

RESPONDING TO THE ASYLUM AND ACCESS CHALLENGE



ECRE
EUROPEAN COUNCIL
ON REFUGEES AND EXILES
COUNSEL EUROPEEN
SUR LES REFUGIES
ET LES EXILES

An Agenda for Comprehensive Engagement
in Protracted Refugee Situations

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**U.S. COMMITTEE
FOR REFUGEES**

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The European Council on Refugees and Exiles (ECRE) is the umbrella organisation for co-operation between the main non-governmental organisations concerned with asylum seekers and refugees in 31 European countries. ECRE and its pan-European membership of 74 agencies advocate for humane and fair asylum policies. The work of ECRE is coordinated by its Secretariat in London with a representative office in Brussels.

The U.S. Committee for Refugees (USCR) is a U.S.-based non-governmental organization that documents refugee conditions and defends the rights of refugees, asylum seekers, and internally displaced persons worldwide. Since 1958, USCR has conducted on-site research before, during, and after refugee emergencies to report on protection and assistance needs and to work with policy makers to ensure that humane, effective, fair, and durable solutions are implemented on behalf of uprooted people. Through its affiliation with Immigration and Refugee Services of America, USCR maintains a partnership with 36 community-based NGOs providing services on behalf of and advocacy for refugees and asylum seekers in the United States.

The German Marshall Fund of the United States (GMF) is an American institution that stimulates the exchange of ideas and promotes cooperation between the United States and Europe in the spirit of the postwar Marshall Plan.

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KEY FINDINGS AND RECOMMENDATIONS

Addressing Protection Needs

Resettlement: A Tool of Protection

1. Increased resettlement on the part of European countries could be an important complementary factor in solving protracted refugee situations as well as emergency situations of mass outflux.
2. European resettlement countries should increase their quotas from regions of refugee origin, focusing on the most vulnerable persons and those most in need of protection and durable solutions.
3. The European Union should create a refugee resettlement programme that remains true to the time-tested fundamental purposes for third-country resettlement: to provide rescue and durable solutions for refugees in need of protection, preserve the possibility of first asylum, and act as a means of equitable responsibility sharing.
4. While the EU should do more to ameliorate conditions for refugees in regions of origin through both assistance and resettlement programmes, it should recognize that these steps are likely to have little impact on the demand for asylum and labour migration in Europe. Refugee resettlement programmes should not be viewed as part of a strategy for migration control although they might have long-term benefits in reconciling the asylum and access challenge.
5. Increased resettlement would be a positive gesture towards host countries, in line with notions of international solidarity and responsibility sharing. In turn, such gestures would likely enforce and enhance the practice of asylum in these regions.
6. Expanded resettlement activities, coupled with the necessary capacity building in host countries, would serve as an important foundation for the development of future comprehensive solutions to protracted refugee situations.

Constraints on Resettlement

7. Resettlement activities are most effective and efficient when conducted in the spirit of tripartite cooperation between resettlement countries, NGOs, and UNHCR. Cooperation at the field level is essential to identify the appropriate approach for responding to those individuals and groups in need of resettlement.
8. Any developments in European resettlement, either collectively through the European Union or independently on the part of European States, should be through

the tripartite global resettlement efforts as coordinated by UNHCR. This is not only mindful of the dangers of competing systems, but in recognition of the fact that the coordination of resettlement programmes has led to greater efficiency in resettlement activities and more responsive resettlement programmes.

9. Within the context of tripartite cooperation, UNHCR should continue to play a central facilitating and coordinating role in the planning and implementation of resettlement programmes in accordance with its mandate and international responsibility for seeking durable solutions for refugees. This is not only necessary for principled reasons. Given the tremendous demand for activities through UNHCR, additional pressures and confusions would emerge and frustrations would increase, not diminish.
10. There is a significant role to be played by NGOs in the identification and referral of refugees in need of resettlement consideration, in accordance with the criteria established in the UNHCR Resettlement Handbook. NGOs often have direct contact with refugees in the field and are often better situated to identify vulnerable cases. Processing would best be improved by increasing the number of entry points to the whole process.

Programme Constraints

11. Members of the European Union, collectively through the EU and independently, should develop annual resettlement quota programs, in cooperation with UNHCR, to help address the current discrepancy between the number of refugees eligible for resettlement and the number of resettlement opportunities.

Resource Constraints

12. Members of the European Union should increase their contribution for resettlement processing, through increased contributions to UNHCR, secondments and through the UNHCR-ICMC Resettlement Deployment Scheme¹.
13. Members of the European Union, collectively through the EU and independently, should develop annual resettlement quota programmes, in cooperation with UNHCR, to help address the current discrepancy between the number of refugees eligible for resettlement and the number of resettlement opportunities.
14. Resettlement criteria should be flexible, especially in *prima facie* situations, to address protection needs of refugees, even if they do not, at that moment, fulfil the requirements of the 1951 Convention definition.²
15. An increase in EU refugee resettlement processing from regions of origin, should be linked to an increase in

resources made available to UNHCR by Member States to support additional processing.

Procedural Constraints

16. The EU, and other donor governments, should 'invest' in early, accurate and up-to-date refugee registration procedures as a prerequisite for credible resettlement activities.
17. UNHCR should develop and implement universal minimum standards, management and oversight mechanisms for the status determination and resettlement process in the region, consistent with the spirit of due process of law.
18. European countries, independently and collectively through the EU, should encourage and support the development of universal minimum standards, management and oversight for the status determination and resettlement process in the region.
19. European countries should support the capacity building of NGOs in the region politically and financially to act as monitors of UNHCR's status determination and resettlement activities.

Targeting Resettlement

Vulnerability in Countries of First Asylum

20. European resettlement activities should continue to place specific emphasis on the protection needs of refugees in their country of first asylum, in addition to their inability to return to their country of origin.

Group Resettlement

21. In coordination with UNHCR and other resettlement partners, the EU or its Member States should not only accept UNHCR-referred resettlement cases, but could also identify groups of vulnerable refugees in need of resettlement.
22. In cases of group identification, resettlement countries should ensure that all necessary human and material resources are made available for the verification and processing of that group, thereby ensuring that the ongoing identification of vulnerable individual cases is not jeopardized.

Profiles of Populations in Need of Resettlement

23. During visits to the regions, ECRE-USCR found the following vulnerable populations would be eligible for resettlement according to the criteria of the UNHCR Resettlement Handbook: Refugee Women at Risk in Dadaab; African refugees in Turkey and Syria; Somali Bantu refugees in Kenya; Sudanese "Lost Girls"

in the Kakuma camp; residual caseload of Sudanese "Lost Boys" in Kakuma camp and in Ethiopia; Sudanese 'protection' cases in the Dadaab camp; Sudanese and Iraqi Refugees in Lebanon; Iraqi refugees whose persecution or fear of persecution is based on actual or imputed association with EU or other Western governments; persecuted religious groups in Iraq; and Iraqi refugees in the Rafha Camp.

Urban Refugees/Irregular Movers

24. In cases of "irregular movers," resettlement countries should offer resettlement as a means of helping UNHCR to establish a safer, more orderly, and more effective means of moving these refugees out of insecure areas; to find durable solutions on their behalf; and to reform its "irregular mover" policy to make greater allowance for people who must continue to move to seek protection.

Family Reunification

25. Demonstrated dependency should be the governing principle in determining the need for and priorities in family reunification.

Paying for Resettlement

26. While funding for refugee resettlement should not come at the expense of overseas assistance funding for refugees, EU members and other prospective resettlement countries should recognize that the benefits of resettlement go beyond providing protection and durable solutions to individual refugees. As an act of responsibility sharing, resettlement helps to alleviate the burden on poorer first-asylum countries and encourages yet other countries to do their part. Resettlement also helps to create public and political support for refugee-and other humanitarian programmes.
27. While government support will be crucial to fund most of the costs of an EU refugee resettlement programme, the EU should explore other models, such as the Canadian private-sponsorship programme, of public-private partnership to fund any resettlement programme.

The Principle of Responsibility Sharing and Comprehensive Approaches to Refugee Crises

The Principle of Responsibility Sharing

28. The international community through the offices of the Executive Committee of UNHCR should take steps to develop an effective, concrete and visible system of responsibility sharing that provides effective protection to refugees and is in line with the principle of international solidarity.

29. Responsibility sharing - financial support to countries of first asylum as well as providing protection to refugees in countries outside the region of origin-should be the overriding principle to be used while developing comprehensive approaches to crises or protracted situations involving large numbers of refugees.
30. The international community must focus more on and give greater attention to resolving conflicts that are the root of the most protracted refugee situations. UNHCR's proposed review of all protracted refugee situations is very important in this context.³ This should involve an analysis of the specific characteristics of its situation, and develop proposals as to how various responsibility sharing mechanisms could possibly contribute to finding durable solutions.

Comprehensive Responses to Specific Refugee Situations

31. Crisis and protracted refugee situations can sometimes be addressed through special comprehensive plans of action, composed by and under the responsibility of the international community and with participation of countries of origin, first asylum and third countries outside the region of origin. Past experiences have shown that such programmes can provide durable or temporary solutions to great numbers of refugees.
32. UNHCR and states should seek to identify situations for which a comprehensive approach could be applied, and consequently develop conditions and criteria as well as elements of organizational structures for implementation.
33. The development of comprehensive responses should be done on the basis of a multilateral approach involving a broad range of actors. Participating states (countries of first asylum, donor and resettlement countries, and where possible countries of origin) should firmly commit to such responses.
34. Countries, which are for long periods hosting large numbers of refugees from neighbouring countries, should receive recognition of the responsibility they have assumed. While considering durable solutions in the region, particularly local integration and voluntary return, donor states should define concretely how they can support countries of first asylum as well as countries of origin. States should focus on strengthening the reception and protection capacities of the host countries, and wherever possible also on improving conditions for safe and durable return.
35. Special attention should be given to developing or supporting possibilities to facilitate the local integration of refugees. This could be done through, inter

alia, seeking suitable parts of the country on the basis of ethnic composition of the population, availability of land or other economic opportunities, presence of other refugees who already have established strong social and economical links.

36. Different forms of support should be considered, such as specially designed forms of financial support, as well as linkages with broader economic, development or other concerns of the countries involved.
37. Western countries should ensure that their national asylum policies, in particular those regarding the return of asylum seekers to transit third countries, do not jeopardize efforts to strengthen the protection capacity of countries of first asylum in regions of origin where there are protracted refugee situations. Similarly, when comprehensive approaches are developed to facilitate refugee returns from neighbouring regions to countries of origin, the return of refugees or asylum seekers from western countries should be considered as a part of such programmes.
38. While preparing for the return of refugees in post conflict situations, special attention should be given to the sustainability of return. The sustainability of return programmes is increased where return is voluntary. Measures should be taken to prevent that the return of large numbers of refugees will contribute directly or indirectly to new conflicts. Return should be considered in relation to the reconstruction process and not interfere with strengthening stability.
39. Criteria for assessment, standards of treatment, timeframe, systems for registration and documentation, as well as the overall organisational structure and the lead agency should be defined well in advance. Participating countries should commit themselves to the agreed upon organizational structure and substantial contents of the programme.
40. A humanitarian evacuation programme must not lead to closing or adopting national asylum systems for the particular group of refugees.

Searching for New Solutions

EU: Asylum Issues and External Relations

41. EU policies and plans aiming at integrating asylum or migration concerns into relations with third countries should be based upon a protection and human rights-oriented approach.
42. Plans and initiatives undertaken by the HLWG should be part of the overall external and development policy within the European framework. They must be in line with or fit within the framework provided by Country

Strategy Papers and Regional Strategy Papers developed by the Commission.

43. Such plans should provide an analysis of the root causes of population movements, and contain realistic, specific, detailed and measurable operational proposals to address these causes, designed for the short, medium and long term.
44. A structure should be developed where all plans and initiatives in the field of refugee, asylum and migration policies are reviewed. Updates and feedback on progress and changes in plans should be given regularly to appropriate EU bodies. Review should be linked to the CSP's and their mid-term review, and provide for a transparent procedure, including reporting to the European Parliament.
45. Plans and initiatives taken up by the EU or its Member States in the field of migration and asylum, which directly concern or influence third countries, should contain concrete arrangements for coordination and dialogue with all relevant bodies including relevant source and transit country governments, UNHCR, UN human rights and development institutions and NGOs active in the field.
46. While seeking cooperation with countries of origin or countries of transit on asylum and migration issues, the EU should ensure that the discussions equally address the interests of all involved.
47. Consultation by the EU on migration or asylum issues with countries of origin or transit should in principle be integrated in the existing framework of dialogue with those countries or regions.

Processing in the Region

48. EU Governments should not seek to transfer asylum determination procedures from Europe exclusively to the regions of origin. EU asylum processing conducted in regions of origin is not feasible on legal, principled and pragmatic grounds and would not reduce the demand for people smuggling.
49. Future state responses need to derive from strategies and plans that provide complementary and additional protection options. As a proponent of international burden sharing in the protection of refugees, the EU should acknowledge that many countries, such as those in the regions visited by ECRE and USCR, are hosting far greater numbers of refugees and asylum seekers than are EU Member States. To simply transfer domestic refugee processing to regions of origin would not be in accord with the concept of international responsibility sharing that has been developed over the years.

50. Countries with domestic systems to adjudicate asylum claims, and with the resources to do so, should take responsibility for examining asylum claims within their territories and providing refugee protection there. Resettlement must continue to function as a complement, not a replacement, for other protection activities and durable solutions.

Embassy Procedures and Humanitarian Visas

51. European countries should develop a system for 'asylum visa' or 'humanitarian visa' to gradually extend the possibilities for people to obtain legal access to their territories. In doing so, they should focus on people in the country of origin or asylum country in the region of origin who need to leave that country because of imminent danger, including the risk of refoulement, as well as on especially vulnerable cases and people at risk who seek reunification with members of their family.
52. Processing systems that aim at facilitating legal access to protection should not in any way prejudice the treatment of asylum claims if submitted by asylum seekers arriving spontaneously to the territory of a state operating protected entry procedures nor influence the eventual outcome of national asylum procedures. Their focus should be to facilitate access to protection for people in need rather than act as deterrence mechanisms for asylum applicants.
53. Procedures for asylum or humanitarian visas should be timely and allow for decision making to take place, if necessary, in very short periods. The asylum or humanitarian visa system should be under the direct responsibility of the national asylum authorities, but responsibility should in emergency situations be taken over by the diplomatic mission.
54. While such systems are being gradually developed, input from other actors, such as the host country as well as UNHCR, should be considered especially to clarify the relationship with (emergency) resettlement procedures.
55. Frameworks should be developed to better cope with risks of fraud and corruption of staff at embassies or at other places where screening might take place.
56. In the new structures, there should be extended possibilities to provide people in need of protection with a humanitarian or asylum visa if they are presented as such by other organisations such as UNHCR or specific NGO's. States should in this light establish working relations with international NGO's, such as Amnesty International or Human Rights Watch and where possible also with national NGO's.

A) *Aims and Objectives*

The single most important asylum issue facing policy makers in Europe and North America today is the question of how to resolve the apparent contradiction between a refugee's right to seek asylum and States' right to control their borders—what is referred to as the asylum and access challenge. In responding to this challenge, the European Council on Refugees and Exiles (ECRE) and the US Committee for Refugees (USCR) with the support of the German Marshall Fund have conducted a joint research project which aims at examining—on the basis of pragmatism, principles, law, and international standards—the feasibility of complementing the processing of asylum applications in European and North American countries of asylum with processing in regions of origin as a means to facilitating the orderly and legal admission of refugees to Europe and North America.

This paper offers possible solutions to alleviate the impact of immigration controls on refugees in need of international protection by examining ways to enable refugees to travel to Europe and North America and access protection. The most effective way to address the asylum and access challenge is through a comprehensive engagement to resolve protracted refugee situations. The researchers believe that this engagement should be three-fold. It must include full consideration of durable solutions, such as the strategic and expanded use of resettlement. It must also engage host countries and receiving countries in North America and Europe in the task of developing an effective, concrete and visible system of international responsibility sharing that provides for effective protection to refugees and is in line with the principle of international solidarity. Finally, Western countries must approach the question of asylum in regions of origin in a more holistic way, incorporating the external dimension of their asylum policies into their relations with third countries.

ECRE and USCR believe that there is an urgent need for a serious, constructive, and principled investigation into possibilities for reconciling current government migration controls with the commitment of European and North American states to provide protection to refugees. For this reason, this feasibility study could not be more timely. Governments are now redoubling their efforts to control migration at a time when the need for refugee protection continues unabated. The result is that the tension between the right to seek asylum and States' right to control their borders has never been greater. ECRE and USCR remain deeply concerned about the development of increasingly restrictive access policies in Europe, and remain committed to engaging and identifying alternative policies respectful of the rights of refugees and asylum seekers. While touching on these central issues, this report is an independent study by a team of researchers, the purpose

of which is to inform the debate, and does not necessarily reflect the official views of the sponsoring organizations.

B) *Project Origins*

The need to ensure access to protection for refugees and asylum seekers is one of the most pressing issues confronting European and North American policymakers. The right to leave one's country and seek protection is enshrined in international law. Article 12(2) of the International Covenant on Civil and Political Rights (ICCPR) provides that everyone, including asylum seekers, has the right to leave his or her own country, and Article 14(1) of the Universal Declaration of Human Rights (UDHR) provides that "everyone has the right to seek and to enjoy in other countries asylum from persecution." In Europe, Article 18 of the Charter of Fundamental Rights of the European Union provides that "the right to asylum shall be guaranteed with due respect to the rules of the Geneva Convention..." However, the current array of immigration control measures imposed by the Western countries has significantly curtailed the ability of asylum seekers, especially those originating from less developed countries, to exercise their right to leave their own countries and escape persecution.

While states have the right to control entry and enforce their borders, they must do so without infringing the right of persons in need of protection to seek asylum. In recent years, illegal immigration and trafficking of persons are viewed as one of the fastest growing problems facing political leaders on both sides of the Atlantic. In response, restrictive measures have come to dominate policy making and recent immigration enforcement initiatives in Europe and North America. These legislative measures do not sufficiently discriminate between asylum seekers and other kinds of migrants, thereby failing to safeguard the right of refugees to seek protection.

During the past few years, there have been a number of policy initiatives undertaken in Europe to address the asylum and access challenge. In June 2000, the former UK Home Secretary Jack Straw proposed that the EU should concentrate on improving reception conditions in the immediate regions from which refugees originate and consider the possibility of conducting asylum procedures in the region of origin; from there, refugees could be resettled in EU countries on the basis of an international quota system. According to Mr. Straw, such an approach would reduce the demand for clandestine entry into the EU by asylum seekers who, for the most part, currently need to enter the territory of the asylum state in order to submit an asylum application. This, in turn, would weaken organized smuggling and trafficking networks, which have increasingly profited by transporting asylum seekers and other migrants.

In its November 2000 Communication to the European Council and the European Parliament, "Towards a Common Asylum Procedure and a Uniform Status Valid throughout the Union for Persons Granted Asylum," the EU Commission concurred that processing the request for

protection in the region of origin and facilitating the arrival of refugees on the territory of the Member States by a resettlement scheme are ways of offering rapid access to protection without refugees being at the mercy of illegal immigration or trafficking gangs. This option, as the Commission saw it, must be complementary and without prejudice to the proper treatment of individual requests expressed by spontaneous arrivals. Subsequently, the EU Commission tendered feasibility studies on the processing of refugee claims in regions of origins and on the establishment of an EU resettlement scheme from such regions. The study on processing in regions of origin was published earlier this year, the latter is expected to be completed in late 2003.

At the time of this report going to print, the UK government has presented proposals on new approaches to addressing the challenges presently facing the refugee protection regime in Europe that are currently being discussed with other EU Member States. These appear to aim at shifting the responsibility for refugee protection towards the source of flight or to countries bordering an enlarged European Union by introducing the concept of Regional Protection Areas near source countries.

C) Methodology

USCR's and ECRE's inquiry focuses on two regions of origin – Turkey and the Middle East, and East Africa – which serve as case studies that inform the findings and recommendations of this report. The study also focuses on two nationalities – Iraqis in Turkey and the Middle East, and Somalis in East Africa – chosen because Iraqis and Somalis are particularly well represented in the asylum and refugee resettlement caseloads in both Europe and the United States, and because of the protracted nature of conflict, persecution, and poverty in their home countries. The study does, however, also address the situation of vulnerable refugees and asylum seekers of other nationalities in East Africa, Turkey, and the Middle East. It also does not address the situation of Iraqi refugees and conditions in neighbouring countries to Iraq since the beginning of hostilities in Iraq earlier this month or changes in Kenya resulting from the recent elections.

This report is based on desk research, interviews with government officials, representatives of international and non-governmental organizations, and academic researchers in London, Brussels, the Hague, Geneva, and Washington DC, and field research in Kenya, Jordan, Syria, and Turkey. USCR and ECRE included the field research in Turkey and the Middle East and East Africa to ensure that the debate on how to reconcile migration control and refugee protection does not take place solely within the cocoon of European and North American States. The field research also served the purpose of providing a real-world context for this report's findings and recommendations. ECRE and USCR jointly conducted the field research, with the exception of the field research in

Jordan, which was carried out by USCR alone in November 2001. ECRE-USCR researchers travelled to Kenya in December 2001 and to Turkey and Syria in January 2002. Research in the field included interviews with government officials, representatives of international organizations and non-governmental organizations (NGOs), diplomatic representatives of European, the US, Canadian, and Australian governments, and with refugees and asylum seekers themselves. This report also draws on field research in Kenya and Somalia carried out by USCR in May 2001 and on Australian asylum practices in its own territory and in Indonesia carried out by USCR in the summer of 2001.

The report has four parts. Part one deals with the reality of refugee protection in East Africa and the Middle East. It summarizes the findings from the field visits conducted by ECRE-USCR to Turkey, the Middle East and Kenya. The findings start by highlighting the causes of migration and levels of international engagement in Iraq and Somalia, the two countries of origin of the primary refugee populations considered in this study. The conditions in countries of first asylum in the regions of origin are assessed, with particular emphasis on the reception capacity of the host states and the quality of protection afforded to refugees. The sections conclude by considering the prospects for achieving durable solutions – voluntary repatriation, local integration and resettlement – in the medium to long term.

Part two provides an overview of recent policy developments in resettlement, emphasizing elements of recent approaches to resettlement that could play a key role in the formulation of a comprehensive engagement to resolve protracted refugee situations. The section then evaluates current processing and resettlement programmes in the regions and proposes profiles of refugee populations in need of resettlement. This part concludes by comparing current resettlement programmes, outlining considerations for the development of an EU resettlement programme, and by discussing the costs and benefits of resettlement.

Part three considers the principle of responsibility sharing and developments regarding responsibility sharing mechanisms for refugee protection at regional and international level. It also considers examples of comprehensive approaches that have involved cooperation among states in regions of origin and donor/resettlement countries with a particular impact upon specific refugee situations. These include the Comprehensive Plan of Action for Indochinese refugees, the International Conference on Central American Refugees (CIREFCA) and the Humanitarian Evacuation Programme for refugees from Kosovo.

Part four addresses some of the current debate surrounding the development of screening mechanisms in regions of origin as well as the incorporation of the external dimension of asylum and migration measures in the relations of the European Union and its Member States with third countries.

ECRE and USCR conducted field research in Kenya, Turkey, Syria, Jordan and Lebanon in order to examine what is possible in these regions of refugee origin in terms of conditions of reception, protection environment and quality of asylum, processing of refugee claims and resettlement opportunities. While refugee status determination (RSD) is carried out in all these states, primarily by UNHCR, and resettlement to the West does take place, including by a selective number of European states, the conditions to carry out refugee processing and resettlement in these regions are barely permissible by international standards and are extremely undependable.

The regions under study are extremely unstable regions where some of the major producers of refugee flows in the world are located. The bulk of the refugees in these regions - Somalis, Sudanese, Iraqis and Iranians - come from countries where conflict, persecution, and other human rights abuses have persisted for years, making it unlikely that they will be able to return home anytime soon.

Most of the governments in the countries visited are not signatories to the 1951 Convention and do not have established asylum procedures. While Kenya has ratified the major refugee legal instruments, it does not have any domestic refugee legislation. Turkey has signed the 1951 Convention with a geographical limitation that excludes non-Europeans, although registered non-European asylum seekers are granted temporary protection to apply for refugee status with UNHCR. Syria, Jordan and Lebanon have not signed the international refugee instruments and do not want to be considered as countries of asylum for non-Palestinian refugees. They tolerate the presence of refugees on a temporary basis, but this tolerance is contingent on the understanding that UNHCR resettles all refugees it recognizes.

Serious protection problems exist for refugees and asylum seekers in all the first-asylum countries covered in this report. Host governments seek to impose a wide range of restrictions on refugees and purposely avoid giving them any permanent residence status, insisting that they stay only temporarily. Often unable to obtain or retain legal status, many refugees and asylum seekers must contend with an array of threats.

Apart from directly seeking asylum in third countries outside of regions of origin, overseas resettlement is practically the only means for asylum seekers to enter Europe, North America and Australia. While many Western resettlement countries have the mechanisms to accept asylum applications at their diplomatic posts in countries of origin or in third countries, few governments either systematically or frequently make use of these measures. Rather most resettlement countries rely completely on UNHCR to make refugee status determinations and referrals to their resettlement programmes.

1.1 Iraqi Asylum Seekers and Refugees in Jordan, Syria, and Turkey

Between 1 and 2 million Iraqis are estimated to be living outside Iraq. Although many are thought to have a well-founded fear of persecution if returned to Iraq, only about 400,000 have any formal recognition as refugees, asylum seekers, or recipients of humanitarian status. Most registered Iraqi refugees and asylum seekers live in countries bordering Iraq or in the region, the largest number, 203,000, in Iran. Hundreds of thousands of unregistered Iraqis also live in the Middle East, including about 250,000 in Jordan and an estimated 40,000 in Syria, and are not recognized, or protected, as refugees.

Although comprehensive figures are not available on the number of Iraqi refugees resettled from Middle Eastern countries of first asylum to Western asylum countries, in 2001, almost 2,500 Iraqi refugees were resettled to the United States;⁴ 1,100 were resettled to Canada, and Australia resettled 1,063.⁵

The number of Iraqis seeking asylum in the West has increased steadily in recent years, from a low of about 4,200 in 1989 to more than 41,200 in 2001.⁶ Asylum/refugee recognition rates for Iraqi asylum seekers vary considerably from country to country, from a low of zero to two percent in Norway and the Netherlands respectively to a high of 93 percent in the United States and 90 percent in Australia.⁷ Relatively few Iraqis apply for refugee status with UNHCR in Turkey and the Middle East. In 2000, the largest number of Iraqis applying in the region filed applications in Jordan (6,623), followed by Syria (3,324), Lebanon (1,989) and Turkey (1,641). On the whole, UNHCR asylum approval rates in the Middle East and Turkey and the approval rates of traditional transit countries were low. In contrast, several countries of destination had much higher approval rates, showing a clear incentive for most Iraqi asylum seekers not to file asylum applications with UNHCR in frontline countries of first asylum, but to continue onward in search of protection to European countries and other countries farther a field such as the United States.

1.1.1 Background on the Causes of Refugee Flight and Other Displacement

Since 1979, Saddam Hussein's government has engaged in systematic repression of opponents to the regime, both real and imagined. The regime's methods of repression include widespread political and other extra-judicial killings, summary executions, disappearances, torture, and targeted and arbitrary arrest. There is no legal or other recourse for most Iraqis targeted by the regime. In 1999, the UN Special Rapporteur on Iraq reported that the repressive nature of Iraq's political and legal system has precluded the establishment of the rule of law in Iraq. Elements of democratic society—including freedom of expression, the press, association, religion, and movement—do not exist in the country today.⁸

In addition, Iraqi government military attacks and large-scale forced relocations, mass summary executions, and disappearances that targeted the Kurds, Shi'a and other segments of the Iraqi population, other systematic human rights abuses, conflict, and economic sanctions have displaced millions of Iraqis and resulted in hundreds of thousands of Iraqi deaths since the mid-1980s.

Campaigns of forced mass displacement, both in the northern and southern parts of the country have continued unabated. In the north, the Baghdad regime has undertaken systematic efforts to 'arabize' predominantly Kurdish districts. USCR estimates the number still displaced in northern Iraq at approximately 600,000 due to the volatile security situation including incursions by Turkish armed forces in pursuit of the Kurdish Workers Party (PKK). The Iraqi government has also been openly hostile to the Marsh Arabs, or *Maadan*, burning and shelling villages, and building dams to divert water from the marshes to depopulate their homelands.

In addition, vulnerable elements of Iraqi society continue to suffer disproportionately the effects of twelve years of sanctions. A May-June 2000 report found that about 800,000 children under the age of five were chronically malnourished.⁹ Various people interviewed in the Middle East, reported to USCR and ECRE that the sanctions had made life unlivable in Iraq for average citizens by 2001. Along with the human rights concerns, the impact of the sanctions has been a significant factor in pushing many Iraqis to leave the country.

1.1.2 Limited Possibilities for Repatriation

a) Repatriation to Government-Controlled Areas

UNHCR recorded 1,727 voluntary repatriations of Iraqi refugees to government-controlled Iraq from Iran and 240 returns from Saudi Arabia in 2001.¹⁰ UNHCR did not promote these repatriations, however, telling would-be returnees that the agency could not monitor or guarantee their safety upon return. In 2001 and past years, USCR has received several reports of the arrests, disappearances, and deaths under mysterious circumstances of some returnees, although these reports could not be independently confirmed. The Syrian and Jordanian governments generally refrain from deporting recognized refugees and asylum seekers with claims pending to government-controlled Iraq in recognition of the possibility that they could face persecution upon return.

There is disagreement regarding the safety of returning rejected asylum seekers to government-controlled Iraq. Most European diplomats in Amman and Damascus interviewed by USCR and ECRE reported their government's serious reservations about returning rejected Iraqi asylum seekers out of concern that the mere act of having applied for asylum in Europe may lead to persecution in Iraq upon return.¹¹ There is yet more disagreement regarding the safety of returning asylum seekers rejected in UNHCR status determinations in Jordan and Syria. UNHCR-Amman

reported that it was safe for applicants rejected by its office to repatriate because of the large number of Iraqis who routinely travel to Jordan for reasons other than to apply for refugee status. Conversely, others said that the large number of Iraqi security agents operating in Jordan monitor who approaches the UNHCR office in Amman, leading to the possibility that rejected applicants could face persecution upon return.

b) Prospects for Repatriation to Kurdish-Controlled Areas

While there is general consensus that it remains unsafe to promote the repatriation of refugees or to deport rejected Iraqi asylum seekers to government-controlled areas, a heated debate has emerged in recent years regarding possibilities for the return of Iraqis to the Kurdish-controlled north. At one extreme, the Dutch government asserts that the stability and prosperity in northern Iraq relative to the rest of the country has created an 'internal flight alternative' in the north for all but the highest profile Iraqis with a well-founded persecution.¹² While not adopting the same extreme approach of the Netherlands, other European governments, including the governments of Germany, Switzerland, and Denmark, have recognized an internal flight alternative in northern Iraq under more limited circumstances.¹³

Other endorsements, from the HLWG and UNHCR, of an internal flight alternative to northern Iraq are more contradictory, revealing the problems with its application. For example, the UNHCR position on internal flight alternative *vis-à-vis* northern Iraq maintains that "although the situation within the enclave [of northern Iraq] remains volatile and susceptible to change, UNHCR has recognized that there may be certain cases for which the possibility to remain in, or return to, northern Iraq safely cannot be ruled out."¹⁴ [emphasis added]

Beyond the context of the most recent developments in the region, USCR and ECRE have opposed the application of an internal flight alternative to northern Iraq. Both organizations find that the prevalence of armed conflict in the Kurdish-controlled zone, the presence of Iraqi government security personnel, and the fact that northern Iraq, as upheld by UN Security Council Resolution 688, remains part of the sovereign territory of Iraq have precluded considering the north as a safe and durable alternative to international protection for Iraqis with a well-founded fear of persecution.

c) Actual Return to Kurdish-Controlled Areas

While the return of asylum seekers to northern Iraq has been hotly debated, few have actually returned there, with the exception of those deported from Syria and Turkey. Turkey has however, enter into a multilateral agreement with Switzerland, the Netherlands, and Sweden that permits rejected Iraqi asylum seekers in those countries to voluntarily repatriate to northern Iraq via Turkey.

1.1.3 Conditions in Turkey, Jordan and Syria

a) Political, Social and Economic Context: Capacity to Host Refugees

Conflict and instability in Iraq and Iran during the past decade have caused a spill over of huge numbers of refugees into the eastern part of Turkey. Ankara's security pre-occupation with its own Kurdish insurgency makes it particularly sensitive to refugee flows from Northern Iraq and Islamic radicalisation from Iran. Turkey is also a bridge between Africa, Asia and Europe and therefore also hosts refugees from Afghanistan and Africa.

While Syria and Jordan have huge Palestinian refugee populations, both countries border Iraq and have been a major receiver of refugees from there during the past ten years. Syria also receives refugees from Iran, Somalia, Afghanistan and Sudan. Measured as ratio of refugees to total population, Jordan hosts more refugees than any country in the world today. According to UN officials and others based in Amman, the Palestinian refugee problem is arguably the single most important factor that prevents Jordan from signing the UN Refugee Convention and accepting refugees falling under UNHCR's mandate. From their perspectives, the Jordanian and Syrian governments have more than met their humanitarian obligations through hosting millions of displaced Palestinians during the past 54 years. At the time of writing, the short-term prospects for these regions are for new waves of refugees as a consequence of the global war against terrorism and the conflict in Iraq.

The countries under review have limited capacity and infrastructure either in their national economy or within their social and legal structures to absorb or to host refugees and migrants. In the past few years, Turkey has experienced one of the worst economic and financial crises in its recent history. The weakness of the Jordanian and Syrian economies is an important factor explaining the reluctance of both governments to recognize non-Palestinians as refugees and their inability to assimilate them. By 1999, an estimated 30 percent of the Jordanian population lived below the poverty line and 25 to 30 percent of the workforce was unemployed.¹⁵

These governments and UNHCR provide minimal assistance to asylum seekers and refugees, leaving many unable to meet their basic economic and social needs. Living in slums, most refugees and asylum seekers are not permitted to work and are destitute. Many support meagre existences by working illegally. The children of asylum seekers and refugees are allowed to attend primary school but they are often deterred from attending because of the language barrier and in some cases because they lack funds for basic school supplies.

An important constraint in the ability to offer a secure asylum environment for refugees is the extremely limited roles of NGOs and civil society in these countries. Local NGOs have to register with government ministries

and they are not permitted to function freely. In Turkey and Syria, local NGOs cannot directly access foreign funds for their assistance and protection programmes for refugees. Not only do Turkish authorities try to curtail refugee work by depriving NGOs of funds, but they also subject NGOs to harassment and intimidation. Human rights NGOs in particular are marginalized by both the government and the media. They are depicted as subversive organizations, supportive of guerrilla and terrorist groups and as a threat to national security. A restrictive environment also exists for international NGOs. Hence, there are very few NGOs in Turkey and the Middle East to monitor and report on the activities of the government or of the few international agencies directly dealing with refugees, such as UNHCR.

In the case of Jordan, few funds have been provided by other countries to assist it in hosting refugees. In 2001, the Jordanian government spent five times more money on assistance for Palestinian refugees than UNRWA, which has suffered from severe funding shortfalls since the early 1990s.¹⁶ At the same time, European governments along with the governments of Canada and Australia have tried to enlist Jordan's support in preventing the onward migration of undocumented Iraqis and others irregular foreigners from Jordan. The Jordanian authorities have cooperated in this endeavour, particularly since September 11.

b) Protection Environment: Access to Territory and UNHCR/ Access to Residency Rights

Most of the governments in the countries ECRE and USCR visited are not signatories to the 1951 Convention and do not have established asylum procedures. Turkey has signed the 1951 Convention with a geographical limitation that excludes non-Europeans, although registered non-European asylum seekers are granted temporary protection to apply for refugee status with UNHCR. Syria and Jordan have not signed the international refugee instruments and do not want to be considered as countries of asylum for non-Palestinian refugees. They tolerate the presence of refugees on a temporary basis, but this tolerance is contingent on the understanding that UNHCR resettles all refugees it recognizes.

The insecurity of temporary protection status can place asylum seekers and refugees in dangerous and unstable situations, for example, when host governments engage in roundups and relocations, or even deportations, sometimes to the countries where they risk persecution. The asylum seekers and refugees interviewed said that security was their greatest concern. The human rights records of these countries are poor. Physical harassment, detention, and *refoulement* of refugees and asylum seekers occur, in some cases on a regular basis.

Turkey's legislation only recognizes Europeans as refugees. These comprise a small minority of the country's refugees. Turkey does allow non-Europeans to register as asylum seekers and present their claims to UNHCR. To

do so, however, they must register within ten days of their arrival with the Turkish police nearest to the border where they entered (unless they arrived with valid travel documents). This means that most Iranians and Iraqis must apply for asylum in provincial cities most of which remain in an insecure area of Turkey. Access to the asylum procedure remains problematic. The ten-day filing deadline has led to the exclusion from the asylum process and resulted in the *refoulement* of substantial numbers of asylum seekers. Local police rarely register the claims of asylum seekers who do not already possess a UNHCR letter. Turkish authorities also deport undocumented asylum seekers and immigrants, applying 'safe third country' rules to Syria, northern Iraq, and Iran for asylum seekers who spent more time in these countries than was required to transit them.

The majority of cases admitted to Turkey are granted 'temporary asylum seeker status.' They are given a six-month residence permit, and are sent to a satellite city where they are expected to live until they are interviewed by UNHCR for refugee status recognition and approved for resettlement to another country. The average waiting time from registration to departure ranged 18 to 24 months in 2001. For some applicants, the procedure can take several years.

Syria and Jordan do not have refugee legislation and illegal border crossing is a deportable offence. The Jordanian government limits the time that refugees may legally remain in Jordan to six months and does not renew identification documents after the first six months have elapsed. Although the government generally tolerates the illegal presence of refugees after expiration of the identification documents, these refugees appear to be more vulnerable to problems such as harassment, arrest and deportation. Iraqi government agents reportedly operate in Jordan and Jordanian authorities have reportedly deported hundreds of Iraqi nationals residing illegally in the country.

While UNHCR reported that the Syrian authorities generally cooperate with the agency to ensure that refugees receive protection and facilitate UNHCR's visits to asylum seekers and refugees in detention, the government does not recognize non-Palestinians as refugees or grant them asylum, leaving them vulnerable to arrest, *refoulement*, and other protection problems. During 2001, for example, Syria *refouled* between 180 and 300 Iraqis originally deported from Lebanon, to northern Iraq without informing UNHCR or considering the protection concerns of the refugees and asylum seekers among them.

Syria also amended its residence procedures for citizens of Arab countries - who still may enter Syria without a visa. Whereas previously Syria allowed nationals of Arab countries (except Iraqis) to reside indefinitely in the country without applying for a residence permit, the new regulation requires Arab country nationals to apply for (renewal of) a residence permit every three months.

In addition to threats to physical safety and civil and political rights, as noted above refugees also face economic and social deprivations due to the limited capacities of these countries to host large refugee populations.

c) Refugee Status Determination by UNHCR and Due Process Concerns

Apart from directly seeking asylum in third countries outside of regions of origin, overseas refugee resettlement programmes provide practically the only means for refugees to enter Europe, North America and Australia. While many Western resettlement countries are legally authorized to accept asylum applications at their diplomatic posts in countries of origin or in countries of first asylum such as Turkey, Jordan and Syria, few governments make use of these measures. Rather most resettlement countries rely completely on UNHCR to make refugee status determination and referrals to their resettlement programmes.

In practice, UNHCR is responsible for all the refugee status determination (RSD) in Turkey. Refugees and asylum seekers in Turkey, therefore, either travel onwards, often using smugglers and traffickers, to other countries to apply for asylum or stay in Turkey and apply to UNHCR for recognition and referral for resettlement abroad. For those asylum seekers who remain in Turkey, the RSD carried out by UNHCR is a linchpin of refugee protection and is the principal means by which those who need protection are identified.

Because Jordan and Syria are not signatories to the Refugee Convention and have no domestic laws that deal with refugees or asylum, UNHCR is responsible for conducting RSD and assisting refugees in these countries. Jordan signed a Memorandum of Understanding (MoU) with UNHCR in April 1998. According to the Memorandum, Jordan agrees to admit asylum seekers, including undocumented entrants, and respect UNHCR's refugee status determinations. The memorandum also adopts the refugee definition contained in the 1951 Convention and forbids the *refoulement* of refugees and asylum seekers. During its November 2001 site visit to Jordan, USCR received reports from various sources—including diplomats, NGO representatives, and asylum seekers—suggesting that the Jordanian government did not always abide by the terms of the Memorandum.

Although the Syrian authorities generally tolerate the presence of refugees on a temporary basis, this tolerance is contingent on the understanding that UNHCR will conduct its RSD procedure and resettle all of the refugees it recognizes. Not having signed a MoU with the Syrian government, UNHCR's presence in Syria and the operation of its RSD and resettlement referral programmes exist on an unstable and uncertain basis.

While UNHCR often provides essential protection to refugees in the Middle East, most asylum seekers and refugees, NGOs, and some foreign diplomats complained to ECRE and USCR about certain constant shortcomings in the RSD procedures conducted by UNHCR. These procedures frequently lack a number of basic legal safeguards to ensure due process, including a lack of accountability and transparency.

Most refugees have little understanding of UNHCR's RSD criteria or decision-making process. Refu-

gees in Turkey and Syria complain that UNHCR has not made its own guidelines or procedural rules for the conduct of RSD publicly available and refugees are not informed what to expect when they apply for RSD.

There is concern that in Jordan, UNHCR-Amman applies overly restrictive criteria, leading to the denial of applicants who should be considered refugees under the Refugee Convention. There is also concern that the procedure is fraught with inconsistencies. Two examples of highly questionable decisions rendered by UNHCR-Amman have come to USCR's attention and are outlined in the full case study attached to this report. They not only display UNHCR's strict approach but also an unsettling arbitrariness in the office's RSD procedure. Reports that UNHCR's overall approval rate has dropped significantly during the first months of 2002 add to USCR's concern that the procedure is too strict, at times arbitrary, and generally unfair.

Moreover, during a 1999 USCR site visit to Turkey, UNHCR-Ankara staff themselves said that the agency applies relatively strict criteria for refugee recognition, for example, not considering instances of past persecution alone as grounds for refugee status. During 2001 for example, the Turkish government's approval rate for "temporary asylum-seeker" status was 87 percent of cases adjudicated; in its parallel procedure, UNHCR's refugee status determination approval rate during the year was 57 percent.

