be 31.5m² if the family is to be able to expand to seven members over time. If these families are grouped in communities of 80 people (again, following UNHCR guidelines), then only 11 families should occupy each community block rather than the suggested 16.

The next concern is to add enough space for all the extra outdoor facilities which the guidelines fail to assign space to – latrines, showers, outdoor cooking areas, a water source and waste disposal. The area for each community block might now be 2,839m² – already some 400m² more than for the community for 16 families under the original UNHCR guidelines.

Once the space for the pathways and firebreaks is added in, and a non-residential block added for each eight residential blocks, the final area per person on a camp-wide basis would be 61m² at the end of the ninth year. This would necessitate an initial calculation for the first year, before any internal population expansion, of 89m² per person – almost double the UNHCR recommendation and three times that of Sphere. Even this, however, does not take into account the need for space for home-based enterprises, nor the fact that up to 40% of land offered for camp construction is sometimes unsuitable for construction, due to steep gradient, high water table or other physical features.

Hierarchy of spaces

In most camps, buildings and spaces come in only two sizes: a single family plot/shelter and much larger

non-residential buildings usually grouped together close to the front entrance of the camp. This rigid division by building function often creates tension. Those who live towards the edge of the camp feel excluded and social instability may be greater. Those who live at the edges of residential communities facing directly onto the open spaces in which the non-residential buildings are located may have no transitional space between the supposedly private spaces of their homes and the public spaces surrounding the clinics, schools or administrative offices. While they may derive some benefit from being able to place goods stalls or other businesses close to these busy areas, they also suffer considerable loss of privacy and security.

Rather than planning a camp by placing a series of physical **structures** onto an empty plane, the planner should start to think of the camp as a hierarchy of different interlocking **spaces** which the built structures in part help to form. Some of these spaces will be absolutely private, and some of them absolutely public, and many will contain a combination of the two. Although some of the spaces will indeed continue to be defined by the buildings that they contain, there will be many other spaces which will be empty at the outset in order to be filled subsequently by the refugees and their own needs for livelihoods and social interaction.

There should not be extreme adjacent contrasts of private and public, or large and small, and there should always be some intermediary space between the two. With some sort of transitional space or spaces between the larger non-residential buildings and the closest residential communities, there will be more privacy and greater security for adjoining residential areas. Outlying communities will include smaller, neighbourhood public spaces. Residents will have a greater say in their uses and form and therefore a greater commitment to them – and to the camp as a whole.

The challenge is to convince the humanitarian community and host government authorities that an extra 100-150% land is necessary and that this would not be used for initial building but for low-intensity use, perhaps for several years. However, only by adopting this approach can a camp truly embody the philosophy, and not just the numbers, of UNHCR's durable solutions and Sphere's shelter with dignity.

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Kibumba camp for Rwandan refugees, Goma region, North Kivu, Zaire (1994).

'Restriction of access' is displacement: a broader concept and policy

by Michael M Cernea

Recent changes in the World Bank's policy on resettlement have dramatic implications for those displaced by conservation projects, for governments, NGOs and researchers.

The conceptual apparatus in forced migration and population resettlement research is being continuously enriched. One important – but still relatively unknown – development was introduced recently into the resettlement policies of the World Bank, African Development Bank and Asian Development Bank. This new thinking is set out in the revised (January 2002) World Bank Operational Policy (OP) 4.12 on resettlement.[1] This significantly defines the 'restricting of access' to indigenous and other people in parks and protected areas as 'involuntary displacement' even when physical displacement and relocation are not required. The justifying rationale is that restrictions impose impoverishment risks and these risks lead to severe deprivations.

Significantly, this new definition has come from major international agencies themselves involved in instituting 'restricted access' regimes. As the definition has been adopted, the world's major development agencies have moved towards policy consensus that restricted access is a form of displacement.

Rethinking 'displacement'

Forced population displacement caused by development or environment projects has usually been defined as those situations when people lose, through imposed expropriation, either their house, or the land they own, or both. They are compelled to yield the 'right of way' to the project. Within this broadly accepted definition there have been two definitional debates – with major implications for people's livelihoods.

The first debate opposed a narrow definition of forced displacement as physical removal against the broader definition mentioned above. The supporters of the narrow definition contended that displacement occurs only when people lose their homes, their 'place'. Loss of land through imposed expropriation, their argument went, would 'affect' people but will not displace them. Therefore they may be eligible for land compensation but not entitled to resettlement protection and rehabilitation support. Obviously, this narrow viewpoint belittles the core economic content of displacement. This narrow definition lost the debate; today it is discredited.

In the second debate, the issue at stake was more complex. It referred primarily to populations with customary land ownership, not formal legal title. When development projects request 'right of way' or when 'protected areas' are established, the populations with customary ownership (including indigenous groups) are either relocated forcibly, or are prohibited by 'restricted access' from using lands and resources declared as 'project protected areas' or 'project security zones'. They also remain under the constant threat of being physically relocated. The impoverished condition in which these populations are left has been brought into the limelight.

On the ground that no physical removal occurs, the promoters of project-protected areas deny that the displacement concept applies to populations subjected to 'restricted access'. This denial is self-serving as it usually justifies the promoting agencies' refusal to grant those

deprived populations compensation and entitlements to alternative land, impoverishing them further. Social scientists have long provided evidence that 'restricting access' to resources vital for livelihood is equal to imposed economic displacement. This debate, as opposed to the first, has continued to simmer inconclusively.

The most common way of securing 'right of way' is outright land expropriation, with some – often with no – compensation. Restrictions of access are typically instituted against the customary practices of the local communities and are necessary for conserving unique bio-diversity resources. In certain conditions, such restrictions are indispensable, and reasonable restrictions are not, in themselves, the issue. What is at issue is the failure to recognise, preempt and counteract the negative livelihood-related consequences of such restrictions. There is ample evidence that their socio-economic effects end up being virtually the same as if they were physically forcibly displaced. Not being given alternatives, such groups soon revert to surreptitious, but now illegal, use of the restricted areas, undermining conservation objectives. Instead of a 'win-win', a 'lose-lose' situation emerges.

The revision included in OP4.12 reflects theoretical developments in the sociology of displacement as it extends coverage from only "the involuntary taking of land" to also "the involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of the displaced persons". The policy defines involuntary restriction of access as "restriction on the use of resources imposed on people living outside a park or protected area, or on those who continue living inside the park, or protected area, during and after implementation."

Never before in the 25 years of its resettlement policy has the World Bank defined 'loss of access' as a form of displacement. This welcome development is, however, consistent with the theoretical principle advocated by scholars long ago – that the definitional characteristic in forced displacement is not necessarily the physical removal but the imposed loss of assets and income. Imposed deprivation of assets may take place *in situ*, without physical removal of inhabitants. Therefore, the policy now covers the "loss of income sources or means of livelihood, whether or not the affected persons must move to another location".