In the countries under review, there are few, if any, legal or human rights organizations that inform and assist asylum seekers in the RSD process. Because most refugees are not provided with legal counselling or advice, many applicants complain that they cannot present their cases properly.

The information that applicants have about their case dossiers is extremely limited. For example, UNHCR does not provide rejected asylum seekers with an explanation of why their individual case was denied. Without this knowledge, it is impossible for applicants to mount an effective challenge to UNHCR's decision.

UNHCR does not have an effective appeals mechanism for denied refugee applicants. While denied asylum seekers are permitted to appeal negative decisions, the majority of appellants are not re-interviewed and UNHCR decisions on appeals are taken on the basis of the applicant's file and any new information provided. In all the countries under study, members of the same UNHCR field-office staff who make the original decisions also decide appeals.

In addition, observers of UNHCR operations in Syria reported to ECRE-USCR researchers that the local UNHCR staff hired to carry out RSD interviews and make initial decisions were generally young and inexperienced, often recent graduates from university with no training in human rights or refugee law prior to joining UNHCR. The fact that UNHCR employs inexperienced staff, combined with the inadequacies and lack of legal guarantees in the procedures, fosters considerable suspicion and distrust towards UNHCR in Damascus.

While ECRE and USCR recognize the difficult protection environment in the Middle East and the considerable constraints under which UNHCR operates, UNHCR nevertheless appears not to have taken sufficient care regarding due process and procedural safeguards. These shortcomings not only jeopardize refugee protection but also compromise the credibility of UNHCR operations.

d) Resettlement Practices, Needs, and Shortcomings

In the countries visited by ECRE and USCR researchers, there are more refugees in need of resettlement than available resettlement quotas. Turkey hosts nearly 10,000 registered refugees and asylum seekers.¹⁷ Jordan and Syria host huge numbers of Palestinian refugees (1.5 million in Jordan and 375,000 in Syria). In addition, these countries are also populated with large numbers of Iraqi and other non-Palestinian asylum seekers and refugees, many of whom may be in need of resettlement. About 180,000 Iraqis live in Jordan, many of whom are refugees. In addition, over 20,000 Iraqis who may be in need of international protection live in Syria.

UNHCR facilitated the resettlement of 2,747 refugees from Turkey, 1,748 refugees from Jordan and 849 refugees from Syria in 2001. The largest resettlement quota made available to UNHCR in the regions visited by ECRE and USCR has been from the U.S. Lately however, refugee resettlement has declined precipitously. Following the events of September 11, 2001, the United States, suspended all resettlement processing out of Syria and most of the rest of the world, adversely affecting resettlement opportunities for tens of thousands of refugees.¹⁸ Other resettlement countries have also begun to scrutinize applicants more closely on security grounds.

The lack of resettlement opportunities, coupled with the physical and economic insecurity that most asylum seekers experience in countries of first asylum, has led large numbers of vulnerable people to seek alternative means of gaining access to Western countries. Relatively large numbers of people, many in need of international protection and with valid asylum claims, choose not to avail themselves of the UNHCR's refugee determination procedures in the Middle East. Many fear making themselves known to the authorities out of concern of being detained pending refugee status determination and being treated like criminals by local police or security officials. Would-be asylum seekers also know that generally only a fraction of all asylum applications are granted. Concerned that the determination procedures are lengthy—lasting several months to several years in some countries—that they are unlikely to receive adequate social and economic assistance either from the host government or the UNHCR, and that they may have a better chance of getting to the West if they remain outside the official system, asylum seekers often turn to the services of smuggling organizations.

Criteria for Selecting Refugees for Resettlement: The criteria for selecting refugees for resettlement vary from government to government. In Turkey, refugees resettled to the United States are all technically UNHCR-referred cases, in deference to the Turkish government's general requirement that all undocumented refugees must be recognized by UNHCR to receive exit permission to leave the country. However, the overwhelming majority were Iranian Baha'is who fall under the US Refugee Processing Priority Two,¹⁹ which includes a group designation for "members of Iranian religious minorities."

Canada has the second largest resettlement programme out of Turkey. In addition to UNHCR-referred cases, the Canadian government resettles privately-sponsored persons under its "asylum country class," an admissions category for people not meeting the 1951 Convention definition of a refugee, but who are otherwise at risk for human rights violations, armed conflict, or civil war.²⁰ Although Canada previously denied resettlement to refugees with health conditions that would be costly to the government, under the new Canadian resettlement regulations, effective June 2002, this policy is less rigidly applied.

Like Canada, Australia also runs a "Special Humanitarian Programme" for people who do not meet the refugee definition but have suffered substantial discrimination amounting to a gross violation of human rights. Candidates must be sponsored by an Australian citizen, permanent resident, or an Australian organization. In making its selections for resettlement, the government factors in an applicant's ability to integrate in Australia. The government also does not resettle refugees with health problems that would pose a significant financial burden to the state.

Norway has the third largest resettlement programme in Turkey. Although the Norwegian government maintains that its primary consideration in making selections is to grant resettlement to those most in need of protection and those with medical problems or family links in Norway, there have been some reports that selection criteria may shift to focus more on a refugee's ability to integrate and on other immigration criteria.

The Swedish government gives priority to refugees with family links in Sweden.

Most embassies in Turkey do not accept applications for resettlement directly from asylum seekers. With the exception of the Australian and Canadian embassies, diplomatic missions decline to accept their applications, instead referring them to UNHCR. The Canadian and Australian embassies have also encountered substantial barriers in obtaining exit permission from Turkey for undocumented foreigners not recognized by UNHCR but accepted for resettlement under the Canadian and Australian humanitarian programmes.

Vulnerable Groups and Individuals Denied Access to Resettlement Opportunities: While USCR and ECRE regard UNHCR staff in Turkey to be among the most qualified in

the region to run a refugee status determination procedure, the field research strongly suggests that the refugee agency interprets the refugee definition too strictly, resulting in the denial of applicants who are refugees and should be afforded resettlement. USCR and ECRE also found UNHCR's RSD procedure in Turkey to lack essential procedural safeguards.

In addition, UNHCR's application of the concept of internal flight alternative to Iraqi asylum seekers results in the denial of refugee status to persecuted applicants whom UNHCR deems to be safe and able to integrate in northern Iraq. ECRE, USCR and other NGOs disagree with this policy, finding that northern Iraq affords neither safety nor a durable solution for Iraqis who otherwise would be considered refugees.

In addition to refugees, USCR and ECRE found that there are applicants who do not meet the Refugee Convention definition but who are nevertheless particularly vulnerable. In Turkey these include single women, single women with children and the elderly from Iran, Iraq, and other countries with little prospect of repatriating who find themselves vulnerable and without support. While the Canadian and Australian humanitarian admissions programmes take limited numbers of people belonging to these categories, interviews with NGOs, asylum seekers, and others revealed that the needs outstripped the resettlement places available.

Role of NGOs in Case Referral and Preparation: Some NGOs such as the International Catholic Migration Commission (ICMC) and Association of Solidarity with Migrants and Asylum Seekers (ASAM) have identified vulnerable people in refugee-like circumstances in Turkey and referred them both to UNHCR and directly to resettlement countries. The Canadian system allows NGOs to refer cases directly to embassies in countries of first asylum provided they have an agreement with the embassy in question. The Canadian embassy in Ankara has entered into such an agreement with ICMC for referrals to Canada's "asylum country class" programme. The Canadian embassy reported to USCR and ECRE that it was encouraging other NGOs to channel referrals through ICMC. The Australian embassy also receives referrals from NGOs on an informal basis. While NGO referral mechanisms are useful—particularly because the NGOs in question often had the most direct contact with asylum seekers and are well situated to assess need—ECRE and USCR noted that there are presently only a very small number of NGO referrals directly to embassies.

Most resettlement countries operating in Turkey rely heavily on UNHCR or embassy staff to complete all the administrative work connected to resettlement in addition to providing refugee referrals. However, the United States, and more recently Canada, have established contracts with ICMC, which maintains an office in Istanbul, to prepare resettlement cases. ICMC acts as the 'Joint Voluntary Agency' (JVA) (representing all private voluntary agencies in the United States that provide resettlement ser-

vices to refugees) for the US refugee programme's resettlement operations, not only in Turkey, but also in Lebanon, Kuwait, Cyprus, and Yemen. JVA activities range from pre-screening applicants and filling out US government paperwork on individual cases to arranging the logistics of the Immigration and Naturalization Service (INS) adjudication missions, providing information for sponsorship in the United States, arranging for medical exams and providing information for security checks and travel to the United States.

While the currently small quotas of individual European resettlement programmes do not appear to lend themselves to a JVA-style system, USCR and ECRE found that ICMC's JVA role in Turkey is particularly well suited to a larger resettlement programme such as that of the United States, and possibly to a future expanded EU resettlement programme. The ICMC operation in Istanbul enables the United States' programme to resettle larger numbers of refugees with efficiency and speed.

Resettlement and the Spirit of Due Process: Resettlement remains a discretionary programme for all resettlement countries operating in Turkey. As such, no resettlement country offers the opportunity for an effective appeal to negative decisions. Instead, denied cases are referred back to UNHCR, which may consider resubmitting cases to other resettlement countries for consideration.

1.2 Somali Refugees and Asylum Seekers in Kenya

Civil war, factional fighting and famine have besieged Somalia for over a decade, causing more than a half-million deaths and massive population upheaval. By the end of 2001 about 270,000²¹ refugees and asylum seekers from Somalia remained outside Somalia, living in about two-dozen countries. Most were living in Kenya.

During the year 2000, 20,963 Somali asylum applications were decided in 38 mostly industrialized countries (including all 15 EU countries). The approval rate was 75 percent (combining 8,402 granted Convention status and 7,244 granted humanitarian status).²² The asylum approval rate for Somali asylum applicants in the United States in 2001 was 81 percent.²³ The number of asylum applications from Somalis fell between 1999 and 2001.²⁴

1.2.1 Background on the Causes of Refugee Flight and Other Displacement

Since the beginning of the 1990s, Somalia has been a warlord-dominated anarchy. In 2000, a fragile new national government, known as the Transitional National Government (TNG), formed in Mogadishu, the Somalia capital. While the TNG has struggled to exert its authority and ward off attacks by armed factions, anarchy and violence have worsened, compounded by persistent drought and poor food security throughout southern and central Somalia. Political leaders in the northern territories of "Somaliland"

and "Puntland" maintain their autonomy from the rest of the country. Somaliland has pursued modest reconstruction efforts and population reintegration.

Except for some pockets where courts attempt to apply the pre-1991 penal code (notably in Somaliland and Puntland), Somalia has no functioning judiciary and the rule of law is absent.

Somalia's nationwide malnutrition rate of 23 percent was one of the highest in the world. Malnutrition rates as high as 40 percent were recorded in areas with high concentrations of displaced families.²⁵ "Much of Somalia remains in a chronic state of emergency," a UN report stated in November 2001.²⁶

1.2.2 Limited Possibilities for Repatriation

In the years 1998-2001, 164,435 refugees have been recorded as having voluntarily repatriated to Somalia, of whom 158,446 (96 percent) have returned to Somaliland.²⁷ Repatriation from Ethiopia accounted for 96 percent of refugee returns to Somalia (164,435 returns) in the years 1998-2001, while only 2,416 refugees returned from Kenya during that time, or 1.5 percent.²⁸

As the statistics indicate, the only significant repatriation to Somalia in recent years has been to Somaliland. Tens of thousands of Somali refugees who have gradually repatriated to Somaliland have continued to struggle to rebuild their lives amid bleak economic prospects and inadequate social services. Reintegration programmes remained small, under-funded, and difficult to sustain. In overcrowded returnee resettlement areas in Hargeisa, the Somaliland capital, 15 percent of repatriated children suffered from malnutrition, many of whom were "likely to die," a United Nations Children's Fund (UNICEF) report stated.²⁹

1.2.3. Conditions in Kenya³⁰

a) Political, Social and Economic Context: Capacity to Host Refugees

Despite a long tradition of providing refuge to hundreds of thousands of refugees from Ethiopia, Rwanda, Somalia, Sudan, and Uganda, Kenya in recent years has shown distinct signs of backtracking from its tradition of hospitality.³¹ Since the early 1990s, Kenya has hosted more than 200,000 refugees, mostly Somalis. Kenya's ability to host refugees is compromised by the presence of approximately 230,000 internally displaced Kenyans in the country. Both government officials and the society at large have come to have a negative view of the refugees, often regarding them as a source of insecurity, environmental degradation, and economic loss.

Kenyan authorities require most refugees to live in three designated camps near the village of Dadaab in the country's remote east, and in three camps known as

Kakuma in northwest Kenya. At the end of 2001, about 130,000 refugees lived in the Dadaab camps, and nearly 70,000 resided in the Kakuma camps. Confined to the isolated camps—situated in a harsh, desert-savannah region lacking natural resources—most refugees have virtually no opportunity to achieve self-sufficiency and are entirely dependent on humanitarian aid.

Poor security conditions in and around the Dadaab and Kakuma camps worsened during 2001. Domestic and sexual violence against females have been chronic problems in and around the Dadaab and Kakuma camps. Despite numerous programmes to address sexual violence, reported rapes increased during 2001.

Tens of thousands of refugees continued to live without humanitarian assistance in urban areas, particularly in the capital, Nairobi. Government authorities asserted that more than 100,000 “illegal immigrants” lived in Kenya’s main cities and towns.

International aid for Somali (or other) refugees in Kenya is small and shrinking. The funding crisis has caused a gap in the food pipeline in Dadaab, a camp that is 100 percent dependent on outside humanitarian assistance.

In addition, UNHCR has been faced with its own budget cuts. UNHCR’s budget for operations in Kenya was cut by 20 percent in 2001, causing cutbacks in shelter, educational facilities, infrastructure, and health. New arrivals to the camp no longer receive non-food items. When floods in Kakuma destroyed 7,000 huts, international agencies did not have sufficient emergency funds for rebuilding their shelters. UNHCR budget constraints hinder refugee-education programmes. Although the demand for education is very high among Somali refugee children and adults, more than half of school-aged children do not attend school because of inadequate numbers of classrooms and properly trained teachers.

Budget cut-backs contribute to the erosion of asylum in the region.

b) Protection Environment in Kenya

Although Kenya is a signatory to the 1951 Convention and its 1967 Protocol, it has no domestic refugee law. Consequently, the hundreds of thousands of refugees living in Kenya have no legal status under domestic Kenyan law.

A draft law has been under discussion for several years. ECRE-USCR learned that an early draft would have required refugees to live in camps, but a more recent draft has apparently softened that language somewhat. Nevertheless, in an interview with ECRE-USCR, the Kenya Permanent Secretary responsible for refugees noted that a primary purpose of the proposed bill is to give the Kenyan government added control over the refugee populations.

UNHCR and the Kenyan government have not been able to agree on the issuance of ID cards for UNHCR-recognized refugees. UNHCR issues letters of refugee recognition, but they are of limited value. Kenyan police frequently do not recognize the validity of UNHCR

letters of recognition, underscoring the need for government-issued refugee ID cards.

Refugee protection in Kenya also needs to address the various threats posed from other refugees, particularly in the Dadaab and Kakuma camps. Sexual abuse in the camps is well documented. Violence within the camps also includes forced recruitment into the militias in Sudan and Somalia, allegations of the presence of government agents from the countries of origin, including Ethiopia, and inter-clan violence transported from Somalia.

Refugee protection in Kenya also needs to address harassment from the Kenyan police. Reports were received of police sweeps through the refugee quarters of Nairobi. These sweeps were allegedly intended to intimidate the refugee population and solicit bribes.

Finally, protection in Kenya needs effective and quick use of resettlement in urgent cases of refugees in imminent danger. On April 17, 2002, an assailant broke into a ‘secure residence’ established by UNHCR and managed by NGOs in Nairobi for refugees at particular risk. The assailant murdered two Rwandan refugee children, ages nine and ten, by slitting their throats. Their mother, a close relative of former Rwandan president Juvenal Habyrimana, was also severely injured with multiple stab wounds. Three other children from the same mother had been murdered in Rwanda. The family is of mixed Hutu-Tutsi ethnicity. The family had been identified as being in urgent need of resettlement both because of the political association with Habyrimana and the mixed ethnicity of the family. Nevertheless, they had been waiting for 11 months for their resettlement application to be processed.³²

c) Prospects for Local Integration

The ECRE-USCR research team to Kenya in December 2001 was told repeatedly and categorically that local repatriation is not an option for Somalis in Kenya. This view was shared by UNHCR officials, diplomats, NGO representatives, and Kenyan government officials. Many said that Kenya lacked available land, economic opportunities, and had too many environmental and security threats and other social pressures to accommodate or integrate refugees permanently.

In the specific context of Dadaab, UNHCR told ECRE-USCR that the government of Kenya clearly opposes local integration. Given local environmental and economic pressures, the government is seen to be concerned about the burden that refugees pose on local populations. For example, around Dadaab, the 130,000 refugees outnumber the 30,000 locals.

The prospects for local integration in urban areas are no better due to negative public perceptions and xenophobia.

d) Prospects for Resettlement from Kenya

Kenya is the hub of UNHCR and government resettlement activities in East Africa and more refugees were

resettled from Kenya in 2000 than from any other country in Africa.

Resettlement activities in Kenya have, however, been overshadowed by a recent corruption scandal. In January 2002, the UN Office of Internal Oversight Services (OIOS) released a report describing how “a ‘criminal enterprise’ allegedly infiltrated the refugee status determination and resettlement process in Nairobi in the late 1990s to force bribes from people seeking resettlement in third countries.”³³ The conclusions of this report continue to overshadow UNHCR’s protection, status determination, and resettlement activities in Kenya. At the time of the field visit, the investigation had resulted in a freeze in the identification of new resettlement cases and the suspension of active resettlement files, pending review and the full implementation of the Office’s action plan to address the conclusions of the report.

This freeze on UNHCR-referred cases was coupled with a suspension of the US Resettlement Programme (USRP) subsequent to the events of September 11, 2001. While USRP activities were resumed by early December 2001, the cumulative effect of the suspension and the rejection of cases associated with the corruption scandal has resulted in a dramatic backlog of pending resettlement cases and, more pressing, of vulnerable refugees in need of resettlement.

In addition to this backlog, the corruption scandal has contributed to the dramatic lack of confidence in UNHCR in East Africa expressed to ECRE-USCR by resettlement countries and NGOs. ECRE-USCR researchers found consensus that, even before the scandal, UNHCR was unable to identify and refer cases for resettlement in the numbers required to fill resettlement quotas. This lack of confidence is also a result of the realization that UNHCR is under-resourced for the role it is expected to play in the resettlement process and has led to repeated questioning of a case-by-case approach to resettlement and the ability of UNHCR to act as the ‘resettlement gatekeeper.’

The pressures of resettlement quotas, coupled with the desire of maximizing scarce resettlement resources, has resulted in a perceived over-emphasis on the identification of groups in need of resettlement—typically at the expense of the processing of individual resettlement cases. While not intended in the design of group identification, this trade-off against individual cases is a result of the shortage of UNHCR staff with exclusive resettlement responsibilities.

There is frustration on the part of resettlement countries and NGOs with UNHCR’s mechanisms for individual identification. In the three Dadaab camps, community development workers are responsible for the identification of vulnerable refugees, but with a lack of protection staff in the camps, especially staff with full-time resettlement responsibilities, cases cannot be assessed at the same rate as they are identified. Once again, the result is a dramatic backlog.

A number of resettlement country representatives and NGOs conclude from these difficulties that UNHCR should be neither the sole actor responsible for the identi-

fication and referral of resettlement cases nor the ‘gatekeeper’ of the resettlement process in Kenya. It was suggested that NGOs could and should play a greater role in the identification of refugees for resettlement, and that the decentralization of this essential task would dramatically increase both the quality and quantity of resettlement activities in Kenya.

There was, however, a general feeling on the part of resettlement countries that they were neither willing nor able to assume the identification function themselves—a position confirmed by the fact that the embassies of the larger resettlement countries do not accept resettlement applications directly from refugees. Because demand for resettlement from Kenya is so high, embassies fear for their security and the integrity of resettlement programmes if competing identification systems were developed. Instead, they felt that the identification role was best filled by UNHCR, given their direct contact with refugee and with the Government of Kenya.

There was consensus on the part of NGOs, States and UNHCR that an increase in resources and training were necessary to increase UNHCR’s capacity to identify resettlement cases. The USRP, in particular, stated that they had seen a dramatic increase in the quality and quantity of UNHCR resettlement referrals from field offices in Africa in recent years since greater investment has been made in the creation of resettlement posts and resettlement training.

An important resettlement function that was filled by NGOs in Kenya was the pre-adjudication processing of cases for the USRP by the Joint Voluntary Agencies (JVA). Prior to interview with an INS officer for adjudication on the case, each refugee family is called to three interviews with the JVA. The first interview, called pre-screening, establishes the identity of all members of the case and documents the basic refugee claim. The second interview, called form filling, documents the refugee’s family tree and broader family relations. The third interview, called the casework interview, documents a detailed description of the refugee claim.

This process has clear advantages. First, it creates a level of comfort with the refugees and prepares them for the interview with the INS. Second, it prepares a rich and credible dossier for consideration by the INS officer. Finally, the process allows for the screening out of manifestly unfounded cases, cases that do not meet the programme’s eligibility criteria, and cases that significantly lack credibility. While required under USRP, a number of other resettlement countries see the benefits of such a system—especially Canada and Australia, the only other resettlement countries who require face-to-face resettlement interviews. It was widely recommended that such a system would be essential to the efficient management of large resettlement programmes, and would be a useful precedent to any possible EU resettlement programme.

A common procedural concern about the three largest resettlement programmes was the significant amount of time required to process a resettlement case. Unlike the European resettlement programmes—which

adjudicated on the basis of a resettlement dossier, issue travel documents within weeks of a positive adjudication and conduct medical screening in the resettlement country—the United States, Canada and Australia all have stringent pre-departure requirements which result in significant delays. From the time of submission to the date of departure, it may take up to 10 months for a refugee to be resettled. In the case of the USRP, this time-frame has changed significantly since the events of September 11, 2001. These delays are typically due to the poor infrastructure in northern Kenya required for pre-departure medical screenings—a requirement for the three programmes.

As a result of these requirements, refugees must typically travel to Nairobi for pre-departure medical screening, then return to the camps to await results and the issuance of travel documents. The logistical and security considerations involved with such a process are substantial, and cause significant delays. In response, the United States, Canada and Australia are cooperating to build what they are calling a ‘happy camp’ in Northern Kenya, fully equipped with the requirements to house refugees under consideration for resettlement, and appropriate medical and security facilities to ensure safe interviews and rapid pre-departure processing.

While a potentially positive development, the opening of such a facility highlights one of the greatest shortcomings of RSD and resettlement processing in Kenya: the lack of due process. Proponents of the ‘happy camp’ initiative were not able to explain what provisions would be included to address refugees transferred to the new camp and subsequently rejected for resettlement, and what responsibility UNHCR would have for resettling such cases.

e) Refugee Status Determination and Due Process Concerns

Indeed, such basic considerations of due process appeared to be lacking at multiple steps in the resettlement and status determination process in Kenya. There are few, if any, independent checks during the status determination and resettlement process. Applications for appeal are frustrated as asylum seekers receive insufficient written explanation for the basis of their rejection. In fact, it would appear as though status determination activities are conducted almost exclusively with resettlement criteria in mind, and some applicants appear to be rejected at the status determination phase on the basis of their ineligibility for resettlement.

While resettlement is a discretionary activity and consequently not bound by strict applications of the due process of law, the credibility of resettlement processing in Kenya is undermined by a lack of transparency and consistency. There is a significant lack of information on the resettlement process available to refugees. A complete lack of NGO oversight of the status determination and resettlement process compounds these concerns. As suggested by the Report of the UN OIOS, such basic considerations of due process and procedural safeguards must be imple-

mented if resettlement activities in Kenya are to regain their previous credibility.

In addition to on-going efforts to improve resettlement activities in Kenya and to make resettlement more responsive to the needs of vulnerable refugees, ECRE-USCR identified two refugee populations that are disadvantaged in the Kenya resettlement process. The first was among the urban refugee caseload of Somalis in Eastleigh. As reported above, a number of Somalis leave the camps of Dadaab to seek opportunities in Nairobi and settle among other ethnic Somalis in Eastleigh. Given that only refugees with written permission (almost exclusively for medical and educational reasons) may reside outside the camps, most Somalis in Eastleigh are considered to be in breach of this requirement and therefore not considered to be eligible for resettlement, notwithstanding the right to engage in wage-earning employment and freedom of movement afforded by Articles 17 and 26 of the 1951 Convention.

ECRE-USCR also learned that there is an apparent bias against refugees from the Great Lakes Region of Central Africa (GLR) residing in Kenya. A number of NGOs active with refugees from the GLR stated that these refugees appear to be summarily denied refugee status, and thereby the possibility of resettlement, on the grounds that they could have claimed asylum in a country neighbouring their country of origin. This bias, without apparent consideration of the security concerns for the claimants in neighbouring countries, was allegedly rooted in a desire to find expeditious means of denying refugee status to certain nationalities in an effort to make the refugee caseload more manageable.

ADDRESSING PROTECTION NEEDS

2.1 Resettlement: A Tool of Protection

Third country resettlement involves the transfer of recognized refugees from the country where they have sought refuge to another country that has agreed to admit them. There, they will usually be granted asylum or some other form of long-term residence and in many cases the opportunity to become naturalized citizens.³⁴ Resettlement is considered one of three durable solutions for refugees and is therefore a core mandate function of UNHCR.³⁵

UNHCR does not have a decision making authority on resettlement applications; it can refer however refugees to resettlement countries which in turn decide on whether to accept applicants for resettlement. Apart from some variations between resettlement countries, referrals by UNHCR are governed by a specific set of criteria and procedures. There are essentially five stages in the resettlement process: (1) the identification of refugees in need of resettlement based on their vulnerability in the country of asylum and their eligibility according to established criteria;³⁶ (2) the preparation of a resettlement dossier and its submission to a resettlement country for adjudication; (3)

the adjudication of resettlement dossiers by resettlement countries; (4) pre-departure formalities; (5) arrival and the process of integration.³⁷

Resettlement countries may be seen to have mixed motives for participating in global resettlement activities. Since the early days of the international refugee regime, resettlement countries have admitted refugees for a range of reasons, including political, economic, and humanitarian concerns. During the Cold War, resettlement considerations were driven by geo-political and ideological concerns. Since its end however, resettlement priorities have been increasingly guided by expressions of international solidarity, responsibility sharing, and adherence to emerging international norms. While domestic and external political considerations do still influence preferences towards particular groups, resettlement priorities and procedures are becoming increasingly harmonized as resettlement countries see the increasingly value of cooperation in the process. This is particularly true with the emerging resettlement countries.

It is commonly recognized that countries of first asylum face a range of burdens associated with hosting large, protracted refugee caseloads. Indeed, one of the fundamental purposes of third-country resettlement—beyond the individual rescue of vulnerable refugees—is to maintain the very possibility of first asylum. It is an act of international responsibility sharing intended primarily to convince countries experiencing an influx of refugees to keep their borders open and to provide at least temporary asylum. In conjunction with other assistance, resettlement is a tool used in forging comprehensive responses to refugee situations whereby more distant—and usually more wealthy—countries come to the aid of countries in the region of conflict who, by the happenstance of geography, find themselves usually reluctant hosts to masses of refugees from neighbouring countries.

Resettlement countries have acted, therefore, both for humanitarian reasons—on behalf of the refugees who are actually resettled and in order to keep the door open in the country of first asylum for persons escaping conflict and seeking asylum from persecution—and for reasons of foreign policy—to support countries of first asylum that might otherwise be destabilized by a refugee influx and to maintain orderly and equitable responsibility sharing.

Eighteen countries currently cooperate with global resettlement activities by making available an annual quota for the resettlement of refugees. These 18 countries can be arranged into three groups. In the first group are the emerging resettlement countries: Brazil, Chile, Argentina, Ireland, Iceland, Spain, Benin and Burkina Faso.³⁸ These countries have agreed to annual resettlement quotas within the past three years, and collectively resettled roughly 350 refugees in 2001. The establishment of these resettlement programmes is a very positive indication of the 'internationalization' of resettlement, and the priority for these countries and for UNHCR is to ensure that these programmes become self-sustaining in the coming years.

The second group includes the traditional Euro-

pean resettlement countries: Denmark, Finland, the Netherlands, Sweden and Norway.³⁹ These countries resettled over 4,000 refugees in 2001, with a particular emphasis on vulnerable refugees. The majority of these cases are selected on the basis of a resettlement dossier forwarded to the resettlement country by UNHCR, and decisions are often taken in the European capitals without directly interviewing the refugee. These countries are particularly known for their willingness to resettle medically vulnerable refugees, victims of torture and vulnerable women who will require extensive counselling and rehabilitation upon arrival in the resettlement country.

The United States, Canada, Australia constitute the third group.⁴⁰ These are the 'big three' resettlement countries responsible for an annual resettlement quota of over 91,000 refugees a year. The United States is responsible for resettling more refugees than all other resettlement countries combined. These resettlement countries have particular procedural requirements that set them apart from the established European resettlement countries. First, the immigration laws of these countries require face-to-face interviews with the refugees by competent representatives of the resettlement countries.⁴¹ Second, the vulnerability of the refugee is not the primary basis of evaluating resettlement need. The US resettlement programme requires all successful applicants for resettlement to demonstrate a well-founded fear of persecution according to the 1951 Convention. The Canadian and Australian programmes will only accept refugees for resettlement if they can demonstrate their ability to integrate in the resettlement country within 12 months of arrival.⁴²

It is in this light that the complementary value of the European approach to resettlement becomes apparent. While European countries accept a comparatively limited number of refugees for resettlement, their resettlement programmes serve a significantly complementary role to the larger resettlement countries as part of global resettlement efforts. Whereas the United States, Canada and Australia resettle the overwhelming number of refugees in a given year based on the criteria of fear of persecution and with a higher threshold for medical inadmissibility, the European programmes accept those vulnerable refugees who would not otherwise be resettled. In Europe, preparedness to consider vulnerability in the country of asylum including medical inability is the 'value-added' of the European approach to resettlement: the willingness to concentrate on the resettlement needs of the most vulnerable.

Another difference between two types of programmes lies in the politics of numbers. Given the difference in scale, the US, Canadian and, to a lesser extent, the Australian resettlement programmes are often accused of being 'quota-driven.' There tends to be significant domestic political pressures on the resettlement programmes to not only fill the quota in a given year, but to also give priority to groups that have domestic political support. This tends to shift the focus of resettlement on domestic political considerations and not on the protection needs of refugees.

There is also a significant difference in processing times of the European programmes when compared to the 'big three.' Given the requirement of adjudication by an official pursuant to a direct interview, the United States, Canada, and Australia must conduct resettlement selection missions to countries of asylum. This creates two difficulties. First, resettlement missions are not responsive to urgent resettlement need as they occur infrequently. Second, for security reasons, selection missions often cannot travel to remote and insecure regions. As a result, refugees in accessible and secure locations are typically favoured. Finally, the larger resettlement programmes have more stringent post-adjudication requirements which add to the delay in departure. It can take up to a year from the time of submission to the US, Canada or Australia for a refugee to be interviewed, processed, and cleared for departure. In comparison, and on the basis of dossier considerations and relaxed pre-departure formalities, European countries can accept a refugee for resettlement and issue the necessary travel documents within six weeks of submission.

This comparison is not intended to diminish the significance or value of the US, Canadian, or Australian programmes. They offer resettlement opportunities to tens of thousands of refugees every year, play a leading role in formulating global resettlement policy, and show significant leadership in developing resettlement as a tool of international protection, as a demonstration of international solidarity with host countries, and as a durable solution for refugees. This comparison is, however, intended to highlight the significant added value of the European approach to resettlement and to emphasize the particular aspects of European resettlement that should be highlighted in the development of a possible EU resettlement programme.

2.1.1 Developments in Resettlement Policy

Resettlement has been a feature of the international response to a number of refugee crises since the emergence of the international refugee regime. It evolved and expanded considerably in the context of the Cold War⁴³ during which, Western governments, led by the United States, used resettlement not only as a tool of protection for those in need, but also as a means of highlighting the failures of Communist regimes. In this way, motivations to engage in large-scale resettlement tended to be focused on particular groups of people and were motivated by the foreign policy of Western states⁴⁴

By far the "largest and most dramatic example of resettlement in modern times"⁴⁵ involved the international response to the Indo-Chinese refugee crisis in Southeast Asia. The consolidation of communist Southeast Asian regimes in 1975 resulted in an estimated 3 million people fleeing Vietnam, Cambodia and Laos in the following two decades. Most fled in small boats, and many died in shipwrecks or were targeted by pirates. Humanitarianism, coupled with the geopolitical interests of the United States,

motivated Western states to recognize the 'boat people' as refugees *prima facie* and to resettle them. More than 550,000 Indo-Chinese sought asylum in Southeast Asia between 1975 and 1979, of which 200,000 were resettled⁴⁶

As arrivals continued to exceed resettlement quotas, regional states declared in June 1979 that they had "reached the limit of their endurance and decided that they would not accept new arrivals."⁴⁷ This reluctance, and reports of regional states pushing boats carrying asylum seekers away from their shores, led to an International Conference on Indo-Chinese Refugees in July 1979. States agreed that worldwide resettlement quotas would be doubled, that the boat people would be recognized as refugees *prima facie*, that illegal departures would be prevented, and that regional processing centers would be established. The result was a formalized *quid pro quo*; resettlement to Western states in exchange for assurances of first asylum in the region.

The immediate results were positive: resettlement increased, 'push-backs' ended and arrival rates fell dramatically as heavy penalties were imposed on clandestine departures. By 1988, however, the number of asylum seekers began to rise dramatically as promises of resettlement resulted in a dramatic pull factor. Believing that these new arrivals no longer warranted automatic refugee status, Western countries introduced selective criteria and reduced resettlement quotas. In response, regional asylum countries returned to earlier policies of preventing arrivals, including push-backs.

In light of this new reality, the Second International Conference on Indo-Chinese refugees was convened in June 1989 and concluded by adopting the Comprehensive Plan of Action (CPA). The CPA contained five mechanisms through which the countries of origin, countries of first asylum and resettlement countries cooperated to resolve the refugee crisis in Southeast Asia: an Orderly Departure Program (ODP) to prevent clandestine departures, guaranteed temporary asylum by countries in the region, individual refugee status determination for all new arrivals, resettlement to third countries for those recognized as refugees, and facilitated return for rejected claimants.⁴⁸ As such, resettlement was used as part of a comprehensive response to a complex refugee situation.

Notwithstanding a number of criticisms,⁴⁹ the CPA is seen to have generally achieved its objectives of reducing the number of clandestine departures, managing the flow of migrants from Indo-China and of finding extra-regional durable solutions for recognized refugees. In 1989, roughly 70,000 Vietnamese sought asylum in Southeast Asia. By 1992, this number had fallen to 41.⁵⁰ At the same time, over 1,950,000 refugees had been resettled by the end of the CPA in 1995; 1,250,000 to the United States alone. On this basis, the CPA is seen by many as a success, and a dramatic example of the possibilities of burden sharing arrangements to address refugee crises.

While arguably the greatest example of resettlement,⁵¹ the Indo-Chinese experience was also a source of its undoing.⁵² As part of a comprehensive review of its

global resettlement activities, UNHCR noted in 1994 that “the disenchantment with resettlement” which followed the Indo-Chinese experience “has had a negative effect on UNHCR’s capacity to effectively perform resettlement functions.”⁵³ This ‘disenchantment with resettlement,’ on the part of traditional resettlement countries and UNHCR, resulted in the reduction in resettlement quotas and a renewed emphasis on return and reintegration as the preferred durable solution.⁵⁴

This characterization of the ‘end of the era of resettlement’ proved, however, to be an exaggeration. Significant developments have occurred in the area of resettlement since UNHCR’s 1995 Evaluation Report on Resettlement Activities. Highlighting the ‘need to improve the dialogue and cooperation between UNHCR and all partners involved in resettlement,’ including resettlement countries, NGOs and IOM, the report called upon UNHCR to ‘establish formal mechanisms of systematic consultation with partners.’ In June 1995, a Working Group on Resettlement was established, involving 10 traditional resettlement countries⁵⁵ and with discussion focusing on annual resettlement quotas. At roughly the same time, consultations with NGOs were organized in North America and Europe to ensure that valuable NGO contributions to the resettlement process would be maintained.

These two tracks were brought together in Geneva in October 1995 during the first formal Consultations with Governments and NGOs. These Consultations have subsequently been convened on an annual basis, and have come to be known as the Annual Tripartite Consultations on Resettlement (ATC). This annual event has proven to be a valuable forum for enhancing partnerships, developing joint strategies for addressing resettlement needs, information sharing, and the development of a more harmonized approach to resettlement.

It was through this process of consultation that UNHCR was able to develop and issue the Resettlement Handbook in July 1997,⁵⁶ now used by all UNHCR field offices in the process of identifying and processing refugees in need of resettlement. Through on-going consultation and the development of partnerships, resettlement has developed into a global tool of international protection in recent years as the number of resettlement countries and resettled nationalities have continued to increase.⁵⁷

In addition to diversifying the pool of resettlement countries and increasing resettlement opportunities, the tripartite process has also facilitated the progressive development of resettlement policy in recent years. Recent policy developments have focused on the various benefits of resettlement: as a tool of international protection; as a durable solution and as an expression of international solidarity and responsibility sharing. There is a growing recognition on the part of tripartite partners that these three benefits of resettlement are most effective when resettlement is approached strategically and in support of broader protection and durable solution strategies. As such, “UNHCR has sought to enhance the role of resettlement by

pursuing it, not as an isolated activity, but as an integral part of a comprehensive range of responses...”⁵⁸

Within this context, a second area of policy development has been in the “strategic use of resettlement to enhance asylum and protection prospects.”⁵⁹ Mindful of the number of burdens borne by countries of first asylum, it has been argued that “resettlement can also be a particularly useful responsibility-sharing mechanism where there are groups of refugees whose presence in a country of asylum may pose problems for security or other reasons particular to that country.”⁶⁰ Resettlement may be used as a ‘safety-valve’ to relieve the pressures faced by countries of first asylum confronted with protracted refugee situations or sudden mass influxes. By demonstrating their solidarity with countries of first asylum by resettling refugees, resettlement countries may contribute to ensuring that the principle of asylum is maintained for those refugees not resettled.

In this light, delegates to the 2001 and 2002 ATC encouraged the expansion of resettlement in the European Union, and stated that the creation of additional resettlement opportunities would be a welcomed development. Recent comments by the High Commissioner for Refugees, Ruud Lubbers, on the expanded use of resettlement to resolve protracted refugee situations, have further encouraged debate on expanding the use of resettlement as a durable solution. The High Commissioner has expressed his desire to see resettlement become ‘a commonplace idea in the response mechanisms of the international community to refugee situations.’⁶¹ Policy discussions have culminated in an EXCOM Conclusion on International Protection (No. 90 (LII) – 2001), which specifically highlighted the potential role of resettlement. The Conclusion encouraged ‘initiatives directed at diversifying resettlement opportunities by increasing the number of resettlement countries, thereby sharing resettlement needs more widely, and meeting increased resettlement needs.’⁶²

2.1.2 Recent Challenges to Resettlement

In contrast with these encouraging developments in resettlement policy, global resettlement activities have been confronted with significant challenges in the past two years.

The first challenge has revolved around issues of management, fraud, and the credibility of resettlement programmes. The corruption scandal in Nairobi,⁶³ has highlighted the need for increased oversight and management of resettlement activities. To this end, the EXCOM Conclusion on International Protection (No. 90 (LII) – 2001) urged ‘further UNHCR efforts to ensure the integrity of the processing of the resettlement caseload’ and encouraged ‘States and UNHCR to continue to pursue a strategic and systematic approach to the problem of attempted fraud or other abuse.’

The terrorist attacks on New York and Washington on September 11, 2001 resulted in a second challenge, especially to the US Resettlement Programme (USRP). All

activities of the USRP were suspended for the two months following the attacks as additional security measures were considered for the programme. Given that the USRP resettles more refugees per year than all other quota resettlement programmes combined, the global impact was significant as refugees accepted for resettlement prior to September 11, 2001 remained vulnerable in their countries of asylum as the USRP attempted to clear its backlog. While various measures were proposed to re-start the USRP, and to ensure that the 2002 quota of 70,000 resettled refugees was met⁶⁴, the more fundamental question remains: how can increased security concerns on the part of resettlement countries be coupled with increased resettlement activities? This question is being taken forward by the Resettlement Working Group.

The third challenge has arisen as a result of suggestions by some States⁶⁵ that resettlement has an immigration-control function, as a substitute, rather than as a complement to asylum. In addition, the 'regionalization' argument at times suggests that the existence of a means for an orderly queue should preclude spontaneous, or irregular, movement of asylum seekers. Some have suggested returning asylum seekers in the EU to holding centres in the regions of origin to undergo RSD and, if approved, to be considered for resettlement back to the EU.⁶⁶ Others have suggested—and, in the case of Australia, implemented—a single annual quota that pits asylum seekers on their territory against resettled refugees, creating, in effect, a numerical limit on the number of persons who can be granted asylum in a given year.⁶⁷

These policy questions have been addressed through the Global Consultations on International Protection, especially during the Nordic regional resettlement meeting on the theme of "resettlement as a multi-faceted protection tool and its relationship to migration."⁶⁸ Through its conclusions, the meeting recommended that resettlement be developed as a "complement to and not a substitute for the right to seek asylum," that "protection should be enhanced through an expanded number of countries engaged in resettlement, and a more strategic use of resettlement, which would enhance protection for as many refugees as possible." The meeting also concluded that "comprehensive migration policies, including enhanced access to asylum procedures and greater resettlement possibilities can mitigate the problem of smuggling of refugees."⁶⁹

These policy discussions have culminated in an EXCOM Conclusion on International Protection (No. 90 (LII) – 2001), which specifically highlighted the potential role of resettlement. While emphasizing the fundamental importance of durable solutions and commending States that facilitate these solutions, the Conclusion encouraged "initiatives directed at diversifying resettlement opportunities by increasing the number of resettlement countries, thereby sharing resettlement needs more widely, and meeting increased resettlement needs."⁷⁰

RECOMMENDATIONS

1. Increased resettlement on the part of European countries could be an important complementary factor in solving protracted refugee situations as well as emergency situations of mass outflux.

2. European resettlement countries should increase their quotas from regions of refugee origin, focusing on the most vulnerable persons and those most in need of protection and durable solutions.

3. The European Union should create a refugee resettlement programme that remains true to the time-tested fundamental purposes for third-country resettlement: to provide rescue and durable solutions for refugees in need of protection, preserve the possibility of first asylum, and act as a means of equitable responsibility sharing.

4. While the EU should do more to ameliorate conditions for refugees in regions of origin through both assistance and resettlement programmes, it should recognize that these steps are likely to have little impact on the demand for asylum and labour migration in Europe. Refugee resettlement programmes should not be viewed as part of a strategy for migration control although they might have long-term benefits in reconciling the asylum and access challenge.

5. Increased resettlement would be a positive gesture towards host countries, in line with notions of international solidarity and responsibility sharing. In turn, such gestures would likely enforce and enhance the practice of asylum in these regions.

6. Expanded resettlement activities, coupled with the necessary capacity building in host countries, would serve as an important foundation for the development of future comprehensive solutions to protracted refugee situations.

2.1.3 Constraints on Resettlement

The common reaction to the current processing systems as expressed to ECRE-USCR is frustration. Refugees complain that their status determination interviews are often conducted long after their arrival in their country of asylum, that decisions on their claims are based on unknown criteria, and that the appeals process is opaque and unpredictable. They are also frustrated that the resettlement process remains shrouded in mystery, and that there is insufficient support from UNHCR to guide them through the process and support them while they await a decision.

NGOs are frustrated at the lack of transparency and support during the UNHCR status-determination and resettlement-referral process. NGOs are often unable to

guide refugees through the process due to a lack of information on status-determination and resettlement processes. NGOs experience difficulties referring needy cases to UNHCR for resettlement consideration. There are also complaints that UNHCR appears to be insufficiently addressing the material needs of asylum seekers awaiting a decision.

Resettlement countries—especially the United States, Canada and Australia—are frustrated that UNHCR is unable to provide sufficient cases to meet resettlement quotas, and that the quality of the referrals received falls below the minimum standards of the resettlement countries.

Countries of asylum who are often either unwilling or unable to establish and run effective eligibility committees to determine the status of asylum seekers on their territory, are concerned about the long delays in UNHCR processing, especially related to resettlement.

This frustration has led a number of resettlement countries and NGOs to question UNHCR's role as 'gatekeeper' of the RSD and resettlement process, and has led to calls for a more open process for the identification and processing of refugees in need of resettlement. UNHCR is generally seen as a 'bottle-neck' in the status-determination and resettlement process. The argument follows that other organizations should be given the authority to identify and refer refugees in need of resettlement to resettlement countries, and that processing would best be improved by increasing the number of entry-points to the resettlement process.

In this light, it is important to note that under the USRP, US embassies abroad are entitled to identify persons who are facing compelling security concerns in countries of first asylum and refer their case to the regional US Refugee Coordinator for resettlement consideration. While embassies have this possibility, very few make use of it and refer all refugees seeking resettlement to the local UNHCR office.

There are a number of cases where NGOs are engaged in the task of identifying vulnerable refugees in need of resettlement consideration, either through a formalized sub-agreement, such as the IRC Durable Solution Project in Pakistan, or more informally through the Community Services or Protection Units of UNHCR Field Offices. Similar initiatives have been undertaken by the ICMC in Istanbul and by the ASAM in Van and Ankara. Such relationships are extremely useful and should be encouraged, as NGOs typically have a different quality of contact with vulnerable refugees in the field, and are often better situated to identify vulnerable refugees.⁷¹

In response to the frustrations of actors in the regions, the best way to improve processing in the regions is by identifying and addressing the current constraints on processing in the field. ECRE and USCR have identified three constraints which impede processing in the regions: programme constraints, resource constraints and procedural constraints.

a) Programme Constraints

During visits to the regions, ECRE-USCR researchers found a significant discrepancy between the number of refugees eligible for resettlement and the number of resettlement places available. The UNHCR Resettlement Handbook states that "resettlement may be considered for refugees who do not have an opportunity to establish themselves in their country of refuge in a manner appropriate to their cultural, social, religious or educational backgrounds. Resettlement may be promoted under such circumstances when it is evident in the individual case that a refugee will not be able to return home in the foreseeable future and is not able to settle locally."⁷² Under this criteria, the significant majority of refugees in the countries visited by ECRE-USCR would be eligible for resettlement. Yet, less than 1 percent of refugees worldwide will be resettled in a given year.

This leads to a tension between eligibility, on the one hand, and prioritization on the other. While a refugee may be eligible for resettlement, the limited number of resettlement opportunities results in the necessity to prioritize resettlement needs. UNHCR's field practices state that resettlement prioritization should be according to vulnerability, but even this consideration would lead to a pool of refugees eligible for resettlement that far exceeds the resettlement quota. In reality, this leads to the notion of a resettlement queue, and to great emphasis being placed by refugees on their place in the queue.

Once this point has been reached, objective criteria become difficult to apply and demand, desperation and uncertainty continue to increase. It is in this environment that desperate refugees will consider all means to 'jump the queue'. The lack of opportunity, coupled with desperation, can lead vulnerable refugees who would be eligible for resettlement to seek alternative means of escape. Increasingly, the most common alternative for those with the necessary financial means and contacts, is to turn to smugglers and traffickers.

b) Resource Constraints

The increasing limitation of the essential resources required to identify and process refugees in need of resettlement places a significant constraint on the system as a whole. The identification of refugees in need of resettlement and the preparation of a dossier for submission to a resettlement country is a remarkably time-consuming task. In the absence of early registration and RSD, it has been estimated that an average of 8–10 hours is required per resettlement submission. When these time constraints are viewed in light of recent funding cut-backs to UNHCR, which have resulted in the posting of very few UNHCR Resettlement officers in the regions under consideration in this study, the implications of the resource constraints are clear. There are too few officers with exclusive resettlement responsibilities posted in complex situations facing overwhelming resettlement need.

In response to this acute human resource constraint, UNHCR and resettlement countries have considered a number of short-term and flexible remedies. The Canadian government, for example, agreed to the secondment of two senior immigration officials to UNHCR resettlement activities in East Africa and the Middle East. Recent emphasis has also been placed on developing the UNHCR–ICMC Resettlement Deployment Scheme, a programme to support the interviewing of refugees for resettlement through the deployment of NGO staff to UNHCR offices around the world for periods ranging from three to 12 months. In 2001, the Scheme deployed a total of 50 people to 32 locations in 28 different countries.⁷³

The direct consequence of these human and material resource constraints required to conduct processing in the regions is a significant backlog of unexamined cases and long waiting periods for the results of interviews. In many cases, asylum seekers may wait up to nine months for the results of their status determination interview with UNHCR. Resettlement procedures may take even longer, and have left vulnerable refugees stranded in desperate conditions for months on end, often with little or no assistance from UNHCR. Recent funding cut-backs have directly impeded not only UNHCR's ability to exercise its protection mandate in many regions, but have also resulted in a reduction of the levels of assistance provided to asylum seekers and refugees as they await decisions on their asylum or resettlement applications.

The consequences are similar to those of programme constraints. Long waits and limited assistance add to feelings of desperation, and may force vulnerable refugees to seek alternative means of resolving their condition and seeking access to more developed asylum systems in Europe and North America.

c) Procedural Constraints

Increases in the number of resettlement opportunities and in human and material resources for processing in the regions would not, however address the long list of frustrations expressed to ECRE-USCR. The majority of frustrations stem from the significant procedural constraints related to UNHCR processing in the field. ECRE-USCR noted a number of procedural constraints during the study, especially related to a lack of due process, universal minimum standards, transparent eligibility and priority criteria, and impartial oversight of the processing systems. It should be noted that many of these shortcomings arise as a result of a lack of resources currently available to UNHCR field offices as a result of funding cuts.

The importance of the due process of law, including the right to a fair and impartial hearing, is enshrined in a number of human rights conventions and UN reports and resolutions. Article 14(1) of the 1966 International Covenant on Civil and Political Rights provides that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established

by law." A similar provision is contained in Article 6(1) of the European Convention on Human Rights. While UNHCR's strict obligation to uphold these standards of international law are debatable,⁷⁴ there is little debate that UNHCR's status determination and resettlement procedures should incorporate the spirit of these provisions on the basis of UNHCR's protection mandate.

UNHCR has, however, been routinely criticized for not upholding these standards in its status determination and resettlement processing activities. While resettlement is a discretionary activity and consequently not bound by strict applications of the due process of law, the credibility of UNHCR's resettlement processing in the regions visited is undermined by a lack of transparency and consistency. NGOs, resettlement countries and refugees repeatedly complain about consistent shortcomings of UNHCR processing, including: erratic decision-making, a lack of clarity about the burdens of proof and thresholds applied by UNHCR; the lack of access by refugees to their personal files held by UNHCR; the lack of legal counsel and basic information provided to refugees; the lack of justification given by UNHCR pursuant to the rejection of an application for asylum or resettlement; and the lack of an effective appeals mechanism.

The lack of accountability and transparency in UNHCR's current processing systems fosters considerable suspicion, resentment and anger towards UNHCR by asylum seekers and refugees. As the case studies in this report make clear, this lack of due process significantly undermines the credibility of UNHCR processing in the regions, and, if found not to be in accordance with universal and regional human rights standards, undermines its legitimacy.

The apparent absence of the due process of law is coupled with an apparent absence of objective universal minimum standards for the processing of asylum and resettlement applications. A lack of standards results in dramatically different procedures being carried-out in various field locations, and leads to pull factors as refugees are drawn to the office where procedures are perceived to be more in-line with their profile.

RECOMMENDATIONS

7. Resettlement activities are most effective and efficient when conducted in the spirit of tripartite cooperation between resettlement countries, NGOs, and UNHCR. Cooperation at the field level is essential to identify the appropriate approach for responding to those individuals and groups in need of resettlement.

8. Any developments in European resettlement, either collectively through the European Union or independently on the part of European States, should be through the tripartite global resettlement efforts as coordinated by UNHCR. This is not only mindful of the dangers of competing systems, but in recognition of the fact that the coordination of resettlement

programmes has led to greater efficiency in resettlement activities and more responsive resettlement programmes.

9. Within the context of tripartite cooperation, UNHCR should continue to play a central facilitating and coordinating role in the planning and implementation of resettlement programmes in accordance with its mandate and international responsibility for seeking durable solutions for refugees. This is not only necessary for principled reasons. Given the tremendous demand for resettlement in the field, without the overall management and coordination of resettlement activities through UNHCR, additional pressures and confusions would emerge and frustrations would increase, not diminish.

10. There is a significant role to be played by NGOs in the identification and referral of refugees in need of resettlement consideration, in accordance with the criteria established in the UNHCR Resettlement Handbook. NGOs often have direct contact with refugees in the field and are often better situated to identify vulnerable cases. Processing would best be improved by increasing the number of entry points to the whole process.

Programme Constraints

11. Members of the European Union, collectively through the EU and independently, should develop annual resettlement quota programs, in cooperation with UNHCR, to help address the current discrepancy between the number of refugees eligible for resettlement and the number of resettlement opportunities.

Resource Constraints

12. Members of the European Union should increase their contribution for resettlement processing, through increased contributions to UNHCR, secondments and through the UNHCR-ICMC Resettlement Deployment Scheme.⁷⁵

13. Members of the European Union, collectively through the EU and independently, should develop annual resettlement quota programmes, in cooperation with UNHCR, to help address the current discrepancy between the number of refugees eligible for resettlement and the number of resettlement opportunities.

14. Resettlement criteria should be flexible, especially in *prima facie* situations, to address protection needs of refugees, even if they do not, at that moment, fulfil the requirements of the 1951 Convention definition.⁷⁶

15. An increase in EU refugee resettlement processing from regions of origin, should be linked to an increase in resources made available to UNHCR by Member States to support additional processing.

Procedural Constraints

16. The EU, and other donor governments, should 'invest' in early, accurate and up-to-date refugee registration procedures as a prerequisite for credible resettlement activities.

17. UNHCR should develop and implement universal minimum standards, management and oversight mechanisms for the status determination and resettlement process in the region, consistent with the spirit of due process of law.

18. European countries, independently and collectively through the EU, should encourage and support the development of universal minimum standards, management and oversight for the status determination and resettlement process in the region.

19. European countries should support the capacity building of NGOs in the region politically and financially to act as monitors of UNHCR's status determination and resettlement activities.

2.1.4 Targeting Resettlement

a) Vulnerability in Countries of First Asylum

The primary focus of resettlement should be to address the protection needs of vulnerable refugees who—as a result of threats to their life, liberty, and personal security—cannot remain in their country of first asylum and cannot return to their country of origin. Both aspects must be taken into consideration. It must also be recognized that not all refugees in need of resettlement will be able to demonstrate a well-founded fear of persecution as specified by the 1951 Convention. In such cases, the strength of the refugee claim should be balanced against vulnerability in the country of first asylum to determine resettlement eligibility and need.

ECRE and USCR interviewed many refugees during field visits who were found not to be eligible for resettlement because they could not demonstrate an individual fear of persecution, but who faced threats to their life and liberty in their country of asylum, and who would face similar threats if returned to their country of origin. This imbalance should be addressed as the eligibility criteria of future European resettlement activities are developed. This view is echoed by UNHCR, which argued that a flexible and protection-based approach to resettlement is "particularly important for refugees who have been in limbo for many years, or for refugees from within *prima*

facie populations who have particularly pressing protection needs in the country of asylum even while they may not, at that point in time, fulfil all the requirements of the 1951 Convention definition.”⁷⁷

This balance is especially important when considering the eligibility for resettlement of refugee women-at-risk. Under US law, for example, the Immigration and Naturalization Service (INS) officers are required to conduct RSD interviews to ensure that applicants meet the 1951 Convention definition and thereby qualify for refugee admission, but are not directed by law to accord any particular weight to conditions in countries of asylum. In many places, refugee women often have difficulty establishing individual refugee claims based on a narrowly interpreted persecution standard. Often, they are part of larger groups fleeing generalized violence in their country of origin. The main reason they are at risk is often because of their high level of vulnerability in the *country of first asylum*, but the INS officers’ attention is directed away from examining those threats because of their concentration on finding specific and explicit grounding of the underlying refugee claim in political, religious, or ethnic persecution of the individual refugee woman in the *country of origin*.

RECOMMENDATION

20. European resettlement activities should continue to place specific emphasis on the protection needs of refugees in their country of first asylum, in addition to their inability to return to their country of origin.

b) Group Resettlement

Persecution is not necessarily individually targeted: Black South Africans under Apartheid (race), Jews under Nazi occupation (religion), Tutsis in Rwanda in April 1994 (nationality), Kulaks under Stalin (membership of a social group), Communists in Indonesia in 1965 (political opinion)—these groups were broadly and brutally persecuted, often with genocidal intensity. Similarly, when members of one Somali clan pillage, rape, and kill members of another clan, the violence, while not necessarily directed against someone as an individual, may be the result of membership of a particular social group, a ground for Convention-refugee protection. Members of such groups (satisfying the “nexus” to one of the five grounds of persecution listed in the Convention) and residing outside the country of origin while such atrocities were occurring are Convention refugees even if they had not personally suffered persecution and could not establish that they individually had been targeted.

If resettlement is to play a role in achieving comprehensive and durable solutions for protracted refugee situations, a group approach could play an important complementary role to on-going resettlement activities with individual cases. Members of an identified group would still need to meet security, health, and other basic

admissibility requirements, but could establish their refugee claim by demonstrating membership of a persecuted and vulnerable group.

Group resettlement is a positive approach, with the potential of meeting the needs of identified vulnerable groups. It must not, however, be undertaken at the expense of individual case identification. Although requiring fewer human resources than individual refugee status determinations, group identification also requires significant human resources to ensure the credibility of individuals claiming to be members of that group. In situations where group resettlement is deemed to be a positive contribution to the protection and durable solution needs of refugees, it must be ensured that UNHCR resettlement staff are not diverted from their work on the identification and processing of individual cases to assist with the verification and processing of groups in need of resettlement. The identification and processing of groups in need of resettlement should therefore be coupled with the additional human resources required for the processing of that group.

RECOMMENDATIONS

21. In coordination with UNHCR and other resettlement partners, the EU or its Member States should not only accept UNHCR-referred resettlement cases, but could also identify groups of vulnerable refugees in need of resettlement.

22. In cases of group identification, resettlement countries should ensure that all necessary human and material resources are made available for the verification and processing of that group, thereby ensuring that the on-going identification of vulnerable individual cases is not jeopardized.

c) Profiles of Populations in Need of Resettlement

Millions of refugees worldwide have been relegated to a limbo existence, warehoused in camps or settlements with no prospects for voluntary repatriation or local integration. Children born and raised in the closed confines of camps often never see normal life outside the fences. These populations often become dependent and despondent, with all the negative social consequences that entails.

Refugees who “do not have an opportunity to establish themselves in their country of refuge in a manner appropriate to their cultural, social, religion or educational backgrounds,” even after extended stays, are eligible for resettlement, according to Chapter 4.9 of the UNHCR Resettlement Handbook. As stated previously, the significant majority of refugees in the countries visited by ECRE-USCR would be eligible for resettlement according to this criteria.

Following is a list of particular populations potentially eligible for resettlement according to the above criteria and found to be vulnerable by ECRE-USCR during

their visits to the regions. This is not an exhaustive list.

Refugee Women at Risk in Dadaab: Refugee women in the Dadaab camp in Kenya are at high risk for sexual abuse. Rape is a common occurrence, and is used quite specifically by members of one clan against rival clans. Women who are known to have suffered rape are often ostracized, and lose the support and protection of their male relatives. Women at particular risk in Dadaab and in urgent need of resettlement are rape victims who cooperate with law-enforcement authorities in an attempt to prosecute the rapists who attacked them. Female genital mutilation is also common among the Somali refugees in Dadaab and resettlement represents a possible means of protecting those women and girls who are unwilling to be subjected to it.

African Refugees in Turkey and Syria: Asylum seekers from sub-Saharan Africa also face substantial protection problems in Turkey, often because they are easily noticed. Many Africans face harassment, beatings, and arrests at the hands of the Turkish police. In July 2001, Turkish police detained and deported more than 200 Africans of various nationalities. Turkish human rights advocates told ECRE and USCR that the authorities severely mistreated some of the Africans in detention, depriving them of food, clean water, and medical assistance. After several days, Turkish authorities attempted to deport the group to Greece, but Greece did not allow them to enter. Although Turkey eventually readmitted most of the Africans, three reportedly died and another three were allegedly raped while trapped in the border zone between Turkey and Greece.

African asylum seekers are also particularly at risk in Syria. In December 2001, Syrian authorities arrested more than 100 rejected southern Sudanese asylum seekers for demonstrating outside the UNHCR office in Damascus. The demonstrators were protesting what they called an unfair bias against southern Sudanese in UNHCR's refugee status determinations, and demanding that the agency issue them protection letters to prevent their deportation to Sudan. Syrian police made the arrests after UNHCR refused to meet the protesters' demands and the demonstrators in turn refused to leave the UNHCR office. Although Syrian authorities promptly released the women, children, and married men they had arrested, about 90 single male demonstrators remained in detention at the beginning of 2002.

Somali Bantu refugees in Kenya: This is one of the better-known potential groups in need of resettlement. The US State Department is seriously considering designating the Somali Bantu as a Priority Two (P-2) group for its resettlement programme. During the ECRE-USCR visit to the Dadaab camp, UNHCR was engaged in a verification exercise to ensure that the names on the P-2 list were eligible members of the category group and that the group would likely meet US requirements, if and when the United States decided to act on this caseload.⁷⁸

The Somali Bantu, descendants of slaves taken to

Somalia from Mozambique and Tanzania, have never been accepted within the Somali clan structure. A visibly distinct group, they have suffered discrimination and persecution as the lowest rung on the Somali social scale. With the onset of civil war, the Bantus of Somalia were subject to horrific violence, including massacres, rapes, looting and burning of homes, and in the early 1990s, nearly all Bantus fled to Kenya. They are only marginally safer in the Dadaab camp, a place notorious for its insecurity. Once again, they are marginalized, and subject to daily indignities and danger, including denial of the right to education minimally observed for the other refugee children in Dadaab. They are easily identified and distinct in appearance, dialect, and culture from the other, predominantly Cushitic Somali refugees in the camp. Their names are already on a list, created in an unsuccessful bid to resettle them to Mozambique and Tanzania. Since the verification exercise, the group consists of 11,585 persons, each person's identity carefully registered and verified.

Sudanese "Lost Girls" in the Kakuma Camp: There are up to 2,000 unaccompanied girls and young women, survivors of an ordeal similar to the better-known "Lost Boys" who were previously resettled to the United States. UNHCR is currently assessing this caseload. This group is highly vulnerable, and subject to exploitation.

Residual caseload of Sudanese "Lost Boys" in Kakuma camp and in Ethiopia: There are up to 4,000 of these unaccompanied boys still in the Kakuma camp who were not included in the previously identified group. A small number were stranded in Ethiopia when most of the group was forced across the Gilo River back into Sudan, from where they fled into Kenya. Their number is estimated at several hundred. UNHCR is now trying to register unaccompanied minors among this group.

Sudanese 'protection' cases in the Dadaab camp: A small group of Sudanese refugees in the overwhelmingly Somali refugee camp of Dadaab were moved there by UNHCR on the basis of valid and pressing protection concerns stemming from threats posed by Sudanese factions operating in Kakuma. ECRE-USCR met with some of these refugees during our visit to Dadaab. They now not only fear persecution in Sudan itself, as well as in Kakuma, but also are fearful and isolated in the Dadaab camp.

Sudanese and Iraqi Refugees in Lebanon: At the end of 2001, there were about 2,800 recognized refugees and 3,000 asylum seekers registered with UNHCR in Lebanon, who continued to face serious threats to their safety, making resettlement more important than ever as a tool of protection. In early January 2002, the Lebanese authorities deported 186 Iraqis to northern Iraq, including asylum seekers and UNHCR-recognized refugees. As a result of increased insecurity for many in Lebanon whose presence the government had previously tolerated, the number of asylum seekers applying for refugee status has increased

substantially. Lebanon is not a signatory to the 1951 Convention. UNHCR-recognized refugees therefore have neither legal status in Lebanon nor any prospect of obtaining it. Therefore, local integration is not an option, a fact underscored by recent crackdowns on refugees and other foreigners without legal status. Reports during 2000 and 2001 suggest that Lebanon is detaining hundreds of asylum seekers—mostly Iraqi and Sudanese—many of whom allegedly have been mistreated and denied access to UNHCR to pursue their refugee claims. There have been credible allegations that Lebanese authorities mistreated, and in some cases tortured, detainees. Lebanese authorities reportedly have *refouled* hundreds of recognized refugees and asylum seekers during the course of the past two years.

Iraqi refugees whose persecution or fear of persecution is based on actual or imputed association with EU or other Western governments: In 1996, following an incursion by Baghdad forces into the Kurdish zone in Northern Iraq, more than 6,000 persons associated with the United States were evacuated and brought to the United States. A small number of persons, who were not included in the original evacuation and who claim ties with US and European humanitarian organizations, still present themselves to UNHCR in Ankara.

Persecuted religious groups in Iraq: This section is not a detailed examination of non-Muslim minorities in Iraq (and Iran), but seeks to draw attention to their current vulnerability from Islamic state and non-state actors. Neither Yezidis, Assyrians, nor Chaldeans are recognized in the Iraqi constitution. The Yezidis are a non-Muslim ethnic Kurdish group whose religion bears similarity to Persian Zoroastrianism. Nothing has been heard about the fate of 33 Yazidis arrested in Mosul in 1996. The Chaldeans and the Assyrians are among the several non-Arab groups (including Kurds and Turkomen) subjected to expulsion from the Kirkuk region. Neither is allowed to teach in their own language, whether their schools are located in the Kurdish north or in the Arab government-controlled part of the country. Assyrians charged in 1999 that Kurdish forces affiliated with the KDP attacked or blockaded eight Assyrian in the north. Adherents of the majority religious denomination in Iraq, Shi'a Islam, have also been subjected to brutal repression at the hands of the Baa'thist, minority Sunni, government.

Rafha Camp: Although not located in one of the countries visited by USCR-ECRE on this occasion, there exists a comparable, though smaller, closed camp population for Iraqi refugees. This is the Rafha camp in northern Saudi Arabia, home to about 5,000 Iraqi refugees unable to return to Iraq and not permitted to integrate locally in Saudi Arabia. The refugees have been living in Rafha for more than ten years in desolate and prison-like conditions. These refugees are the remainder of a group of some 33,000, mostly Shi'a, Iraqis, whom coalition forces

evacuated to Saudi Arabia after Saddam Hussein crushed their uprising in the immediate weeks following the 1991 Gulf War cease-fire.

While living conditions in Rafha are difficult for everyone, they are particularly harmful to women and children. Saudi authorities allow Iraqi refugee women to move about the camp only when fully veiled and in the presence of a male escort. This policy has an isolating effect on these women, whose modes of dress and social interaction tended to be far more liberal in Iraq. Also deeply troubling is the fact that one-fourth of the camp population are children under the age of nine who have known nothing but life in the camp. A full 40 percent of the camp population are refugee children under the age of 18. For these children, Rafha is a dead end.

Rafha stands as an example of how resettlement can be used to leverage international burden sharing. The United States resettled more than 12,100 Iraqis from Rafha between 1991 and 1997. Other countries accepted another 12,600, with Iran, Sweden, Australia, and Canada taking the largest numbers. Most resettlement activity ceased after 1997, however, and thousands of refugees remained in limbo.

When the United States closed its resettlement programme in Rafha in 1997, it appeared that most of the remaining refugees did not wish, or were ineligible, to resettle to the United States. Most hoped instead to repatriate or resettle to other Muslim countries. However, the passage of four more difficult years in the camp without any movement on durable solutions understandably has led many refugees to change their minds. According to a UNHCR survey, about two-thirds of the refugees in Rafha now are actively seeking resettlement, while the remaining third wish to remain in Saudi Arabia pending repatriation. Those refugees who did not seek resettlement in the mid-1990s because they were holding out hope that they would be able to repatriate safely to their homeland should not now be penalized, more than four years later (and more than ten years after their original displacement), for deciding that repatriation is not a viable option and that they must get on with their lives.

RECOMMENDATION

23. During visits to the regions, ECRE-USCR found the following vulnerable populations would be eligible for resettlement according to the criteria of the UNHCR Resettlement Handbook: Refugee Women at Risk in Dadaab; African refugees in Turkey and Syria; Somali Bantu refugees in Kenya; Sudanese "Lost Girls" in the Kakuma camp; residual caseload of Sudanese "Lost Boys" in Kakuma camp and in Ethiopia; Sudanese 'protection' cases in the Dadaab camp; Sudanese and Iraqi Refugees in Lebanon; Iraqi refugees whose persecution or fear of persecution is based on actual or imputed association with EU or other Western governments; persecuted religious groups in Iraq; and Iraqi refugees in the Rafha Camp.

d) Urban Refugees/Irregular Movers

In many parts of the world, UNHCR offices take an extremely restrictive interpretation of “irregular movers” that at times appear to contradict their own policy guidelines. Although the relevant UNHCR Executive Committee Conclusion (58) defines “irregular movers” as refugees and asylum seekers who have already found protection in a country and feel “impelled to leave due to the absence of educational and employment possibilities and the non-availability of long-term durable solutions...,” UNHCR offices often deny resettlement opportunities to refugees who have moved irregularly from first-asylum countries that do not, in fact, offer secure protection.

Critics maintain that in applying this overly restrictive concept, some UNHCR offices appear to have compromised their protection mandate in an effort to combat the unauthorized migration of refugees and to conserve their scarce resources for refugee care and maintenance by discouraging urban refugees and seeking to maintain refugees in camp settings.

The problem is particularly evident in Ankara and Nairobi. In Nairobi, the “irregular movement” is from the Dadaab and Kakuma camps to the city. Contrary to Articles 31.2 and 26 of 1951 Convention, the Kenyan government bars refugees from living or moving outside the camps. With some exceptions, UNHCR generally abides by the Kenyan government’s rules and makes neither assistance nor resettlement available to refugees living in Nairobi.

In Turkey, the problem has both an internal and external aspect. Internally, undocumented asylum seekers are required to register at the police station at their nearest point of entry, usually in the “state of emergency” zone along the borders with Iraq and Iran, and, after recognition, are directed to live in “satellite cities” outside the major population centres. The Turkish authorities have barred recognized refugees with firm offers of resettlement from legally exiting the country for failure to have met these and other procedural requirements. Knowing how strict the Turkish authorities are on this question, UNHCR, in turn, discourages irregular movement by directing applicants to border police stations and recognized refugees to satellite cities.

Externally, UNHCR has applied the irregular mover policy to Iranians who entered Turkey via Northern Iraq. Because UNHCR has a presence in Northern Iraq, UNHCR has taken the position that they ought not to move on to Turkey from there. However, UNHCR cannot begin to guarantee their safety in Northern Iraq. Most disturbingly, UNHCR has agreed with the authorities in Baghdad that refugees among this group accepted for third-country resettlement must first pass through Baghdad controls before entering Jordan or another transit country. Iraq has stated that it does not recognize the Iranians in northern Iraq as refugees and opposes their resettlement to third countries. Many refugees, therefore, are understandably fearful about passing through Iraqi Government controls

and often prefer to escape northern Iraq on their own, both because of threats to their personal safety as well as to seek a safer venue to wait for a resettlement offer. Citing its “irregular mover” policy, UNHCR has, in the past, routinely rejected requests for assistance or resettlement for Iranian refugees who have moved spontaneously from northern Iraq to Turkey or other countries. However, in 2001, UNHCR for the first time referred some Iranian irregular mover cases from Ankara for resettlement, an important breakthrough.

RECOMMENDATION

24. In cases of “irregular movers,” resettlement countries should offer resettlement as a means of helping UNHCR to establish a safer, more orderly, and more effective means of moving these refugees out of insecure areas; to find durable solutions on their behalf; and to reform its “irregular mover” policy to make greater allowance for people who must continue to move to seek protection.

2.1.5 Family Reunification

The principle of reuniting families separated by war and persecution is uncontroversial on its face. Problems quickly arise, however, in the definition of a “family” and how the notion of “separation” should be understood. Critics of a broader definition of the family unit have argued that broad definitions could lead to many more applications than the resettlement countries are willing to accept, creating huge backlogs and frustration for the refugees. On the other hand, narrow family definitions have been criticized for showing cultural insensitivity to varying understandings of family—a particular problem with respect to Somali society.

Further to the discussions at the 2001 Annual Tripartite Conference on Resettlement (ATC), the notion of family composition should be rooted in an understanding of dependency. The need for family reunification is most evident when a person directly depends on another for his or her safety and economic and psychological well-being. Particularly dependent members of the family unit might include people who are not blood relatives, including foster children, who risk becoming unaccompanied minors (usually needing resettlement as a matter of urgency, where such need is established according to the principle of the best-interests-of-the-child). Persons tasked with registering refugees need to be trained to include such non-blood-related dependents in the initial case composition.

Family reunification also raises the nagging but unavoidable question of fraud: How to verify the credibility of family composition in the absence of credible documentation or registration. Concerns relating to the fraudulent misrepresentation of family composition, particularly in its Africa programme, preoccupy the US Bureau of Population, Refugees, and Migration (PRM), which oversees the US refugee admissions programme. Comparable govern-

ment bureaus in the EU contemplating refugee family-unity programmes would likely share such concerns.

Resettlement experts in the field repeatedly emphasized to ECRE-USCR the importance of an early, accurate and up-to-date registration process of refugees, in a non-resettlement context, as the prerequisite to a credible resettlement programme. The simplest antidote to fraud is careful and accurate tracking of a refugee's identity throughout the process. Accurate case composition and an RSD should be completed as early as possible, and certainly prior to resettlement consideration. Refugee case files should accurately identify the case through photographs of each family member, attached to the file in a tamper-proof manner. In the same way, refugee case files should be stored in a controlled and secure facility. If the bio data in the refugee's case file is accurate, subsequent petitions for family reunification can be compared with that information and establish confidence in the legitimacy of the request for family reunification. Without good initial registration the task of verifying family composition at a later date for purposes of family reunification becomes much more difficult.

RECOMMENDATIONS

25. Demonstrated dependency should be the governing principle in determining the need for and priorities in family reunification.

2.1.6 Paying for Resettlement

As with asylum processing, the screening and resettlement of refugees from overseas is a labour-intensive process, the cost of which runs in the thousands of dollars per refugee resettled. In 2001, for example, the US per capita cost of resettlement was about \$1,770, which does not include the considerable cost of programmes geared toward assisting refugees integrate in the United States.

The price of resettlement also raises the question whether this the best use of the limited funds available for humanitarian programmes. The query is similar to the one posed by former UK Home Secretary Jack Straw who, in a February 2001 speech that advocated an enhanced regional approach to assisting refugees, contrasted the estimated \$10 billion that developed countries spend annually on their asylum procedures to process the claims of about half a million asylum seekers with UNHCR's annual budget of about \$1 billion to assist millions of refugees.⁷⁹ While seductive in its simplicity, the argument that governments could reprogram all or substantial amounts of funding from asylum to overseas assistance is a false choice.

While overseas assistance needs for refugees are a real and pressing priority, it would be wrong to conclude that resettlement has no place in providing solutions for refugees. While more costly than providing care and maintenance to refugees in most countries of first asylum, resettlement serves the important function of providing protection to a limited number of individuals without other

options. Unlike care and maintenance assistance, resettlement also provides a durable solution for refugees at risk in insecure countries of first asylum as well as for long-stayer refugees who have little hope of repatriation and limited rights in countries of first asylum.

Done well, refugee resettlement has other benefits that are impossible to measure in monetary terms. As an act of responsibility sharing, resettlement can play a role in accomplishing the broader goal of enhancing protection for thousands, if not millions, of other refugees for whom admission to western countries will never be a possibility. Ideally, resettlement should be used to create additional leverage with other countries—so that countries of first asylum will keep their doors open to provide at least temporary asylum in the immediate vicinity of conflict and so that other more distant countries will also be encouraged to share in the responsibility for resolving the plight of refugees. While this report has highlighted the many protection problems for refugee in the countries visited for this study, USCR's and ECRE's fieldwork also strongly suggests that far greater numbers of refugees would be treated substantially worse were it not for the "asylum space" that resettlement helps to create.

Finally, there are political and educational benefits to resettling refugees, as shown by the outpouring of public generosity in Europe and the United States toward Kosovar refugees evacuated from Kosovo from Macedonia during the Kosovo crisis in the spring of 1999. The resettlement of these refugees (on a temporary basis in Europe and permanent basis in the United States) helped to educate the public about the plight of refugees and generated considerable public support, not just for refugee resettlement but for other humanitarian programmes as well.

In his February 2001 speech, Jack Straw said that "Any moves towards the implementation of ideas for processing claims overseas or substantial resettlement programmes will have to be in parallel with driving down the numbers of unfounded applications." The real prospect that an EU overseas resettlement programme would not, at least in the near term, succeed in reducing the number of asylum applications in Europe raises the question of how to pay for a substantial new resettlement programme. Clearly, an EU resettlement programme could not operate without substantial government funding. However, there are examples of public-private partnerships to help defray the costs of refugee resettlement. For instance, in addition to the 7,300 government-assisted refugees that Canada resettled in 1999, the Canadian government also resettled some 2,300 refugees under a private-sponsorship programme. Under the programme, organizations with sponsorship agreements with the government or any group of five Canadian citizens agree to cover the costs of a refugee's first year in the country. The additional private funds effectively create more resettlement opportunities. The programme has the added benefit of fostering the involvement of private citizens with refugees, which, as outlined above, helps educate and create popular and political support for refugees and humanitarian programmes.

RECOMMENDATIONS

26. While funding for refugee resettlement should not come at the expense of overseas assistance funding for refugees, EU members and other prospective resettlement countries should recognize that the benefits of resettlement go beyond providing protection and durable solutions to individual refugees. As an act of responsibility sharing, resettlement helps to alleviate the burden on poorer first-asylum countries and encourages yet other countries to do their part. Resettlement also helps to create public and political support for refugee and other humanitarian programmes.

27. While government support will be crucial to fund most of the costs of an EU refugee resettlement programme, the EU should explore other models, such as the Canadian private-sponsorship programme, of public-private partnership to fund any resettlement programme.

3 THE PRINCIPLE OF RESPONSIBILITY SHARING AND COMPREHENSIVE APPROACHES TO REFUGEE CRISES

3.1 The Principle of Responsibility Sharing

Responsibility sharing has always been a central element of the international framework of refugee protection. The Preamble to the 1951 Refugee Convention acknowledges, *“that the grant of asylum may place unduly heavy burden on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation.”* The principle of international solidarity has been reaffirmed in a number of EXCOM Conclusions.⁸⁰ More recently at a meeting of States Parties, convened to mark the 50th anniversary of the 1951 Geneva Convention, a Declaration was adopted stressing that the refugee protection regime *“is enhanced through committed international cooperation in a spirit of solidarity and effective responsibility and burden-sharing among all states.”* States Parties committed themselves to *“providing better refugee protection through comprehensive strategies (...) in order to build capacity, in particular in developing countries and countries with economies in transition, especially those which are hosting large-scale influxes or protracted refugee situations, and to strengthening response mechanisms, so as to ensure that refugees have access to safer and better conditions of stay and timely solutions to their problems.”*⁸¹

Beyond rhetoric, the principle of international solidarity has hardly held out against reality. There is presently no clear understanding of what the concept of responsibility sharing should encompass. Generally, it is assumed that only financial contributions of more devel-

oped countries are insufficient for a full commitment to the principle.⁸² In 1998, UNHCR prepared a discussion paper on the subject of responsibility sharing.⁸³ Here it was noted that large refugee and returnee populations may impede or jeopardize the development efforts of developing countries, in some of which the largest refugee and returnee concentrations can be found.⁸⁴ The paper called for an in depth discussion into the necessity of responsibility sharing, its goals and objectives, its structure and participants. It suggested that, *“where asylum in the region is considered as an element of burden-sharing, due consideration should be given to the lack of capacity of countries neighbouring the country of origin to absorb refugees, and to the need for regular consultations with neighbouring countries most affected by the exodus in order to assess and respond to their assistance requirements.”* It proposed that comprehensive approaches to responsibility sharing can cover issues beyond protection, assistance and durable solutions for refugees and returnees. With regard to a future structure for responsibility sharing arrangements, it is noted that a more systematized mechanism would enable states to respond in a more efficient, equitable and consistent way to refugee or returnee situations.⁸⁵ Systematisation however at the global level should ensure that the necessary flexibility is not lost.

More recently, the Agenda for Protection adopted by the 53rd session of the UNHCR Executive Committee in October 2002, outlines a range of objectives under the broad goals of “sharing burdens and responsibilities more equitably and building capacities to receive and protect refugees”⁸⁶ and “redoubling the search for durable solutions.”⁸⁷ These include better responsibility sharing arrangements to shoulder the burdens of first asylum countries both in mass influx and protracted refugee situations; more effective cooperation to strengthen protection capacities in refugee-receiving countries—including the targeting of financial and technical assistance to boost the capacity of countries of first asylum to meet basic protection needs and provide essential services;⁸⁸ and realisation of comprehensive durable solutions strategies especially for protracted refugee situations.⁸⁹ The Agenda also calls for a more effective use of resettlement as a tool of responsibility sharing, and suggests that states consider allocating development funds to programmes that simultaneously benefit refugees and local populations in host countries.

The High Commissioner has been championing this last issue, stating that there could be no durable solutions for Africa’s refugees and returnees unless they were fully integrated in the development process. An example of such an approach is the so called Zambia initiative, originating in 2001, which aims to encourage donors and development agencies to contribute to the development of refugee-hosting areas in the western province of Zambia, a poor and under developed area which hosts sizeable numbers of refugees.⁹⁰ At the 53rd session of the Executive Committee, the High Commissioner called for the development of protection tools in the form of multilateral “special agreements” to complement the 1951 Convention. These

have been termed “Convention Plus.” The agreements will aim to set up “joint arrangements in areas where multilateral commitments are called for and where the are negotiable.”⁹¹

Developed countries have mainly paid lip service to the idea of responsibility sharing beyond some few examples whereby a number of countries co-operated in the development of comprehensive approaches to specific refugee crises. They have increasingly sought to shift responsibility to provide refugees with adequate protection to countries in regions of origin through the introduction of new concepts such as the so-called safe third country concept or through the signing of readmission agreements with countries refugees have transited through. At the same time, countries ‘in the region of origin’, hosting large refugee populations have reacted to these developments by showing decreasing willingness to provide protection to refugees.

In Europe, debate on responsibility sharing originates from discussions, initially within the context of former Yugoslavia, on how to cope with mass influx situations within the European region—with the focus being on sharing responsibility within the European Union rather than developing a global system of solidarity with third countries outside the EU. In this regard, the European Commission issued a Communication in February 1994 proposing the “development of a monitoring system for absorption capacities and creation of a mechanism which would make it possible to support Member States (MS) who are willing to assist other Member States faced with mass influx situations.”⁹² Such a system would fall short of a formal burden sharing arrangement but would increase the probability of support between Member States in situations of “absorption problems.”⁹³ During the same year, the German government holding the EU Presidency presented a Draft Council Resolution on Burden Sharing with Regard to the Admission and Residence of Refugees.⁹⁴ The Draft proposed a system of distribution that could be used by Member States based upon Member States’ percentage of the total Union population, percentage of Union territory and percentage of the Union’s Gross Domestic Product. In view of the controversy caused by the Draft’s provisions setting out a system of distribution, a number of less detailed proposals were presented by some Member States leading to the development of limited consensus on burden sharing illustrated in the adoption in 1995 of a Council Resolution on Burden Sharing with regard to the Admission and Residence of Displaced Persons on a Temporary Basis.⁹⁵

Rather than providing a precise way of distributing displaced persons, the 1995 Resolution provided that “the burden in connection with the admission and residence of displaced persons on a temporary basis in a crisis could be shared on a balanced basis in a spirit of solidarity taking into account... a) the contribution which each Member State is making to prevention or resolution of the crisis...in particular by the supply of military resources... and by the measures taken by each Member State to afford local protection to people under threat or to provide hu-

manitarian assistance. b) all economic, social and political factors which may affect the capacity of a Member State to admit an increased number of displaced persons under satisfactory conditions.” The Resolution was followed by a Decision on Alert and Emergency Procedure for Burden-Sharing with Regard to Admission and Residence of Displaced Persons on a Temporary Basis which lays down the procedural framework for Council decisions and monitoring in burden sharing situations.⁹⁶ At the time, ECRE commented the ongoing efforts of European States to establish a system of sharing responsibility recognising that the lack of responsibility sharing agreement in Europe during the crisis in former Yugoslavia, resulting in several states bearing a clearly disproportionate share of the reception responsibility was a major factor in the decision of those states to impose visa restrictions on refugees fleeing Bosnia.⁹⁷

More recently, the question of responsibility sharing in the context of the EU has been addressed in three distinct ways. Firstly, in the context of discussions on temporary protection in the event of a mass influx of displaced persons, a Council Directive has been adopted on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.⁹⁸ Chapter VI of this Directive titled Solidarity provides that “Member States shall receive persons who are eligible for temporary protection in a spirit of Community solidarity. They shall indicate—in figures or in general terms—their capacity to receive such persons.”⁹⁹ If the number of those eligible for temporary protection exceeds reception capacity, the Council of the European Union will examine the situation and take appropriate action including recommending additional support for Member States affected.¹⁰⁰ Secondly, responsibility sharing has been considered in the context of the 1997 Dublin Convention and the Dublin Regulation recently adopted by the Council setting out the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national.¹⁰¹ Thirdly, responsibility sharing has been the principle underlying Community Actions undertaken under the European Refugee Fund established in 2000 to support and encourage Member States’ efforts in receiving refugees and displaced persons.¹⁰²

To date, there has been little progress in the establishment of a global responsibility sharing system that provides for cooperation among States in a true spirit of international solidarity. Recently, the Council of the European Union has invited the European Commission “to develop concrete proposals before the end of 2004 on the refugee burden issue to the direction of distributing such a burden in a more equitable way that would give support and encourage developing countries to host refugees. In its proposals the Commission is invited to elaborate further on strengthening the use of development cooperation in the search of solutions for refugees, in return and reintegration as well as local integration.”¹⁰³

The following section will consider examples of comprehensive approaches that have involved cooperation among states in regions of origin and donor/resettlement countries in the case of specific refugee crises and identify recommendations for the future development of such plans.