Social scientists have demonstrated that displacement and loss of access to common natural resources are closely associated with social disarticulation, landlessness, loss of identity, increased morbidity and mortality and marginalisation.[2] All these raise issues of social justice and equity in development and conservation strategies. In practice, the accepted standards of forced resettlement are largely not applied also because those affected are too weak politically to alone fight for their entitlements. Alternative lands are generally not offered, compensation is rarely paid and other effective mitigatory measures are absent. The critique of such approaches is consistent with the broader criticism of the economic harm and moral injustice of unmitigated development-induced displacements. Indicative of the trend towards greater recognition of poverty impacts of protected areas is the fact that the 2003 World Parks Congress – convened by the IUCN World Conservation Union – adopted the recommendation that areas earmarked for biodiversity conservation should under no circumstance exacerbate poverty.

The response from the international development community to the definition of restriction of access as displacement has been rapid and supportive. In Africa, the region where untold abuses have marred the creation of many protected areas, the African Development Bank has included in its 2003 policy on resettlement the statement (absent previously) that the policy covers "loss of assets or involuntary restriction of access to assets including national parks, protected areas or national resources; or loss of income sources or means of livelihood as a result of projects, whether or not the affected persons are required to move."[3] The Asian Development Bank has similarly extended its policy to address "social and economic impact that are permanent or temporary and are caused by … restrictions imposed on land as a result of an ADB operation."[4]

Implementation

Implementation outcomes will depend on monitoring by civil society and the actions of development agencies, governments and NGOs (such as the IUCN, the WorldWide Fund for Nature or Conservation International) involved in park creation.

The World Bank has committed itself to a sequence of 'required measures' tailored to the needs of the affected populations. Under the new policy, governments receiving Bank financing are required to prepare a 'process framework' for all projects involving restriction of access, explicitly not only for biodiversity sustainability but also for sustainable livelihoods. Project sponsors are expected to implement "measures to assist affected persons in their efforts to improve their livelihoods or restore them, in real terms, to pre-displacement levels, while maintaining the sustainability of the park or protected areas". The sweep of this statement is particularly important as it established the requirement of 'double sustainability', both of the environment and of people's incomes and livelihoods.

The militancy of the affected people themselves and the work of many resettlement and conservation researchers have impelled the new definition and policy on restricting access. They have provided the empirical evidence demonstrating the risks and sheer disasters inflicted on vulnerable populations by such forced displacement. Some of this research in fact concluded that forced displacements should be ruled out as a park creation strategy unless the 'entitlement matrix' (ie the full complement of titled land, fair compensation, productive alternatives and rights protection) is provided. To analyse its own experiences in more depth, the World Bank itself initiated a project portfolio review, now in progress, identifying and analysing a large number of projects – over 100 – containing restricted access provisions.

Further research is now needed to chart whether, and how, the new policy guarantees are being implemented. The accountability of development and conservation programmes for their intended and unintended consequences, the assurance of double sustainability in governance programmes over natural resources, the risks of impoverishment and the counter-risk measures are research priorities.

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3. AfDB's policy is at: www.afdb.org/en/country_operations/policies_procedures/policies/involuntary_resettlement_policy_english_ver
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Internal displacement in Nigeria: an urgent challenge

by Claudia McGoldrick

In the past five years an estimated 800,000 people have been displaced in Africa's most populous state. Addressing Nigeria's neglected IDP crisis must be a key priority in the run-up to the country's 2007 presidential elections.

With a population of over 130 million and more than 250 ethnic groups, Nigeria has a multitude of religious, ethnic and political fault lines that periodically lead to communal violence. At least 10,000 have died since military rule ended in 1999. The past year has witnessed an alarming upsurge in the level of violence in the central Nigerian Plateau state and the oil-producing Niger Delta region.

In the decades which followed the attempted secession of Biafra, Nigeria's military rulers forcibly kept the lid on religious, ethnic and political tensions. However, the election of President Olusegun Obasanjo in 1999 allowed Nigerians greater freedom to vent pent-up grievances and new areas of conflict were created by competition for political spoils. Communal violence was fuelled by ethnic and religious violence (exacerbated by the introduction of Islamic sharia law in a third of Nigeria's 36 states), land disputes and competition for oil resources.

Perhaps the most significant cause of communal violence in Nigeria is the entrenched division throughout the country between people considered indigenous to an area and those regarded as settlers. Settlers may have lived in an area for centuries but are, nevertheless, discriminated against and denied equal access to land, commercial opportunities, employment and education.

In the predominantly Christian Plateau state, the majority of 'settlers' belong to the northern Hausa-Fulani ethnic group, nomads who have moved southwards as the expanding Sahara desert has dried up their traditional grazing lands. Hausa-Fulani Muslims have long complained that Christian farmers steal their cattle and prevent them from graz-ing, whilst the farmers counter that cattle encroach on their land. In addition, there are indigenous Muslim ethnic groups fiercely opposed to the perceived expansionist tendencies of the Hausa-Fulanis.

Between February and May 2004 a vicious cycle of revenge attacks in Plateau state left more than 1,000 people dead. Some sources put the number of people displaced in the state at over a quarter of a million but statistics are notoriously unreliable and are much disputed. In the small town of Yelwa, where a series of clashes culminated in the massacre of at least 600 Muslims (according to the Nigerian Red Cross) by heavily armed Christian militia, an estimated 80% of houses were destroyed. Mass graves attest to heavy losses on both sides. While both Muslim and Christian groups in the Yelwa area have made inflammatory accusations, the conflict is not simply driven by religious rivalry. Some Plateau residents remain convinced that the state government deliberately initiated the violence in order to rid the area of Muslim settlers while others believe the state governor has been made a scapegoat.

Conflict in Nigeria is driven by poverty and unequal access to resources. Despite its oil wealth, at least two-thirds of Nigerians live on less than $1 a day. Many people believe that conflicts are created and fanned by scheming politicians, particularly elites of the former military regime, who rely on the huge pools of destitute and frustrated youths to create social division. When violence erupts, it quickly spreads and takes on a momentum of its own.

Neglected long-term needs

While immediate humanitarian needs in the wake of communal violence are often adequately addressed by local authorities, UN agencies, Red Cross/Crescent and NGOs, the longer-term needs of IDPs are routinely neglected.