RECOMMENDATIONS

28. The international community through the offices of the Executive Committee of UNHCR should take steps to develop an effective, concrete and visible system of responsibility sharing that provides effective protection to refugees and is in line with the principle of international solidarity.

29. Responsibility sharing - financial support to countries of first asylum as well as providing protection to refugees in countries outside the region of origin should be the overriding principle to be used while developing comprehensive approaches to crises or protracted situations involving large numbers of refugees.

30. The international community must focus more on and give greater attention to resolving conflicts that are the root of the most protracted refugee situations. UNHCR's proposed review of all protracted refugee situations is very important in this context.¹⁰⁴ This should involve an analysis of the specific characteristics of its situation, and develop proposals as to how various responsibility sharing mechanisms could possibly contribute to finding durable solutions.

3.2 Comprehensive Responses to Specific Refugee Situations

An important manifestation of responsibility sharing are complementary solutions in refugee situations involving a range of actors. Such solutions important to pursue as protection of refugees is best realised through durable solutions.

There have been some efforts to develop comprehensive responses to specific refugee situations. There have been initiatives taken as a reaction to crisis situations, where there were mass-outflows of refugees, and other initiatives to solve existing refugee situations within the framework of a stabilization or peace process.

In 1992, an internal working group within UNHCR identified three indicators of situations appropriate for the adoption of comprehensive approaches to refugee problems: a) where an entire region or cluster of countries is affected by a common refugee problem or cause of flight, and where its solution implies a sub-regional or regional approach; b) where major obstacles to asylum and solutions (such as conflict or concentration of military power) are beyond UNHCR's capacity alone to influence or overcome; and c) where there is a need for UNHCR to

serve as a bridge between national, regional and international initiatives to address refugee-related problems.

In 1993, UNHCR's Executive Committee highlighted the importance of addressing prevention, protection, and solutions on a comprehensive regional basis¹⁰⁵ and consequently in May 1994, UNHCR undertook an overview of past comprehensive and regional approaches to refugee problems.¹⁰⁶ In this document, a comprehensive approach was defined "*in the broadest sense, (as) one in which a variety of different but concerted measures are brought to bear in an effort to break the cycle of exile, return, internal displacement and exile. The ultimate goal of such an approach is to promote the overall stability of the society and respect for the rights of its citizens, including refugees and returnees, and thus to remedy the factors causing displacement. The maintenance of peace and security, the promotion of economic and social development, and respect for human rights must be considered essential elements of any fully comprehensive approach. More narrowly, the concept can be understood in terms of both the actors (governmental, inter-governmental and non-governmental organizations, as well as affected communities and individuals) and components (political, peace-keeping, humanitarian, human rights, developmental).*" UNHCR points out that, given the diversity of situations, there cannot be a universal blueprint. "*The nature of measures will fluctuate, not least depending on whether the emphasis is on prevention, protection or solutions, and all aspects may be present in varying degrees. The essence of comprehensive arrangements is that the various components should be interlocking and mutually reinforcing.*"

In October 1996, EXCOM adopted a Conclusion¹⁰⁷ in which it stressed the importance of comprehensive approaches by the international community to the problems of refugees. It referred to the International Conference on Central American Refugees (CIREFCA) and the Comprehensive Plan of Action for the refugee situation in South East Asia (CPA) which were applied to protracted refugee situations, emphasized the importance of addressing root causes, and underlined the value of regional cooperation in addressing involuntary displacement in a manner which encompassed the political dimension of causes. The Conclusion provided a list of principal elements of protection based approaches, including the promotion of the rule of law, respect for the institution of asylum and international protection, measures to reinforce responsibility sharing, support for long-term sustainable development, support for rehabilitation, reintegration and reconstruction and reconciliation measures in post conflict situations. Since the adoption of the EXCOM Conclusion, the comprehensive approach, with CPA and CIREFCA as the main successful examples, has been seen suggested in many strategy papers and discussions as a possible solution for specific refugee problems.¹⁰⁸

In 2002, UNHCR's Agenda for Protection stressed the need to enhance the refugee protection regime through committed international cooperation; specifically Goal 3 calls for the need for the sharing of burdens and responsibilities more equitably and the building of capacities to

receive and protect refugees, while Goal 5 calls for the redoubling of the search for durable solutions.

Most recently, during the 53rd session of the UNHCR Executive Committee in October 2002, the High Commissioner for Refugees called for the development of new arrangements and tools of protection in the form of multilateral “special agreements” to complement the 1951 Convention or ‘Convention Plus.’ In the beginning of 2003, the Department of International Protection provided some clarification on the concept of “Convention Plus,”¹⁰⁹ reflecting on the legal basis of the proposed special agreements, and referring to the Comprehensive Plan of Action for the Indo-Chinese Refugees as a potentially useful model. Some specific suggestions for agreements were presented, relating to responses to situations of mass-influx, the use of targeted development assistance to achieve more equitable burden sharing and to promote self-reliance of refugees and returnees; multilateral commitments for resettlement and roles and responsibilities of countries of origin, transit and destination in secondary movements situations. With regard to secondary flows, UNHCR stressed that there is an explicit need for a better understanding of a number of key issues such as, *inter alia*, the meaning of the concept ‘effective protection’ in countries of first asylum, as well as responsibility sharing in relation to countries of first asylum, particularly with a view to strengthening protection and reception capacities.

Though very different, there have been three regional comprehensive approaches which have had particular impact upon specific refugee situations and are consequently worth of consideration in some detail: the Comprehensive Plan of Action for the refugee situation in South East Asia (CPA), the International Conference on Central American Refugees (CIREFCA), and the Humanitarian Evacuation Programme (HEP) for refugees from Kosovo.¹¹⁰

3.2.1 Comprehensive Plan of Action for Indo-Chinese Refugees (CPA)

The end of the Vietnam War in 1976 and the subsequent border conflicts between Vietnam and China, triggered a flow of great numbers of Vietnamese refugees. Until the end of the eighties, the international response to the problem of Indo-Chinese refugees had been a combination of temporary asylum in countries in the region and resettlement. This approach however, whereby several western countries agreed to take refugees in exchange for guarantees that the possibility of first asylum would be maintained in neighbouring countries in the region, seemed to encourage additional migration from countries of origin. Moreover, as resettlement possibilities diminished, first countries of asylum were left with large numbers of displaced people within their borders. This was at a time when persons continued to leave their countries of origin, increasingly, according to their own statements, for economic reasons rather than persecution.

With the Conference on Indo-Chinese Refugees, held in June 1989, the international community tried to

design a new and comprehensive approach (see also section 2.1.1 Developments in Resettlement Policy), which would safeguard the protection of refugees and enable the repatriation of non-refugees, taking into account the concerns of the countries of origin, the countries of first asylum, as well as the resettlement countries.¹¹¹ The Plan of Action, adopted at the Conference, meant a new approach. The CPA contained five mechanisms through which the countries of origin, countries of first asylum and resettlement countries cooperated to resolve the refugee crisis in Southeast Asia: an Orderly Departure Programme (ODP) to prevent clandestine departures, guaranteed temporary asylum by countries in the region, individual refugee status determination for all new arrivals, resettlement to third countries for those recognized as refugees, and facilitated return for rejected claimants.¹¹²

Displaced persons were to be interviewed by UNHCR to determine their status as refugees. Those ‘screened in’ as refugees were eligible for third country resettlement. Those ‘screened out’ were to voluntarily repatriate—with UNHCR’s assistance, to their countries of origin. Under the CPA, UNHCR arranged the large-scale voluntary repatriation of screened-out Vietnamese boat people, then residing in various camps and detention centres throughout the region. Between 1989 and 1998, 110,000 Vietnamese boat people returned to Vietnam from the camps/detention centres in the Association of South-East Asian Nations (ASEAN) countries, Hong Kong and Japan. Within the CPA framework, UNHCR provided direct assistance to returnees in the form of a repatriation cash grant. In addition, in line with a Memorandum of Understanding, signed in 1988 with Vietnam, UNHCR conducted widespread post-return monitoring, carried out to verify that the amnesty given to all returnees who had left the country illegally was respected, as well as to assist the returnees in their reintegration. Expatriate, but also Vietnamese speaking monitoring staff, individually monitored some 40 percent of the returnee caseload. Through the repatriation process, UNHCR also funded some 700 small-scale community based development projects, mainly in provinces with a high concentration of returnees.¹¹³

The CPA was effectively concluded for ASEAN countries in 1996 and for Hong Kong in 1997, however UNHCR’s presence in Vietnam continued to be required mainly to complete post-CPA related activities. In 1998-1999, while progressively scaling down, UNHCR continued to monitor activities focusing on returnees who were repatriated during 1996 and 1997.

Though the CPA helped to resolve the situation of the Vietnamese boat people and tens of thousands of refugees were resettled, it nevertheless met with a lot of criticism.¹¹⁴ First, RSD procedures in the region varied considerably, were often inadequate and were premised on the assumption that the ‘boat people’ were predominantly economic migrants, not refugees. Second, the low standards of care and maintenance in asylum centers were reported to frequently violate international standards, mo-

tivated by a desire to deter future asylum seekers. Third, scholars have argued that the conditionality of asylum for resettlement runs contrary to the principles of international law. Fourth, incidences of forced return of failed asylum seekers were frequently denounced by human rights organizations. Finally, it has been argued that the CPA created a 'market system' where immigration and political considerations overshadowed asylum considerations and which was dominated by US geopolitical interests.

The agreed Refugee Status Determination (RSD) procedure provided for under the CPA, represented the first time that the international community had decided upon a screening mechanism on a region-wide basis, involving the active participation of governments of countries of first asylum, which had no previous experience in this work. The primary determinate for being 'screened in' under the RSD procedure was whether the person was in need of international protection. The five ASEAN countries of first asylum each designated government officials who would be involved in the RSD procedure. UNHCR was tasked to train these officials, who came from various backgrounds and had no experience in refugee law and protection. In all countries the RSD procedures provided for review of first instance negative decisions, but the procedures varied, as did UNHCR's role in the procedures. The fact that the RSD exercise was undertaken with UNHCR supervision and assistance partly reduced the potential for inconsistencies in approach and outcomes.

However, the regional average of screened out Vietnamese boat people was between 60 and 70 percent, and this has led to serious charges of procedural deficiencies and the unfair application of the RSD criteria.¹¹⁵ Commentators highlighted the very limited access to outside legal assistance that was available to asylum seekers in closed camps, the wide level of discretion in the interpretation of the refugee determination criteria and problems of application of the principle of family unity in the context of the broader concept of family in Vietnamese culture, marriages in the camps and long separations between family members.¹¹⁶ In January 1990, Amnesty International criticized the situation in Hong Kong stressing the flaws in the first instance as well as in the review procedure.¹¹⁷ UNHCR provided 6 staff to monitor the screening interview, but they could clearly not cover the 400 screening interviews each week, nor could they provide legal assistance to asylum seekers.

Inconsistencies in the RSD procedure partly reflected inherent contradictions within the CPA. The Plan of Action referred to international instruments and the need for the refugee determination criteria to be applied in a humanitarian spirit taking into account the special situation of the asylum seekers concerned and the need to respect the family unit. This called for the use of a more generous approach to status determination than normally applied in the context of the 1951 Refugee Convention. Such an approach however risked encouraging more persons to leave their country and seek protection. Further, under the Memorandum of Understanding with UNHCR,

Vietnam committed itself to ensuring that the voluntary return of refugees would take place in safety and dignity, including a waiver of persecution and of punitive and discriminatory measures. This led to considerable difficulties in any assessment of ongoing needs of international protection for persons leaving Vietnam.

Most criticism of the CPA concerned the fact that the repatriation was not really voluntary, which became increasingly a problem in the very last phase of the CPA when pressure on persons to return led to the use of force. Although the CPA explicitly stated that rejected asylum seekers should return voluntarily, thousands refused to do so and host governments used increasing levels of force to return them. With the completion of RSD procedures in March 1995 first asylum countries, including Hong Kong, began to shift their energies to clearing the Vietnamese from their camps.¹¹⁸ This shift towards favouring (involuntary) repatriation as the most desirable durable solution for the majority of Vietnamese boat people, not only exacerbated the already intolerable conditions within Hong Kong detention camps, but also led to violence by both government forces and camp inmates and resulted in security forces using disproportionate force in operations to transfer the Vietnamese to other detention facilities to prepare for the trip home. There were reports of situations in the camps where refugees, who had yet to sign up for voluntary repatriation, were shot, beaten, or forced to sleep outside without shelter.¹¹⁹

Finally, it has been argued that the CPA created a 'market system' where immigration and political considerations overshadowed asylum considerations and which was dominated by US geopolitical interests.¹²⁰

3.2.2 CIREFCA¹²¹

The International Conference on Central American Refugees (CIREFCA) was convened in 1989, the same year as the CPA. It came at the end of a decade where devastating civil conflicts had raged through El Salvador, Guatemala and Nicaragua and had uprooted some two million people in these countries out of a combined population of around 18 million. Around 300,000 of these people found their way to neighbouring countries, and several hundred thousands went to the United States and Mexico where they stayed, often without any legal status. More than one million people became internally displaced in their own country.

The CIREFCA conference followed the signing of the Scapulas II peace agreement in 1987, in which five Central American Presidents¹²² agreed to implement a regional peace and democratisation plan and formally declared that a solution to the refugee problem had to be an integral part of peace initiatives in the region. As the High Commissioner for Refugees stated, the impetus behind the Conference was the growing awareness of the need to find solutions to the problems of refugees and the conviction that this process could contribute to the efforts to achieve peace.¹²³ The Conference took place at a time when the

internal armed conflicts in three countries had not been resolved.¹²⁴

The CIREFCA process sought to set up forms of economic assistance on behalf of returning populations that also would empower communities; strengthen local authorities and NGO's; and encourage governments and donors to incorporate the poorest people from the poorest regions into development projects. Its Plan of Action contained a three-year regional programme—consisting of a voluntary repatriation programme, programmes for refugees and for internally and externally displaced—as well as the establishment of follow-up mechanisms. It contained wide-ranging commitments on the part of the seven countries¹²⁵ concerned, including: a) closing refugee camps; b) integrating the uprooted within wider development programmes; c) respecting basic principles of humanitarian treatment for all categories uprooted (refugees, returnees and displaced); and d) engaging in dialogue at country level, especially with NGOs, with the aim of achieving national reconciliation.¹²⁶

Although CIREFCA provided a common framework, and approach for attending to the needs of uprooted people, each country defined its own operation in somewhat different terms depending on different institutional arrangements and needs. Participation of NGO's was considered critical to the CIREFCA process. UNHCR and UNDP were entrusted with the technical support and follow up to the Plan of Action, which, in addition to their respective programmes in the seven countries, was expressed mainly through the CIREFCA Joint Support Unit (JSU). This Unit was funded and staffed jointly by the two agencies and played a key role in terms of technical support, resource mobilization and overall reporting throughout the process.

The Action Plan built on earlier UNDP plans for reconstruction and development in the region and carried forward UNDP's special economic programme for refugees and displaced (PRODERE). UNHCR developed Quick Impact Projects (QIPs), small scale micro-projects requiring a modest, one-time investment which were to be carried out locally. These projects were to assist UNHCR in promoting rapid and effective responses to immediate needs, while UNHCR avoided getting involved in lengthy and complex development processes. QIPs aimed at the rehabilitation of social and economic networks and productive infrastructure, reconciliation between returnees and neighbouring populations, and promotion of further development initiatives in returnee areas.¹²⁷

Coordination of development efforts proved to be problematic. Following the peace agreements in Nicaragua and El Salvador, national reconstruction plans were elaborated and presented to international donors and financial institutions. The plans were intended to include solutions for the problems linked to refugees and IDPs. They should have complemented the CIREFCA process but they did not. Unfortunately, the international support which was channelled through CIREFCA was only minimally coordinated with larger strategies of national recon-

struction. Moreover, international funding for the reconstruction plans was less than expected. This was probably due to, as well as resulted in, governments being unable to coordinate local and regional efforts and to incorporate grass roots initiatives. Thus, national reconstruction plans did not really affect the returnees.

Notwithstanding, has been considered a success, especially in promoting and securing either voluntary repatriation or local integration. A UNHCR evaluation summarized the achievements and shortcomings of the process.¹²⁸ Successes include, amongst others, that CIREFCA reinforced the regional peace and in turn, was strengthened by that process, that it achieved the commitment of the participating governments to respect human rights and attend the needs of the uprooted and raised the consciousness of those governments about their responsibilities towards uprooted populations and thus reinforced legal protection at national level. However, in terms of solutions, repatriation and reconstruction, CIREFCA did not sufficiently address the situation of internally and externally displaced.

3.2.3 The Humanitarian Evacuation Programme (HEP)¹²⁹

NATO air strikes on Serbia in March 1999, intending to end conflict in Kosovo led to escalating violence on the ground and a large scale outflow of refugees over the borders into Macedonia and Albania.¹³⁰ Half a million people arrived in these neighbouring countries in the course of about two weeks, and a few weeks later the total was over 850,000. The Macedonian government had stated from the outset, that it would be unable to host more than 20,000 refugees and engaged in frequent border closures to stress this point. It argued that if refugees were not moved in great numbers from Macedonia, the country would face serious destabilization because of the combination of geopolitical, ethnic and economic factors. Though the position of UNHCR during the first days of the crisis was that Macedonia was obliged under international law to keep its borders open and admit the refugees, it was nevertheless willing to discuss sharing schemes to find solutions to the crisis situation at the border.

As Macedonia threatened to withdraw support for NATO's military campaign in Kosovo, Western governments, moved by strategic political interests as well as humanitarian concerns,¹³¹ took the initiative and prepared a 'burden sharing package' that linked admission of refugees in Macedonia to a sharing scheme with third countries 'outside the region.' Within UNHCR there remained strong dissenting opinions on the conditionality of protection underlying this package as it compromised the principle of unconditional first asylum through open borders.

The Humanitarian Evacuation Plan (HEP) sought to facilitate access to temporary safety 'outside the region' of Kosovo Albanian refugees arriving in Macedonia.¹³² It was accompanied by a Humanitarian Transfer Programme (HTP), which, on a smaller scale, sought to transfer refu-

gees within 'the region' to neighbouring Albania. HEP intended to ease the pressure on Macedonia, thereby ensuring that it would continue to accept refugees reaching its border. UNHCR worked with states to develop and coordinate the evacuation and transfer programmes. It raised protection issues and produced guidelines to clarify standards. An initial United States sharing offer, involving the transfer of Kosovo refugees to Guantanamo base, illustrates the initial reluctance of states to cooperate in an evacuation programme. After strong criticism by human rights activists though, this proposal was changed in favour of admission to the United States mainland.

In the week following 6 April 1999, some 8,000 refugees were evacuated, and by the end of the emergency, almost 92,000 refugees had benefited from HEP in 29 host countries. The host countries did not offer refugees resettlement with the option to remain permanently, but only temporary protection. Registration of candidates for the evacuation programme was jointly conducted by UNHCR, IOM and OSCE, with logistical support provided by NATO. The selection criteria for HEP included: a) evacuation being entirely voluntary; b) respect for family unity; c) priority to most vulnerable refugees; d) consideration of family links in a particular country of destination; and e) refugees being medically fit to sustain travel.

The international response to the Kosovo crisis proved to be a complex exercise raising fundamental protection challenges. UNHCR commissioned an independent evaluation on its own performance.¹³³ Overall, the conclusion was that the refugees generally received adequate assistance. Notwithstanding, one of the key concerns raised was that UNHCR was not at all prepared for the crisis despite warnings by neighbouring governments of future large-scale refugee outflows in the event of air strikes. Firstly, UNHCR's focus on internal victims of the Kosovo conflict had caused a shift in institutional preoccupation away from the possibility that a large scale outflow of refugees might result to assistance for the internally displaced. According to the evaluation, "had UNHCR been more focused on its traditional refugee-specific mandate, it might have been more ready to prepare for worst-case refugee scenarios simply because refugees were its primary concern."¹³⁴ Secondly, donors felt that supporting planning for massive outflows would undermine the confidence in their own policy.¹³⁵ As a result, the possibility of the disastrous consequences of air strikes was discounted.

Other points of concern related to inconsistencies on the part of participating states concerning the implementation of evacuation criteria and conditions upon arrival leading to lack of clarity as to the HEP's actual purpose. While departures were to be voluntary and links to destination countries would as much as possible be taken into account, the refugees did not really have a choice about the country of destination. In reality, because of inadequate information regarding socio-economic rights and political conditions in the country of reception, people were unable to make a well-balanced decision on their destination.

Further, while UNHCR's official statements clearly and consistently distinguished the Humanitarian Evacuation Programme from its other programmes, the concepts of resettlement, humanitarian evacuation and temporary protection became blurred with some governments viewing the hosting of HEP beneficiaries as a permanent commitment while others saw it as a temporary expedient. This led to problems when the immigration status of many HEP beneficiaries, who did not repatriate as soon as the crisis was over, came to an end.

Coordination between so many involved, and often competing, organizations proved to be extremely complicated. UNHCR's role as lead agency, although poorly defined, mandated the organization to coordinate the UN agencies, but it had no clear legal mandate to coordinate other actors.¹³⁶ Some governments bypassed UNHCR and proceeded with evacuations based on their own criteria, thus contributing to UNHCR's difficulties of coordinating the operation and providing systematic information

With HEP, the international community reacted with a programme in a situation of mass outflow to relieve the pressure on Macedonia. There has been criticism from human rights organizations on the establishment of a sharing mechanism as pre-condition for a country to keep its borders open for refugees, as it would undermine the principle of unconditional asylum and would further accelerate restrictive policies of states towards refugees. Others however argued that the Macedonian positioning was a political fact and had to be recognized and that a pragmatic response was necessary to avert a humanitarian disaster at the border. These two clashing approaches continued to influence and to frustrate work on the ground.¹³⁷

RECOMMENDATIONS

31. Crisis and protracted refugee situations can sometimes be addressed through special comprehensive plans of action, composed by and under the responsibility of the international community and with participation of countries of origin, first asylum and third countries outside the region of origin. Past experiences have shown that such programmes can provide durable or temporary solutions to great numbers of refugees.

32. UNHCR and states should seek to identify situations for which a comprehensive approach could be applied, and consequently develop conditions and criteria as well as elements of organizational structures for implementation.

33. The development of comprehensive responses should be done on the basis of a multilateral approach involving a broad range of actors. Participating states (countries of first asylum, donor and resettlement countries, and where possible countries of origin) should firmly commit to such responses.

34. Countries, which are for long periods hosting large numbers of refugees from neighbouring countries, should receive recognition of the responsibility they have assumed. While considering durable solutions in the region, particularly local integration and voluntary return, donor states should define concretely how they can support countries of first asylum as well as countries of origin. States should focus on strengthening the reception and protection capacities of the host countries, and wherever possible also on improving conditions for safe and durable return.

35. Special attention should be given to developing or supporting possibilities to facilitate the local integration of refugees. This could be done through, inter alia, seeking suitable parts of the country on the basis of ethnic composition of the population, availability of land or other economic opportunities, presence of other refugees who already have established strong social and economical links.

36. Different forms of support should be considered, such as specially designed forms of financial support, as well as linkages with broader economic, development or other concerns of the countries involved.

37. Western countries should ensure that their national asylum policies, in particular those regarding the return of asylum seekers to transit third countries, do not jeopardize efforts to strengthen the protection capacity of countries of first asylum in regions of origin where there are protracted refugee situations. Similarly, when comprehensive approaches are developed to facilitate refugee returns from neighbouring regions to countries of origin, the return of refugees or asylum seekers from western countries should be considered as a part of such programmes.

38. While preparing for the return of refugees in post conflict situations, special attention should be given to the sustainability of return. The sustainability of return programmes is increased where return is voluntary. Measures should be taken to prevent that the return of large numbers of refugees will contribute directly or indirectly to new conflicts. Return should be considered in relation to the reconstruction process and not interfere with strengthening stability.

39. Criteria for assessment, standards of treatment, timeframe, systems for registration and documentation, as well as the overall organisational structure and the lead agency should be defined well in advance. Participating countries should commit themselves to the agreed upon organizational structure and substantial contents of the programme.

40. A humanitarian evacuation programme must not lead to closing or adopting national asylum systems for the particular group of refugees.

SEARCHING FOR NEW SOLUTIONS

The issues of immigration control, the right to seek asylum and the need to ensure access to protection for refugees has been a major issue on the European political agenda. Immigration and asylum questions touch on some of the most sensitive issues of national sovereignty and are central to how states define national identity and the conditions of membership of their societies. The admission and treatment of non-nationals have also recently become linked with the threat of international terrorism and national security concerns. How to balance state concerns about migration control with ensured legal access to asylum for those in need of protection is the key question confronting the EU and North America.

4.1 Figures and Trends in North America

Although the number of asylum applicants arriving in the United States has fluctuated during the past ten years, it dropped significantly beginning in 1997, the year after the U.S. government passed restrictive asylum and immigration legislation. Whereas more than 100,000 asylum seekers filed applications annually in the United States between 1992 and 1996 (peaking at 149,065 in 1995),¹³⁸ the number of asylum seekers arriving in the country fell to 85,000 in 1997 and decreased further in the following years to a low of 41,000 in 1999 before climbing back to 65,000 in 2001.¹³⁹

The composition of the U.S. asylum-seeker caseload is considerably different from that of Western Europe, with a far higher percentage of applicants entering the United States originating from countries in the Western Hemisphere. Of the 868,000 asylum seekers filing applications in the United States between 1992 and 2001, the largest number came from El Salvador (191,400), Guatemala (151,000), Mexico (66,000) and Haiti (50,500). During the last decade, the largest number of claimants arriving from outside the region came from China (58,800).¹⁴⁰ In 2001, the largest number of asylum seekers came from Mexico (9,178), followed by China (8,760), Colombia (7,280), and Haiti (5,068).¹⁴¹

Asylum applicants in the United States generally have enjoyed significantly higher approval rates than have their counterparts filing in EU countries. Between 1991 and 2001, the cumulative approval rate for all nationalities was 29 percent, with Iraqis enjoying the highest approval rate (84 percent), followed by Burmese (78 percent), Bosnians (73 percent), Sudanese (73 percent), Afghans (71 percent), and Somalis (70 percent). Asylum seekers belonging to the largest nationality groups fared less well; Mexicans has the lowest approval rate (1 percent), followed

by El Salvadorans (6 percent), Guatemalans (9 percent), Haitians (24 percent), and Chinese (27 percent). During 2001, Afghans had the highest approval rate (90 percent), followed by Burmese (89 percent), Iraqis (82 percent), and Somalis (81 percent).¹⁴²

Since 1996, upon an immigrant's arrival in the United States, an immigration officer may "order the alien removed from the United States without further hearing or review" if the officer determines that the alien arrived without proper documents. An exception is made if the alien "indicates an intention to apply for asylum...or a fear of persecution." If the individual who entered without inspection or with false documents makes an asylum claim, the immigration officer must refer him or her to an asylum officer. If the asylum officer determines that the alien does not have a "credible fear" of persecution, the officer may order the alien removed from the United States "without further hearing or review."

The legal standard for screening asylum seekers—a credible fear of persecution—requires potential claimants to demonstrate a "significant possibility...that the alien could establish eligibility for asylum" according to the "well-founded fear of persecution" standard used under current law for adjudicating asylum claims. Asylum officers must take into account the credibility of the asylum seeker and "other facts" known to the officer in making the credible fear determination.

An immigration judge may review the asylum officer's negative decision only if the asylum seeker requests it. The review must be conducted within seven days after the asylum officer's order. The power of an immigration officer to exclude an improperly documented person summarily, without further hearing or review, applies not only to persons just arriving, in the literal sense. It also includes any person (except for Cubans arriving by air) who has not been admitted or paroled into the United States and who has not been in the country continuously for at least two years.

The INS is required to detain all asylum seekers while the determination of credible fear of persecution is pending. After an asylum officer determines that an alien does have a credible fear of persecution, INS district directors have the discretion to continue to detain the alien while the asylum application is considered, or to grant parole. In 2001, INS district directors continued to vary in their willingness to release asylum seekers.

No judicial review of expedited removal orders is permitted, except for aliens who claim under oath that they have already been lawfully admitted for permanent residence, admitted as a refugee, or granted asylum.

After the September 11 attacks on the United States, the Bush Administration issued a series of rules concerning the detention and removal of immigrants. Immediately following the attacks, Attorney General John Ashcroft extended from 24 to 48 hours the amount of time he can hold a non-citizen in custody before charging the individual with an immigration violation and deciding whether or not the detainee should be released. "In the

event of an emergency or other extraordinary circumstance," the new rule gave the attorney general an indefinite period of time to detain a non-citizen, with or without charges.

In October 2001, President Bush signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, which contained numerous provisions that affect immigrants. The new provisions broadened the definitions of "terrorism," "terrorist activity," and "terrorist organization" for purposes of deportability and inadmissibility, created additional mechanisms for the attorney general to detain and deport a non-citizen as a terrorist, and established a new ground of inadmissibility for spouses and children of those inadmissible on terrorist grounds.

The USA PATRIOT Act also established new detention rules, mandating the detention of any non-citizen the attorney general "certifies" as a terrorist suspect, even if the non-citizen is eligible for or is granted relief from removal, including asylum. Under the new law, the attorney general has seven days to charge a detained non-citizen who is "certified" as a terrorist suspect with a deportable offense. However, a non-citizen need not be charged with a terrorism-related ground of removal in order to be subject to mandatory detention. A non-citizen detained under the provisions of the USA PATRIOT Act who has not been removed or whose removal "is unlikely in the reasonably foreseeable future" may be detained indefinitely "if the release of the alien will threaten the national security of the United States or the safety of the community or any person."

In November 2001, Ashcroft announced that the government would no longer reveal the number of people detained pursuant to the investigation of the September 11 attacks. Until the date of the announcement, the government had said that 1,182 people had been arrested, but did not disclose the detainees' names, places of detention, reasons for arrests, or the number of those released. Also in November, President Bush issued an order that allowed special military tribunals to try non-citizens charged with terrorism. Under the order, a tribunal has the authority to create its own trial procedures and requires only a two-thirds majority to convict and sentence. The tribunal can impose the death penalty; the proceedings can be secret and can be held anywhere in the world; and there is no right to review by any court.

4.2 Figures and Trends in Europe

With easier transport links and deteriorating human rights, security and economic conditions in many parts of the world, the number of asylum seekers travelling to Europe has greatly increased since the early 1980s. However, there have been peaks and troughs. Asylum applications grew from some 50,000 in 1983 to more than 684,000 in 1992. Since 1993 with increasing restrictionist measures through-

out Western Europe coupled with a decline in Bosnian asylum seekers with the signing of the Dayton Accords in November 1995, the numbers steadily declined, reaching about 276,000 in 1996. Since then, the numbers have progressively climbed again, reaching almost 420,000 in 2001. Of all the EU countries, Germany has been by far the largest recipient of asylum seekers during this period, frequently receiving more than 50 percent of the regional caseload. During the past three years, the United Kingdom has rivalled Germany as the leading recipient of asylum flows to Western Europe.

Where do these asylum seekers come from and what are their reasons for leaving their home countries? According to the Office of the United Nations High Commissioner for Refugees (UNHCR), in the period 1990-1999, the top ten source countries of asylum seekers and refugees in Western Europe were: former Yugoslavia, 25 percent (1,043,800); Romania, 9.4 percent (392,200); Turkey, 8 percent (335,900); Former USSR 4.7 percent (196,600); Iraq, 4.4 percent (184,800); Sri Lanka, 3.5 percent (145,900); Somalia, 2.8 percent (117,300); Afghanistan, 2.7 percent (113,300); Iran, 2.6 percent (108,800), and Bulgaria, 2.5 percent (106,300). Behind them came Democratic Republic of Congo with 2.3 percent and Pakistan and India, each with less than 2 percent. Other countries accounted for the remaining 29 percent.¹⁴³ In 2000, the top five source countries in Western Europe and the other 22 industrialized countries were the former Yugoslavia, Iraq, Afghanistan, Iran, and Turkey.¹⁴⁴ In 2001, the top five were Afghanistan, Iraq, Turkey, the former Yugoslavia, and China.¹⁴⁵

These statistics reveal certain trends. First, a relatively small number of nationalities account for the majority of asylum applicants in Western Europe: former Yugoslavia, Turkey, Iraq, and Afghanistan together make up nearly half the total. Secondly, people tend to seek asylum in their region or near-by regions; most asylum applicants in Western Europe in the past decade have come from Europe itself or from the Middle East or West Asia. Thirdly, the leading source countries have been the same for some years; former Yugoslavia and Turkey (except for 2000) have been among the top three every year since 1990, and Iraq has been a consistent number four or five (and in recent years number two). Lastly, these statistics indicate that most asylum seekers who have arrived in Europe during the past dozen years have come not to escape poverty *per se*, but frequently to flee grave internal disorder and civil strife or severe repression. The break-up of Yugoslavia in 1991 and the subsequent brutal conflict and ethnic cleansing led to a marked increase in refugees; human rights abuses, conflict and repression of their Kurdish minority populations have led to greater flows from Turkey and Iraq; conflict and persecution in Afghanistan, first by warlords and subsequently by the Taliban, caused an outpouring of refugees; a civil war and insurgency in Sri Lanka has resulted in a constant influx of Tamil asylum seekers; a failure in democratization and a simultaneous relaxation of border controls in Romania led to an increase in arrivals, particu-

larly of Roma (or Gypsies), to Western Europe.

A central feature of the mass character of recent population displacements is that people move because they fear political persecution and because their means of livelihood and their dignity have been stripped away from them. They leave because their families and communities have been disrupted by a series of violent shocks, the full effects of which they can barely comprehend, let alone measure and predict. In such circumstances people panic and flee to safety. Exodus is also fed by an intervening "migration industry" comprising agents, recruiters, organizers, fixers and brokers, some with links to international criminal syndicates, who sustain links to countries of origin and destination. Points of departure and arrival are also linked by friendship and kin and ethnic networks organized by migrants themselves.

In this complex situation, it is not always easy to differentiate between "migrants" and "refugees." As UNHCR has noted: "the distinction between voluntary and involuntary population movements, between the refugee and the so-called 'economic migrant,' is not always as clear and definite as it may appear to be."¹⁴⁶ In reality, persecution and violent conflict often overlap with, or may be provoked or aggravated by, economic marginalization, population pressure, environmental degradation or poor governance. UNHCR and the International Organization for Migration (IOM) have drawn attention to the fact that not only do refugees increasingly move within a broader mixed flow which includes both forced and voluntary movements but also even resort to migrant smugglers as one way to leave their country. At the same time, in the absence of viable, legal migration options to pursue, persons who are not refugees are nevertheless seeking to enter countries of their choice through the asylum channel, it being often the only entrance effectively open to them. It is not surprising, therefore, that "the line between migrant and asylum seeker progressively blurs in the public mind, just as does the distinction between migration control and refugee protection in the policies of States."¹⁴⁷ In its June 2002 *Agenda for Protection*, UNHCR identified improving protection for refugees within broader migration flows as a main goal of the refugee agency.¹⁴⁸

Faced with having to make distinctions between strong and weak claims for refugee status, and between forced and voluntary migration, between refugees and migrants, Western European governments have been granting a smaller percentage of asylum applicants either refugee status or humanitarian status during the last few years. UNHCR estimates that the Convention refugee recognition rate in the 38 mostly industrialized countries of Europe, North America, and Australia fell from 13 percent in 1999 to 12 percent in 2000, whereas the total recognition rate (that is, including those granted complementary, but lesser forms of protection) fell from 23 percent to 21 percent.¹⁴⁹ In the European Union, the proportion of asylum decisions resulting in Convention refugee status fell from 10 percent in 1999 to 8 percent in 2000, whereas the total recognition rate decreased from 20 percent to 19 percent.

There is also an increasing trend on the part of EU governments to grant some form of humanitarian status to asylum seekers rather than Convention refugee status. In 2000 the proportion of asylum seekers granted refugee status compared to the total number of asylum seekers granted humanitarian or another form of complementary protection fell from 50 percent in 1999 to 44 percent in 2000.¹⁵⁰

With the steady decline in asylum approval rates, governments maintain that widespread abuse of the asylum system exists in the West and that a substantial proportion of those who apply for asylum are not *bona fide* refugees but are opportunists or at best economic migrants. UNHCR has noted that “the increase in the number of arrivals of asylum seekers without the required documentation has raised concerns about the ability of States to control borders and access to their territory” and in response governments have renewed efforts to prevent irregular migration and to combat the smuggling and trafficking of persons.¹⁵¹ Politicians and the media not only perceive that their governments have lost control of their borders but they are also alarmed that increasing backlogs of asylum cases and rising costs exceeding \$7-8 billion per year put heavy strains on their asylum systems.

Many politicians now feel that the large amounts of money that the industrialized countries are spending at the national levels on processing a few hundred thousand asylum seekers annually could be better spent on the millions of refugees staying in the regions of origin. These concerns, combined with increased xenophobia and anti-refugee and anti-immigrant sentiments throughout Europe, have fuelled restrictionist tendencies and have led to a plethora of national exclusionary controls on access to EU Member State territories. Since September 2001 with the preoccupation of fighting global terrorism on the rise, these tendencies have been exacerbated with population movements not only being seen as threatening cultural cohesion and identity in Western countries, but also, in some cases, endangering national security. As a result, Western governments are undertaking ever-stricter measures to limit the number of asylum seekers arriving on their territory and applying for asylum.

Against this background, within the European Union, debate has mainly focused on the process of harmonisation of asylum policy at EU and the negotiation of a number of key asylum measures representing the “building blocks” of a Common European Asylum System. At the same time, some new approaches have been discussed in dealing with refugees.

4.3 EU: Asylum Issues and External Relations

The basis for European Union (EU) involvement in asylum policy derives from the objective of establishing the free movement of persons within the Union. Control of shared external borders is considered a necessary prerequisite for establishing freedom of movement within the Union. Against this background during the last decade,

EU Member States have sought to strengthen cooperation on immigration and asylum issues. They have committed themselves to creating an “*area of freedom, security and justice*”¹⁵² and embarked on a legislative programme to develop the principal elements of a common asylum and immigration policy.¹⁵³ In October 1999, at a special European summit in Tampere, Finland, EU leaders gave political impetus and strategic direction to the adoption of a common asylum policy, a common policy to combat illegal immigration, and a common policy to manage the integration of legal migrants. Further, they pledged to cooperate closely with countries of origin and transit and to adopt a common approach in the management of migration flows.

4.3.1 The High Level Working Group

Already in late 1998, in an attempt to integrate asylum and immigration concerns into all areas of EU external policy, the High Level Working Group on Migration and Asylum (HLWG) was established.¹⁵⁴ The HLWG was given the task of preparing cross-pillar action plans, integrating EU foreign and security policies, trade and aid relations, social policies, humanitarian aid, and immigration and asylum policies. The creation of the High Level Working Group on Asylum and Migration was a first step in the development of an integrated and comprehensive approach at EU level *vis-a-vis* extra-regional migration and refugee challenges. At the Tampere Summit, EU Member States endorsed the HLWG approach and called for partnership with countries of origin and transit. The underlying premise for such an approach was the belief that political dialogue, as well as trade and aid links, with countries of origin and countries of transit would more effectively address root causes of population movements. Such partnerships could also strengthen countries in the region that need assistance in coping with often large influxes of refugees and create conditions conducive to the return of migrants and refugees to their countries of origin.

Until 2002, the main initiative of the HLWG was to design so called EU Action Plans for Afghanistan/Pakistan, Albania and the neighbouring region, Iraq, Morocco, Somalia, and Sri Lanka. These plans analysed the political, economic, human rights and humanitarian dimensions of each of the six countries and suggested a list of practical, operational proposals both to increase cooperation with the countries of origin and transit and to enhance the capacity of EU Member States to manage migration flows. At the Nice European Council in December 2000, the HLWG gave a frank account of the difficulties in implementing its work.¹⁵⁵ It highlighted the problem of carrying out a comprehensive approach that integrated political, economic, and security fields, and questioned the compatibility of Justice and Home Affairs’ goals with EU foreign policy and development objectives. It noted that it had so far proved impossible to integrate policy initiatives targeted at migration with policies promoting development

objectives. It also highlighted the lack of human and financial resources available to implement the Action Plans.

One of the major obstacles to the implementation of the Action Plans was the lack of meaningful dialogue between the EU and the countries of origin and in the regions. International and regional political dynamics made it virtually impossible for the HLWG to negotiate with the major countries targeted in its Action Plans. Iraq as well as Afghanistan until recently, have for years been isolated and subject to sanctions imposed by the international community. Somalia has existed for the past decade or more without a functioning central government. Moreover, governments of transit and host states criticized the HLWG for acting unilaterally and not consulting them adequately. Finally, the HLWG seemed to have attached more importance to security and control of migration to western countries than to strengthening host countries in the region in providing protection to refugees and asylum seekers. In fact, it could be argued that very little was accomplished in implementing the protection related measures of any of the six Action Plans.

Following the Conclusions of the April 2002 General Affairs Council meeting,¹⁵⁶ which *“underlined the need for an integrated approach, ensuring the appropriate co-ordination between migration policy and the best use of all instruments available in the framework of the EU’s external relations,”* the HLWG’s mandate was modified.¹⁵⁷ The Group was given a leading role in the EU’s JHA external dimension and asked to *“promote the EU’s role in the efforts of the international community aimed at addressing the main causes for migration.”*¹⁵⁸ This has involved a move away from a restricted approach to a broader one that now includes the development of a strategic approach and a coherent and integrated policy for the most important countries and regions of origin and transit for asylum seekers and migrants. Under the new mandate, the HLWG is to analyse and monitor migratory trends, and propose measures and take initiatives to manage migratory flows. More emphasis is laid on strategic policy development, based on increased monitoring and analysis; a more flexible geographic scope to its work; more emphasis on regional approaches; real partnership with countries of origin and transit; and close involvement of Second Pillar Council working parties. Co-operation with international organisations such as UNHCR and IOM should also be enhanced, for example, through the joint submission of funding proposals for operational activity.