During the 2004 Plateau crisis most of those who fled the violence became hidden in host communities. The most visible IDPs were the 60,000 or so who took refuge in camps in neighbouring Bauchi and Nassarawa states. Early assessments by Médecins Sans Frontières (MSF) revealed that the IDPs in camps were in difficult circumstances and many of their basic longer-term needs were unaddressed – including a clear need for trauma counselling. Many people had seen family members badly mutilated and killed, or had themselves been seriously wounded. Hundreds of women and girls had been abducted and many had been raped and used as slave labour. IDPs, including large numbers of children, show clear signs of post-traumatic stress disorder.

government assistance is spasmodic and UN support for IDPs has been ad hoc

Almost a year after the Yelwa violence reached its peak, several thousand IDPs remain in camps. Some IDPs have integrated into local communities, joined relatives in other states or are being officially resettled. Although thousands have returned to Plateau to try to pick up the pieces among the rubble and charred remains of their homes, few have the means to start rebuilding. Lack of shelter is a major obstacle to return. Once again, in the aftermath of displacement crises, government assistance is spasmodic and UN support for IDPs has been *ad hoc.*

At the level of the federal government the humanitarian response is constrained by lack of experience in dealing with IDP issues and by competing mandates. Due to competition for resources between the National Emergency Management Agency (NEMA) and the National Commission for Refugees (NCR) it is unclear who has prime responsibility

for assisting IDPS. In the wake of the 2004 Plateau state crisis, international donors criticised the Nigerian authorities for lack of coordination, absence of a proper IDP registration system, inefficient use of resources, poor planning, inadequate monitoring and evaluation and the politicisation of humanitarian assistance.

Although the Nigerian government has requested international assistance, very little has been forthcoming as most donors feel Nigeria has the financial resources to tackle problems on its own. Neither the UN nor international donors regarded the displacement of a quarter of a million people in Plateau State as a real humanitarian crisis. An assessment mission led by the European Commission's Humanitarian Office in July 2004 concluded that the crisis was too small in terms of duration, numbers of affected populations and mortality rates to warrant provision of emergency funding to the Nigerian government. There is a widely held view that the government should focus its efforts on addressing the root causes of the problem – including the equitable distribution of resources – rather than simply addressing the symptoms.

What needs to be done?

Although internal displacement in Nigeria may not amount to an 'emergency' – especially when compared to other conflict-induced displacement crises in West Africa – there is real potential for renewed violence and major population movements. A six-month state of emergency in Plateau state imposed by President Obasanjo was lifted in November 2004 but many fear a further outbreak of violence will again spread to other areas of the country.

The fragmented response to the 2004 crisis has demonstrated the need for improved coordination between humanitarian actors at all stages of internal displacement from contingency planning and preparedness right through to post-emergency rehabilitation activities. Although the Nigerian government may have the financial capacity to respond to emergencies, it lacks the necessary institutional capacity and expertise to deal effectively with acute situations of internal displacement.

Donors must invest both in improving the emergency response and facilitating IDP return and reintegration. This should include not only physical rehabilitation of homes, public buildings and infrastructure but also support for peace and reconciliation initiatives, especially at the grass-roots level. All too often in Nigeria, once an outbreak of conflict has died down, humanitarian assistance dries up. The situation of IDPs trying to rebuild their homes and livelihoods in the devastated town of Yelwa is just one example of the sad lack of sustained post-emergency humanitarian assistance. MSF is the only NGO working there but it clearly has limited capacity and

there is real potential for renewed violence and major population movements

resources to deal with the full range of humanitarian needs. UNICEF is also constrained by lack of funding. Sustained, coordinated support is essential to allow IDPs to return home in 'safety and dignity' as required by the UN Guiding Principles on Internal Displacement.

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Billboard in Plateau state.

Recommendations for urban refugee policy

by Karen Jacobsen and Loren Landau

UNHCR is currently revising the Policy on Refugees in Urban Areas which it introduced in 1997. While this policy represented a step towards protecting the rights of urban refugees, it has been difficult to implement for technical, logistical and political reasons. Human Rights Watch has criticised the policy for its almost exclusive focus on assistance and for ignoring the very real protection needs of refugees in urban areas.[1] Although UNHCR has recognised the inadequacy of the policy[2], it continues to struggle to develop a strategy that is legally sound, politically acceptable and financially sustainable.

We believe that the existing policy does not adequately address the challenges and opportunities facing refugees in the world's cities. An effective urban refugee policy – as with any refugee policy – should promote refugee rights and livelihoods without compromising the well-being of those around them. Based on a review of research on urban refugees, the following recommendations could help develop such a policy.

Strengthening UNHCR's advocacy role

In order to effectively advocate for the rights of refugees and asylum seekers UNHCR should promote the right to work for refugees and asylum seekers in accordance with Articles 17, 18 and 19 of the 1951 Refugee Convention. UNHCR should engage with governments at the highest level – with prime ministers, presidents and relevant ministries. UNHCR should also work with local lobbying organisations to use existing legislation and the courts to open labour markets to refugees. It is vital to ensure the provision of adequate documentation including travel papers, work permits and photo identity cards. National initiatives should train relevant officials to recognise and respect these forms of documentation. Support should also be given to professional certifica-

tion and recertification. Many urban refugees have professional qualifications that are not recognised by national authorities or professional associations in asylum countries. For example, while South Africa faces an acute nursing shortage, hundreds of refugee nurses remain unemployed because they cannot prove their qualifications.

At the provincial or municipal level UNHCR should work with local governments and businesses to help them identify their responsibilities to refugees and asylum seekers. With decentralisation, local governments are increasingly responsible for primary health care, housing, policing and economic development. These are critical components of refugee protection and UNHCR should ensure that refugees are included in programmes. UNHCR should help local governments to recognise that excluding refugees from key programmes heightens social marginalisation. The agency should collaborate more closely with local advocacy groups to identify challenges and monitor the effectiveness of measures to protect refugees. Such alliances must promote two-way communication in which local organisations can call on UNHCR when they identify specific problems which cannot be resolved locally.

Material and livelihood assistance

While UNHCR need not provide ongoing material assistance to urban refugees it could develop a locally appropriate urban refugee 'starter pack'. This might include paying housing deposits or providing small grants to acquire business tools or equipment. UNHCR should also work with local organisations to assist refugees in developing literacy, upgrading their professional skills, accessing education and securing credit. Efforts should be made to

avoid parallel structures such as special refugee credit organisations, schools or clinics.

Those not able to capitalise on cities' opportunities include unaccompanied minors, single parents, the elderly and infirm and people of rural origin. Urban assistance programmes should therefore be complemented by initiatives that provide humanitarian assistance to those refugees who are unable to compete in the urban environment. Such initiatives might be located in geographically distinct areas, including purpose-built camps and settlements or designated zones of assistance.

UNHCR could develop a locally appropriate urban refugee 'starter pack'

It is encouraging that UNHCR is revisiting its urban refugee policy. This creates opportunities for refugees, municipal governments, businesses, service providers, academics and advocates to engage with UNHCR in developing a policy that can improve refugee protection in the world's cities. We hope that UNHCR will solicit and be open to the views of all, and we offer our suggestions as a contribution to this process.