To date, the HLWG has brought about progress in the field of migration control measures and readmission. However, it does not seem to have contributed concretely to enhancing refugee protection. It is hoped that under its new mandate, the Group will provide the forum for the establishment of partnerships with countries of origin and transit on economic cooperation, trade expansion, development assistance or conflict prevention, which would potentially reduce the underlying causes of refugee flows.

4.3.2 External Dimension of EU Policies in the field of Justice and Home Affairs

In addition to its support for the work of the HLWG, the Tampere Council of October 1999, committed itself to integrating asylum concerns into the external dimension of EU policy. As noted above, the conclusions stated that *“the European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children.”* The conclusions called for greater coherence of internal and external policies of the Union with *“partnership with third countries (being) a key element for the success of such a policy, with a view to promoting co-development.”* They also called for stronger external action whereby *“Justice and Home Affairs concerns (were to) be integrated in the definition and implementation of other Union policies and activities.”*

In October 2001, within the framework of a European Conference on Migration organised by the Belgian Presidency of the EU to discuss the migration challenges facing the Union, the Presidency outlined its view on building a *“mutually beneficial relationship between the European Union and countries of origin and transit of irregular migration, with the aim of regulating migration streams and transforming them into constructive alternatives.”*¹⁵⁹ The Belgian Presidency underlined that EU migration policy should not rely exclusively on coercive measures: Rather, *“an existing tendency to focus our contacts with the countries of origin on issues in the field of JHA cooperation, rather than on foreign policy and development measures, should be counterbalanced.”*

In Seville, in June 2002, the European Council confirmed that the EU’s immigration policy concerns should be integrated into the Union’s relations with third countries.¹⁶⁰ Closer economic cooperation, trade expansion, development assistance and conflict prevention are named as being means of promoting economic prosperity in third countries and thereby reducing the underlying causes of migration flows. The Council urged that any future cooperation, association or equivalent agreement which the EU concludes with any country *“should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration.”* It also called for a systematic assessment of relations with third countries which do not cooperate in combating illegal migration. Lack of adequate cooperation would hamper the establishment of closer relations between the country and the Union.

How are the EU’s intentions of integrating refugee and migration concerns in relations with third countries to be realised? Since 2000 the European Commission Directorate-General for External Relations has been responsible for the preparation of Country Strategy Papers (CSPs). These papers set out EU co-operation objectives, policy responses and priority fields of co-operation based

on a thorough assessment of the partner country's policy agenda and political and economical situation. The papers have a 6-year timeframe, with a mid term review. The multi-annual indicative programme (MIP) attached to the strategy sets out the EU response in more detail, highlighting programme objectives, expected results and conditionality in the priority fields of co-operation. As there is general agreement that immigration policy should be broadly integrated into the Union's relations with third countries, Justice and Home Affairs concerns must be integrated in the CSPs. Is this possible though? Although difficult to provide an answer at this stage, it could be argued that the basic conceptual framework and principles underlying the work of Justice and Home Affairs and Development institutions within the EU and EU Member States are so different that it might be hard to integrate them into a single framework. Simply stated, development interventions aim at poverty reduction and institution building rather than supporting activities seeking to manage population flows into Europe.

In December 2002, the Commission presented the Communication *'Integrating migration issues in the European Union's relations with third countries.'*¹⁶¹ One part of the Communication analyses the phenomenon of international migration, elaborates how the EU's various external policies and instruments, including development policy, can make an important contribution in addressing the underlying causes of population movements. The second part represents an account of the financial resources available at Community level for repatriation of immigrants and rejected asylum seekers, for management of external borders and for asylum and migration projects in third countries. The Communication states that, the Commission and the Member States, *"have the collective responsibility and the difficult task of reconciling differing but complementary priorities."* It outlines some key parameters for integrating migration into external EU policy: a) dialogue and actions with third countries in the migration field must be part of a comprehensive approach at EU level; b) the long-term priority of the Community is to address the root causes of migration: as such, development resources should have poverty eradication, institution and capacity building and conflict prevention as objectives; c) migration aspects should in the first instance be dealt with within the strategic framework of the Country Strategy Papers and its mid term review mechanism foreseen for 2003 (this review should lead to specific programmes relating to migration having a greater priority); d) the budget line on cooperation with third countries in the field of migration¹⁶² should be significantly increased, and should be used to compliment what can be achieved in the CPS review. In a response to the Communication, a number of NGOs including ECRE have expressed concern that the Communication has failed in its goal with regard to the interrelation between migration and development. Although the analysis reflects the relevant points of concern, the conclusions fall short of expectations by limiting the focus only on return policies and border controls. Concern is also ex-

pressed that in the search of solutions in the fight against irregular migration, not only is the international protection regime overshadowed but the development sector risks being taken hostage.

RECOMMENDATIONS

41. EU policies and plans aiming at integrating asylum or migration concerns into relations with third countries should be based upon a protection and human rights-oriented approach.

42. Plans and initiatives undertaken by the HLWG should be part of the overall external and development policy within the European framework. They must be in line with or fit within the framework provided by Country Strategy Papers and Regional Strategy Papers developed by the Commission.

43. Such plans should provide an analysis of the root causes of population movements, and contain realistic, specific, detailed and measurable operational proposals to address these causes, designed for the short, medium and long term.

44. A structure should be developed where all plans and initiatives in the field of refugee, asylum and migration policies are reviewed. Updates and feedback on progress and changes in plans should be given regularly to appropriate EU bodies. Review should be linked to the CSP's and their mid-term review, and provide for a transparent procedure, including reporting to the European Parliament.

45. Plans and initiatives taken up by the EU or its Member States in the field of migration and asylum, which directly concern or influence third countries, should contain concrete arrangements for coordination and dialogue with all relevant bodies including relevant source and transit country governments, UNHCR, UN human rights and development institutions and NGOs active in the field.

46. While seeking cooperation with countries of origin or countries of transit on asylum and migration issues, the EU should ensure that the discussions equally address the interests of all involved.

47. Consultation by the EU on migration or asylum issues with countries of origin or transit should in principle be integrated in the existing framework of dialogue with those countries or regions.

4.4 Processing in the Region

It is important to make a distinction between 'resettlement schemes' and a system of 'processing or screening in the region.' The former represents a tool of protection and a

urable solution under the responsibility of UNHCR. Countries participating in the resettlement system commit themselves to accepting a specific number of refugees in the form of a quota. In contrast, screening in the region might involve the transfer of a protection-related screening procedure to the territory of the country of refugee origin or neighbouring countries in the region of origin. An extraterritorial screening system might consist of a complete asylum procedure, or some kind of preliminary screening, which does not lead to recognition of refugee or complementary protection status, but to the granting of a visa enabling asylum applicants to travel to the territory of the state where a full asylum procedure would be conducted.

Mechanisms for processing in country or in the region of origin have been used by states to varying effect in recent years.¹⁶³ While the in-country processing programmes curtailed large-scale departures in unseaworthy boats from Vietnam and Cuba, saving lives and providing a safer means of departure, not all would be refugees could safely make themselves available for in-country processing. Those refugees who feared making themselves known to their governments had even fewer options for flight once in country processing was inaugurated. In Haiti, the United States (US) employed in-country processing as a pretext for returning interdicted boats directly to Haiti without giving Haitians aboard the right to apply for asylum. While in country processing particularly for Vietnamese provided huge numbers of people the opportunity to resettle in the US, they were in effect, immigration not refugee programmes. They also underscored the importance of using these programmes as a complement not as a substitute for an asylum system for persons in need for protection. While these programmes helped to reduce migration pressures, they did not address the continuing need to provide protection and access to asylum systems outside of countries of origin for refugees fleeing persecution.

In the mid-1990s, regional protection of sorts was used in the Caribbean as an alternative to admission into the US. Concerned that access to the US would create a magnet to further boat departures from Haiti and Cuba, the administration continued earlier policies of interdicting and summarily returning Haitian boat people. As the human rights situation in Haiti deteriorated, the US government began in July 1994 taking the Haitians to the US naval base at Guantanamo, Cuba, where a 'temporary safe haven' camp was established without the option of refugee screening or resettlement. A month later, in August 1994, the interdiction/ Guantanamo policy was extended to Cuban rafters. At its height, Guantanamo held about 32,000 Cubans and 20,000 Haitians.¹⁶⁴ Although the majority of Haitians at Guantanamo, about 15,100,¹⁶⁵ repatriated voluntarily after US intervention restored the elected Haitian government to power, the US forcibly repatriated 3,900 Haitians who refused to leave Guantanamo voluntarily in January 1995, and after that it closed the safe haven camp.¹⁶⁶ However, about 800 Haitians, mostly medi-

cal cases and unaccompanied minors, remained at Guantanamo after it closed, the subjects of litigation whether to admit them to the US.¹⁶⁷ The Cubans were treated differently. At one point about 10,000 of the Cubans were transferred to a US-run camp in the Panama Canal Zone, where conditions were far better than on Guantanamo.¹⁶⁸ Eventually, nearly all of the interdicted Cubans at Guantanamo (including those transferred to Panama), about 31,000, were admitted to the United States.¹⁶⁹

The present US policy is that interdicted migrants are not entitled to any asylum screening, regardless of whether they were interdicted in international or US territorial waters. The INS does, however, provide a minimal level of asylum screening to interdicted persons on an *ad hoc* basis and slightly more screening to Chinese and Cubans. Under the US government's "wet foot/dry foot" policy, Cubans intercepted at sea are screened for asylum claims. Those whom the US believes have legitimate claims to asylum are brought to the US or resettled in other countries; all others are returned to Cuba. Those who evade interception and set foot on US soil can apply for permanent residency after one year. On the other hand, interdicted Haitians are generally summarily returned, and have no right to residency in the US.

More recently, Australia has created its own system of regional refugee/asylum processing with its so-called 'Pacific Solution'. In August 2001 Australia refused to allow the entry of more than 400 persons—mostly from Afghanistan—aboard the Norwegian freighter the Tampa, which had rescued them from a sinking Indonesian fishing boat and attempted to bring them to the Australian territory of Christmas Island. When neither Norway nor Indonesia agreed to take responsibility for the asylum seekers, the tiny Pacific island nation of Nauru agreed to house them while their refugee claims were being processed. Australia said it would meet Nauru's costs for transportation and lodging, and it subsequently provided Nauru with an aid package worth \$10 million. More than 1,000 asylum seekers were eventually brought to Nauru under this agreement.

Soon after, Papua New Guinea agreed to join Nauru in hosting Australia-bound asylum seekers. Australia provided Papua New Guinea with an initial aid package worth \$500,000, in return for the establishment of a refugee-processing centre on the remote Papua New Guinea island of Manus. Australia initially transported some 400 asylum seekers there, with more to come. UNHCR agreed to screen the first group of asylum seekers brought to Nauru but refused to screen subsequent groups brought there or to Papua New Guinea, noting that Australia's new policy of intercepting and relocating asylum seekers was "*inappropriate and inconsistent with the edifice of asylum that's been built up over years.*"¹⁷⁰ Australia sent its own immigration officials to screen the new arrivals—under the minimal requirements of the 1951 Refugee Convention, rather than under Australian law.

In September 2001, Australia enacted new legis-

lation that extended the legal basis for their new policies.¹⁷¹ The deterrent policy has four main components: granting the authorities extended powers of interception at sea, “excising” certain Australian islands for the purpose of national immigration law and processing asylum claims on excised territory while holding asylum seekers in detention without the procedural guarantees provided on the mainland, subcontracting the detention to poorer neighbouring states, and denying permanent protection in Australia to virtually all refugees who were in third countries prior to arrival.

Refugees transferred to the islands of Nauru and Papua New Guinea are clearly put in a very disadvantaged position. Procedural guarantees such as legal advice are withheld, and if they are recognized as refugees under the Convention, they have to apply and wait for resettlement rather than automatically being granted a visa for Australia. Australia accepts for resettlement only those refugees who already have immediate family members in the country. There are reports that children have been deported to the Pacific states while they had family members living in Australia. In Nauru and Papua New Guinea refugees are held in indefinite detention in closed camps, without almost any contact with the outside world. Their detention is not subject to periodical review by an independent body. Human rights organisations have been denied access to the camps.

The ‘Pacific Solution’ has been called inhumane and unsustainable, while the Australian media have noted that the costs of the programme have far exceeded the estimated costs of housing and processing those asylum seekers on Australian soil.

In Europe, there have been some initiatives addressing the issue of regionalisation of asylum. The Budapest Process which was initiated in 1991 has focused on the prevention of irregular migration and related control issues. Calls have also been made to examine the feasibility of temporarily accommodating refugees and asylum seekers in “safe areas” in their country of origin or in holding centres in the immediate vicinity where they may or may not be considered or processed for resettlement. The Intergovernmental Consultations (IGC) carried out a number of studies from the mid 1990s to examine the ways of strengthening the concept of reception of asylum seekers in regions of origin, including processing in regions and protection in “internationally protected areas,” and of international burden-sharing.¹⁷²

At a conference in Lisbon in June 2000, Jack Straw, the United Kingdom’s Home Secretary, again returned to the idea of “regionalization” of asylum when he proposed a plan to radically transform the EU approach to asylum seekers and refugees. Mr. Straw argued that the EU should concentrate on improving reception conditions in the immediate regions from which refugees originate and consider the possibility of conducting asylum procedures in the region of origin; from there, refugees could be resettled in EU countries on the basis of an international quota system. According to the former British Home Secretary, such

an approach would reduce the demand for clandestine entry into the EU by asylum seekers who, for the most part, currently need to enter the territory of the asylum state in order to submit an asylum application. This, in turn, would weaken organized smuggling and trafficking networks, which have increasingly profited by transporting asylum seekers and other migrants.¹⁷³

This proposal was taken up by the EU Commission in a Communication to the Council and the European Parliament in late 2000.¹⁷⁴ The Commission noted that, “processing the request for protection in the region of origin and facilitating the arrival of refugees on the territory of the Member States by a resettlement scheme are ways of offering rapid access to protection without refugees being at the mercy of illegal immigration or trafficking gangs.” However, the Commission recognized that there were many issues that needed to be addressed before proposing such a policy. Consequently, in October 2001, the EC tendered a study to examine the feasibility of processing asylum claims outside the EU. This was followed by another EC tender in April 2002 to study the feasibility of setting up resettlement schemes in EU Member States or at EU level, against the background of the Common European Asylum System and the goal of a Common Asylum Procedure. Further, the Commission’s Communication on a Common Policy on Illegal Immigration while inviting Member States to “explore possibilities of offering rapid access to protection so that refugees do not resort to illegal immigration or people smugglers” proposed as options “greater use of Member States’ discretion in allowing more asylum applications to be made from abroad or the processing of a request for protection in the region of origin and facilitating the arrival of refugees on the territory of the Member States by resettlement schemes.”

4.4.1 Exclusive Processing?

With increasing pressure on asylum systems in the EU, new policy options have been discussed. One option, which has been put forward, is to improve reception conditions in the regions of origin and ultimately transfer refugee status determination procedures from Europe to those regions, which would enable accepted cases to travel to Europe in an orderly manner. Politicians have suggested that the substantial financial resources now devoted to costly asylum procedures in the West could be transferred to new mechanisms and programmes in the region of origin, thereby benefiting the majority of refugees who are presently in the regions of origin.¹⁷⁵ Advocates of exclusive regional processing also argue that repatriation and return of rejected asylum applicants would be easier to manage from neighbouring areas than from EU Member States.

Principled, legal, and practical considerations make the implementation of such ideas problematic. Exclusive regional processing would not be compatible with Article 33.1 of the 1951 Convention concerning *non-refoulement* and Article 14 of the Universal Declaration of Human Rights covering the right to seek asylum. It also

appears to contravene the Constitutions and internal legal systems in many states. The scheme would have to meet international standards for protection to assure the participation of international organizations such as UNHCR, IOM and NGOs.

As the author of an IGC *Working Paper on Reception in the Region of Origin*¹⁷⁶ noted, the practical problems with this proposal are even more daunting. The establishment of processing centres in regions of origin would exercise a strong pull factor. The fact remains that there are large numbers of people who are desperate to resettle in the West. As long as people believe that gaining access to reception facilities provides an opportunity to be resettled in a developed country, the pull factor will be very strong. The influx of large numbers of people could destabilize host countries. There is a related problem of what to do with rejected asylum seekers. The successful implementation of regional processing would depend on voluntary or forced return and cooperation with the countries of origin which may prove extremely difficult to achieve. Rejected asylum seekers who are not returned are most likely to try to resort to smugglers and use forged identities to gain access to Europe. The IGC noted that “careful examination of these impediments therefore lead to the conclusion that the ‘exclusive’ option is not feasible and as such, does not deserve further elaboration.”

Many host countries, including the ones visited for this study by ECRE and USCR, do not have the capacity or legal or social infrastructure to ensure the safety of large numbers of asylum seekers. In none of the countries visited by ECRE and USCR does there exist the capacity or legal or social infrastructure to ensure the safety of large numbers of asylum seekers. The insecurity of their legal status places asylum seekers and refugees in dangerous situations, for example, when the Turkish, Kenyan or Lebanese governments engage in roundups and relocations, or even deportation, sometimes to the countries where they risk persecution. Because of a lack of domestic refugee law, and often the lack of an independent judiciary, as well as a paucity of independent NGOs in the countries under study there are virtually no checks on governments or on the few international agencies that deal directly with refugees. International and host government assistance to asylum seekers and refugees is limited in these countries, resulting in harsh living conditions for most refugees and asylum seekers.

Nor are these countries likely to be receptive to the idea of regional processing and large-scale reception centres being hosted on their soil. Government officials in the countries visited by ECRE and USCR expressed concern that their territories will be overrun if people from unstable neighbouring regimes believe that gaining access to reception facilities provided an opportunity to be resettled in a developed country. These governments fear that the influx of large number of people could destabilize their societies and undermine their rule.

Participating governments outside of the regions of origin would also have to provide considerable resources

and assistance and take international burden-sharing seriously. They would also have to be willing to receive very large numbers of persons in need of protection and agree to the sharing of burdens and quotas. Finally, exclusive processing in regions of origin would not substantially reduce the demand for smuggling and, because illegal entrants to the EU would have no opportunity to gain legal status through pursuing an asylum request there, the programme would simply drive people further underground.

RECOMMENDATIONS

48. EU Governments should not seek to transfer asylum determination procedures from Europe exclusively to the regions of origin. EU asylum processing conducted in regions of origin is not feasible on legal, principled and pragmatic grounds and would not reduce the demand for people smuggling.

49. Future state responses need to derive from strategies and plans that provide complementary and additional protection options. As a proponent of international burden sharing in the protection of refugees, the EU should acknowledge that many countries, such as those in the regions visited by ECRE and USCR, are hosting far greater numbers of refugees and asylum seekers than are EU Member States. To simply transfer domestic refugee processing to regions of origin would not be in accord with the concept of international responsibility sharing that has been developed over the years.

50. Countries with domestic systems to adjudicate asylum claims, and with the resources to do so, should take responsibility for examining asylum claims within their territories and providing refugee protection there. Resettlement must continue to function as a complement, not a replacement, for other protection activities and durable solutions.

4.4.2 Embassy Procedures and Humanitarian Visas

Another option, which has been the subject of some discussion, is the use of visa systems to grant potential refugees legal access to a refugee determination procedure. UNHCR in July 2002 explicitly asked states to give due humanitarian consideration “in a spirit of justice and understanding” to visa requests from people in their country of origin who have to flee because of a fear of persecution, as well as for refugees in a third country risking *refoulement* and for whom little or no possibilities for resettlement are available.¹⁷⁷ In the same document, and as a complement to the easing of visa requirements, UNHCR suggested that in certain situations consideration should be given to the possibility of processing asylum applications submitted at embassies. UNHCR recognizes that this approach can be

fraught with many difficulties, as contact with a foreign embassy can increase the risk of persecution, but suggests that in some cases such an approach might be feasible when the feared harm emanates from non-state agents without state complicity, and where the state is unable to provide protection.

In December 2002, the Danish Centre for Human Rights published a feasibility study commissioned by the European Commission on the processing of refugee claims in regions of origin.¹⁷⁸ The study advocates for increased opportunities for persons in need of protection to approach diplomatic missions of EU Member States with a claim for asylum or other forms of international protection. People, who after a pre-screening procedure are believed to be in need, should be provided with the possibility of being granted access to a EU Member State by means of a visa or entry permit to pursue an asylum claim. It is thought that establishing procedures through which asylum seekers can request protection prior to departure, would represent an important and credible alternative to illegal migration and an important complement to the existing territorial filing of asylum claims.¹⁷⁹

The study envisages what has been termed 'protected entry procedures' as part of a comprehensive approach, complementary to existing asylum systems, offering three different but interlinked ways of contributing to refugee protection in regions of origin. In the first place, first countries of asylum in the region of origin should be assisted to discharge their protection obligations towards arriving refugees in full compliance with international norms. Next, EU Member States should offer access to protection through 'protected entry procedures' to individuals whose needs cannot be met by the first country of asylum "*due to qualitative limitations in its protection offer,*" and also who possess specific links to a specific Member State.¹⁸⁰ Access should also be granted to urgent cases. Finally, EU Member States should offer a resettlement quota through UNHCR for other cases in need. This quota would be exclusively protection-oriented, and thus free of utilitarian considerations of Member States.

The study presents five different proposals, which EU Member States could consider when developing 'protected entry procedures' in the future. The first three can be considered as strategic organizational structures (the flexible use of a visa system for protection reasons, a system which is linked to a sponsorship model, and the establishment of an EU regional presence which should develop into a differentiated referral system for migration and protection), while the last two take a legal-technical approach and fit within the legal EU framework (gradual harmonization through an EU Directive based on best practices, and an initiative to establish a Schengen asylum visa).

The development by European countries of visa screening procedures in the regions of origin raises a variety of complex issues. Fair and efficient asylum procedures are generally considered to be an essential condition for

the proper application of the Refugee Convention. It seems however, almost unavoidable that embassy procedures will lack basic procedural safeguards, such as access to legal aid and interpreters, appeal rights, and accessible information on the procedure. A lack of procedural safeguards will diminish the quality of decision making, and increase the risk that access to protection through such procedures might be limited.

Concerns about the quality of the screening procedure are directly related to the relationship between embassy procedures in the region of origin and asylum procedures in Europe. The quality of the screening procedure is of the highest importance if states adopted an approach whereby the rejection of a visa request at an embassy in any way prejudiced the examination of an asylum claim submitted at a future date by the same applicant on the territory of an EU or European state. Asylum seekers could potentially be presented with a dilemma. A clear case of an individual person at risk, in the country of origin as well as in the host country, with a strong protection claim would have a fair chance of being granted a visa and subsequently a protection status. However, a person with a weaker or more complicated case could, because of the lack of adequate procedural guarantees, run a particular risk that his visa request would be rejected. If this rejection prejudiced¹⁸¹ the examination of the his asylum request at a later stage, the person would have less chances of obtaining protection than if a visa request had not been made.

A system of granting humanitarian visa is most likely to be targeted at people who would be at risk both in their own country, and in a third country. It is however, likely to be difficult to define exact criteria for determining whether 'effective protection' and 'safety' is available in a third country.¹⁸²

The speed of any extraterritorial procedure must also be considered. A person who is waiting for the outcome of a visa request, will, if s/he has a genuine case, per definition be at risk in the host country. Extended waiting periods will evidently augment this risk. Thus, beyond a certain time limit, a protection seeker will consider illegal ways to safety preferable to the outcome of any 'protected entry procedure.' Although the time taken to process a visa application is of high importance, the risk is that a fast system of processing may lessen the quality of the procedure.

A vital issue to take into account is the envisaged number of asylum seekers who would, or who should, seek access to European Union Member States through the 'Protected Entry Procedures.' Examples of well functioning extraterritorial systems¹⁸³ have always had only limited numbers of cases with which to deal. The question is, what impact a larger number of applications would have on the quality and scope of the 'protected entry procedures?' The attitude of the host states would be an important factor. In the past, we have seen countries in the region limit the number of refugees to be resettled through UNHCR from their territory, as too many re-

settled cases would lead to unwanted and increasing numbers of people crossing their borders.

Related to the question of how many people would decide to make use of the humanitarian visa procedures, is the issue of where people would stay while awaiting the outcome of their request. It will also be essential to take care of a range of security concerns. It is widely known that there exist large scale and serious problems in almost all countries in Africa and Asia where many refugees and protection seekers are waiting for opportunities to travel on individually or through resettlement schemes. As demonstrated by the case studies in Chapter 1, these problems affect the refugees (varying from *refoulement*, illegal stay in the host country and subsequent detention situations, appalling reception facilities in urban areas or in camps, violence including sexual violence, etc), the involved states or international organizations (pressure and cases of fraud and corruption of staff etc) and the host states (financial and economical pressure, increased instability, etc). One of major problems mentioned by host countries is the problem of armed combatants, as it appears to be almost impossible to keep them out of the camps.

RECOMMENDATIONS:

51. European countries should develop a system for 'asylum visa' or 'humanitarian visa' to gradually extend the possibilities for people to obtain legal access to their territories. In doing so, they should focus on people in the country of origin or asylum country in the region of origin who need to leave that country because of imminent danger, including the risk of refoulement, as well as on especially vulnerable cases and people at risk who seek reunification with members of their family.

52. Processing systems that aim at facilitating legal access to protection should not in any way prejudice the treatment of asylum claims if submitted by asylum seekers arriving spontaneously to the territory of a state operating protected entry procedures nor influence the eventual outcome of national asylum procedures. Their focus should be to facilitate access to protection for people in need rather than act as deterrence mechanisms for asylum applicants.

53. Procedures for asylum or humanitarian visas should be timely and allow for decision making to take place, if necessary, in very short periods. The asylum or humanitarian visa system should be under the direct responsibility of the national asylum authorities, but responsibility should in emergency situations be taken over by the diplomatic mission.

54. While such systems are being gradually developed, input from other actors, such as the host country as well as UNHCR, should be considered especially to clarify the relationship with (emergency) resettlement procedures.

55. Frameworks should be developed to better cope with risks of fraud and corruption of staff at embassies or at other places where screening might take place.

56. In the new structures, there should be extended possibilities to provide people in need of protection with a humanitarian or asylum visa if they are presented as such by other organisations such as UNHCR or specific NGO's. States should, in this light, establish working relations with international NGO's, such as Amnesty International or Human Rights Watch and where possible also with national NGO's.

APPENDIX 1: STATISTICS

Table 1: New asylum applications submitted in industrialised countries, 1992-2001.

a. New asylum applications submitted in industrialised countries, 1992-2001

Country of asylum	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	Total
Australia	6.054	7.198	6.264	7.632	9.758	9.312	8.156	9.451	13.065	12.366	89.256
Austria	16.238	4.745	5.082	5.919	6.991	6.719	13.805	20.096	18.284	30.135	128.014
Belgium	17.647	26.882	14.353	11.420	12.433	11.788	21.965	35.780	42.691	24.549	219.508
Bulgaria	150	-	-	517	302	429	833	1.331	1.755	2.428	7.745
Canada	37.748	20.292	22.006	26.072	26.120	22.584	23.838	29.393	34.252	44.038	286.343
Cyprus	-	-	-	109	101	92	225	789	651	1.766	3.733
Czech Rep.	817	2.193	1.188	1.413	2.156	2.098	4.082	7.285	8.787	18.087	48.106
Denmark	13.884	14.347	6.651	5.104	5.893	5.092	9.370	12.331	12.200	12.512	97.384
Estonia	-	-	-	-	-	-	23	21	3	12	59
Finland	3.634	2.023	839	854	711	973	1.272	3.106	3.170	1.651	18.233
France	28.872	27.564	25.964	20.415	17.405	21.416	22.375	30.907	38.747	47.291	280.956
Germany	438.191	322.599	127.210	127.937	116.367	104.353	98.644	95.113	78.564	88.287	1.597.265
Greece	1.850	813	1.303	1.312	1.643	4.376	2.953	1.528	3.083	5.499	24.360
Hungary	458	468	207	130	152	209	7.097	11.499	7.801	9.554	37.575
Iceland	13	3	-	5	4	6	19	17	24	52	143
Ireland	39	91	362	424	1.179	3.883	4.626	7.724	11.096	10.325	39.749
Italy	6.042	1.647	1.786	1.732	675	1.858	11.122	33.364	15.564	9.620	83.410
Japan	68	50	73	52	147	242	133	223	216	353	1.557
Latvia	-	-	-	-	-	-	58	19	4	14	95
Liechtenstein	-	-	-	-	-	-	228	515	11	112	866
Lithuania	-	-	-	-	-	320	163	133	199	256	1.071
Luxembourg	-	-	-	394	240	427	1.709	2.912	628	686	6.996
Malta	403	-	-	148	75	65	165	85	71	116	1.128
Netherlands	20.346	35.399	52.573	29.258	22.170	34.443	45.217	42.733	43.895	32.579	358.613
New Zealand	771	347	426	675	1.317	1.495	1.972	1.528	1.551	1.601	11.683
Norway	5.238	12.876	3.379	1.460	1.778	2.271	8.373	10.160	10.842	14.782	71.159
Poland	592	819	598	843	3.211	3.533	3.373	2.955	4.589	4.506	25.019
Portugal	686	2.090	767	457	270	297	365	307	224	234	5.697
Rep. of Korea	-	-	-	-	-	44	17	4	43	39	147
Romania	800	-	-	-	588	1.425	1.236	1.670	1.366	2.431	9.516
Slovakia	87	96	140	359	415	645	506	1.320	1.556	8.151	13.275
Slovenia	-	-	-	-	38	72	499	867	9.244	1.511	12.231
Spain	11.708	12.615	11.992	5.678	4.730	4.975	6.654	8.405	7.926	9.489	84.172
Sweden	84.018	37.583	18.640	9.047	5.753	9.662	12.844	11.231	16.303	23.515	228.596
Switzerland	17.960	24.739	16.134	17.021	18.001	23.982	41.302	46.068	17.611	20.633	243.451
Turkey	7.011	5.796	4.443	3.840	4.183	5.053	6.838	6.606	5.685	5.041	54.496
United Kingdom	32.300	28.000	42.200	55.000	37.000	41.500	58.487	91.200	98.900	92.000	576.587
United States	103.964	143.118	144.577	149.065	107.130	52.200	35.903	32.711	40.867	59.432	868.967
Total	857.589	734.393	509.157	484.292	408.936	377.839	456.447	561.387	551.468	595.653	5.537.161
- European Union	675.455	516.398	309.722	274.951	233.460	251.762	311.408	396.737	391.275	388.372	3.749.540
- Western Europe	698.653	554.013	329.235	293.432	253.239	278.015	361.311	453.480	419.739	423.899	4.065.016
- Central Europe	2.904	3.576	2.133	3.262	6.862	8.411	17.626	26.927	35.098	46.668	153.467
- Europe	708.984	563.388	335.811	300.796	264.464	291.962	386.428	488.077	461.474	477.824	4.279.208
- North America	141.712	163.410	166.583	175.137	133.250	74.784	59.741	62.104	75.119	103.470	1.155.310
- Australia/New Zealand	6.825	7.545	6.690	8.307	11.075	10.807	10.128	10.979	14.616	13.967	100.939

Source: UNHCR Statistical Yearbook 2001

Table 2: Origin of asylum applicants in 32 industrialised countries, 1992-2001.
Figures generally refer to first or new applications only.

Origin	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	Total
Yugoslavia, FR	223.555	100.322	55.034	52.738	39.497	49.423	99.177	122.764	46.343	28.328	817.181
Iraq	17.658	15.204	12.937	18.672	27.139	43.187	41.516	36.560	47.184	50.763	310.820
Turkey	37.505	25.928	26.617	41.689	38.923	33.546	22.209	20.368	29.576	32.405	308.766
Romania	119.086	89.227	23.145	15.579	10.418	11.151	9.181	9.249	9.665	7.956	304.657
Afghanistan	8.562	8.649	10.237	12.287	13.033	16.973	19.276	25.607	34.827	54.620	204.071
El Salvador	7.707	14.980	18.923	75.613	63.499	5.095	3.872	2.338	2.040	2.458	196.525
B o s n i a a n d Herzegovina	13.952	75.999	24.570	17.429	6.620	8.313	10.254	6.736	11.415	10.788	186.076
Sri Lanka	23.036	16.174	15.779	15.263	17.130	18.056	15.530	16.195	16.849	14.858	168.870
Islamic Rep. of Iran	11.418	9.646	15.778	13.421	14.074	12.357	12.122	17.962	34.243	20.115	161.136
Guatemala	44.652	34.570	34.665	22.510	9.261	2.719	2.725	1.278	1.101	1.357	154.838
China	9.996	22.447	15.932	9.523	8.187	11.414	11.613	18.401	22.021	20.180	149.714
Somalia	18.397	16.319	14.993	14.128	10.301	11.639	15.135	17.960	14.157	14.605	147.634
India	14.185	15.957	11.556	13.525	13.041	11.112	8.044	9.581	12.606	14.836	124.443
Pakistan	14.934	11.746	9.970	13.154	9.776	10.042	8.739	11.038	12.605	11.147	113.151
Russian Federation	15.574	12.072	7.119	5.956	5.977	6.678	7.669	9.793	16.051	18.327	105.216
Dem. Rep. of Congo	18.802	12.136	9.254	8.353	9.140	9.854	8.005	8.328	9.253	10.726	103.851
Algeria	9.158	14.184	8.380	9.480	5.827	7.978	9.396	8.751	8.447	11.031	92.632
Bulgaria	34.773	26.896	6.346	4.133	4.060	4.377	1.998	2.202	3.051	3.319	91.155
Nigeria	13.339	4.479	6.567	9.223	7.030	6.067	6.526	5.397	8.255	10.234	77.117
Mexico	882	6.591	9.520	9.699	8.773	14.598	5.626	3.428	4.988	10.418	74.523
Armenia	1.530	8.930	4.964	6.308	7.350	6.550	5.815	9.493	8.685	8.795	68.420
Haiti	6.407	11.593	10.282	2.772	4.180	4.663	3.215	3.294	6.503	7.897	60.806
Albania	7.529	6.803	2.285	1.732	1.932	9.176	7.878	6.661	7.869	6.113	57.978
Viet Nam	13.824	12.447	4.148	3.744	2.772	3.605	3.593	3.107	3.855	6.285	57.380
Bangladesh	6.029	6.884	6.882	5.454	4.398	4.902	4.198	5.453	6.410	6.088	56.698
Sierra Leone	3.405	3.024	2.982	2.674	1.317	3.423	4.301	7.397	8.449	10.430	47.402
Ukraine	3.312	6.323	3.775	2.593	2.752	3.385	2.427	4.803	7.025	10.668	47.063
Angola	2.279	4.546	4.982	3.214	2.571	2.103	2.250	4.735	5.587	8.566	40.833
Colombia	1.537	2.494	2.484	1.626	1.652	2.499	2.432	3.399	6.338	12.727	37.188
Ghana	11.634	7.301	4.876	4.121	1.918	1.588	1.028	1.143	1.270	1.280	36.159
Ethiopia	4.913	3.735	3.714	3.568	3.328	3.179	2.643	3.019	3.474	3.918	35.491
Lebanon	9.450	4.919	3.406	3.261	3.091	2.777	1.886	2.012	2.302	2.202	35.306
Syrian Arab Rep.	2.890	2.559	2.106	2.452	3.252	3.159	3.417	4.419	5.200	4.361	33.815
Georgia	366	1.783	2.506	3.177	3.145	4.480	4.222	3.678	3.998	6.341	33.696
Liberia	8.411	5.729	2.879	2.966	3.850	2.840	1.338	1.206	1.543	1.792	32.554
Sudan	3.612	2.000	2.025	3.476	2.724	3.034	3.896	3.645	3.758	3.451	31.621
Stateless	1.530	1.419	1.286	3.230	3.729	3.806	3.765	4.365	4.210	2.327	29.667
Poland	6.984	4.194	2.542	2.164	1.585	1.295	2.029	3.156	3.697	1.608	29.254
Togo	4.684	4.328	5.046	1.820	1.743	2.479	1.260	1.476	1.669	2.349	26.854
Peru	5.535	5.921	4.713	2.348	974	1.099	953	738	895	1.202	24.378
Other/unknown	93.474	90.689	86.273	71.959	57.322	54.056	58.927	106.262	97.320	117.578	833.860
Total	856.506	731.147	501.478	517.034	437.291	418.677	440.086	537.397	534.734	574.449	5.548.799
- Africa	126.666	103.516	87.044	81.924	65.837	71.483	77.770	87.960	99.072	120.046	921.318
- Asia	191.792	179.975	154.254	171.818	178.161	194.897	175.756	203.474	260.714	274.800	1.985.641
- Europe	435.491	334.708	134.428	113.552	81.263	105.174	153.989	181.782	124.415	114.612	1.779.414
- Latin Am. and Carib.	78.128	91.737	105.039	129.204	98.438	36.821	23.153	18.951	27.765	44.625	653.861
- Other/unknown	24.429	21.211	20.713	20.536	13.592	10.302	9.418	45.230	22.768	20.366	208.565

Source: UNHCR Statistical Yearbook 2001

Table 3: Resettlement arrivals of refugees in industrialised countries, 1982-2001.

Country of resettlement	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	Total
Australia	7.157	10.939	11.350	13.632	11.253	7.955	10.457	7.467	7.878	6.454	94.542
Canada	14.726	11.560	10.100	11.101	10.937	10.369	9.645	9.779	13.518	12.245	113.980
Denmark	553	3.206	3.757	2.018	601	501	444	501	464	531	12.576
Finland	674	585	651	642	840	627	304	543	756	739	6.361
Iceland	-	-	-	8	-	-	-	-	24	23	55
Ireland	-	-	650	-	-	-	-	1.032	40	52	1.774
Japan	792	558	456	231	151	157	132	158	135	40	2.810
Netherlands	569	457	498	492	475	187	524	11	204	625	4.042
New Zealand	619	412	737	822	780	527	677	726	716	601	6.617
Norway	2.037	1.474	694	1.591	788	1.343	1.124	3.942	1.481	1.269	15.743
Sweden	3.402	937	7.431	1.956	1.629	1.180	1.130	546	1.501	1.089	20.801
United Kingdom	620	510	260	70	20	-	-	-	-	-	1.480
United States	132.531	119.448	112.981	99.974	76.403	70.488	77.080	85.525	73.147	68.426	916.003
Total	163.680	150.086	149.565	132.537	103.877	93.334	101.517	110.230	99.864	92.094	1.196.784

Source: UNHCR Statistical Yearbook 2001

APPENDIX 2: CASE STUDIES

Case 1: Profile of Iraqi Refugees and Asylum Seekers

Number and Location of Iraqi refugees

Between 1 and 2 million Iraqis are estimated to be living outside Iraq. Although many are thought to have a well-founded fear of persecution if returned to Iraq, only about 400,000 have any formal recognition as refugees, asylum seekers, or recipients of humanitarian status. Most registered Iraqi refugees and asylum seekers live in countries bordering Iraq or in the region, the largest number, 203,000, in Iran. Some 5,100 registered Iraqi refugees live in the Rafha camp in Saudi Arabia, while an additional 868 live in Jordan, 1,828 in Lebanon, 1,597 in Syria, 1,200 in Kuwait, and 565 in Turkey.¹⁸⁴ Hundreds of thousands of unregistered Iraqis also live in the Middle East, including about 250,000 in Jordan and an estimated 40,000 in Syria, and are not recognized, or protected, as refugees.

Outside of the Middle East, an estimated 150,000 Iraqi asylum seekers have been granted some form of protected status in Europe, the United States, Australia, and Canada between 1989 and the end of 2001. This aggregate figure includes at least 90,000 Iraqis granted refugee status under the 1951 Convention¹⁸⁵ and about 60,000 granted some form of humanitarian status.¹⁸⁶ Although comprehensive figures are not available on the number of Iraqi refugees resettled from Middle Eastern countries of first asylum to western asylum countries, some 31,700 Iraqi refugees were resettled to the United States alone between 1989 and the end of 2001, of these almost 2,500 resettled in 2001.¹⁸⁷ By way of comparison, Canada resettled 1,100 Iraqi refugees in 2001 and Australia 1,063.¹⁸⁸ Although data on the number of Iraqi refugees resettled to

Scandinavian and other countries was not available for 2001, data from past years suggests that the number was in the hundreds.¹⁸⁹

Iraqi Asylum Seekers and Where They Apply

The number of Iraqis seeking asylum in the West has increased steadily and dramatically in recent years, from a low of about 4,200 in 1989 to more than 41,200 in 2001. Between 1989 and the end of 2001, 277,500 Iraqis applied for asylum in western industrialized countries, mostly in Europe. Of these, the largest number went to Germany (84,500), followed by the Netherlands (40,900), Sweden (36,800), the United Kingdom (23,800), Greece (16,591), Austria (15,881), and Denmark (15,095). Comparatively few Iraqis sought asylum in the United States (4,744 cases) and Australia (4,827) between 1989 and the end of 2001.¹⁹⁰

However, the pattern of where Iraqis apply for asylum has shifted since 1999. While Germany (37,908) continued to receive the largest number of Iraqi asylum seekers between 1999 and the end of 2001, the United Kingdom (15,680) and Sweden (13,281) overtook the Netherlands (7,805) in the number of Iraqis applying during these years. A restrictive Dutch policy *vis-à-vis* Iraqi asylum applicants, instituted in 1998, accounts for the drop-off in Iraqi asylum applications in the Netherlands in subsequent years. In 2001, the largest number, 17,708, applied for asylum in Germany, followed by the United Kingdom (6,805), and Sweden (6,206).¹⁹¹

Relatively few Iraqis apply for refugee status with UNHCR in Turkey and the Middle East. In 2000, the largest number of Iraqis applying in the region filed applications in Jordan (6,623), followed by Syria (3,324), Lebanon (1,989), Turkey (1,641), Yemen (461), and Kuwait (226).