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1. www.hrw.org/reports/2002/kenyugan/kenyugan1002%20ap%20alter-26.htm

2. 'Evaluation of UNHCR's policy on refugees in urban areas' by Kemlin Furley, Naoko Obi and Jeff Crisp, October 2002. www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RESEARCH&id=3dddf3114&page=research

UNIYA/Jesuit Refugee Service

update

Colombia: internal displacement still on the rise

The number of people internally displaced in Colombia in 2004 increased by 38.5% on the previous year, according to a recent report by a Colombian NGO. CODHES states that just over 287,000 people were displaced in 2004, compared with some 207,000 in 2003. Refuting these figures, the Colombian government insists that internal displacement decreased by 37% in 2004. Church authorities have supported CODHES, pointing to a substantial increase in inter-urban displacement (which is unaccounted for in official statistics) as well as the increasing military strategy of blockading and confining communities.

Ahead of a meeting in February 2005 to discuss the implementation by the Colombian government of UN human rights recommendations, Amnesty International stressed that "the human rights and humanitarian crises in Colombia remain critical with civilians targeted by all sides in the conflict – soldiers, army-backed paramilitaries and the guerrillas". Amnesty reiterated that it will not support any demobilisation process in Colombia that does not take full account of victims' rights to truth, justice and reparation. It also recommended that the international community support the creation of a mechanism to monitor compliance with human rights recommendations.

For more information see www. codhes.org.co, www.amnestyusa.org/ countries/colombia and the Global IDP Project's Colombia Report www. idpproject.org

IDPs overlooked in Nepal

Since 1996 Maoist guerillas have been fighting to overthrow Nepal's monarchy. Rebels stepped up attacks after King Gyanendra took absolute power February 2005. Human rights groups have warned that the lifting of the state of emergency in early May is unlikely to reverse the country's already deteriorating human rights situation. Professor Walter Kälin, the UN Secretary-General's Representative on the Human Rights of Internally Displaced Persons (IDPs), visited Nepal in April 2005 with Dennis McNamara, Director of the UN's Inter-Agency Internal Displacement Division. They met with senior government officials and also held meetings with Nepali NGOs, international and national aid organisations, UN agencies, donors and members of the diplomatic community. Their mission resulted in agreement to establish a monitoring operation to help establish accountability for rights abuses and prevent further violations.

Kälin noted that there is a widespread pattern of conflict-induced displacement and that the numbers of IDPs are far greater than the 8,000 cited by the Nepalese government. The majority of IDPs have not been registered by the authorities because of a restrictive registration process, the IDPs' fear of declaring themselves and the movement of many conflict-induced displaced persons across the border into India. Professor Kälin found that the main causes of population displacement are acts of violence or threats against the population, practices of forced recruitment and extortion by the Maoist armed group, fear of reprisals by the Royal Nepal Army for allegedly providing food or shelter to Maoists (even when this was provided under duress) and a general climate of insecurity.

Emergency assistance has reached only a very small number of IDPs. Kälin stated that there has been no coherent assistance and protection response, either from the government or from national or international organisations. Kälin welcomed reports that the government is to develop a new IDP policy and urged them to respect international hu-

manitarian law, condemn vigilante groups which have been set up by some state officials and train civil and military authorities on the rights of IDPs. He called on the Maoists to respect the distinction between combatants and non-combatants in the Geneva Conventions and to make a public commitment to adhere to the Guiding Principles on Internal Displacement, which is also addressed to non-state actors.

See www.brook.edu/fp/projects/ idp/20050422_nepal_mission.htm

The Rights of Refugees Under International Law 6-7 August 2005 : Oxford

This weekend course focuses on the specific human rights to which all refugees are entitled under the 1951 Refugee Convention and its 1967 Protocol.

The goal is to equip policy makers, advocates and scholars with a solid understanding of the international refugee rights regime. The course starts with an historical analysis of the evolution of refugee rights and an introduction to the structure of entitlement under the Refugee Convention. The rest of the course focuses on three key themes selected for their contemporary relevance: the right of refugees to enjoy freedom of internal movement, to work and to receive public assistance.

Maximum 50 participants. Instructor: Professor James C Hathaway. Course venue: Queen Elizabeth House, Oxford, UK. Course fee: £130 (including course materials, refreshments and lunch)

Visit www.rsc.ox.ac.uk/teaching_ short.html or email rscmst@qeh. ox.ac.uk

Falling asylum figures: a wake-up call for the EU?

by Raymond Hall

Concerns over illegal immigration and the spread of international terrorism have moved the asylum issue up the collective and individual agendas of EU member states. Asylum and illegal immigration have become issues on which governments can fall, extremist parties and views can prosper, and elections can be won or lost. Crude numbers of asylum seekers are not, however, the reason for this phenomenon.

UNHCR's latest report on asylum statistics[1] indicates that asylum application levels in Europe are in sharp decline, falling by 21% from 396,800 in 2003 to 314,300 in 2004. The 25 EU countries recorded 19% fewer asylum requests in 2004. Relative to national population size, Cyprus received the largest number of asylum requests during 2000-2004 (22 asylum seekers per 1,000 inhabitants), followed by Austria (18) and Norway (15). Objectively speaking, it cannot be argued that the EU is unable to manage such numbers.

The explanation of why asylum continues to be such a contentious issue is more complex. It lies in the fact that refugees and asylum seekers who arrive in Europe today are caught up in broader and increasingly globalised movements of migrants seeking a better life in countries with mature economies. Since there are very few legal channels for migration into Europe, both asylum seekers and economic migrants resort to irregular means of access, often making use of smuggling networks. Once in Europe, many would-be migrants apply for asylum as the only way of regularising their stay. At the end of the asylum procedure, only a minority of those whose cases are rejected return to their countries of origin. All this feeds the perception that

European governments have ceded control over their borders and their asylum systems to smugglers and to individuals misusing the asylum institution. As a result, asylum seekers are increasingly criminalised in the public mind and stigmatised in a way that loses sight of the fact that many come from regions characterised by conflict and widespread violations of human rights and are thus in need of protection.

Moreover, concern over national security has further heightened hostile perceptions and xenophobic reactions regarding irregular movements of people. States have to reconcile their legitimate concern to control their borders and combat illegal immigration with their voluntarily assumed obligations to recognise and provide protection to refugees.

At a national level, many of the 'old' EU member states have revised their asylum laws in a restrictive direction; at the European level many of these restrictive provisions have either been incorporated or accommodated in EU texts through provisions for exceptions, permitted derogations and scope left for national discretion. Some EU governments have flirted with the burden-shifting approach, proposing the return of asylum seekers from the EU to extra-territorial processing centres.

The 'problem' of asylum in the EU cannot, of course, be solved in the EU alone and there is much that can be done outside the EU. EU countries need to support the development of asylum capacity in neighbouring countries and help build protection and promote solutions further afield in regions from which refugees

originate. By reinforcing the protection in such regions, and ensuring that refugees have access to some durable solution or an acceptable degree of self-reliance, not only can their rights and well-being be better ensured but the pressures which encourage onward secondary movement of refugees can also be reduced.

Any failure of the EU to provide access to its territory and its asylum procedures for those seeking its protection raises serious concerns in relation to state responsibility and respect of international law. Not

concern over national security has further heightened hostile perceptions and xenophobic reactions

only does it set a bad example but it would also risk unravelling the international refugee protection regime of which the 1951 Convention is the cornerstone. As EU member states move into the second phase of the development of a common EU asylum system, let us hope that they take note of the asylum trends highlighted in UNHCR's report – and see it as an opportunity to put refugee protection back at the centre of asylum policy.

Raymond Hall is Director of UNHCR's Bureau for Europe (hall@unhcr.ch). This article is based on a speech given at the Cicero Foundation's International Seminar on Refugee and Migration Policy in the EU, November 2004.[2]

1. *Asylum Levels and Trends in Industrialized Countries, 2004,* published 1 March 2005: www.unhcr.ch

2. www.cicerofoundation.org/pdf/raymond_hall_nov_04.pdf

Brookings Institution-University of Bern Project on Internal Displacement
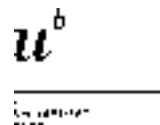
Safeguarding IDP voting rights

by Erin Mooney and Balkees Jarrah

Elections are an important means by which IDPs can have a say in the political, economic and social decisions affecting their lives. As citizens of the country in which they are uprooted, IDPs are entitled to vote and participate in public affairs, a right which is affirmed in the Guiding Principles on Internal Displacement.[1] In practice, however, IDP voters often find a number of obstacles put in their way. These include:

- **Lack of documentation:** Displacement frequently results in the loss or confiscation of identity documents, making it difficult for IDPs to register or vote on election day. Obtaining replacement documentation often proves difficult and may require IDPs to return to unsafe areas. Issuing IDPs – women as well as men – with replacement documentation (a right set out in Guiding Principle 20) should be prioritised.

- **Discriminatory practices:** In many cases, IDPs are members of ethnic or religious minority groups who suffer discrimination. In Croatia, displaced Serb voters have in the past faced cumbersome registration procedures, had access to fewer polling stations than displaced Croats and in some cases were barred from voting altogether.

- **Insecurity and acts of intimidation:** In situations of displacement caused by conflict and communal tensions, exercising the right to vote can entail risks to physical security. For instance, IDPs from Chechnya must travel back for each election to home areas that are often unsafe in order to collect a voting certificate. In a number of countries, displaced voters have been harassed en route to or at polling stations. Elections can only be free, fair and legitimate if voters can cast their ballots without fear of risk or harm.

- **Restrictive residency requirements:** In successor states of the former Soviet Union, lingering influences of the *propiska* system (restricting freedom of movement by tying the exercise of rights to an individual's approved place of residence) continue to hinder IDPs' ability to vote in places other than their area of origin. In Georgia, the legacy of *propiska* was reinforced by the political goal of promoting return and resulted in legal restrictions denying IDPs the right to vote for representatives in the areas where they were 'temporarily' residing. As a result of civil society and international lobbying these restrictions were removed in 2001.

- **Inadequate arrangements for absentee voting:** Security concerns or practical difficulties, such as distance, can make it difficult for IDPs to travel to polling stations. Arrangements for absentee voting are therefore important. In the January 2005 election in Iraq, polling stations were set up in the camps for IDPs who had been displaced from Falluja. Similar arrangements may also be required in Liberia for IDPs remaining in camps when elections are held in October 2005.

- **Lack of timely and clear information:** To enable IDPs to exercise their right to vote, they must have timely information about arrangements in a language they can understand. In the lead-up to the 2003 presidential elections in Chechnya, electoral officials publicly contradicted one another in announcements about IDP voting procedures. In Serbia, the lack of electoral information in the Roma language contributed to low turnout of Roma IDPs. In Azerbaijan, electoral information was provided only in the Roman alphabet which most IDPs, who had been educated in the Cyrillic alphabet, could not read.[2]

Left unaddressed, these barriers disenfranchise displaced voters and further exacerbate the marginalisation and exclusion that IDPs so often suffer. They also undermine the legitimacy of the electoral process overall.

National as well as international election officials and monitors should be sensitised to the particular obstacles that IDP voters can face and should systematically monitor and report on how these problems are being addressed. The Organisation for Security and Cooperation in Europe (OSCE) has recently recognised the importance of paying greater attention to IDPs' voting rights. Other regional organisations engaged in election monitoring as well as the UN Electoral Assistance Division should also ensure that IDPs are freely and fully able to exercise their right to vote.

Forthcoming elections in 2005 in which IDP voting rights should be closely monitored include Croatia, Democratic Republic of Congo (DRC), Afghanistan, Liberia and Azerbaijan.

Erin Mooney is Deputy Director and Balkees Jarrah a Senior Research Assistant of the Brookings-Bern Project. They are the authors of a recent study on IDP voting rights in the OSCE region (www.brook. edu/fp/projects/idp20041105_osce. htm). Emails: emooney@brookings. edu; bjarrah@brookings.edu

1. Principle 22 1(d). www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html

2. IOM/Participatory Elections Project. www.iom.int/pep/Electoral_Displacement_in_the_Caucasus1.pdf

NORWEGIAN REFUGEE COUNCIL
"NRC is an independent humanitarian organization.
Our task is to enhance international protection of refugees
and internally displaced people, and to offer humanitarian assistance"

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Norwegian proposal to clarify refugee status

by Vigdis Vevstad

In April 2004 a meeting of the EU's Justice and Home Affairs ministers adopted the Qualification Directive, a set of minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection. The 24 EU members bound by it (Denmark is not included) are required to incorporate the Directive into domestic legislation necessary by 10 October 2006.[1]

The Qualification Directive is the final element in a four-part package of measures aimed at establishing a common European asylum system. It secures a mutual understanding of who is in need of international protection, both under the universal definition of the 1951 Refugee Convention and of those who are in need of subsidiary protection. The Directive includes persons at risk of "serious harm", defined as "... death penalty or execution; or torture or inhuman or degrading treatment..." or a serious and individual threat to "...a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict." It also defines the benefits to be enjoyed by family members of the beneficiaries of refugee status or subsidiary protection status

The Directive has been quite well received by refugee and human rights agencies. The European Council on Refugees and Exiles (ECRE), of which the Norwegian Refugee Council is a member, has welcomed the Directive's recognition of persecution from non-state actors and acknowledgement of child-specific and gender-specific forms of persecution.[2]

However, there is controversy over the different rights granted to those who achieve Convention status as opposed to those who receive subsidiary protection. Discrimina-

tory provisions on Convention status and subsidiary status have been heavily criticised. UNHCR, ECRE and others have argued that any rights accorded to 1951 Refugee Convention refugees should also be granted to all persons afforded subsidiary protection as both categories of protected persons have similar needs and circumstances. Other regional initiatives have indeed done so and granted refugee status to any person in need of international protection. Both the OAU Convention in Africa and the Cartagena Declaration in Latin America contain broadened refugee definitions which include war refugees and victims of massive violations of human rights.