Refugee and Humanitarian Status Recognition Rates of Iraqi Nationals¹⁹²

Table 4: First Instance Asylum Applications and Refugee Recognition Rates for Iraqi Applicants in 2000 in Traditional Asylum Countries

Country	Applications	Recognised	Denied	Recognition Rate	Humanitarian Status
Australia	2,165	2,008	218	90 %	N/A
Austria	2,361	98	241	29 %	N/A
Belgium	569	89	37	71 %	N/A
Canada	282	210	60	78 %	N/A
Denmark	2,458	51	86	3 %	1,444
Germany	11,601	389	4,470	9 %	6,194
Ireland	89	39	37	51 %	N/A
Netherlands	2,773	58	67	1 %	105
Norway	766	*	110	0 %	1,358
Sweden	3,499	95	624	2 %	3,471
Switzerland	908	312	1,050	15 %	162
United States	330	233	18	93 %	N/A

Table 5: Status Determinations for Iraqi Nationals in Transit Countries in 2000

Country	Applications	Recognised	Denied	Recognition Rate
Bulgaria	31	33	42	9 %
Czech Republic	127	5	*	4% (85 closed)
Greece	1,334	39	835	4 %
Hungary	889	37	247	11 %
Italy	5,605	150	5,455	3 %
Romania	250	40	244	14 %
Russia	59	*	71	0 %
Slovakia	115	*	5	0 % (98 closed)

Table 6: UNHCR Status Determinations for Iraqi Nationals in 2000 (Mostly in the Region of Origin)

Country	Applications	Recognised	Denied	Recognition Rate	Pending (end 2000)
Indonesia	659	379	17	96 %	179
Jordan	6,623	1,790	2,911	17 %	7,209 (5,568 closed)
Kuwait	226	157	80	66 %	15
Lebanon	1,989	463	543	46 %	2,570
Malaysia	75	8	38	17 %	9
Pakistan	192	59	82	42 %	81
Saudi Arabia	54	8	28	22 %	18
Syria	3,324	778	1,901	16 %	1,405 (2,085 closed)
Thailand	116	21	58	26 %	25
Turkey	1,641	454	865	24 %	1,882 (563 closed)
Yemen	461	18	135	12 %	341

The above statistics on Iraqi asylum/refugee decisions reveal several important trends. The first is that asylum/refugee recognition rates for Iraqi asylum seekers vary considerably from country to country, from a low of zero to two percent in Norway and the Netherlands respectively to a high of 93 percent in the United States and 90 percent in Australia. While some European countries including Denmark, Germany, Norway and Sweden had relatively high overall approval rates when grants of humanitarian status were taken into account, the overall approval rate for grants of all statuses in the Netherlands remained very low, which, as seen in the section on where asylum seekers apply, has led to a significant reduction in Iraqi asylum applications in that country.

The statistics also reveal a correlation in approval rates for applications according to region. On the whole, UNHCR approval rates in the Middle East and Turkey and the asylum approval rates of traditional transit countries were low. In contrast, several countries of destination had much higher approval rates, showing a clear incentive for most Iraqi asylum seekers not to file asylum applications with UNHCR in frontline countries of first asylum, but to continue onward to certain European countries and other countries farther a field such as the United States.

Overview of the Human Rights Situation in Government-controlled Iraq

After seizing power in 1968, Iraq's first Ba'ath party leader, Ahmad Hassan Al Bakr, and Saddam Hussein, who replaced Bakr in 1979, created a police state. "The state is built on an interlocking framework of internal security organizations, secret intelligence services, Ba'ath party security apparatus, with additional layers of military and militia organs designed for internal repression," according to the Washington, DC-based Iraq Foundation.¹⁹³

Since its inception, Saddam Hussein's government has engaged in systematic repression of individual opponents to the regime, both real and imagined. In addition cracking down on alleged opponents of the regime, the government routinely establishes guilt by association, arresting family members and close associates of those who fall foul of the government, according to Max van der Stoel, the former UN special rapporteur on Iraq.¹⁹⁴

The regime's methods of repression include widespread political and other extra-judicial killings, summary executions, disappearances, torture, targeted and arbitrary arrest. There is no legal or other recourse for most Iraqis

targeted by the regime. In 1999, the UN special rapporteur on Iraq reported that the repressive nature of Iraq's political and legal system has precluded the establishment of the rule of law in Iraq. Indeed, many laws themselves have furthered the regime's repressive agenda.¹⁹⁵ Elements of democratic society—including freedom of expression, the press, association, religion, and movement—do not exist in the country today.¹⁹⁶

Background on the Causes of Refugee Flight and Other Displacement

In addition to provoking war with Iran in 1979 and invading Kuwait in 1991, the Iraqi government has abused its own citizens on a massive scale in recent years. Iraqi government military attacks, large-scale forced relocations, mass summary executions, and disappearances that targeted the Kurds, Shi'a and other segments of the Iraqi population, other systematic human rights abuses, conflict, and economic sanctions have displaced millions of Iraqis and resulted in hundreds of thousands of Iraqi deaths since the mid-1980s.

While a detailed accounting of Iraq's recent history of forced displacement, human rights abuses, and the humanitarian impact of international sanctions is beyond the scope of this report, some basic facts bear mentioning. During the past 15 years, the Iraqi government has engaged in several systematic campaigns that have targeted its own citizens and resulted in hundreds of thousands deaths and the forced displacement of millions. In 1987, the government unleashed its genocidal "Anfal" campaign against Iraqi Kurds, resulting in the death of at least 50,000 and as many as 180,000 people,¹⁹⁷ the forced displacement and relocation of some half million to one million others, and the destruction of thousands of Kurdish villages.¹⁹⁸ The Anfal operation included the Iraqi government's use of chemical weapons against the residents of the Kurdish town of Halabja, which killed more than 5,000 people and has resulted in numerous health problems among survivors and newborn children.¹⁹⁹ During the 1980s, the Iraqi government deported to Iran several hundred thousand Farsi Kurds and others because of their alleged Iranian descent.

The government of Iraq again turned on its own people in the spring of 1991. In the immediate aftermath of the Gulf War, residents of Iraq's predominantly Shi'a south and the Kurdish north spontaneously rose up and attempted to overthrow the government. In response, the government unleashed Republican Guard units against its citizens, first in the south and then in the north. The suppression of the revolts left at least 30,000 dead by conservative estimates²⁰⁰ and resulted in the displacement of more than a million people, including 700,000 who crossed into Iran, about 350,000 who massed on Iraq's border with Turkey but were denied entry, and about 90,000 Iraqis who sought refuge with coalition forces in southern Iraq (coalition forces eventually evacuated 33,000 Iraqis to refugee camps in Saudi Arabia, where 5,100 remain at the time of writing).²⁰¹

The next wave of killing and displacement came in late August 1996 when government troops and Iraqi security—facilitated by fighting between the Kurdish parties in control of the north (the Kurdish Democratic Party and Patriotic Union of Kurdistan)—entered the Kurdish-controlled zone of northern Iraq. Government troops and security attacked the city of Erbil, reportedly killing at least 100 people and arresting others in the Kurdish zone, including members of the Iraqi National Congress, the Patriotic Union of Kurdistan (PUK), and other members of opposition groups rounded up in house-to-house searches.²⁰² Hundreds of people from Erbil, thought to have been arrested by Iraqi government forces, were still missing in 2001. There were unconfirmed reports that many were executed in a "prison cleansing" campaign in 1997 and 1998.²⁰³ The invasion of the north also resulted in the evacuation of 6,500 Iraqis who worked directly for, or were associated with, United States assistance and political activities in the north and in the temporary displacement of about 75,000 refugees to Iran.²⁰⁴

Ongoing Displacement by the Iraqi Government

In addition to these cataclysmic events brought on by the Iraqi government, the government has conducted other campaigns of forced mass displacement, both in the northern and southern parts of the country that continue to this day.

'Arabization' in the North: In the north, the Baghdad regime has undertaken systematic efforts to 'Arabize' the predominantly Kurdish districts of Kirkuk, Khanaqin, and Sinjar at the edge of government-controlled Iraq near the Kurdish-controlled zone. To solidify control of this strategically and economically vital oil-rich region, the government expelled Kurds, Assyrians, and Turkomans—at times, entire communities—from these cities and surrounding areas. At the same time, the government offered financial and housing incentives to Sunni Arabs to persuade them to move to Kirkuk, Mosul, and other cities targeted for Arabization. New Arab settlements were constructed on expropriated Kurdish land holdings.

Under the Arabization programme, known as 'nationality correction,' the government forces ethnic minority civil servants to sign a form 'correcting' their nationality. Persons who refuse to sign the forms—for example, a Kurd who declines to 'correct' his nationality and list himself as an Arab rather than a Kurd—are subject to expulsion to northern Iraq or the no-fly zone in the south. During the year, Kurdish and Turkoman families in Mosul and Kirkuk were reportedly expelled to northern Iraq for failure to sign the forms.

Various reports indicate that more than 100,000 persons were expelled from Kirkuk and surrounding areas between 1991 and the end of 2001. In June 2001, the PUK estimated the number of persons displaced from government-controlled areas to the Kurdish zone to be closer to

200,000, although this figure could not be independently confirmed. In September, the UN special rapporteur on Iraq reported that forced deportations of non-Arab families living in the Kirkuk area were continuing, but offered no details on the scale of expulsions.²⁰⁵

Repression of Marsh Arabs and other Shi'a in the

South: The Iraqi government has long been openly hostile to the Marsh Arabs, or *Maadan*, people living in the marshlands between the Tigris and Euphrates rivers in a triangle-shaped region formed by the cities of Amarah, Basra, and Nasiriyah. Following the suppression of the 1991 Shi'a uprising in southern Iraq, many opponents of the Baghdad regime fled to the marshes, and the Iraqi government intensified a pacification campaign it had been directing toward the *Maadan* since 1989.

Since 1991, government forces have burned and shelled villages, and built dams to divert water from the marshes to depopulate the area. Although there are no reliable estimates of the number of displaced people in southern Iraq, USCR conservatively estimates that about 100,000 are internally displaced from and within the southern region.²⁰⁶

The government has intensified its repression of the Shi'a since the 1991 uprising, arresting members of the Shi'a religious establishment and their followers, restricting communal prayer, and banning Shi'a broadcasts, the dissemination of Shi'a books, and other activities. In September 1998, the government reportedly arbitrarily arrested and detained about 20,000 persons in southern Iraq. In January 1999, there were reports of hundreds of Shi'a executions.²⁰⁷ Following the February 1999 assassination of Ayatollah Muhammad Sadiq al Sadr, the spiritual leader of Iraq's Shi'a population and a vocal critic of the central government, there were reports of widespread rioting, as well as allegations of summary executions and arrests. At the time, the Iraqi authorities also reportedly burned houses as collective punishment against rebellious villages and neighbourhoods. According to reports by the UN Special Rapporteur and Amnesty International, repression of Shi'a clergy and their followers continued in 2001.²⁰⁸

The Situation in Northern Iraq

Many residents of northern Iraq have been displaced multiple times. In October 2000, the UN Centre for Human Settlements (UN-Habitat) estimated that 805,000 people remained internally displaced in the north, although this estimate too could not be verified.²⁰⁹ No accurate estimates exist for the number of people who remained internally displaced at the end of 2001. Many continued to live in tents or with other families, but it was also clear that returns within northern Iraq were occurring, and that some of the 4,500 Kurdish villages destroyed by Baghdad forces during the "Anfal" campaign of the late 1980s were being rebuilt and reoccupied.

Based on conservative estimates, approximately 100,000 of the displaced in the north are former residents

of the government-controlled regions of Kirkuk, Khanaqin, and Sinjar who have been expelled into the north in recent years, including in 2001. Roughly another half-million Kurds whose original homes either were in northern Iraq—many of which were destroyed during the "Anfal" campaign—or who fled to the north in 1991 remained displaced during the year. Some were unable to return to their original homes in the north because of the impasse between the Kurdish political parties, while others were deterred by poor security along the border areas and lack of resources to rebuild destroyed homes and villages. USCR estimates the number still displaced in northern Iraq at approximately 600,000. During the year, many of the displaced reportedly were still living in tents or in open, unheated public buildings and remained dependent on humanitarian assistance.

The economy in northern Iraq continued to improve in 2001, and the Kurdish population appeared to be faring better economically than the Iraqis to the south. Health and nutrition in the northern governorates showed improvement, with the UN Children's Fund (UNICEF) reporting that malnutrition rates among children under age 5 dropped from 18.3 percent in 1999 to 14.5 percent in 2000.

A 1998 peace agreement signed between the Kurdish Democratic Party (KDP) and the PUK, formally ending four years of factional fighting, held through 2001, although northern Iraq remained essentially split between the two parties. The KDP controlled Erbil and Dohuk governorates, while the PUK controlled Suleymaniyah. Nevertheless, relations between the two parties improved somewhat during the year, allowing for increased trade and movement of persons between the areas under each party's control. The PUK and KDP also began implementation of an October 1999 agreement that called for the return of displaced people within northern Iraq to their places of origin; between June and October, some 1,300 families reportedly returned to their homes in Erbil, Dohuk, and Suleymaniyah.²¹⁰

Despite relative calm between the two main Kurdish factions, northern Iraq remained volatile in 2001, as the Iraqi government became increasingly active in the north and each Kurdish faction battled other parties. The Iraqi military reportedly reinforced its troops south of Erbil in June, and, according to the KDP, subjected some 30 villages just inside the border of the Kurdish-controlled zone to repeated artillery bombardment, resulting in the displacement of village residents. Fighting between government troops and the PUK broke out in September, and in October, government troops reportedly moved into the Kurdish zone, occupying a village southwest of Erbil. Several bomb blasts targeting buildings used by international and NGOs in the north also were attributed to Iraqi government agents.²¹¹

In September and October, Human Rights Watch (HRW) reported that clashes between the PUK and *Jund al-Islam* (Soldiers of God)—a militant Islamic group based in northeastern Iraq that in September declared a holy war

on northern Iraqi secular political parties—resulted in at least 200 deaths, mostly of combatants.²¹² The PUK and KDP also battled the Kurdish Workers Party (PKK), a Kurdish opposition group in Turkey with bases in PUK territory in northern Iraq. Turkish armed forces, which reportedly waged incursions into northern Iraq in pursuit of the PKK during 2000 and 2001, further complicated the security situation.²¹³

Humanitarian Impact of International Sanctions on Iraq

The international community maintained increasingly leaky economic sanctions against Iraq for a twelfth year. Although surreptitious violations of the sanctions and humanitarian exceptions through the oil-for-food programme improved Iraq's economic situation during 2001, vulnerable elements of Iraqi society continued to suffer disproportionately the effects of the sanctions.

In 2001, Russia and other members of the UN Security Council blocked an attempt by the United Kingdom and the United States to amend the sanctions regime; the draft resolution would have allowed Iraq to increase its imports of civilian goods, but also would have tightened controls on imports that could be used for military purposes.

A May-June 2000 report jointly issued by the UN Food and Agriculture Organization (FAO), the World Food Programme (WFP), and the World Health Organization (WHO) found that about 800,000 children under the age of five were chronically malnourished and that ten percent of children under age five in Baghdad, Karbala, and Diyala had indications of 'wasting' (low weight for height).²¹⁴ In contrast, the three Kurdish-controlled northern governorates appeared to be enjoying relative prosperity, both as a result of receiving a UN-mandated 13 percent of all oil-for-food revenues and 'taxes' the Kurds impose on the lucrative smuggling operations across the Turkish and Iranian borders.²¹⁵

Various people interviewed in the Middle East for this report, including NGO representatives, international diplomats, and Iraqi refugees and asylum seekers themselves reported to USCR and ECRE that the sanctions had made life unlivable in Iraq for average citizens by 2001. Along with the human rights concerns elaborated on above, the impact of the sanctions has been a significant factor in pushing many Iraqis to leave the country.

Profile of Iraqi Refugee Applicants in Jordan, Syria, and Turkey

Shi'a Muslims constitute the main group of Iraqi refugee applicants approaching UNHCR's office in Amman, followed by Christian Chaldeans, and Mandeans. Smaller numbers of other Iraqi religious minorities, including Assyrians, Yazidis, and Jews, and ethnic minorities, including Kurds and Turkomans also apply for refugee status with UNHCR-Amman.

Most Iraqi Shi'a applicants reportedly base their case on religious persecution, claiming that they are prevented from practicing their religion. Some claim that they were followers of Ayatollah Muhammad Sadiq al Sadr, the spiritual leader of Iraq's Shi'a population and a vocal critic of the central government who was assassinated in February 1999. Other Shi'a claim they, or relatives, participated in the 1991 uprising in southern Iraq, which resulted in the Iraqi authorities targeting entire families for persecution. Smaller numbers of Marsh Arabs have also applied in Jordan. Christian Chaldeans and Mandeans reportedly do not claim religious persecution but persecution based on political opinion. Political opinion cases also include some applicants who claim they were prisoners of war in Iran, Kuwait, and Saudi Arabia and were persecuted after repatriating with the help of the ICRC. Small numbers of applicants claiming persecution by the KDP also apply in Amman as do a small number of members, or relatives of, the former Iraqi Communist party and senior officials and intellectuals and draft evaders.

According to UNHCR, most Iraqi refugee applicants entering Syria come from government-controlled areas, including many of the same groups applying in Jordan. They also include increasing numbers of Iraqis who had been living for years as refugees in Iran. Deteriorating conditions in Iran and the search for resettlement opportunities led about 700 to travel to Syria in 2000 and 2001 and apply with UNHCR. Although UNHCR recognizes them as refugees, it considers them as 'irregular movers,' and therefore denies them assistance and does not seek to resettle them. While in Damascus, USCR and ECRE interviewed Shi'a, Assyrian, and Kurdish refugee applicants.

In contrast, about half of the Iraqi refugee-applicant caseload in Turkey came from Kurdish-controlled northern Iraq in 2001, and the other half from government-controlled Iraq. According to UNHCR, about half of its Iraqi applicants are Kurdish, about a quarter are Arab Muslims (mostly Sunni), and about a quarter are Chaldeans, Assyrians, and other religious and ethnic minorities. Significant numbers claim persecution based on political opinion or imputed political opinion. There is a sizable number of military officers and relatives of military officers who have deserted. UNHCR-Ankara also reported a significant number of refugee claims based on social group, often women from northern Iraq who have either refused to marry or have committed adultery and fear retribution from their extended families.

UNHCR offices in the region also noted significant numbers of applicants fleeing the effects of the economic sanctions.

Limited Possibilities for Repatriation

Repatriation to Government-Controlled Areas: In June 1999, Iraq announced an amnesty for certain Iraqis who had been expelled for specific periods of time or who had departed the country illegally, including university teachers who had left the country without exit permission, or

who had not returned home after representing Iraq in official delegations.²¹⁶ In November 1999, however, the government announced a new law that imposes prison terms of up to ten years on persons attempting to leave the country illegally.²¹⁷

UNHCR recorded 1,727 voluntary repatriations of Iraqi refugees to government-controlled Iraq from Iran and 240 returns from Saudi Arabia in 2001.²¹⁸ UNHCR did not promote these repatriations, however, telling would-be returnees that the agency could not monitor or guarantee their safety upon return. Although UNHCR reported a breakthrough in negotiations with the Iraqi government at the end of 2001 whereby the government agreed to allow the agency to monitor repatriations, the safety of returning Iraqi refugees—and by extension the prudence of promoting returns—remained in doubt at year's end. In 2001 and past years, USCR has received several reports of arrests, disappearances, and deaths under mysterious circumstances of some returnees, although these reports could not be independently confirmed.

In the course of USCR's and ECRE's field research in the Middle East, UNHCR and others reported that the Syrian and Jordanian governments generally refrain from deporting recognized refugees and asylum seekers with claims pending to government-controlled Iraq in recognition of the possibility that they could face persecution upon return. However, there was disagreement regarding the safety of returning rejected asylum seekers to government-controlled Iraq. Most European diplomats in Amman and Damascus interviewed by USCR and ECRE reported their government's serious reservations about returning rejected Iraqi asylum seekers out of concern that the mere act of having applied for asylum in Europe may lead to persecution in Iraq upon return. In discussing a Dutch proposal to repatriate rejected Iraqi asylum seekers through Jordan, UNHCR officials in Amman expressed similar concerns.

There was yet more disagreement regarding the safety of returning asylum seekers rejected in UNHCR status determinations in Jordan and Syria. UNHCR-Amman reported that it was safe for applicants rejected by its office to repatriate because of the large number of Iraqis who routinely travel to Jordan for reasons other than to apply for refugee status. Conversely, others said that the large number of Iraqi security agents operating in Jordan monitor who approaches the UNHCR office in Amman, leading to the possibility that rejected applicants could face persecution upon return.

UNHCR's Damascus office reported that the Syrian authorities generally refrain from deporting Iraqis, including those denied by UNHCR, to government-controlled Iraq, deporting them instead to the Kurdish-controlled north.

Prospects for Repatriation to Kurdish-Controlled Areas:

While there is general consensus that it remains unsafe to promote the repatriation of refugees or to deport rejected Iraqi asylum seekers to government-controlled areas, a heated debate has emerged in recent years regard-

ing possibilities for the return of Iraqis to the Kurdish-controlled north. At one extreme, the Dutch government asserts that the stability and prosperity in northern Iraq relative to the rest of the country has created an 'internal flight alternative' in the north for all but the highest profile Iraqis with a well-founded fear of persecution. This would include, for example, Arab Iraqis persecuted by the government with no connection to the north. The very low approval rate for Iraqi asylum seekers in the Netherlands is a result of this policy. In justification of his government's approach, a Dutch diplomat in Amman reported to USCR that many Iraqis, including refugees recognized in the Netherlands, were returning to visit northern Iraq. "This gives us a new perspective on the issue," the official said. However, a Dutch diplomat stationed elsewhere in the region took issue with the Dutch government's use of the internal flight alternative, saying that the decision to apply the concept was a political decision not grounded in an accurate analysis of actual situation in Iraq. While not adopting the same extreme approach of the Netherlands, other European governments, including the governments of Germany, Switzerland, and Denmark, have recognized an internal flight alternative in northern Iraq under more limited circumstances.²¹⁹

Other endorsements of an internal flight alternative to northern Iraq are more contradictory, revealing problems with its application. While the High Level Working Group on Asylum and Migration's 1999 *Draft Action Plan for Iraq* states that northern Iraq "can be seen as an internal flight/relocation alternative for those who fear persecution at the hands of the regime in Baghdad, except in the case of specified at-risk groups and after a case-by-case assessment," the action plan also noted that "a fundamental improvement in the situation of the Iraqi population, including the Kurds, is not in sight."²²⁰ Even more at odds with itself, the UNHCR position on internal flight alternative *vis-à-vis* northern Iraq maintains that "although the situation within the enclave [of northern Iraq] remains volatile and susceptible to change, UNHCR has recognized that there may be certain cases for which the possibility to remain in, or return to, northern Iraq safely cannot be ruled out."²²¹ [emphasis added]

USCR and ECRE oppose the application of an internal flight alternative to northern Iraq. Both organizations find that the prevalence of armed conflict in the Kurdish-controlled zone (which in 2001 included incursions by the Iraqi military), the presence of Iraqi government security personnel, and the fact that northern Iraq, as upheld by UN Security Council Resolution 688, remains part of the sovereign territory of Iraq preclude considering the north as a safe and durable alternative to international protection for Iraqis with a well-founded fear of persecution.

Actual Return to Kurdish-Controlled Areas: While the return of asylum seekers to northern Iraq has been hotly debated, few have actually returned there, with the exception of those deported from Syria and Turkey. Certain

European countries such as the Netherlands, have attempted to reach agreements to allow the deportation of rejected Iraqi asylum seekers to northern Iraq through Turkey and Syria. Thus far, however, the governments of Turkey and Syria have refused to cooperate.

However, Turkey did enter into a multilateral agreement with Switzerland, the Netherlands, and Sweden that permits rejected Iraqi asylum seekers in those countries to voluntarily repatriate to northern Iraq via Turkey with the assistance of the International Organization of Migration. Although the several dozen Iraqis who opted for repatriation through Turkey in 2001 appeared to do so voluntarily, most reportedly were denied assistance and legal status in Europe, leaving them little choice but to repatriate.

Turkey

Conditions in Turkey: Integration Possibilities and Protection Environment

The practice of human rights and refugee protection in Turkey falls far short of European Union (EU) standards. According to the political criteria set forth at the Copenhagen European Council in 1993 for countries aspiring to EU membership, countries must achieve “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.”²²² In reviewing Turkey’s progress towards accession in September 2000, the EU noted serious shortcomings in human rights, in particular, regarding torture, freedom of expression and protection of minorities. It also recognized that Turkey is far from implementing its own refugee status determination procedure and that the quality of the protection offered to asylum seekers and refugees in Turkey falls short of EU *acquis* standards.²²³

Political, Social and Economic Context

Whereas in the past Turkey was a significant ‘sending’ country in terms of international migratory flows, since the early 1980s, Turkey has also become a major ‘receiving’ and ‘transit’ country. At least three factors shape these migratory movements to Turkey.²²⁴ First, insecurity, economic, social and political instability, impoverishment, and human rights violations in neighbouring areas have pushed hundreds of thousands of migrants from their homelands in the hope of a better life, security, and protection from persecution, particularly from Iran and Iraq. Second, Turkey is strategically situated between East and West and North and South, making it a suitable country of transit for those intending to travel onto Western Europe. Finally, the increasingly strict immigration controls and restrictive admission procedures in Western countries, particularly in the EU, have blocked substantial numbers of migrants seeking entry to Western European countries, stranding them in countries such as Turkey.

Because of Turkey’s ill-defined ports of entry, po-

rous borders, and the prevalence of people smugglers, the number of undocumented migrants is much greater than the number of officially registered asylum seekers and refugees. It is not surprising that Turkey is a major transit country to the West. Although Turkey has an estimated one million ‘irregular migrants’ and migration is a major issue of contention between Turkey and its neighbours, including the EU, the government lacks an effective migration policy.

In interviews with government officials, ECRE-USCR researchers found that Turkish views are shaped by the country’s security and economic situation. Refugees and migrants are perceived as a potential or real threat to national and regional security. Thus, refugee protection is increasingly subsumed under the imperatives of security and the strategic priorities of the Turkish military and state security forces. The Turkish military, which exercises great influence in domestic and foreign policy,²²⁵ has also just emerged from waging a brutal armed struggle against a Kurdish separatist insurgency led by the PKK. The confrontation between the PKK and the Turkish military makes the control of the country’s eastern borders a particularly sensitive issue. The government closely (if inaccurately) associates refugees from the semi-autonomous Kurdish zone in northern Iraq with the threat posed to domestic security by the PKK. Officials express the belief that PKK ‘terrorists’ mingle among those who might otherwise have a valid claim for asylum. There is also widespread concern that refugees fleeing from unstable neighbouring regimes such as Iran constitute the vanguard of Islamic radicalism, although many of the Iranian refugees themselves are fleeing religious persecution.

In addition, Turkey has recently become a transit country for a growing number of undocumented migrants from the former Soviet republics, and Middle Eastern, Asian, and African countries trying to reach Europe. These are often people who either arrive illegally or overstay their visas and work in the black market. These groups are associated in the public mind with illegal activities, including prostitution and drug trafficking. Since Turkey has neither a strong institutional nor legal framework to deal with migration and asylum issues, the initiative to dictate the government’s asylum and migration policies rests with the Security General Directorate’s Foreigners Department whose concerns are overwhelmingly national security and not refugee protection.

Asylum seekers in Turkey told ECRE-USCR researchers that they encountered many problems with the local population. Van, along Turkey’s eastern frontier, is not only the entry point for many asylum seekers but is also a rapidly growing city undergoing socio-economic and cultural changes due to considerable urban growth. Asylum seekers compete with locals for food, shelter and employment, resulting in growing social tension.²²⁶ Women asylum seekers and refugees are particularly vulnerable. Female Iranian asylum seekers residing in two shelters in Van for single women and single women with children told ECRE and USCR that they experience sexual harassment in the streets, at their workplaces, and at the homes of their

hosts. Many of the women said that they are afraid to leave the shelters alone.

In Istanbul, asylum seekers and refugees from Iraq told ECRE-USCR that harassment by local police was a major problem. Most of the asylum seekers and refugees had been stopped by the police and had to pay bribes to avoid imprisonment. Serious psychological problems, including sleep disorders and depression, are common ailments among asylum seekers and refugees throughout Turkey, particularly among those who have been waiting long periods for decisions about their refugee status determination and resettlement to third countries.

Turkey's Capacity to Host Refugees

Turkey has limited capacity and infrastructure either in its national economy or within its social and legal structures to absorb or to host refugees and migrants. In the past few years, Turkey has experienced one of the worst economic and financial crises in its recent history as evidenced by massive rises in interest rates, inflation, and severe declines in its international reserves. Thus, the government argues that it does not have the resources to meet the standards for the social and economic rights of refugees laid down in the 1951 Refugee Convention.

Both the Turkish government and UNHCR provide minimal assistance to asylum seekers and refugees, leaving many unable to meet their basic economic and social needs. Some Turkish municipalities provide in-kind assistance, such as food and heating oil, although such assistance is delivered only on an ad-hoc and irregular basis. Registered asylum seekers and refugees are also eligible for health care at state hospitals. In the past, UNHCR provided limited financial assistance to recognized refugees in need or to asylum seekers who met the agency's assistance criteria. UNHCR generally set a higher priority for financial assistance resources in border towns like Van and Agri in order to encourage compliance with Turkish regulations and to encourage the authorities not to deport indigent asylum seekers from border areas. While UNHCR continues to provide minimal financial assistance to recognized refugees in need or to asylum seekers who meet UNHCR's assistance criteria, in the past year UNHCR has had to cut back such funding in order to balance its overall global budget. Consequently, most asylum seekers and refugees are left to fend for themselves.

Most non-European refugees and asylum seekers in Turkey are concentrated in Ankara and its satellite towns, in Istanbul and in Van and Agri, near the Iranian border. The overwhelming majority of asylum seekers and refugees do not receive accommodation or assistance. Living in slums, most refugees and asylum seekers are not permitted to work and are destitute. Although the children of asylum seekers and refugees are allowed to attend primary school, they are often deterred from attending because of the language barrier and in some cases because they lack funds for basic school supplies.

Neither international nor local NGOs have been

able to provide the needed assistance programmes to asylum seekers and refugees. This is primarily because Turkey only permits NGOs to operate in a very limited environment. The International Catholic Migration Commission (ICMC) is the only refugee-related NGO in Turkey that enjoys some official status and plays a significant role in resettlement but also in providing some social assistance to asylum seekers and refugees. Caritas, the Istanbul Inter-Parish Migrants Programme, and the Committee for Humanitarian Assistance to Iranian Refugees are the only other international NGOs that run small support and counselling programmes for asylum seekers and migrants.

Likewise, there are very few Turkish NGOs that assist refugees. The government remains suspicious of the activities of Turkish NGOs, and severely restricts them by imposing registration requirements, restrictions on financing, and other measures. The Association of Solidarity with Migrants and Asylum Seekers (ASAM) provides a modest amount of counselling and social help to asylum seekers and refugees. They also run small but important social programmes in Van and Agri in eastern Turkey, such as shelters for refugee women. Other NGOs that assist refugees include the Turkish Human Rights Association, the Turkish Bar Association, and the Anatolian Development Foundation.

Despite offers of financial assistance from external sources such as the European Union and European NGOs, local NGOs cannot accept foreign funds for their assistance and protection programmes for refugees without permission from the government. In many cases, the government denies such permission. Not only do Turkish authorities try to curtail refugee work by refusing such permission and by depriving NGOs of funds, but they also subject NGOs to harassment and intimidation. For example, Turkish security personnel refused ECRE-USCR researchers permission to privately interview ASAM staff and refugees when they visited Van in eastern Turkey. Turkish human rights NGOs in particular are marginalized by the government and depicted by the media as subversive organizations threatening national security and supporting guerrilla and terrorist groups.

There have been some improvements in Turkey's reception capacity in recent years. Most of these improvements have focused on increasing awareness about asylum seekers and their needs among Turkish officials. UNHCR and governments of several resettlement countries have organized seminars and workshops for Turkish judges, prosecutors and lawyers, police, and other government officials on refugee law and status determination. In addition to training programmes, UNHCR has also conducted awareness programmes for police on differentiating between illegal immigrants and refugees and Turkey's obligations under international law. Because Turkish judges and police are not locally based, but rather appointed or deployed from Ankara and frequently rotated out of the border regions, UNHCR's training efforts have been stymied by a lack of continuity among those who have participated in training workshops.

Protection Environment

Despite efforts to improve Turkey's reception capacity, many refugees continue to face substantial risks to their safety. Turkey signed the 1951 Refugee Convention with a geographical limitation that excludes non-Europeans. Thus, all non-European refugees must be resettled to a third country.

Turkey does allow non-Europeans to register as asylum seekers and present their claims to UNHCR. To do so, however, they must register within ten days of their arrival with the Turkish police nearest to the border where they entered (unless they arrived with valid travel documents). The police conduct interviews to determine if they should be recognized officially as asylum seekers. They send the file to the Ministry of Interior (MOI) in Ankara, where it is reviewed and passed to the Ministry of Foreign Affairs (MFA). After the MFA asks UNHCR its opinion on the claim, it makes a recommendation to the MOI, which informs the police whether the claim has been granted or denied. The majority of cases are granted 'temporary asylum seeker status.' They are given a six-month residence permit, and are sent to a satellite city where they are expected to live until they are interviewed by UNHCR for refugee status recognition and approved for resettlement to another country. The average waiting time from registration to departure ranged from 18 to 24 months in 2001, although for Iranian Baha'i applicants the process was quicker. For some applicants, the procedure can take several years.

Access to the asylum procedure remains problematic. The ten-day filing deadline has led to the exclusion from the asylum process and resulted in the *refoulement* of substantial numbers of asylum seekers and, in some cases, of recognized refugees. Moreover, the requirement that undocumented asylum seekers (about 30 percent of the caseload) register with the Turkish police nearest the border where they entered means that most Iranians and Iraqis must apply for asylum in the provincial cities most of which remain in an insecure area of Turkey. Local police rarely register the claims of asylum seekers who do not already possess a UNHCR letter. Turkish authorities also reject on procedural grounds asylum seekers who arrive via "safe third countries" or who fail to present adequate identity documents within 15 days of their arrival.

During 2001, the government's approval rate for temporary asylum seeker status was 87 percent of cases adjudicated; in its parallel procedure, UNHCR's refugee status determination approval rate during the year was 57 percent. Iranians and Iraqis represent the largest number of asylum seekers entering Turkey. The Turkish authorities recognized 92 percent of Iranians as temporary asylum seekers; UNHCR recognized 67 percent of Iranian claimants as refugees. The Turkish authorities granted 78 percent of Iraqis temporary asylum seeker status; UNHCR's refugee status determination approval rate for Iraqis was 31 percent. Turkey had a 54 percent approval rate for other nationalities; in contrast, UNHCR recognized other nation-

alities at a 53 percent rate during the year.

Those asylum applicants who are denied by the Turkish government are given fifteen days to appeal the decision or leave the country. The appeal is also decided by the MOI, although by a higher official. When an asylum seeker receives a deportation order, UNHCR assigns a high priority to completing its determination of the person's refugee status. If UNHCR recognizes a refugee slated for deportation, it writes a 'letter of support' calling upon the MOI to suspend the deportation order.

Turkish administrative courts have intervened in several cases involving asylum seekers who failed to meet the deadline, and have enjoined the police from removing those persons. These cases cite Turkey's international obligations not to return refugees to persecution. In some cases, after the courts have suspended deportations, the MOI has allowed asylum seekers who failed to meet the ten-day filing deadline to enter the asylum procedure. In other cases, the MOI has appealed administrative court decisions to the Council of State, the highest administrative court.

Despite greater involvement of the courts to check the power of the government on asylum matters, it is unknown how many people apprehended at Turkey's borders who might be seeking asylum from persecution are never given an opportunity to file a claim. In effect, only those asylum seekers who manage to evade capture and approach a UNHCR office are able to pursue their asylum claims with the authorities. Reports indicate that the rest, particularly if apprehended in the border area, are summarily deported. Iraqi and Iranian refugees and asylum seekers in eastern Turkey told ECRE-USCR researchers in January 2002 that apprehension and deportation of asylum seekers and migrants attempting unauthorized entry at the border occurred frequently. These cases are often not reported because of the remoteness of those borders, the lack of access for journalists and independent monitors, and the high military and police presence there.

Turkish police also conduct sweeps through immigrant neighbourhoods in Istanbul and other Turkish cities, arresting hundreds of undocumented immigrants, including asylum seekers. While the situation of many Iraqi and Iranian asylum seekers is difficult, asylum seekers from sub-Saharan Africa also face substantial protection problems in Turkey, often because they are easily noticed. Many Africans face harassment, beatings, and arrests at the hands of the Turkish police. In July 2001, Turkish police detained and deported more than 200 Africans of various nationalities. Turkish human rights advocates told ECRE and USCR that the authorities severely mistreated some of the Africans in detention, depriving them of food, clean water, and medical assistance. After several days, Turkish authorities attempted to deport the group to Greece, but Greece did not allow them to enter. Although Turkey eventually readmitted most of the Africans, three reportedly died and another three were allegedly raped while trapped in the border zone between Turkey and Greece.

Turkish authorities continued to deport undocumented asylum seekers and immigrants of a variety of nationalities throughout 2001, applying 'safe third country' rules to Syria, northern Iraq, and Iran for asylum seekers who had spent more time in these countries than was required to transit them. It was unclear how many of those deported may have had valid claims to refugee status. Turkey has readmission agreements with Greece and Syria that provide for the return of illegal migrants. The agreements do not contain provisions that would assure asylum seekers access to the asylum procedure in the country to which they are returned.

Turkey also has an agreement with Switzerland, the Netherlands, and Sweden that permits rejected Iraqi asylum seekers in those countries to repatriate to northern Iraq via Turkey. Although the several dozen Iraqis who opted for repatriation through Turkey during 2001 appeared to do so voluntarily, most reportedly were denied assistance and legal status in Europe, leaving them little choice but to repatriate. The Turkish government also has ongoing negotiations with the EU on various border-control measures. Turkey has proposed and sought EU funding for several projects to combat illegal migration, including for the establishment of reception centres to house illegal migrants, for the provision of air-control units to detect, deter, and check migrant smuggling in the Aegean and Mediterranean, for infra-red radar systems to be installed on Turkish coast guard boats, and for the establishment of a joint Turkey-EU solidarity fund for the orderly and swift return of unauthorized transit migrants apprehended in Turkey. For the present, the two sides have not reached any agreement on these projects.

Refugee Status Determination by UNHCR and Due Process Concerns

In practice, UNHCR is responsible for all the refugee status determination in Turkey. Some Western embassies have the legal means to entertain direct requests for refugee status and asylum, but this is rarely used in practice. Refugees and asylum seekers in Turkey, therefore, either travel onwards, often using smugglers and traffickers, to other countries to apply for asylum or stay in Turkey and apply to UNHCR for recognition and referral for resettlement abroad.

Turkish officials in Ankara told ECRE-USCR researchers that they are willing to rely on UNHCR's judgment and to go along with the agency's decisions as long as asylum seekers also register with the Turkish government and eventually those who are recognized as refugees are resettled out of Turkey. Thus, for those asylum seekers who remain in Turkey, the refugee status determination carried out by UNHCR is a linchpin of refugee protection and is the principal means by which those who need protection are identified. Despite the importance of refugee status determination as a protection tool, there exists very little government or public awareness or recognition of human rights or refugee issues in Turkey, providing UN-

HCR with a difficult and sometimes hostile working environment.

While UNHCR often provides essential protection to refugees in Turkey as well as in other countries in the Middle East, most asylum seekers and refugees, NGOs, and some foreign diplomats complained to ECRE and USCR about certain constant shortcomings in the refugee status determination procedures conducted by UNHCR. These procedures frequently lack a number of basic safeguards to ensure due process, including a lack of clarity about the threshold test applied by UNHCR in making refugee status determinations, a lack of reasons given by UNHCR for rejection of refugee claims; and the absence of an effective appeals mechanism.

The lack of accountability and transparency in the current refugee status determination system fosters considerable suspicion, resentment, and anger towards UNHCR by asylum seekers and refugees. Refugees in Turkey complain that UNHCR has not made publicly available its own guidelines or procedural rules for the conduct of refugee status determination and therefore refugees do not know what to expect when they apply to UNHCR for refugee status determination. UNHCR's substantive criteria for making refugee status determinations are often unclear. Asylum seekers often have no idea what standard of proof UNHCR uses to determine a well-founded fear of persecution, even after they have been through the interview process. Because UNHCR only issues boilerplate written explanations of its decisions, because there is no effective review of appeal decisions, and because there are no publicly available guidelines, most refugees have little understanding of UNHCR's refugee status determination criteria or process.

As noted above, there are few, if any, legal or human rights organizations in Turkey that assist asylum seekers to negotiate the RSD process. Most refugees are not provided with pre-interview legal counselling or access to legal advice during other stages of the refugee status determination process as they are in several Western countries.

The information that applicants have about their case dossiers is extremely limited. For example, UNHCR does not provide rejected asylum seekers with an explanation of why their individual case was denied. Without this knowledge, it is impossible for applicants to mount an effective challenge to UNHCR's decision to deny.

UNHCR does not have an effective mechanism for appeals for denied refugee applicants. While denied asylum seekers are permitted to appeal negative decisions, the majority of appellants are not re-interviewed and UNHCR decisions on appeal are made on the basis of the applicant's file and any new information provided. In Turkey, members of the same UNHCR field-office staff who make the original decision also decide appeals.

While ECRE and USCR recognize the difficult protection environment in Turkey and the considerable constraints under which UNHCR operates, UNHCR nevertheless has not taken sufficient care regarding due process and procedural safeguards. These shortcomings not only jeop-

ardize refugee protection but also compromise the credibility of UNHCR operations.

Resettlement Practices, Needs, and Shortcomings

UNHCR facilitated the resettlement of 2,747 refugees from Turkey to third countries in 2001. Of these, the overwhelming majority were from Iran (2,203 - 80 percent), followed by refugees from Iraq (477 - 17 percent), Afghanistan (44 - 1.6 percent) and smaller numbers of refugees from Uzbekistan, China, Congo-Kinshasa, and Ethiopia.

At the end of 2001, an additional 3,401 UNHCR-recognized refugees remained in Turkey pending resettlement. Iranians were the largest group (2,651 - 78 percent), followed by Iraqis (565 - 17 percent), Afghans (95 - 2.7 percent), Palestinians (30 - 0.9 percent), and smaller numbers of refugees belonging to other nationalities.

With the exception of small numbers of people accepted for resettlement directly by the Australian and Canadian missions in Turkey (see below), the main criteria for consideration for resettlement is a grant of refugee status by UNHCR. Because Turkey signed the 1951 Refugee Convention with a geographical limitation excluding non-Europeans, as well as other refugee protection concerns UNHCR pursues resettlement for all the non-European refugees the agency recognizes in Turkey.

Of the 2,747 refugees resettled to third countries in 2001, the United States accepted the largest number (959), followed by Canada (636), Norway (608), Sweden (200), Australia (154), and Finland (97). Smaller numbers resettled to Germany, Denmark, the United Kingdom, France, Italy, the Netherlands, New Zealand, and Switzerland during the year.