If EU states were to follow suit, the problem of providing differentiated protection to 1951 Convention refugees and those with subsidiary protection status would cease to exist. EU members are able, if they so wish, to introduce more favourable standards as the Directive allows for better conditions than the minimum standards it sets out. As EU states begin transposing the Directive into national legislation and administrative and judicial practice, Europe has an opportunity to make a real difference and place all refugees on an equal footing.

Norway, although not a member of the EU, has recently made a suggestion which could serve as an example for Europe as a whole. A government-appointed expert law committee in October 2004 proposed that persons at risk of the death penalty, torture or other inhuman or degrading treatment or punishment should be given the status of refugees equal to that of refugees who fulfil the requirements of the 1951 Convention. The criteria are similar to those which under EU law qualify for 'subsidiary protection'. If the proposal is accepted by the Norwegian parliament, it will ensure refugee

status to those for whom the state is obliged to grant protection due to the 1951 Convention as well as to those who are covered by other human rights instruments and customary law. EU member states are bound by the same principles of refugee and human rights law as Norway. A broadened refugee definition would therefore be fully in accordance with already existing obligations on protection and discriminatory distinctions between persons in need of international protection would be eliminated.

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1. The text of the Directive is at: http://europa. eu.int/eur-lex/pri/en/oj/dat/2004/l_304/ l_30420040930en00120023.pdf

2. www.ecre.org/statements/qualpro.doc

The Norwegian Refugee Council (NRC) works to provide assistance and protection to refugees and displaced people in Africa, Asia, Europe and the Americas. NRC was founded in 1946 in Oslo.

www.nrc.no/engindex.htm

The **Global IDP Project** is part of NRC and is an international non-profit organisation that monitors internal displacement caused by conflicts. The IDP Database provides public information about internal displacement in 50 countries.

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25 million IDPs worldwide: no change

The worldwide internal displacement situation showed few tangible signs of improvement during 2004, according to a report published by the Global IDP Project in March 2005. The report, entitled *Internal Displacement: Trends and Developments in 2004*, concludes that the total number of people internally displaced by conflict and human rights violations remained almost unchanged at 25 million.

"Internally displaced people are among the most vulnerable victims of conflict, and constitute arguably the largest at-risk population in the world." [report]

While some three million people were newly displaced in 2004, mainly in Darfur/Sudan, Uganda and Iraq, about the same number of IDPs were able to return to their homes in the course of the year. The largest return movements took place in the Democratic Republic of Congo, Angola and Liberia but there were concerns that conditions in many return areas would not allow for the sustainable reintegration of returnees. Altogether some 50 countries on all continents were affected by conflict-induced internal displacement.

Africa remained the continent by far the worst affected by internal displacement, hosting more than half of the world's IDPs – over 13 million people. Sudan was home to the world's largest internal displacement crisis, with some 6 million IDPs. Other countries with large internally displaced populations include Colombia (up to 3.3 million), the Democratic Republic of Congo (2.3 million), Uganda (up to 2 million) and Iraq (over 1 million).

The report reveals that most IDPs do not receive adequate humanitarian assistance, nor are they sufficiently protected from violence and human rights abuses. In 2004, three in four IDPs – more than 18 million people – could not count on the authorities in their country for the provision of adequate assistance. In 14 countries, with a total of over 12 million IDPs, governments reacted with hostility or, at best, indifference to the protection needs of the internally displaced. Even worse, in at least 13 countries the very governments responsible under international law for protecting their citizens were themselves behind forced displacement and attacks on IDPs, either directly or through militias, including in Burma (Myanmar), Nepal, Sudan and Colombia.

Attempts by the international community to fill the gaps left by national governments remained weak, according to the report. Although in 2004 agencies reaffirmed their commitment to ensure a collaborative and comprehensive response to internal displacement, this did not lead to tangible improvements on the ground. The international response continued to be crippled by agency competition, diffuse responsibilities, lack of accountability and insufficient resources. In 14 countries, the UN – the largest provider of humanitarian aid – was not involved at all in providing targeted assistance to IDPs.

The report this year includes not only sections on global trends and regional developments but also chapters on major thematic issues related to internal displacement, such as health and nutrition, women and children, property issues, and shelter and housing. The full report can be downloaded from the Global IDP Project's website at www.idp-project.org, or ordered by emailing idpproject@nrc.ch. (postal address opposite).

Global IDP Project training

The Global IDP Project provides training to UN, international NGO and national actors to strengthen the knowledge on the rights and needs of IDPs, promote dialogue on IDP protection and facilitate practical follow-up activities such as coordination, monitoring and advocacy. In 2004, the Global IDP Project conducted eight training workshops and briefings for over 200 participants. Workshops in Ethiopia, Somalia and Jordan (for the Iraq country team) were organised following the UN Emergency Relief Coordinator's request to the Global IDP Project to take over responsibility for responding to UN Country Teams' needs for training on the Guiding Principles and IDP protection.

For more information on our training programme, visit our training page at www.idpproject. org/training.htm or email us at christophe.beau@nrc.ch.

Refugee protection and human rights obligations in the EU

by Maria-Teresa Gil Bazo

www.rsc.ox.ac.uk

Adoption in 1997 of the Amsterdam Treaty marked a major step towards the establishment of a Common European Asylum System. The first set of legally binding instruments has been agreed. While some progress has been made towards incorporating refugee rights into EC law, some provisions raise serious issues under refugee and Human Rights (HR) law and may result in judicial action even before they are applied. The European Parliament has taken the Council before the European Court of Justice for violations of HR law by adopting the Directive on Family Reunification[1] and may do so in relation to the Directive on Asylum Procedures.

EU asylum policies extend beyond Europe. The so-called External Dimension[2] aims to project the EU's asylum and migration policies beyond its borders by incorporating them into agreements with countries worldwide. When the Hague Programme was launched in November 2004 the EU declared its External Dimension to be a policy priority. An ever-widening number of countries have either signed agreements with the EU or are negotiating them in order to control migration movements.

How does refugee and HR law fit within the ever expanding nature of the EU's asylum and migration policies? When they signed the Amsterdam Treaty, EU states shifted competence to rule on certain aspects of asylum legislation to the EC and therefore gave up part of their sovereign powers to control the entry into and stay in their territories of refugees and others in need of protection. They also established that EU asylum law would need to comply with refugee and HR law.

All EU states are parties to the 1951 Refugee Convention and other international human rights treaties. They are also accountable to the international bodies set up to monitor compliance, most notably to the European Court of Human Rights. Over the past decades and in absence of an international refugee court, human rights monitoring bodies have developed a body of decisions that complement the protection of refugees and others in need of protection.

However, as the EU itself is not party to any international human rights treaties it is not accountable to any body charged with monitoring its human rights record. While EU member states remain individually accountable for their human rights performance, the process of collectivising asylum and migration policies has provided a good opportunity to revisit international obligations. The Council has not even been accountable to the European Parliament, which has repeatedly petitioned the European Court of Justice to obtain access to documents and whose consultative opinions have often only come after agreement on legislation by governments had already been reached.

The removal of asylum policies from the control of national parliaments and the scrutiny of international human rights monitoring bodies raises serious refugee protection concerns. From a practical point of view, it is likely to result in an increase of claims before national courts against the application of EC asylum law by member states, something that runs contrary to their stated goal to improve the efficiency of their asylum systems.

Statements of these concerns are often labelled as 'unconstructive' by governments and those sympathetic to their inability to manage their asylum resources efficiently. However, one fails to see how respecting the international legal framework that states have committed themselves to observe (and which goes much further than the *non-refoulement* obligation in Article 33 of the Refugee Convention) can be seen as anything but a basic starting point in any serious debate on this matter.

The EU must ensure as a matter of urgency that any proposals to address asylum systems in EU states be based on a well-informed analysis of the facts (rather than on unfounded presumptions) and on a sound understanding of international refugee and HR law. They must also ensure that international accountability is guaranteed. Accession by the Union to the Refugee Convention and other international human rights treaties must therefore be carried out as soon as it becomes legally possible (the 2004 Treaty Establishing a Constitution for Europe already includes the obligation for the Union to accede to the European Convention on Human Rights).

As long as the EU's asylum and migration policies fail to be grounded in international refugee and HR obligations, these policies will not only lack legitimacy but will remain incapable of achieving their expected goals.

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1. www.euractiv.com/Article?tcmuri=tcm:29-110014-16&type=Analysis
2. http://europa.eu.int/comm/justice_home/fsj/external/fsj_external_intro_en.htm

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publications

Foreign Territory: The Internationalisation of EU Asylum Policy

by David McKeever, Jessica Schultz and Sophia Swithern. Oxfam GB. March 2005. 131pp. ISBN 0-85598-577-7 (English). ISBN 0-85598-559-3 (French). £5.00. Available in English and French at www.oxfamgb.org/ukpp/resources/foreignterritory.htm
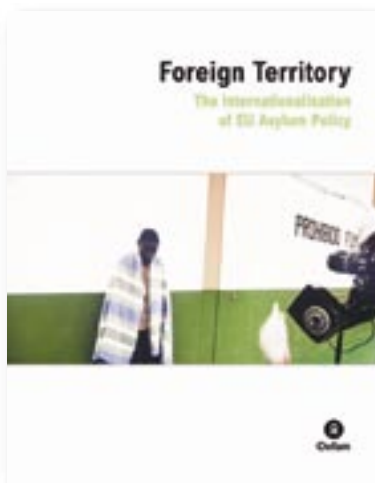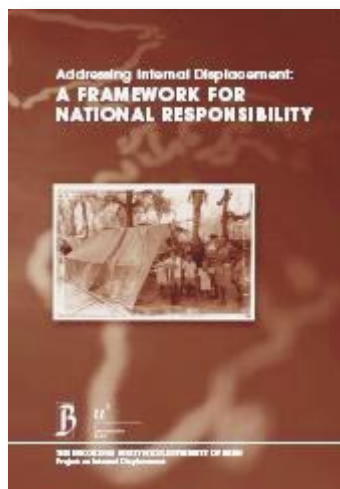
The politicisation of asylum-related issues and the desire to 'manage migration' are the forces behind a wave of new internationalised initiatives which include inadequate safeguards for refugee protection and are insufficiently informed by an understanding of the realities of their lives. Policy analysis is interwoven with original research into refugee realities in Sri Lanka, DRC and Tanzania. Includes agenda for action. *Contact Oxfam Publishing, 274 Banbury Road, Oxford OX2 7DZ, UK. Email publish@oxfam.org.uk*

Addressing Internal Displacement: A Framework for National Responsibility

Brookings-Bern Project on Internal Displacement. April 2005. 40pp. Free. Online at www.brookings.edu/fp/projects/idp/20050401_nrframework.pdf

The Framework identifies the steps that governments should take to achieve an effective national response to internal displacement, and enables international organisations, regional bodies, national human rights institutions, civil society and the displaced themselves to evaluate the extent to which governments are exercising their national responsibility. *Contact the Brookings-Bern Project at The Brookings Institution, 1775 Massachusetts Avenue NW, Washington DC 20036, US. www.brook.edu/fp/projects/idp/idp.htm Tel: +1 (202) 797 6489 Email: brookings-bern@brookings.edu*

Internal Displacement in South Asia: The Relevance of the UN's Guiding Principles

(Eds) Paula Banerjee, Sabyasachi Basu Ray Chaudhury & Samir Kumar Das. Mahanirban Calcutta Research Group with the Brookings-Bern Project on Internal Displacement. Jan 2005. 364pp. ISBN 0-7619-3329-8. Free.

Examines displacement caused by conflict, natural disasters and development projects in Afghanistan, Bangladesh, Burma, India, Nepal, Pakistan and Sri Lanka. Additional focus on the impact of displacement on women and the application of the Guiding Principles to the South Asia region. *Contact Brookings-Bern Project (see contact details opposite).*

Rights in Exile: Janus-Faced Humanitarianism

by Guglielmo Verdirame and Barbara Harrell-Bond. 2005. 480pp. ISBN 1-57181-527-9. $29.95/£19.95. (Vol 17, Forced Migration series, Berghahn Books)

Aims to expose the gap between human rights norms and the mandates of international organisations on the one hand and the reality on the ground on the other. "The central argument is that the international and humanitarian organisations that are in charge of looking after refugees are responsible for extensive and avoidable violations of the rights of those dependent upon them." (foreword by Justice Albie Sachs) *Contact Berghahn Books www.berghanhnbooks.com Email (UK/Europe): orders@plymbridge.com (US/rest of world) berghahnmail@presswarehouse.com*

Learning to live together: Developing communities with dispersed refugee people seeking asylum

by Bogusia Temple and Rhetta Moran. Joseph Rowntree Foundation. 62pp. ISBN 1-85935-286-3. £13.95 (+£2.0p&p). Free online at www.jrf.org.uk/bookshop/eBooks/1859352871.pdf

Draws on the work of Refugee and Asylum Seeker Participatory Action Research, a voluntary organisation working with refugees and asylum seekers in Manchester. It assesses activities that have been useful for both the participants and their communities. *Contact: York Publishing Services, 64 Hallfield Road, Layerthorpe, York YO31 7ZQ, UK. www.jrf.org.uk/bookshop/ Tel: +44 (0)1904 430033. Email: orders@yps-publishing.co.uk*

Land rights: a gift for refugees in West Timor

by Ingvild Solvang

In the West Timorese village of Sukabitetek, a wedding ceremony with a difference has taken place. Local residents and refugees from East Timor have pledged their troth as one community in a ceremony sealed with gifts – and land rights.