As is the case elsewhere, criteria for selecting refugees for resettlement in Turkey vary from government to government. Refugees resettled to the United States are all technically UNHCR-referred cases, in deference to the Turkish government's general requirement that all undocumented refugees must be recognized by UNHCR to receive exit permission to leave the country. However, the overwhelming majority (782 persons, or 81 percent of the US caseload in 2001) were Iranian Baha'is who fall under the US Refugee Processing Priority Two, which includes a group designation for "members of Iranian religious minorities" in establishing eligibility for United States resettlement. Iranian Baha'is do not, therefore, need to undergo a refugee status determination by UNHCR. Rather, UNHCR simply confirms whether or not the applicant in question actually is a member of the Baha'i religious community. Applicants who are confirmed to be Iranian Baha'is have a near 100 percent approval rate with the Immigration and Naturalization Service (INS). The United States also resettled another 114 Iranians and 62 Iraqis in 2001 who underwent UNHCR refugee status determinations and were considered under the US Refugee Processing Priority One, which establishes eligibility for consideration for UNHCR referrals.²²⁷

Although American embassies may also identify

cases for resettlement, embassy officials in Ankara told USCR and ECRE that they do not make use of this authority in practice. Instead any person approaching the embassy requesting refugee status and resettlement is referred to UNHCR. While the sole criteria for United States resettlement is meeting the definition of a refugee under United States law, the American government has increased the security screening of refugee applicants worldwide in the aftermath of September 11, in particular requiring enhanced scrutiny for certain (classified) nationalities that presumably include Iraqis and Iranians. During the first six months of FY 2002, about 600 refugees had been admitted to the United States out of its Near East/South Asia regional ceiling of 15,000 for the year, which projects to a 92 percent shortfall in admissions for the year from the region that includes admissions out of Turkey.

Canada, with the second largest resettlement programme out of Turkey, resettled 636 UNHCR-recognized refugees in 2001, including 528 Iranians, many of whom also were Baha'is. Canada also accepted 74 Iraqis, and small numbers of Afghans, Chinese, Congolese, and Uzbeks. In addition to UNHCR-referred cases, the Canadian government also resettled about 200 privately-sponsored persons under its "asylum country class," an admissions category for people not meeting the 1951 Convention definition of a refugee, but who are otherwise at risk of human rights violations, armed conflict, or civil war. Canada does not accept applicants who were soldiers or who committed war crimes. The government screens applicants for security risks and requests that UNHCR take this into account in making referrals. Although Canada previously denied resettlement to refugees with health conditions that would be costly to the government, the new Canadian refugee law, effective June 2002, discontinues this policy.

Like Canada, Australia also runs a "Special Humanitarian Programme" for people who do not meet the refugee definition but have suffered substantial discrimination amounting to a gross violation of human rights. These people must be sponsored by an Australian citizen, permanent resident, or Australian organization. In 2001, the Australian government resettled some 110 persons, mostly Iraqis, under its special humanitarian programme in Turkey, in addition to the 154 UNHCR-recognized refugees admitted (mostly from Iran). In making its selections for resettlement, the government factors in an applicant's ability to integrate in Australia. The government also does not resettle refugees with health problems that would pose a significant financial burden to the state. After September 11, the Australian embassy in Ankara reported to USCR and ECRE that it began to scrutinize applicants more closely on security grounds.

With the third largest resettlement programme in Turkey, Norway resettled 608 refugees from Turkey in 2001, including 460 Iranians, 126 Iraqis, and 21 Afghans. A Norwegian diplomat in Ankara reported to USCR and ECRE that Norway is reducing the number of Iraqi refugees it

resettles in order to admit more Iranian Baha'is. Although the Norwegian government maintains that its primary consideration in making selections is to grant resettlement to those most in need of protection and those with medical problems or family links in Norway, there have been some reports that selection criteria may shift to focus more on a refugee's ability to integrate and on other immigration criteria.

Sweden resettled 200 UNHCR-referred refugees out of Turkey in 2001, including 110 Iranians, 83 Iraqis, and 7 Afghans. The Swedish government gives priority to refugees with family links in Sweden. In addition to refugee resettlement, the Swedish embassy in Ankara granted family reunification visas to about 800 to 900 applicants during the year, mostly from Iraq. Minor children, spouses, and dependent members of the same household qualify for family reunification.

Vulnerable Groups and Individuals Denied Resettlement Opportunities: Based on field research in Turkey including interviews with both accepted and denied asylum seekers, USCR and ECRE found that there is a substantially greater pool of people in need of resettlement than there are places available.

The largest definable caseload is a group of some 300 Iranian refugees recognized by UNHCR. Between January 2000 and December 2001, about 850 Iranian refugees arrived in Turkey from the semi-autonomous Kurdish zone in northern Iraq. The Iranian refugees moved from northern Iraq to Turkey because of security concerns and to seek resettlement outside the region; they had no opportunity for resettlement remaining in northern Iraq, nor any prospects for local integration or repatriation. Although the Turkish government generally has regarded this group as inadmissible for temporary asylum because it considers northern Iraq to be safe for them, UNHCR negotiated an agreement with the Turkish government that allowed the agency to review the claims of Iranians arriving from northern Iraq in 2000 (about 550 persons). While UNHCR was working to find resettlement opportunities for the Iranian refugees who arrived before January 1, 2001, the agency and the government would not consider those who arrived after January 1 as eligible for resettlement (about 300 persons). In ECRE's and USCR's view, this group of refugees, and the remaining 4,700 Iranian refugees in northern Iraq, have pressing protection concerns and no durable solution in northern Iraq. Consequently, they should be considered for resettlement.

Through interviews with several dozen asylum seekers in Turkey, USCR and ECRE found that there are individual asylum seekers denied refugee status by UNHCR who nevertheless appear to have compelling claims to a well-founded fear of persecution. The fact that USCR and ECRE found such cases in a relatively small pool of asylum seekers would suggest that there may be substantial numbers of refugees whom UNHCR wrongly denies refugee status. There are also undoubtedly substantial numbers of refugees among the tens of thousands of un-

documented foreigners who bypass UNHCR-Turkey and travel on spontaneously to Europe and other destinations each year.

In addition to refugees, USCR and ECRE found that there are applicants who do not meet the 1951 Refugee Convention definition but who are nevertheless particularly vulnerable in Turkey. These include single women and single women with children and the elderly from Iran, Iraq, and other countries with little prospect of repatriating who find themselves vulnerable and without support in Turkey. While the Canadian and Australian humanitarian admissions programmes take limited numbers of people belonging to these categories, interviews with NGOs, asylum seekers, and others revealed that the needs outstripped the resettlement places available.

Access to Resettlement: Under the present system in Turkey, all but the handful of applicants admitted under the Canadian and Australian humanitarian programmes need to be recognized by UNHCR to be resettled to third countries. This places considerable responsibility on UNHCR to conduct fair and impartial refugee status determinations. While USCR and ECRE regard UNHCR staff in Turkey to be among the most qualified in the region to run a refugee status determination procedure, USCR's and ECRE's field research nevertheless strongly suggests that the refugee agency interprets the refugee definition too strictly, resulting in the denial of applicants who are refugees and should be afforded resettlement. USCR and ECRE also found UNHCR's refugee status determination procedure to lack transparency and an effective right to an appeal (see "Refugee Status Determination by UNHCR and Due Process Concerns" above).

These findings are based on USCR-ECRE interviews with several dozen asylum seekers and refugees in Turkey, interviews with NGO representatives, and on comparative approval rates for similar applicant groups in other countries. It is also based on an analysis of UNHCR policies, including the agency's application of the concept of internal flight alternative to Iraqi asylum seekers resulting in the denial of persecuted applicants whom UNHCR deems to be safe and able to integrate in northern Iraq. ECRE, USCR and other NGOs disagree with this policy, finding that northern Iraq affords neither safety nor a durable solution for Iraqis who otherwise would be considered refugees. Moreover, during a 1999 USCR site visit to Turkey, UNHCR-Ankara staff themselves said that the agency applies relatively strict criteria for refugee recognition, for example, not considering instances of past persecution alone as grounds for refugee status. While UNHCR's overall recognition rate has increased from 41 percent in 1999 to 57 percent in 2001, the recognition rate for Iraqis has remained relatively low (31 percent in 2001). Low approval rates have led to a substantial reduction in the number of Iraqis filing claims with UNHCR in Turkey, from 2,939 applicants in 1997 to 982 in 2001. It is reasonable to infer that many have bypassed UNHCR, recognizing that their chances for approval are relatively slim, and chosen

instead to travel directly to countries of destination, primarily in Europe.

Some NGOs such as the International Catholic Migration Commission (ICMC) and ASAM have identified vulnerable people in refugee-like circumstances in Turkey and referred them both to UNHCR and directly to resettlement countries. The Canadian system allows NGOs to refer cases directly to embassies in countries of first asylum provided they have an agreement with the embassy in question. The Canadian embassy in Ankara has entered into such an agreement with ICMC for referrals to Canada's "asylum country class" programme. The Canadian embassy reported to USCR and ECRE that it was encouraging other NGOs to channel referrals through ICMC. The Australian embassy also receives referrals from NGOs on an informal basis. While NGO referral mechanisms are useful—particularly because the NGOs in question often had the most direct contact with asylum seekers and are well situated to assess need—ECRE and USCR noted that there are presently only a very small number of NGO referrals directly to embassies.

Most embassies in Turkey do accept applications for resettlement directly from asylum seekers. With the exception of the Australian and Canadian embassies, diplomatic missions decline to accept their applications, instead referring them to UNHCR. The Canadian and Australian embassies have also encountered substantial barriers in obtaining exit permission from Turkey for undocumented foreigners not recognized by UNHCR but accepted for resettlement under the Canadian and Australian humanitarian programmes.

Role of NGOs in Case Preparation: Most resettlement countries operating in Turkey rely heavily on UNHCR or embassy staff to complete all the administrative work connected to resettlement in addition to providing refugee referrals. However, the United States, and more recently Canada, have established contracts with ICMC, which maintains an office in Istanbul, to prepare resettlement cases. ICMC acts as the 'Joint Voluntary Agency' (JVA — called this because it represents all private voluntary agencies in the United States that provide resettlement services to refugees) for the US refugee programme's resettlement operations, not only in Turkey, but also in Lebanon, Kuwait, Cyprus, and Yemen. JVA work includes everything from pre-screening applicants and filling out United States government paperwork on individual cases to arranging the logistics of INS adjudication missions, providing information for sponsorship in the United States, arranging for medical exams and providing information for security checks and travel to the United States.

While the currently small quotas of individual European resettlement programmes do not appear to lend themselves to a JVA-style system, USCR and ECRE found that ICMC's JVA role in Turkey is particularly well suited to a larger resettlement programme such as that of the United States, and possibly to a future expanded EU resettlement programme. The ICMC operation in Istanbul

enables the United States' programme to resettle larger numbers of refugees with efficiency and speed. While it was beyond the scope of this report to conduct a detailed analysis of the cost of ICMC's JVA operation compared to the cost of UNHCR and embassy staff handling similar elements of processing for other programmes, it appeared to USCR and ECRE that the JVA model was the more cost-effective one, particularly if a large number of cases was being considered. As alluded to above, USCR and ECRE found other benefits of the JVA approach, including daily contact with asylum seekers allowing identification of vulnerable individuals. ECRE and USCR also found that ICMC staff had developed an expertise on different asylum seeker groups, which improved the quality of the selection process.

Resettlement and the Spirit of Due Process: Resettlement remains a discretionary programme for all resettlement countries operating in Turkey. As such, no resettlement country offers the opportunity for an effective appeal of negative decisions. Instead, denied cases are referred back to UNHCR, which must find another resettlement country to consider the case.

Jordan

Conditions in Jordan: Integration Possibilities and Protection Environment

While Jordanians generally remain sympathetic to the situation of Iraqi and other non-Palestinian refugee groups, conditions for non-Palestinian refugees in Jordan remain insecure. Iraqis make up almost the entire UNHCR refugee caseload in Jordan. In addition to the several thousand Iraqi asylum seekers who file claims each year with UNHCR, there are an estimated 250,000 Iraqis living in the country, most of whom arrived in Jordan since the 1990-91 Gulf War. The prevalence of human rights abuses in Iraq, intermittent low-intensity military conflict, and the devastating impact of sanctions imposed by the international community continue to result in a steady flow of Iraqi asylum seekers and migrants into Jordan. These factors also make it unlikely that most of the Iraqi nationals will be able to repatriate for the foreseeable future. At the same time, most Iraqis lead a precarious existence in Jordan and have no viable possibilities to locally integrate.

Political, Social, and Economic Context

With Iraq on its eastern border and the Israeli-occupied West Bank and Israel to its west, Jordan is located in a highly volatile region and is no stranger to forced displacement. The fact that Jordan, a country of some 5.15 million, hosts more than 2.4 million displaced Palestinians is critical to understanding its treatment of Iraqi and other non-Palestinian refugee groups. Measured as ratio of refugees to total population, Jordan hosts more refugees than any country in the world today. Regional instability, large-scale

refugee inflows, and Jordan's poor economic performance also have led the Jordanian government to view the presence of large numbers of Iraqi asylum seekers as a threat to security and public order.

Jordan has absorbed hundreds of thousands of Palestinian refugees and other forced migrants as a result of three major regional wars during the last 54 years. With the creation of Israel in 1948, several hundred thousand Palestinian refugees fled their homes in what became Israel and sought refuge in Jordan (which, at the time included the West Bank). By 2001, the number of Palestinian refugees and their descendants originating from Israel proper had grown to 1.64 million, according to the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).²²⁸ Thousands of other Palestinians were displaced into Jordan during the 1967 Arab-Israeli war, which resulted in Israel's occupation of the West Bank. As with Palestinian refugees from 1948, the number of Palestinians displaced in 1967 and their offspring has multiplied into the hundreds of thousands.

The 1990-91 Gulf War also resulted in the forced return of about 300,000 Palestinians with Jordanian travel documents from Persian Gulf states (some citizens, some not) because of Yasser Arafat's decision to side with Saddam Hussein during the war.²²⁹ UNRWA estimates that 800,000 Palestinians currently residing in Jordan were either displaced from the Occupied Territories during or after 1967 or returned from the Gulf States in the early 1990s.²³⁰ Finally, Jordanian media reported a net influx of 26,000 Palestinians from the West Bank and Gaza Strip between August 2000 and June 2001, presumably as a result of the ongoing violence in the Occupied Territories.

While discrimination against Palestinians persists in Jordan, Jordan has treated Palestinians generously compared to other countries in Middle East. Jordan accorded citizenship to 1948 Palestinian refugees and their descendants. While it does not grant citizenship to Palestinians displaced from the Occupied Territories since 1967, it issues them travel documents.

According to UN officials and others based in Amman, the Palestinian refugee problem is arguably the single most important factor that prevents Jordan from signing the 1951 Refugee Convention and accepting refugees falling under UNHCR's mandate. From its perspective, the Jordanian government has more than met its humanitarian obligations through hosting millions of displaced Palestinians during the past 54 years. Moreover, the Jordanian government sees little point in signing the Convention if it would jeopardize the "right of return" of Palestinian refugees.²³¹

The weakness of the Jordanian economy is also an important factor explaining both the government's reluctance to recognize non-Palestinians as refugees and Jordan's inability to assimilate them. The 1990-91 Gulf War and subsequent economic sanctions on Iraq dealt devastating blows to Jordan's already anaemic economy. Remittances sent home to Jordan from the Gulf States dried up as Palestinians with Jordanian travel documents and

Jordanians were forced to leave Kuwait and other Gulf States.²³² Sanctions against Iraq, prior to the war Jordan's largest trading partner, have also resulted in a sharp decline in trade, generating significant income losses.²³³ By 1999, an estimated 30 percent of the Jordanian population lived below the poverty line and 25 to 30 percent of the workforce was unemployed.²³⁴

Two additional external shocks have hit the Jordanian economy during the past year and a half. First, the collapse of the Palestinian Israeli peace process and the resulting violence in the West Bank and Gaza Strip has led to a sharp drop in tourism in Jordan and a reduction in trade and movement of people to and from the Occupied Territories and Israel. Second, the September 11, 2001 terrorist attacks in the United States have dealt an additional blow to Jordan's tourism sector, as western tourists have shied away from air travel and travel to Middle Eastern destinations. During USCR's site visit to Jordan in November 2001, UN officials and others reported that most of the hotels in Amman (many built during the early 1990s when investors were optimistic about Jordan's tourism prospects with the Oslo Peace process in full swing) stood empty.

Other countries have done little to assist Jordan in hosting refugees. In 2001, the Jordanian government spent five times more money on assistance for Palestinian refugees than UNRWA, which has suffered from severe funding shortfalls since the early 1990s.²³⁵ The international community provides scant assistance to non-Palestinian refugees and people in refugee-like circumstances in Jordan.

At the same time, European governments along with the governments of Canada and Australia have tried to enlist Jordan's support in preventing the onward migration of undocumented Iraqis and other irregular foreigners from Jordan. Immigration control officers from the Netherlands, Sweden, Norway, Australia, Canada, and the United States work in Amman and maintain a presence at Queen Aliya International Airport to prevent the departure of foreigners with fraudulent documents. The Jordanian authorities have cooperated in this endeavour, particularly since September 11, which reportedly has resulted in a substantial reduction in the number of insufficiently documented asylum seekers arriving from Jordan in European and other countries of destination. However, the Jordanian government has been reluctant to accept the return of rejected Iraqi asylum seekers that may have transited through Jordan en route to various western destinations.

Protection Environment

Because Jordan is not a signatory to the 1951 Refugee Convention and has no domestic laws that deal with refugees or asylum, UNHCR is responsible for conducting refugee status determination and assisting refugees in the country. Nevertheless, Jordan signed a Memorandum of Understanding (MoU) with UNHCR in April 1998 concerning

the treatment of asylum seekers and refugees. According to the MoU, Jordan agrees to admit asylum seekers, including undocumented entrants, and respect UNHCR's refugee status determinations. The MoU also adopts the refugee definition contained in the 1951 Convention and forbids the *refoulement* of refugees and asylum seekers. During its November 2001 site visit to Jordan, USCR received reports from various sources—including diplomats, NGO representatives, and asylum seekers—suggesting that the Jordanian government did not always abide by the terms of the MoU (see below).

Jordan does not consider itself to be a permanent country of asylum. Therefore, resettlement outside the region is the only durable solution for UNHCR-recognized refugees in Jordan.

Access to Jordanian Territory and UNHCR and Residency Rights: Almost 90 percent of asylum seekers approaching UNHCR in Jordan are Iraqi nationals. Some Iraqis fearing persecution in Iraq are believed to slip across the border into Jordan, where they remain without status or seek to move on to other countries. Most, however, enter Jordan legally on Iraqi passports; even individuals with a well-founded fear of persecution can procure them if they have enough money to pay the requisite bribes. The government allows Iraqis with passports to enter and remain in Jordan for up to six months, after which they must either return to Iraq or depart to a third country in order to renew their visa. UNHCR reported that the authorities also generally allow undocumented Iraqis who express the wish to seek asylum to enter the country and file refugee claims with UNHCR. The UNHCR representative in Amman told USCR that the police frequently refer asylum seekers to the refugee agency.

However, in past years there have been reports of push-backs at the Jordanian-Iraqi border, including the non-admission of a group of 400 Iraqi asylum seekers in February 1998. Jordan also has signalled its reluctance to admit large numbers of Iraqi refugees at times when a mass influx appeared a real possibility. For example, as tensions mounted in the Middle East in February and November 1998 over the issue of UN weapons inspections in Iraq, Jordan announced that it would close its border to Iraqi refugees.²³⁶ Although USCR did not hear of push-backs of asylum seekers during its November 2001 site visit, USCR was unable to ascertain whether this was because the government admitted all asylum seekers arriving at the border in compliance with the terms of its MoU with UNHCR, or whether it was because of a lack of information and reporting.

More evidently problematic than the question of admission to Jordan, USCR received reports from asylum seekers and diplomatic sources of periodic arrests and deportations of undocumented Iraqi nationals already in the country. One Western diplomat based in Amman said that the Jordanian authorities regularly arrest undocumented Iraqis and transport them by bus to the border with Iraq where they are deported. The diplomat expressed doubts

about whether the authorities actually screened deportees for potential refugees.

Although unable to definitively establish if asylum seekers or refugees have been among the deportees, USCR noted that most asylum seekers were forced to reside illegally in Jordan after the first six months of their stay in the country, leaving them vulnerable to arrest and deportation. While it normally takes months for UNHCR to reach a decision on cases and ten to twelve months to resettle refugees from the time UNHCR approves their applications, the Jordanian government limits to six months the time that refugees may legally remain in Jordan and does not renew identification documents after this period has elapsed. Although UNHCR and others reported to USCR that the government generally tolerates the presence of refugees after their documents lapse, refugees and asylum seekers without valid identification reported that they lived in constant fear of arrest and deportation. Various sources, including diplomats, NGO representatives, and numerous Iraqis living in refugee-like circumstances, reported that undocumented Iraqis tended to be more vulnerable to these actions and a variety of other protection problems.

USCR received reports from a number of sources that Iraqi government agents operate in Jordan, adding to the climate of insecurity and unease for many Iraqis. However, no sources were able to provide specific examples where Iraqi agents had actually threatened or harmed asylum seekers or refugees.

Living Conditions and Assistance: While UNHCR provides modest assistance to Iraqis and others it recognizes as refugees, the broader population of Iraqis receives little, to no, assistance. During its November 2001 site visit, USCR found that many Iraqis are among the poorest in Jordanian society. Although not permitted to work, many do so illegally, eking out meagre existences in jobs such as street vendors or construction workers. Iraqis living in Amman reported to USCR that Jordanian authorities periodically police markets and construction sites, arresting illegal workers. Those arrested may be subject to deportation. As illegal workers are in most places, many Iraqis are also vulnerable to exploitation by their employers, receiving lower wages and at times no wages at all for their work. While in Amman, USCR visited a number of Iraqi asylum seekers in their homes and found that most live in slums, in overcrowded and, at times, unsanitary conditions. On the positive side, Iraqi children may attend Jordanian schools, including those without legal status in the country.

Very few NGOs assist the broader Iraqi community in Jordan, according to the Caritas office in Amman, which provides schooling and medical assistance to Iraqis. Caritas's representative in Amman told USCR that there was a great need for more assistance to the broader community of Iraqis in Jordan in the areas of health care, nutrition, housing, and social services.

UNHCR Refugee Status Determination

At the end of 2001, 990 UNHCR-recognized refugees were in Jordan, of whom 868 came from Iraq. During the year, 4,605 asylum seekers filed claims with UNHCR, the overwhelming majority, 4,095, from Iraq. Small numbers of Sudanese, Syrians, and Sri Lankans also applied for refugee status in Jordan during the year.

In 2001, UNHCR decided the cases of 3,105 refugee applicants (including appeals), granting refugee status to 703 refugees, an approval rate of 22.6 percent. Iraqi nationals—accounting for 89 percent of all decisions taken by UNHCR-Amman—had an approval rate of 24.6 percent. More recent reports, however, indicate a sharp drop in the approval rate to below 10 percent for the first several months of 2002.

USCR's findings, and indeed UNHCR's own reporting, strongly suggest that UNHCR-Amman's refugee status determination procedure applies overly restrictive criteria for acceptance, leading to the denial of applicants who should be considered refugees under the 1951 Convention. A passage from UNHCR-Amman's mid-year report for the first half of 2001 acknowledges UNHCR-Amman's strict criteria and suggests that the refugee agency is preoccupied with concerns other than maintaining a fair refugee status determination procedure. In that report, UNHCR states: "To avoid a pull factor and through close relationship with the government of Jordan and strict refugee status determination procedures, Branch Office (BO) Amman has maintained a realistic resettlement quota just sufficient to cope with the case load."²³⁷

USCR's interviews with both accepted and rejected asylum seekers not only suggest that the UNHCR-Amman's criteria for acceptance are overly restrictive but that the procedure is fraught with inconsistencies. One case involved the brother and sister of an Iraqi refugee resettled to the United States in 1995 from the Rafha refugee camp in Saudi Arabia, who filed applications with UNHCR-Amman late in 1998. The brother and sister both had compelling refugee cases as a result of persecution inflicted on their family because of their brother's participation in the 1991 uprising in southern Iraq and because the Iraqi regime targeted them both individually for persecution. Although UNHCR-Amman approved the brother, the office denied refugee status to the sister, despite the strength of her own claim and her family links to two brothers recognized by UNHCR as refugees. In approving the brother and denying the sister, UNHCR-Amman itself added to the ranks of vulnerable single refugee women, as the brother was resettled to the United States.

Another case involved an Iraqi husband, wife, and three children who fled Iraq because of repeated threats by Iraqi security personnel in connection with the wife's brother who is a high profile Iraqi opposition member working in the United States. The husband, who fled separately and was the first to approach UNHCR-Amman, was denied refugee status. The wife and children in contrast were later approved. Fearing that he would not be able to

leave Jordan with his wife and children or might be deported to Iraq, the husband decided to leave Jordan and managed to travel to Italy and then on to Denmark where he promptly was granted asylum. Although he was able to apply for a family reunification visa to join his wife in the United States where she resettled, the experience exposed the husband to the risk of *refoulement* and resulted in his prolonged separation from his family. In addition to shedding light on what appears to be erratic and poor decision making on UNHCR's part, this case also vividly demonstrates the incentive for bypassing UNHCR in the region altogether and travelling onward to Western Europe.

These are but two examples of several highly questionable decisions rendered by UNHCR-Amman that have come to USCR's attention, both before and during USCR's November 2001 site visit. They not only display UNHCR's strict approach but also an unsettling arbitrariness in the office's refugee status determination procedure. Reports that UNHCR's overall approval rate has dropped significantly during the first months of 2002 add to USCR's concern that the procedure is too strict, at times arbitrary, and generally unfair.

In addition to these concerns, most asylum seekers with whom USCR spoke in Amman expressed a frustration that they did not understand the status determination process and that the waiting time for a decision was often extremely long. Although UNHCR reported that it is training staff at two Jordanian NGOs to provide counselling for asylum seekers, these activities appeared limited to USCR. It did not appear that any NGO had enough interaction with UNHCR or asylum seekers to provide a meaningful check on UNHCR's work in Amman.

Resettlement Practices, Needs, and Shortcomings

UNHCR facilitated the resettlement of 1,748 refugees from Jordan to third countries in 2001. Of these, the overwhelming majority were from Iraq (1,699-97 percent). Another 21 Somalis, 14 Sudanese and small numbers of other refugees resettled from Jordan during the year. The United States accepted the largest number of refugees resettled (499), followed by Sweden (427), Denmark (391), Canada (146), and Australia (128). Norway, New Zealand, Germany, Finland, and other countries each resettled small numbers.

As is the case elsewhere in the region, the governments of Australia and Canada are the only governments that operate resettlement programmes that vet a portion of their cases on humanitarian criteria more general than the refugee definition. During USCR's November 2001 site visit, the Canadian embassy in Amman estimated that in 2001 it would resettle between 300 and 500 privately sponsored applicants under its "asylum country class," an admissions category for people who do not meet the 1951 Refugee Convention criteria, but who are otherwise at risk because of human rights abuses, armed conflict or civil war. The Australian embassy in Amman

estimated that it would resettle considerably fewer persons out of Jordan under its special humanitarian programme. USCR's interviews with asylum seekers in Amman suggest that there are many more in the Iraqi community in Jordan who fulfil the criteria of the Canadian and Australian humanitarian programmes and would benefit from resettlement.

The Swedish embassy in Amman also grants family reunification visas to hundreds of Iraqis annually. Eligibility extends to minor children, spouses, and members of the same household who are economic dependents. While Sweden recently incorporated this last criterion into its law, USCR interviewed a 27-year-old Iraqi woman left stranded alone in Amman because the Swedish embassy denied her application for reunion with her mother in Sweden while approving the applications of her minor siblings and father. USCR was unable to ascertain whether or not this apparent mistake was an anomaly.

Aside from family reunification and the small number of applicants who are directly accepted by Australia and Canada based on humanitarian considerations, the main criteria for eligibility to be considered for resettlement is a grant of refugee status by UNHCR. As mentioned above (see "UNHCR Refugee Status Determinations"), UNHCR's overly strict interpretation of the refugee definition together with what appears to be significant variations in the quality of UNHCR adjudications have resulted in the denial of refugee status to *bona fide* refugees who could have been eligible for resettlement consideration. USCR found that the high rate of denial and consequent lack of resettlement opportunities serves as a strong incentive for those with the means to bypass UNHCR in Jordan and instead travel on directly to Western countries of asylum.

The criteria for acceptance of resettlement countries operating in Jordan and their good practices and shortcomings are very similar to the criteria described in the Turkey case study of this report and therefore need no further elaboration here.

Although the September 11, 2001 terrorist attacks in the United States resulted in a temporary suspension of US resettlement out of Amman, an INS circuit ride was scheduled to Amman for the spring of 2002. The events of September 11 did not appear to have an impact on other refugee resettlement programmes.

Syria

Conditions in Syria: Integration Possibilities and Protection Environment

The reception and protection environment for refugees in Syria falls short of the minimum standards set forth in the UN Refugee Convention. The nationalities that dominate UNHCR's caseload in Syria come from countries where conflict, persecution, and other human rights abuses have persisted for years, making it unlikely that they will be able to return home any time soon. It is also the case that there exist almost no viable local integration possibilities. Most

non-Palestinian refugees and asylum seekers have few economic opportunities and have little prospect of finding a solution to their plight in Syria.

Political, Social and Economic Context

Syria is situated in an unstable region where some of the major producers of refugees are located. During the past 10 years, Syria has received large numbers of refugees from Iraq, Iran, Somalia, Afghanistan and Sudan. In addition, Syria hosts more than 391,000 Palestinian refugees registered with the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). In addition to Palestinians registered with UNRWA, the Syrian government reported another 75,000 unregistered Palestinians living in refugee-like conditions in the country during 2001. As many as 40,000 Iraqi nationals not registered with UNHCR also live in Syria, many of whom may be refugees. An estimated half-million long term internally displaced persons and 200,000 stateless Kurds also live in the country.

Like Turkey and many of the other countries visited by ECRE and USCR, Syria is a major transit country to the West. Many asylum seekers transiting Syria blend in with the larger flow of undocumented migrants. As in Jordan, Syrian authorities feel they have done more than their share in providing assistance to refugees by hosting hundreds of thousands of Palestinians. As such, Syria would be very reluctant to assume more responsibility for refugees, particularly at a time of escalating tension in region, in particular regarding Iraq and the war against global terrorism.

It is not surprising, therefore, that refugees and asylum seekers in Syria are viewed not only as a humanitarian problem requiring generosity and assistance but also increasingly as a security problem that needs to be contained. These negative perceptions have begun to create uncertainty among refugees and migrants, especially since September 2001. Whereas Syria previously had allowed nationals of Arab countries (except Iraqis) to reside indefinitely in the country without applying for a residence permit, Syria recently amended its admission and residence procedures for citizens of Arab countries generally, and for Iraqis specifically. The new regulation requires Arab-country nationals to apply for, and renew, a residence permit every three months. Citizens of Arab countries still may enter Syria without a visa. The regulation also rescinded the prior requirement that had obliged Iraqis to obtain a security clearance from the Syrian authorities to enter and remain in the country. ECRE and USCR were told that the new residence requirement might make it easier for Syria to deport or restrict refugees and illegal migrants in the future should Syrian relations with any of its refugee-producing neighbours change, particularly if it reaches a *rapprochement* with Iraq.

Perhaps most significantly, the local environment is not conducive to providing protection to asylum seekers and migrants. Syria is not a signatory to the major

international human rights instruments and as a consequence there is a legal vacuum about human rights issues generally in Syria. Neither the Syrian public nor government officials exhibit much awareness or recognition of the human rights conditions in neighbouring countries or of the international obligations that states have to the international human rights regime.

Ability of Syria to Host Refugees

Syria has limited capacity and infrastructure either in its national economy or within its social and legal structures to absorb or to host refugees and migrants. Like other economies in the region, Syria has experienced one of its worst economic and financial crises in recent years. The government does not have resources to meet the standards for the social and economic rights of refugees set out in the 1951 Refugee Convention. Most UNHCR-recognized refugees receive limited financial assistance, which is channelled through the Syrian Arab Red Crescent Society and the Women's Association. However, because of continuing cutbacks in UNHCR assistance programmes, many asylum seekers and refugees go unassisted. Syria does not allow non-Palestinian refugees the right to employment, although it reportedly tolerates the illegal employment of foreign Arabs.

An important constraint in the ability of Syria to offer a secure asylum environment for refugees is the extremely limited roles of NGOs and civil society permitted there. Local NGOs have to register with government ministries and they are not permitted to function freely. In Syria, as in Turkey, local NGOs cannot gain direct access to foreign funds for their assistance and protection programmes for refugees. Human rights NGOs are non-existent. A restrictive environment also exists for international NGOs. Hence, there are very few NGOs in Syria and virtually no check on the government or on the few international agencies that deal directly with refugees, such as UNHCR.

Protection Environment

Syria is not a signatory to the UN Refugee Convention or Protocol and does not want to be considered a country of asylum for non-Palestinian refugees. Syria generally tolerates the presence of non-Palestinian refugees, but does not offer them the possibility for permanent asylum. Thus, UNHCR pursues resettlement for those the agency recognizes as refugees in Syria.

Asylum seekers and refugees either register with UNHCR for assistance and protection or pursue illegal means, mainly via smugglers, to gain access to third countries. In December 2001, there were 3,271 UNHCR-registered refugees in Syria, the largest number from Iraq (1,597). Significant numbers also came from Yemen (662), Somalia (397), Afghanistan (407), and Sudan (109). In addition, some 2,935 asylum seekers applied for refugee status with UNHCR during the year, mostly from Iraq.

Although UNHCR was unable to provide detailed statistics on its status determinations for 2001, it reported to USCR and ECRE that its recognition rate was somewhere between 10 and 13 percent, a significant drop from the 29 percent approval rate the agency reported for 2000.

During the USCR-ECRE January 2002 site visit, UNHCR reported that about 700 Iraqi long-term residents of Iran had applied for refugee status with UNHCR in Syria since the beginning of 2000, most in 2001. UNHCR treats such applicants as 'irregular movers,' granting them refugee status if they meet the refugee definition, but denying them assistance and resettlement opportunities because it deems them to have already found protection in Iran.

While UNHCR reported that the Syrian authorities generally cooperate with the agency to ensure that refugees receive protection and facilitate UNHCR's visits to asylum seekers and refugees in detention, the government does not recognize non-Palestinians as refugees or grant them asylum, leaving them vulnerable to arrest, *refoulement*, and other protection problems. The commission of any crime, including illegal border crossing (the only way for many asylum seekers to leave their countries of origin) constitutes a deportable offence in Syria. Hence asylum seekers are not protected against random and arbitrary deportation. During 2001, for example, Syrian authorities reportedly deported to northern Iraq seven Iraqi asylum seekers registered with UNHCR in Damascus. Syria *refouled* between 180 and 300 Iraqis originally deported from Lebanon, to northern Iraq in December 2001 without informing UNHCR or considering the protection concerns of the refugees and asylum seekers among them.

African asylum seekers and migrants are particularly at risk in Syria. In December 2001, Syrian authorities arrested more than 100 rejected southern Sudanese asylum seekers for demonstrating outside the UNHCR office in Damascus. The demonstrators were protesting what they called an unfair bias against southern Sudanese in UNHCR's refugee status determinations, and demanding that the agency issue them protection letters to prevent their deportation to Sudan. Syrian police made the arrests after UNHCR refused to meet the protesters' demands and the demonstrators in turn refused to leave the UNHCR office. Although Syrian authorities promptly released the women, children, and married men they had arrested, about 90 single male demonstrators remained in detention at the beginning of 2002.

Refugee Status Determination by UNHCR and Due Process Concerns

Apart from directly seeking asylum in third countries outside of regions of origin, overseas refugee resettlement programmes provide practically the only means for refugees to enter Europe, North America and Australia. While many Western resettlement countries are legally authorized to accept asylum applications at their diplomatic posts in countries of origin or in countries of first asylum such as Syria, few governments make use of these measures. Rather

most resettlement countries rely completely on UNHCR to make refugee status determinations and referrals to their resettlement programmes. In Syria, refugee status determination is the major activity of UNHCR.

As noted above, Syria, not a signatory to the 1951 Refugee Convention, does not have national mechanisms to process refugee claims. Although the Syrian authorities generally tolerate the presence of refugees on a temporary basis, this tolerance is contingent on the understanding that UNHCR will conduct its refugee status determination procedure and resettle all of the refugees it recognizes. Not having signed a memorandum of understanding with the Syrian government, UNHCR's presence in Syria and the operation of its refugee status determination and resettlement referral programmes exist on an unstable and uncertain basis.

As in Turkey and in the Middle East generally, there are numerous complaints about the lack of due process in the refugee status determination procedures conducted by UNHCR. Indeed, UNHCR's refugee status determination procedures in Syria suffer from even greater shortcomings than those carried out by UNHCR in Turkey. In addition to the problems concerning lack of legal counsel provided refugees either before or during the procedures, lack of reasons given by UNHCR for rejections of refugee claims, and the lack of an effective appeals mechanism (all noted in the section on refugee status determination in Turkey), UNHCR in Syria has particular problems affecting the accountability and transparency of its refugee status determination procedure.

Observers of UNHCR operations in Damascus reported to ECRE-USCR researchers that the local UNHCR staff hired to carry out refugee status determination interviews and make initial decisions were generally young and inexperienced, often recent graduates from university with no training in human rights or refugee law prior to joining UNHCR. Refugees, asylum seekers, and others interviewed by ECRE-USCR, complained that the UNHCR staff who carry out refugee status determination procedures often make arbitrary decisions and that some are insensitive to human rights concerns. The fact that UNHCR employs inexperienced staff, combined with the inadequacies and lack of legal guarantees in the procedure, foster considerable suspicion and distrust towards UNHCR in Damascus. Without greater funding and a fairer and more open refugee status determination process, UNHCR's credibility and effectiveness in Syria and throughout the region will inevitably suffer.

Resettlement Needs in Syria

In Syria, as in other countries visited by ECRE and USCR researchers, there exists a marked need for greater resettlement. As noted above, Syria hosts over 3,200 UNHCR-registered refugees, half of whom are Iraqis. Registered asylum seekers, however, probably represent only a fraction of the foreigners residing in Syria who have a well-founded fear of persecution in their home countries. For

example, over 40,000 Iraqis who are not registered with UNHCR and yet may be refugees, live in the country. Long-staying Sudanese asylum-seekers are at particular risk in Syria.

In the past six months, the resettlement of refugees from Syria and other regions of origin have declined precipitously. Following the events of September 11, 2001, the major resettlement country, the United States, suspended all resettlement processing out of Syria and most of the rest of the world, adversely affecting the resettlement opportunities for tens of thousands of refugees in these regions. In Syria, as in other parts of the Middle East, UNHCR has depended on the United States to provide resettlement opportunities for the bulk of the refugees it recognizes in Syria. For example, of the 849 refugees resettled from Syria in 2001, the United States took 602.

The lack of resettlement opportunities, coupled with the physical and economic insecurity that most asylum seekers experience in Syria, has led large numbers of vulnerable people to seek alternative means of gaining access to Western countries. Relatively large numbers of people, many in need of international protection and with valid asylum claims, choose not to avail themselves of the UNHCR's refugee determination procedures in Syria and other parts of the Middle East. Many fear making themselves known to the authorities out of concern of being detained pending refugee status determination and being treated like criminals by local police or security officials. Would-be asylum seekers also know that generally only a fraction of all asylum applications are granted. Concerned that the determination procedures are lengthy—lasting several months to several years in some countries—that they are unlikely to receive adequate social and economic assistance either from the host government or UNHCR, and that they may have a better chance of getting to the West if they remain outside the official system, asylum seekers often turn to the services of trafficker and smuggling organizations.

Case 2: Profile of Somali Refugees and Asylum Seekers

Country of Origin Conditions and Causes of Migration Flows

Civil war and factional fighting have besieged Somalia for the past decade, causing more than a half-million deaths. Conditions were particularly severe during 1991-92, when war and famine caused massive population upheaval, resulting in an estimated 2 million internally displaced persons and another 800,000 becoming refugees in neighbouring countries, including about 280,000 in Kenya.²³⁸ By the end of 2001, a decade later, about 270,000²³⁹ refugees and asylum seekers from Somalia remained outside Somalia, living in about two-dozen countries. Most, about 160,000,²⁴⁰ were living in Kenya.

For the past decade, Somalia has been a warlord-dominated anarchy, where power and authority come starkly through the barrel of a gun. A UN military force intervened in 1992 to restore order, but failed to do so. The last UN peacekeepers left in 1995. In 2000, a fragile new national government, known as the Transitional National Government (TNG), formed in Mogadishu, the Somalia capital, for the first time in a decade. The TNG immediately encountered armed opposition from local warlords, some of whom continued to control large parts of Mogadishu, as well as significant territory outside the capital.

While the TNG has struggled to exert its authority and ward off attacks by armed factions, anarchy and violence have worsened, compounded by persistent drought and poor food security throughout southern and central Somalia. Clan-related attacks and factional rivalries have caused hundreds of fatalities and casualties in recent months, mostly civilian. Mogadishu and other areas of southern Somalia continue to experience high levels of both criminal and political violence. Gunfights between newly deployed TNG security forces and various warlords, primarily in Mogadishu and the town of Jilib, in southern Middle Juba region, have left hundreds dead and wounded. In virtually all cases militias kill, kidnap, and plunder with complete impunity. Except for some pockets where courts attempt to apply the pre-1991 penal code (notably in Somaliland and Puntland), Somalia has no functioning judiciary and the rule of law is absent (outside arbitrary application of Islamic law and traditional clan customary justice).

Serious food shortages loomed during 2001 because of widespread crop failures caused by poor rainfall and pest infestations. In August, TNG officials pleaded for 60,000 tons of food to assist "Somalis at risk of starving." Somalia's nationwide malnutrition rate of 23 percent was one of the highest in the world. Malnutrition rates as high as 40 percent were recorded in areas with high concentrations of displaced families.²⁴¹ "Much of Somalia remains in a chronic state of emergency," a UN report stated in November 2001.²⁴²

An upsurge in factional conflict and the worst drought in seven years²⁴³ displaced an estimated 25,000²⁴⁴ people from their homes in 2001. In March, approximately 17,000²⁴⁵ Somalis fled to northeastern Kenya to escape inter-clan fighting, which reportedly killed more than 80 combatants and 50 civilians, and injured hundreds more in the town of Bula Hawa, in Somalia's southern Gedo region.²⁴⁶ An estimated 400,000 Somalis remained internally displaced at year's end.