The East Timorese who took refuge in Sukabitetek have been lucky. When they arrived five years ago, fleeing the violence in East Timor, the local population welcomed them and the oldest man in the village, Herman Besin, provided land for temporary homes and gardens. Although they are now Indonesian citizens, the 13 remaining refugee families struggle to make ends meet on land which is not their own. Land and water are scarce in poverty-ridden West Timor and the local population is often no better off than the former refugees.

After five years, however, Mr Besin – a man of simple lifestyle and modest means – astounded his neighbours by offering to formally transfer land rights to the refugees. "I see the refugees as a part of my own family now," he explains. With help from the Jesuit Refugee Service (JRS) Indonesia and a legal consultant, legal contracts are drawn up. The agreement is signed in the presence of government officials and Mr Besin uses the opportunity to ask the government to provide improved water supply and housing. "I hope that when the government sees that a poor man like me is able to help the refugees, they will realise that they should also do something," Mr Besin says.

To cement the relationship the new families are welcomed with *Fetsawa Umamane*, a ceremony usually performed at weddings. Mr Besin and his family, as the givers of land, represent the bride's family and offer five lengths of hand-woven traditional cloth – *tais* – to the refugees. The refugees – the groom's family – respond with a gift of money. JRS contributes an ox for the feast and the refugee families provide rice, vegetables and spices. The whole community is involved – in singing, dancing, reciting poetry and preparing and sharing the feast. Legally the refugees gain rights to use the land and traditionally the old and new families of the community become one.

The process of finding an appropriate traditional approach can help tie refugee and local communities together, creating a forum where people share and learn about their cultural values. In the local community, local tradition is stronger than legal documents. For this reason, the *Fetsawa Umamane* ceremony provided an important supplement to the legal process. The combination of formal legal and traditional approach will hopefully lay a solid foundation for long-lasting good relations between both old and new families in Sukabitetek.

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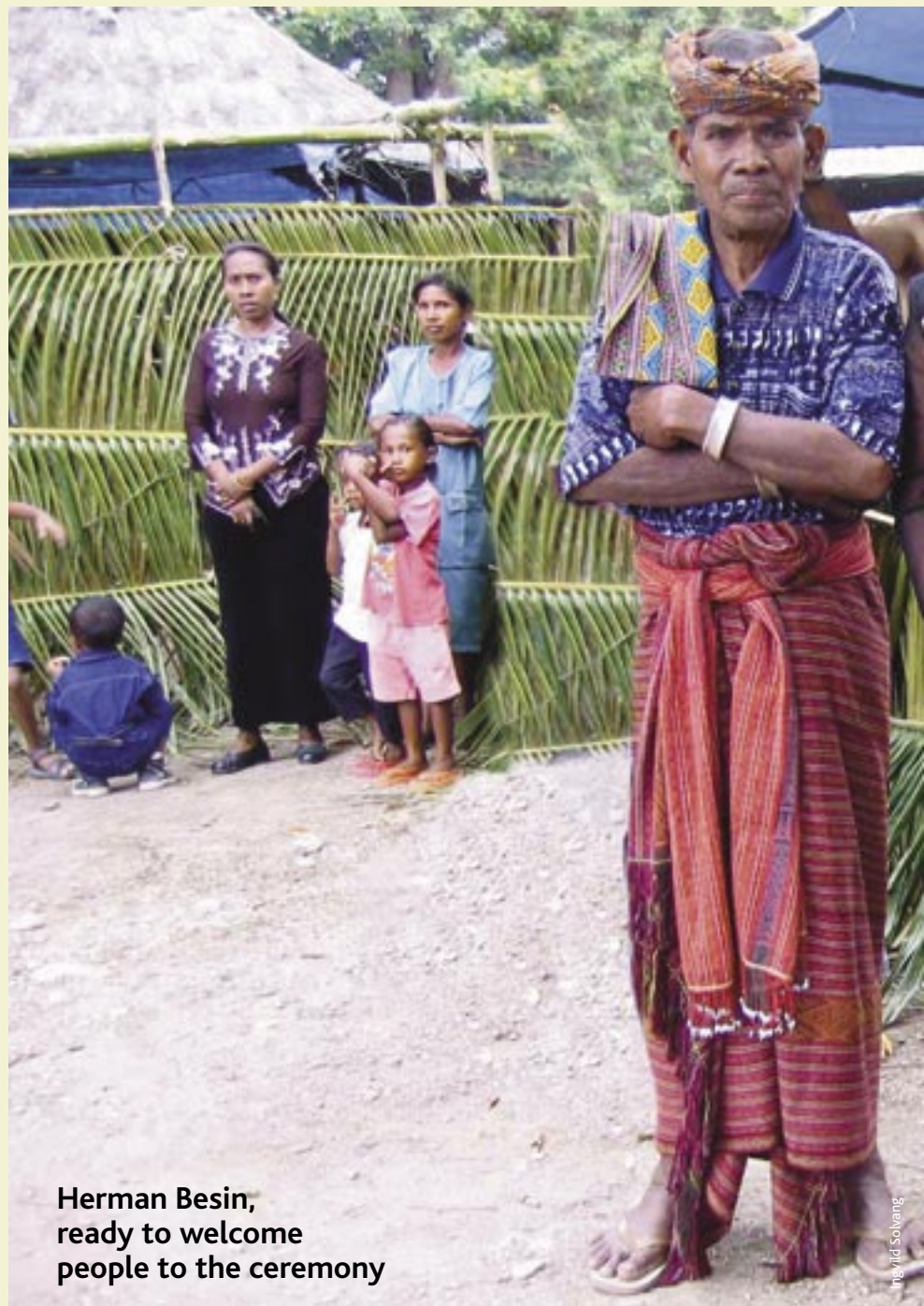
Herman Besin, ready to welcome people to the ceremony