Political leaders in northern Somalia have maintained their autonomy from the rest of the country. Leaders in the northwest, largely of the Issaq clan, rule their territory of "Somaliland," formed in 1991.²⁴⁷ Leaders in the northeast, dominated by the Darod clan, maintain control of their territory of "Puntland," formed in 1998. While no foreign government officially recognizes either autonomous region, both regions—particularly

Somaliland—pursue modest reconstruction efforts and population reintegration.²⁴⁸ Puntland suffered an internal power struggle and its worst violence in six years in 2001. Somaliland remained an area of relative peace, although it, too, suffered isolated demonstrations and political violence in mid-2001.

Prospects for Repatriation

In the years 1998-2001, 164,435 refugees have been recorded as having voluntarily repatriated to Somalia, of whom 158,446 (96 percent) have returned to Somaliland, 3,636 (2 percent) to Mogadishu, and 1,567 (1 percent) to Puntland.²⁴⁹ Repatriation from Ethiopia accounted for 96 percent of refugee returns to Somalia (164,435 returns) in the years 1998-2001, while only 2,416 refugees returned from Kenya during that time, or 1.5 percent. Other refugees repatriated from Yemen (2,575), Djibouti (886), and Eritrea (57).²⁵⁰

As the statistics indicate, the only significant repatriation to Somalia in recent years has been to Somaliland. Tens of thousands of Somali refugees who have gradually repatriated to Somaliland in recent years have continued to struggle to rebuild their lives amid bleak economic prospects and inadequate social services. Reintegration programmes remained small, under-funded, and difficult to sustain.

Most of the 40,000²⁵¹ Somali refugees who repatriated during 2001, returned to the Somaliland cities of Hargeisa, Boorama, and Burao in UNHCR-organized convoys. Although UNHCR officially reported that nearly 55,000²⁵² refugees returned home from Ethiopia, the actual number of returnees was probably less than half that many because of massive fraud in Somali refugee camps in Ethiopia that inflated refugee and repatriation lists. About 14,000 Somali refugees who fled to Mander, Kenya in March voluntarily repatriated to southern Somalia in June. About 4,000 of them returned with assistance from UNHCR.

Most returnees during 2001 received plastic sheeting, kitchen items, blankets, and a small cash transportation allowance to reach their homes from border transit centres. They also received reintegration grants from UNHCR and a nine-month food supply or cash equivalent from the World Food Programme (WFP). More than 10,000 Somali refugees registered with UNHCR for assistance in repatriating voluntarily to relatively peaceful northern Somalia. Although northern Somali government authorities granted permission for the repatriation, UNHCR lacked the financial resources to facilitate the operation.

USCR conducted a site visit to Somaliland during 2001 and issued a report, *Welcome Home to Nothing: Refugees Repatriate to a Forgotten Somaliland*, which examined the repatriation of refugees to northern Somalia.²⁵³ The USCR report noted that Somaliland remained a devastated and war-scarred country with needs well beyond refugee repatriation programmes. The report warned that

most returnee areas contained inadequate housing, health-care services, water, and sanitation systems.

In overcrowded returnee resettlement areas in Hargeisa, the Somaliland capital, 15 percent of repatriated children suffered from malnutrition, many of whom were “likely to die,” a United Nations Children’s Fund (UNICEF) report stated.²⁵⁴

International Engagement in Somalia

The High Level Working Group on Asylum and Migration (HLWG) Action Plan for Somalia (written in 1999) is overwhelmingly focused on EU actions inside Somalia itself.²⁵⁵ Of the 25 recommendations made by the HLWG, 20 are specific to actions needed inside Somalia, 4 concern neighbouring countries in the region, and 1 calls for transatlantic dialogue on the issue between the EU and the United States and Canada.

The HLWG Action Plan on Somalia includes recommendations to encourage conflict resolution, prevent human rights abuses, assist in humanitarian aid, reconstruction of civil society, and “sustainable development of peace, stability, and economic development.” Several of the HLWG recommendations also focus on the repatriation of refugees and return of rejected asylum seekers.

What has been the engagement of the international community in pursuit of these recommendations? A May 2001 Council of Europe “progress report” on the HLWG says almost nothing about activities in or around Somalia, noting only that an EU Troika mission to Somalia in February 2001 “informed the Transitional Government in Mogadishu and the authorities in Hargeisa and Garowe about the activities of the HLWG and of the Action Plan for Somalia.”²⁵⁶

Humanitarian agencies have had great difficulty operating in Somalia, and are often themselves targeted for attack. In March 2001, nine expatriate relief workers and one Somali national were kidnapped and 12 Somalis killed during an attack on a Médecins Sans Frontières (MSF) compound in Mogadishu. Factions held the relief workers hostage for one week before releasing them unharmed.²⁵⁷

An estimated 800,000 Somalis—more than 10 percent of the population—required some 70,000 tons²⁵⁸ of emergency food assistance in 2001. By October, donor nations had provided WFP less than 40 percent of the funds needed for relief and recovery programmes.²⁵⁹ UNICEF appealed to donor nations for \$23 million to support emergency operations in Somalia during 2001. By mid-July, donors had provided less than \$2 million, forcing UNICEF and other humanitarian agencies to eliminate or dramatically reduce health, education, water, and environmental sanitation programmes for women, children, and repatriated refugees.²⁶⁰

A sharp economic downturn in mid-2001 further deepened food problems. The entire country—particularly Somaliland—continued to suffer economic consequences from a ban on Somali livestock imposed in 2000 by Saudi

Arabia and other Gulf States for fear of diseased herds. The ban has cost the Somali economy \$120 million, according to one estimate.²⁶¹

In July 2001, the European Commission Humanitarian Aid Office donated \$1.3 million to bolster UNHCR’s poorly funded repatriation programme for Somali refugee returns from Ethiopia to Somaliland.²⁶² In November, the United States froze the assets of Somalia’s largest money transfer centre because of its alleged links to international terrorist activities. The US action curtailed remittances from the Somali diaspora, which normally contributed some \$500 million annually to the Somalia economy. The financial restrictions put “Somalia on the precipice of potential and total economic collapse,” the UN humanitarian coordinator for Somalia declared in December.²⁶³

Scope and Pattern of Migration Flows

Migration flows out of Somalia are hard to detect, in part, because of the large ethnic Somali populations living in Kenya, Djibouti, Ethiopia, and Yemen. The largest number of newly recorded Somali arrivals in the region occurred in Yemen, where 11,070 were registered as asylum seekers by UNHCR in 2001.²⁶⁴ Those who reached Yemen crossed the Gulf of Aden in often-perilous journeys that reportedly cost several hundred asylum seekers their lives when their makeshift boats sank. In May 2001, more than 80 Somali asylum seekers fleeing political violence in Puntland drowned when smugglers forced them to jump overboard after the boat’s engine stalled, and it capsized. About 13,000 Somali refugees reside in the Al-Gahin camp in Yemen, located about 87 miles (140 km) east of Aden, many of whom were transferred to another camp, Al-Kaharaz in the Lahaj governorate. Most Somalis in Yemen live in urban centres, where migrants and refugees are commingled with Yemenis of Somali origin.

About 20,000 Somali refugees were living in Djibouti at the end of 2001.²⁶⁵ Many originated from Somaliland and appeared poised for repatriation. There did not appear to be noteworthy migration from Somalia into Djibouti during 2001. Another 30,000 Somali refugees were living in camps in Ethiopia at the end of 2001, almost all of whom also originated from Somaliland.²⁶⁶ Unknown thousands of additional Somali refugees lived outside established camps in urban and rural areas of Ethiopia. Thousands of Ethiopian nationals of Somali descent have also lived in the Somali refugee camps alongside genuine Somali refugees. About 25,000 Somali refugees repatriated from Ethiopia in 2001, primarily to Somaliland. As camps closed, the Ethiopian nationals of Somali descent who voluntarily dispersed from the camps were given the same humanitarian aid packages as those repatriating to Somalia.

The travel routes for Somalis migrating irregularly into the EU are not well known. According to the HLWG, “Almost all asylum seekers claim that they come directly from Somalia and since 1993, they have claimed to come

from the southern part of Somalia including the capital, Mogadishu. Applicants may in reality have made shorter or longer stays in various countries, mainly in Central Europe, but also in Eastern Europe and in some African countries, such as Kenya, Tanzania, Ethiopia, Yemen or Djibouti.²⁶⁷

Despite Somalia's economic woes, economic migration does not appear to be a significant factor. The HLWG observed, "It can be concluded that the emigration of Somalis for non-asylum purposes is low; it is in the area of asylum and subsequent family reunion applications that significant numbers are encountered."²⁶⁸ The HLWG, citing Eurostat, estimated that 120,000 Somalis were living within the EU in 1999, of whom between 30 and 40 percent were in the United Kingdom, with other large concentrations in the Netherlands, Sweden, and Italy.²⁶⁹

The Somali caseload in the EU has some unique, and sometimes disturbing, features. Most troubling is the high proportion of unaccompanied minors, suggesting significant trafficking in children, as well as a willingness on the part of families to send their children into dangerous and unknown journeys in order to establish an anchor from which to seek family reunification. The HLWG reports that more than 50 percent of all unaccompanied minors in some EU member states are of Somali origin.²⁷⁰

The HLWG also reports that the largest number of asylum claims among Somalis in the EU comes from members of clans basing their persecution claims on their clan membership. Among the largest number of Somali asylum seekers in the EU are members of the Darood Marehan clan. Although the clan is centred in northeast Somalia, many Darood Marehan asylum claimants say that they come from in and around Mogadishu, and claim to be persecuted for being associated with Mohamed Siad Barre, the deposed president of Somalia, ousted in 1991. Other clans, including the Hawiye and the Bajun, lodge claims in the EU based on fear of persecution for their clan membership.²⁷¹ Still others, such as the Digil and Rahanwayn clans, located in the south around the city of Baidoa, claim to be persecuted, based on linguistic and socio-cultural differences with the other clans.²⁷²

The EU requires all Somalis to possess a valid visa in order to enter the external borders of EU member states.²⁷³ However, few EU member states have diplomatic missions in Somalia that would be able to issue visas, and because Somalia has not had a central government for the past decade, Somali passports and other travel documents are suspect. Some EU countries, such as Denmark, do not recognize Somali passports and travel documents at all.²⁷⁴ A few Somali diplomatic missions continue to function in Europe. The HLWG notes that issuing travel documents is "normally their only source of income."²⁷⁵ The Germany Foreign Ministry has reportedly requested the Somali embassy in Bonn to stop issuing official documents.²⁷⁶ A brisk sale in Somali travel documents reportedly also occurs in the markets of Eastleigh, the Somali quarter of Nairobi.

Asylum Recognition Rates

During the year 2000, 20,963 Somali asylum applications were decided on the merits in 38 mostly industrialized countries (including all 15 EU countries). The approval rate was 75 percent (combining 8,402 granted Convention status and 7,244 granted humanitarian status). Another 5,239 cases were closed without considering the case on the merits.²⁷⁷ In 1999-2000, Somalis represented third highest Convention approval rate among all nationalities applying for asylum (following only Iraqis and former Yugoslavs), and the fourth highest nationality group to receive humanitarian status (following former Yugoslavs, Iraqis, and Afghans).²⁷⁸

The number of Somalis applying for asylum in the 38 industrialized countries decreased 18 percent, from 19,392 in 1999 to 15,813 in 2000.²⁷⁹ During the same period, asylum applicants from all nationalities to these 38 countries decreased by 1.8 percent.²⁸⁰ For the EU as a whole, the number of Somali applicants granted refugee status from 1999 to 2000 increased by a dramatic 1,670 percent, from 326 to 5,769 Convention refugees.²⁸¹ During the same period, Somalis granted humanitarian status in the EU increased by 180 percent from 2,047 to 5,730 humanitarian refugees.²⁸²

While data were not available for all EU countries for 2001 (statistics were not available for Italy, Greece, and UK), UNHCR was able to tabulate asylum information for 26 industrialized countries for the year (25 European countries, Australia, Canada, New Zealand, and the United States), and found that 7,867 Somalis applied for asylum in those 26 countries in 2001, an 11.6 percent decrease from the 8,904 Somalis who applied for asylum in those 26 countries the year before, and a 24.4 percent decrease from the 10,411 who applied in 1999. During that same period—1999 to 2001—in those same 26 countries, asylum applicants for all nationalities increased 13.9 percent.²⁸³

The asylum approval rate for Somali asylum applicants in the United States in 2001 was 81 percent. For the ten-year period from 1991-2001, the cumulative approval rate in the United States for Somalis has been 70 percent.²⁸⁴

Kenya

Political, Social and Economic Context

Despite a long tradition of providing refuge to hundreds of thousands of refugees from Ethiopia, Rwanda, Somalia, Sudan, and Uganda, Kenya in recent years has shown distinct signs of backtracking from its tradition of hospitality.²⁸⁵ Since the early 1990s, Kenya has hosted more than 200,000 refugees, mostly Somalis. Both government officials and the society at large have come to have a negative view of the refugees, often regarding them as a source of insecurity, environmental degradation, and economic loss.

Kenyan authorities require most refugees to live

in three designated camps near the village of Dadaab in the country's remote east, and in three camps known as Kakuma in northwest Kenya. At the end of 2001, about 130,000 refugees lived in the Dadaab camps, and nearly 70,000 resided in the Kakuma camps. More than 65 percent of Somali refugees lived in the three Dadaab camps. Confined to the isolated camps—situated in a harsh, desert-savannah region lacking natural resources—most refugees had virtually no opportunity to achieve self-sufficiency and were entirely dependent on humanitarian aid.

Tens of thousands of refugees continued to live without humanitarian assistance in urban areas, particularly in the capital, Nairobi. Government authorities asserted that more than 100,000 “illegal immigrants” lived in Kenya's main cities and towns. UNHCR provided primary and secondary education assistance, subsistence allowances, and counselling to more than 2,000 urban refugees during 2001.

Poor security conditions in and around the Dadaab and Kakuma camps worsened during 2001. “The situation is precarious and unpredictable, with occasional hostile interaction between refugees and the local population,” a UNHCR report observed. “This is putting at risk refugees, nongovernmental organizations, and UNHCR staff working in the camps.”²⁸⁶

Domestic and sexual violence against females have been chronic problems in and around the Dadaab and Kakuma camps. Despite numerous programmes to address sexual violence, reported rapes increased during 2001. More than 80 percent of all rapes occurred while females collected firewood and building material outside the camps. Rape was reportedly used as an extension of clan violence with males from certain clans targeting female members of rival clans.

Although UNHCR continued to supply firewood to refugee families to help protect women and girls from dangerous forays into isolated areas to collect wood, its firewood-distribution programme supplied only one-third of families' household fuel needs. Time-consuming negotiations with local firewood carriers delayed distribution in Dadaab.

In July 2001, the Kenyan government banned all cross-border trade with Somalia, including air shipments, and closed its 500-mile (800 km) shared border. Kenyan president Daniel arap Moi insisted that his government “would not deal with political factions fighting for power in Somalia,” and vowed to keep the border closed until Somalia formed a new central government.²⁸⁷ The border closing also aimed to curb the flow of illegal weapons into Kenya. In November, President Moi reopened the border as a “goodwill gesture.”²⁸⁸

During 2001, Somalia's fledgling transitional government did little to improve security conditions throughout the country. In March, sustained violence in southwestern Somalia pushed some 15,000 new refugees into Kenya. However, more than 10,000 of the new refugees spontaneously repatriated, including nearly 4,000 vulnerable refugees who returned to their home region with

UNHCR assistance. A residual group of several thousand new refugees reside in and around the town of Mandera in northeastern Kenya.

Kenya's ability to host refugees is compromised by the presence of approximately 230,000 internally displaced Kenyans in the country. In most cases, political discontent, simmering land disputes, and ethnic tension were at the root of Kenya's domestic conflicts that caused the displacement of its own citizens. Many internally displaced families surrendered their land titles under duress during the early 1990s and sought shelter in towns and cities, leaving their property for the government to seize and nationalize. Most displaced Kenyans were rural farmers and herders ill-equipped to provide for their families in urban areas.

In March 2001, Jesuit Refugee Services (JRS) published a lengthy report, *The Current Situation of Internally Displaced Persons in Kenya*, which examined sources of conflict and population upheaval in Kenya. The JRS report identified seven categories of displaced persons: landowners who lost the legal right of land ownership; landowners unwilling to reconstruct their homes or farms because of lingering dangers; displaced squatters; individuals and families ordered from temporary camps for internally displaced persons; perpetrators of the original violence displaced by revenge attacks; orphans; and pastoralists. The report noted that poor security, poverty, and land disputes hindered the return of some 230,000 internally displaced Kenyans to their original homes.²⁸⁹

Profile of Asylum Seekers and Migrants in Kenya

Somali Refugees: Most Somali refugees and asylum seekers in Kenya originate from the southern and central regions of the country, the areas that are still wracked by turmoil and violence. Many base their refugee claims on the fear of being persecuted by other clans on account of their clan or sub-clan membership. Most of the refugees in Dadaab are members of the Ogaden clan from southern Somalia. Some of the conflicts in Dadaab have involved sub-clans, such as the Aulihan, fighting with each other.

Women at risk represent a significant portion of the refugee caseload. Large numbers of women and girls in Dadaab have been victims of rape. Earlier, rape was attributed more to outsiders attacking women as they foraged outside the camp for firewood. A firewood project attempted to address that security gap, and although that situation is not solved, it is improved. However, as a USCR researcher found in May 2001 during a visit to Dadaab, as the incidents of rape have decreased outside the camps, they have increased inside the camps, and are associated with clan conflict. UNHCR documented 100 rapes between February and August 2001, but estimated that the actual number was ten times the number of reported cases. CARE estimates that, on average, more than one rape per day occurs in the camps. In addition, almost all Somali women and girls are subjected to female genital mutilation.²⁹⁰

Sudanese Refugees: Continued civil war in Sudan pushed an average of 1,000 new Sudanese refugees into Kenya each month during 2001. Some 70,000 Sudanese refugees are living in Kenya, the overwhelming majority in three Kakuma camps in northwest Kenya, about 75 miles (125 km) from the Sudan border.

The situation in the Kakuma camps was "one of a chronic emergency of complex origins," an international relief organization reported in March 2001.²⁹¹ "The camps are located in an extremely poor region of Kenya where four years of poor rains have exacerbated the already existing tension between refugees and their hosts."²⁹² However, unexpected heavy rains produced flash floods in November 2001 that killed two refugee boys, destroyed some 7,000 huts, and temporarily displaced more than 23,000 refugees in the Kakuma camps.²⁹³

More than 2,000 Sudanese boys and young men departed Kenya and were resettled in the United States during 2001 as part of a formal international resettlement programme. They were known as the "Lost Boys" of Sudan because many of them had been separated from their families for nearly a decade. Some 3,000 Sudanese have resettled in the United States during the past two years as part of the programme.

Ethiopian Refugees: Although Kenya invoked the cessation clause for Ethiopian refugees in May 2001, nearly 6,000 Ethiopian refugees were still living in Kenya at the end of 2001, mostly in the Dadaab camps, although others remained in Nairobi. Despite the supposed end of refugee flight out of Ethiopia, in June a new influx of Ethiopian students arrived at the border town of Moyale seeking refuge in Kenya. They were told to go to the Dadaab camps, but refused, citing a fear of Ethiopian agents operating in the camps, and have held hunger strikes to draw attention to their situation, and to call for resettlement to a third country.²⁹⁴

Great Lakes Refugees: ECRE-USCR met with NGOs in Nairobi who were assisting Rwandan, Burundian, and Congolese refugees. Based on these interviews, it appeared as though refugees from the Great Lakes region of Africa dominated the caseloads of the Nairobi-based NGOs. Some of these NGOs believe these refugees are disadvantaged by the UNHCR refugee status determination process and lack adequate protection and assistance. As a result of their lack of legal status, the majority of these refugees reside in Nairobi without the permission of the authorities, and consequently live in a condition of significant vulnerability. This insecurity was recently highlighted by the killing of two Rwandan refugee children in an NGO-operated 'secure residence' in Nairobi.²⁹⁵

Tanzanian Refugees: Clashes between police and opposition demonstrators on the Tanzanian islands of Zanzibar and Pemba escalated into violence that killed dozens of civilians and forced more than 2,000 persons to flee to Kenya in January 2001. Nearly all the refugees fled by boat

to the southeastern Kenyan coastal village of Shimoni. UNHCR and the governments of Kenya and Tanzania signed a voluntary repatriation agreement in May promising refugees that they could return home without fear of prosecution by Tanzanian authorities. Most refugees had voluntarily repatriated by year's end.

International Engagement to Promote Asylum in Kenya

International aid on behalf of Somali (or other) refugees in Kenya is small and shrinking. A WFP official told USCR that their budget in Dadaab was cut 20 percent in 1998, then cut 20 percent again in 1999, 20 percent again in 2000, and 20 percent again in 2001. The funding crisis caused a gap in the food pipeline in Dadaab, a camp that is 100 percent dependent on outside humanitarian assistance. Between May and June 2000, there were no wheat deliveries to Dadaab. According to this WFP official, in 1999, virtually all of the food aid came from one donor, the United States. WFP personnel, including Catherine Bertini, its Director, were quite critical of the EU for not contributing their "fair share."

Lack of donor funding forced the WFP to reduce refugees' normal daily food ration by more than one-third during most of 2001. In June, Médecins Sans Frontières (MSF) registered a 170 percent increase in severe malnutrition rates among young Somali children living in the Dadaab camps.²⁹⁶ "As a direct consequence of the food rations drop, the number of severely malnourished children has shown an alarming increase," MSF concluded.²⁹⁷

The head of the UNHCR Sub-Office in Dadaab told USCR in May 2001 that the location of Dadaab in an arid corner of Kenya provides no opportunity for refugees to grow any supplementary food. The concern was raised that another break in the WFP food pipeline would likely result in increased rates of malnutrition and possibly increased mortality.

UNHCR has been faced with its own budget cuts. A UNHCR protection officer told ECRE-USCR that UNHCR's budget for operations in Kenya was cut by 20 percent in 2001, causing cutbacks in shelter, educational facilities, infrastructure, and health. New arrivals to the camp no longer receive non-food items. When floods in Kakuma destroyed 7,000 huts, international agencies did not have sufficient emergency funds for rebuilding their shelters.

UNHCR budget constraints hinder refugee-education programmes. Although the demand for education is very high among Somali refugee children and adults, more than half of school-aged children do not attend school because of inadequate numbers of classrooms and properly trained teachers. More than 100 students typically crowd into a single classroom. Lack of funding has also forced UNHCR and other humanitarian assistance agencies to curb vocational-training programmes for adults.

UNHCR's Representative for Somalia told the ECRE-USCR researchers that the consequence of donors

not meeting the UN consolidated appeals and UNHCR budget cuts is the deterioration of relations with local authorities and NGOs. As a result of the lack of funding, UNHCR is unable to live up to expectations and has had to cancel previous commitments. UNHCR in East Africa and the Horn believes that recent budget cut-backs contribute to the erosion of asylum in the region.

UNHCR's 20 percent budget cut and the move to a unified budget from the Geneva headquarters led to the redirection of a \$660,000 US government earmark for security improvements in Dadaab, including increased police posts within the camps, the purchase of police vehicles and radios, and the introduction of electric lighting. Rather than have its earmark represent an additional US contribution, however, UNHCR's budget cutting and reorganization meant no increase of \$660,000 for Dadaab, but rather an earmark that crippled the rest of the budget, by "taking money away from other programmes," according to a US embassy official in Nairobi, causing deep cuts in education and other sectors. Among the cuts was eliminating a UNHCR regional security officer position.

Protection Environment in Kenya

Although Kenya is a signatory to the 1951 Refugee Convention and its 1967 Protocol, it has no domestic refugee law. Consequently, the hundreds of thousands of refugees living in Kenya have no legal status under domestic Kenyan law. Absent national refugee legislation and inadequate financial support for the government's Refugee Eligibility Commission means "the legal framework for implementation of a refugee assistance programme in Kenya remains fragile," the UN High Commissioner for Refugees (UNHCR) reported in November 2001.

A draft law has been under discussion for several years. ECRE-USCR learned that an early draft would have required refugees to live in camps, but a more recent draft has apparently softened that language somewhat. Nevertheless, in an interview with ECRE-USCR, the Kenya Permanent Secretary responsible for refugees noted that a primary purpose of the proposed bill is to give the Kenyan government added control over the refugee populations.

UNHCR and the Kenyan government have not been able to agree on the issuance of identity cards for UNHCR-recognized refugees. Before 1991, the National Eligibility Commission was able to determine the status of asylum seekers in Kenya and issued refugee identity cards to recognized refugees. Since the initial influx of Somalis to Kenya in 1991, however, the Commission has ceased to function, and identity cards have consequently not been issued to arriving refugees. UNHCR issues letters of refugee recognition, but they are of limited value. The Executive Director of the Refugee Consortium of Kenya, a local NGO, told ECRE-USCR researchers that the Kenya police frequently do not recognize the validity of UNHCR letters of recognition, underscoring the need for government-issued refugee identity cards.

Refugee protection in Kenya also needs to address the various threats posed from other refugees, particularly in the Dadaab and Kakuma camps. Sexual abuse in the camps is well documented, and has already been noted in this report. "Most rape cases can be traced to clan rivalries and ...is used as a weapon of revenge against rival clans," says an article in *Refugee Insights*, the newsletter of the Refugee Consortium of Kenya, which describes life in the camps as "survival of the fittest."²⁹⁸ Violence within the camps includes forced recruitment into the militias in Sudan and Somalia, allegations of the presence of government agents from the countries of origin, including Ethiopia, and inter-clan violence transported from Somalia to Dadaab.

Refugee protection in Kenya also needs to address harassment from the Kenyan police. A letter-to-the-editor of *Refugee Insights* by a Congolese refugee says, "The major problem that refugees experience here in Nairobi is the constant arrest by the Kenyan police. Sometimes the police come into our houses and accuse us of hiding criminals or being in possession of illegal arms and drugs. This has made many refugees feel insecure. I am kindly appealing to the police commissioner to intervene to stop the constant harassment of refugees by some unprofessional police officers that regard refugees as a source of money."

These concerns are particularly evident in Eastleigh, a slum neighbourhood of Nairobi inhabited predominantly by ethnic Somali Kenyans and Somali nationals. A priest working and living there for 15 years told ECRE-USCR that police in the area are accused of frequently demanding bribes and breaking into homes to steal possessions and arrest the inhabitants. He said that no one would testify against the police for fear of even greater harm coming to him or her. Reports were also received of police sweeps through refugee quarters of Nairobi. These sweeps were allegedly intended to intimidate the refugee population and solicit bribes. UNHCR documentation is destroyed by the police during these sweeps, and NGOs complain that UNHCR is unresponsive to these events.

Finally, protection in Kenya means effective and quick use of resettlement in urgent cases of refugees in imminent danger. On April 17, 2002, an assailant broke into a 'secure residence' established by UNHCR and managed by NGOs in Nairobi for refugees at particular risk. The assailant murdered two Rwanda refugee children, ages nine and ten, by slitting their throats. Their mother, a close relative of former Rwandan president Juvenal Habyrimana, was also severely injured with multiple stab wounds. Three other children from the same mother had been murdered in Rwanda. The family is of mixed Hutu-Tutsi ethnicity. The family was identified as being in urgent need of resettlement both because of the political association with Habyrimana and the mixed ethnicity of the family. Nevertheless, they had been waiting for 11 months for their resettlement application to be processed.²⁹⁹

Prospects for Local Integration

The ECRE-USCR research team to Kenya in December 2001 was told repeatedly and categorically that local repatriation is not an option for Somalis in Kenya. This view was shared by UNHCR officials, diplomats, NGO representatives, and Kenyan government officials. Many said that Kenya lacked available land, economic opportunities, and had too many environmental and security threats and other social pressures to accommodate or integrate refugees permanently.

In the specific context of Dadaab, UNHCR told ECRE-USCR that the government of Kenya clearly opposes local integration. Given local environmental and economic pressures, the government is seen to be concerned about the burden that refugees pose on local populations. For example, around Dadaab, the 130,000 refugees outnumber the 30,000 locals. Despite the fact that UNHCR has invested \$2.9 million since 1994 in infrastructure development in the local community—building schools, boreholes, taking steps to restore the environment—the local community does not see the refugee presence as a benefit. This sentiment was shared by the Permanent Secretary for Refugee Affairs in Kenya, who told ECRE-USCR that the local community feels that the refugees have aggravated the security situation and harmed the environment in refugee populated areas.

The prospects for local integration in urban areas is no better. The Refugee Consortium of Kenya recent stated that “the refugee situation especially in urban areas is not helped by frequent negative government pronouncements against refugees. These affect public perception leading to xenophobic attitudes. . . . Often refugees are viewed as criminals and competitors in business. In some areas that have a large population of refugees, they have been blamed for the constant rise of house rent. This is far fetched since refugees living in these areas are known to live in congested accommodation with four to six people sharing a single or a double room. Indigenous Kenyan Somalis are also seen by the general public as refugees. Some Kenyan Somalis own flourishing businesses, further increasing hostile feelings against refugees. The surrounding communities feel threatened by the success of these ‘refugees.’”³⁰⁰

Prospects for Resettlement from Kenya

Kenya is the hub of UNHCR and government resettlement activities in Africa. The African resettlement programmes of the United States, Canada and Australia have all been based out of Nairobi for a number of years. UNHCR has sought to coordinate the activities of these programmes through a Regional Resettlement Officer posted in Nairobi. Notwithstanding the proliferation in the range of resettlement activities in Africa in the past three years, the diversification of resettled nationalities and the expansion of resettlement activities in all UNHCR field offices in Africa, more refugees were resettled from Kenya in 2000 than from any other country in Africa.

Resettlement activities in Kenya have, however, been overshadowed by the recent corruption scandal. In January 2002, the UN Office of Internal Oversight Services (OIOS) released a report describing how “a ‘criminal enterprise’ allegedly infiltrated the refugee status determination and resettlement process in Nairobi in the late 1990s to force bribes from people seeking resettlement third countries.”³⁰¹ According to the OIOS report, the investigation resulted in the arrest of three UNHCR staff members, two members of an affiliated non-governmental organization, and four others.³⁰²

The conclusions of this report continue to overshadow UNHCR’s protection, status determination, and resettlement activities in Kenya. The investigation has resulted in a freeze in the identification of new resettlement cases and the suspension of active resettlement files, pending review and the full implementation of the Office’s action plan to address the conclusions of the report. At the time of the case studies this freeze on UNHCR-referred cases had been coupled with a suspension of the US Resettlement Programme (USRP) subsequent to the events of September 11, 2001. While USRP activities were resumed by early December 2001, the cumulative effect of the suspension and the rejection of cases associated with the corruption scandal has resulted in a dramatic backlog of pending resettlement cases and, more pressing, of vulnerable refugees in need of resettlement.

In addition to this backlog, the corruption scandal has contributed to the dramatic lack of confidence in UNHCR in East Africa expressed to ECRE-USCR by resettlement countries and NGOs. ECRE-USCR researchers found consensus that, even before the scandal, UNHCR was unable to identify and refer cases for resettlement in the numbers required to fill resettlement quotas. This lack of confidence is also a result of the realization that UNHCR is under-resourced for the role it is expected to play in the resettlement process and has led to repeated questioning of a case-by-case approach to resettlement and the ability of UNHCR to act as the ‘resettlement gatekeeper.’

As a likely consequence, the emphasis of resettlement activities in Kenya in recent years has increasingly been on the identification and processing of groups in need of resettlement. In 2000/2001, a group of Sudanese youth, the ‘Lost Boys,’ was processed and accepted for resettlement to the United States. At the time of the field studies UNHCR was in the process of verifying a list of 13,800 Somali Bantu for resettlement to the United States under the P-2 designation. Notwithstanding this large group of Somalis to be considered for resettlement, the majority of Somali resettlement cases for the USRP are family reunification (P-3) cases – a category recognized to be replete with problems of fraud and credibility by all involved in the resettlement process in Kenya.³⁰³

The pressures of resettlement quotas, coupled with the desire of maximizing scarce resettlement resources, has resulted in a perceived over-emphasis on the identification of groups in need of resettlement—typically at the expense of the processing of individual resettlement cases.

While not intended in the design of group identification, this trade-off against individual cases is a result of the shortage of UNHCR staff with exclusive resettlement responsibilities. In 1999, UNHCR Kenya referred to resettlement countries a significant number of cases on the basis of their protection and security needs, in addition to cases of survivors of violence and torture, woman-at-risk cases and a significant number of medical cases. Even prior to the suspension of UNHCR's resettlement activities in Kenya, there was a marked decrease in the identification and processing of such individual cases. This decrease coincided with activities related to the identification and verification of the 'Lost Boys' and the 'Somali Bantu' as 'resettlement groups.' With limited resettlement staff, precious work-time was necessarily diverted from individual case identification to the meet the increasing demands of group resettlement.

While group resettlement is a positive approach to meet the needs of identified vulnerable groups, it must be recognized that it continues to require significant human resources to ensure the credibility of individuals claiming to be members of that group. In situations, like Kenya, where group resettlement is deemed to be a positive contribution to the protection and durable solution needs of refugees, it must be ensured that UNHCR resettlement staff are not diverted from their work on the identification and processing of individual cases to assist with the verification and processing of groups in need of resettlement. The identification of groups in need of resettlement should therefore be coupled with the additional human resources required for the processing of that group.

Another possible reason for the recent emphasis on group identification is the recent frustration on the part of resettlement countries and NGOs with UNHCR's mechanisms for individual identification. In the three Dadaab camps, community development workers, working on a day-to-day basis in the camps, are responsible for the identification of vulnerable refugees. These cases are submitted to the Field Assistants, who screen the case and make recommendations to the Protection or Community Service Units. Cases referred to the Protection Unit may subsequently be referred for resettlement, but with a lack of protection staff in the camps, especially staff with full-time resettlement responsibilities, cases cannot be assessed at the same rate as they are identified. Once again, the result is a dramatic backlog. The shortcomings of the individual identification mechanisms have led resettlement countries to conclude that the task of identifying the most vulnerable individual refugees is a task fraught with shortcomings.

A number of NGOs conclude from these difficulties that UNHCR should be neither the sole actor responsible for the identification and referral of resettlement cases nor the 'gatekeeper' of the resettlement process in Kenya. It was suggested that NGOs could and should play a greater role in the identification of refugees for resettlement, and that the decentralization of this essential task would dramatically increase both the qual-

ity and quantity of resettlement activities in Kenya.

While evaluations of UNHCR's resettlement role in Kenya were surely overshadowed by the corruption scandal, resettlement countries repeatedly stated to ECRE-USCR that they preferred UNHCR resettlement referrals over other possible routes. There was, however, recognition that UNHCR's capacity in the field was simply too low to address not only the overwhelming need for resettlement, but also too low to meet the quotas of the large resettlement programmes. As a result, the larger resettlement countries based in Kenya expressed a keen interest to ECRE-USCR in diversifying the possible routes for identifying refugees in need of resettlement.

There was, however, a general feeling on the part of resettlement countries that they were neither willing nor able to assume the identification function themselves – a position confirmed by the fact that the embassies of the larger resettlement countries do not accept resettlement applications directly from refugees. Because demand for resettlement from Kenya is so high, embassies fear for their security and the integrity of the system if competing identification systems were developed. Instead, they felt that the identification role was best filled by UNHCR, given their direct contact with refugees and with the Government of Kenya.

There was consensus that an increase in resources and training were necessary to increase UNHCR's capacity to identify resettlement cases. The USRP, in particular, stated that they had seen a dramatic increase in the quality and quantity of UNHCR resettlement referrals from field offices in Africa in recent years since greater investment has been made in the creation of resettlement posts and resettlement training.

This reliance on UNHCR did not, however, appear to result in a prohibition on NGO referrals. In fact, some NGOs had brought resettlement cases directly to the attention of the resettlement countries. These cases were, however, exceptionally rare. On the whole, NGOs themselves were also reluctant to become involved with the identification of refugees in need of resettlement in any systematic way. Many NGOs were concerned that resettlement activities would result in security risks for their staff and would potentially compromise their original programmes with refugees.

An important resettlement function that was filled by NGOs in Kenya was the pre-adjudication processing of cases for the USRP by the Joint Voluntary Agencies (JVA). Prior to interview with an INS officer for adjudication on the case, each refugee family is called to three interviews with the JVA. The first interview, called pre-screening, establishes the identity of all members of the case and documents the basic refugee claim. The second interview, called form filling, documents the refugee's family tree and broader family relations. The third interview, called the casework interview, documents a detailed description of the refugee claim.

This process has clear advantages. First, it creates a level of comfort with the refugees and prepares them for

the interview with the INS. Second, it prepares a rich and credible dossier for consideration by the INS officer. Finally, the process allows for the screening out of manifestly unfounded cases, cases that do not meet the programme's eligibility criteria, and cases that significantly lack credibility. While required under USRP, a number of other resettlement countries see the benefits of such a system—especially Canada and Australia, the only other resettlement countries who require face-to-face resettlement interviews. It was widely recommended that such a system would be essential to the efficient management of large resettlement programmes, and would be a useful precedent to any possible EU resettlement programme.

A common procedural concern about the three largest resettlement programmes was the significant amount of time required to process a resettlement case. Unlike the European resettlement programmes—which adjudicated on the basis of a resettlement dossier, issue travel documents within weeks of a positive adjudication and conduct medical screening in the resettlement country—the United States, Canada and Australia all have stringent pre-departure requirements which result in significant delays. From the time of submission to the date of departure, it may take up to 10 months for a refugee to be resettled. In the case of the USRP, this timeframe has changed significantly since the events of September 11, 2001. These delays are typically due to the poor infrastructure in northern Kenya required for pre-departure medical screenings—a requirement for the three programmes.

As a result of these requirements, refugees must typically travel to Nairobi for pre-departure medical screening, then return to the camps to await results and the issuance of travel documents. The logistical and security considerations involved with such a process are substantial, and cause significant delays. In response, the United States, Canada and Australia are cooperating to build what they are calling a 'happy camp' in Northern Kenya, fully equipped with the requirements to house refugees under consideration for resettlement, and appropriate medical and security facilities to ensure safe interviews and rapid pre-departure processing.

While a potentially positive development, the opening of such a facility highlights one of the greatest shortcomings of refugee status determination and resettlement processing in Kenya: the lack of due process. Proponents of the 'happy camp' initiative were not able to explain what provisions would be included to address refugees transferred to the new camp and subsequently rejected for resettlement, and what responsibility UNHCR would have for resettling such cases.

Indeed, such basic considerations of due process appeared to be lacking at multiple steps in the resettlement and status determination process in Kenya. There

are few, if any, independent checks during the status determination and resettlement process. Applications for appeal are frustrated as asylum seekers receive insufficient written explanation for the basis of their rejection. In fact, it would appear as though status determination activities are conducted almost exclusively with resettlement criteria in mind, and some applicants appear to be rejected at the status determination phase on the basis of their ineligibility for resettlement.

While resettlement is a discretionary activity and consequently not bound by strict applications of the due process of law, the credibility of resettlement processing in Kenya is undermined by a lack of transparency and consistency. There is a significant lack of information on the resettlement process available to refugees. A complete lack of NGO oversight of the status determination and resettlement process compounds these concerns. As suggested by the Report of the UN OIOS, such basic considerations of due process and procedural safeguards must be implemented if resettlement activities in Kenya are to regain their previous credibility.

In addition to ongoing efforts to improve resettlement activities in Kenya and to make resettlement more responsive to the needs of vulnerable refugees, ECRE-USCR identified two refugee populations that are disadvantaged in the Kenya resettlement process. The first was among the urban refugee caseload of Somalis in Eastleigh. As reported above, a number of Somalis leave the camps of Dadaab to seek opportunities in Nairobi and settle among other ethnic Somalis in Eastleigh. Given that only refugees with written permission (almost exclusively for medical and educational reasons) may reside outside the camps, most Somalis in Eastleigh are considered to be in breach of this requirement and therefore not considered to be eligible for resettlement, notwithstanding the right to engage in wage-earning employment and freedom of movement afforded by Articles 17 and 26 of the 1951 Refugee Convention.

ECRE-USCR also learned that there is an apparent bias against refugees from the Great Lakes Region of Central Africa (GLR) residing in Kenya and whose life, liberty or security may be in jeopardy. A number of NGOs active with refugees from the GLR stated that these refugees appear to be summarily denied refugee status, and thereby the possibility of resettlement, on the grounds that they could have claimed asylum in a country neighbouring their country of origin. This bias, without apparent consideration of the security concerns for the claimants in neighbouring countries, was allegedly rooted in a desire to find expeditious means of denying refugee status to certain nationalities in an effort to make the refugee caseload more manageable.

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ENDNOTES

- ¹ For more information on the ICMC – UNHCR Resettlement Deployment Scheme, see: <http://www.icmc.net>.
- ² As discussed at the EXCOM Standing Committee meeting of June 2001.
- ³ UNHCR, Agenda for Protection, Goal 5, Redoubling the search for durable solutions, Objective 1, para. 1.
- ⁴ *Refugee Reports: 2001 Statistical Issue*, US Committee for Refugees, Vol. 22, No. 12, December 2001, Washington, D.C.
- ⁵ The Canadian resettlement figure came from the Canada country report, *World Refugee Survey 2002*, (US Committee for Refugees, Washington, DC).
- ⁶ These statistics are a compilation of USCR statistics reported in the *World Refugee Survey* and *Refugee Reports* and statistics reported by UNHCR.
- ⁷ However, some European countries including Denmark, Germany, Norway and Sweden had relatively high overall approval rates when grants of humanitarian status were taken into account.
- ⁸ Iraq Report on Human Rights Practices for 2001, (US Department of State, www.state.gov).
- ⁹ *Ibid.*
- ¹⁰ US Committee for Refugees, Iraq Country report, *World Refugee Survey 2002*, Washington, D.C.
- ¹¹ At time of this report going to print, UNHCR had asked governments. "in view of current tensions in Iraq, to refrain from sending rejected Iraqi asylum seekers back home against their will, irrespective of their areas of origin in Iraq." UNHCR, Geneva, 11 March 2003.
- ¹² At the time of this report going to print and since December 2002, asylum seekers from Central and Southern Iraq enjoy subsidiary protection status in cases where they have not been entitled to asylum status on individual grounds in the Netherlands; since February 7, 2003 there has been a moratorium on returns to Iraq for asylum seekers originating from Northern Iraq.
- ¹³ European Legal Network on Asylum (ELENA), *Research Paper on the Application of the Concept of Internal Protection Alternative*, (2000). German law considers northern Iraq as an internal flight alternative for Iraqi Kurds with ties to the north. In 2000, the Swiss Asylum Appeal Board held that it was reasonable to expect denied asylum applicants from northern Iraq to return to the north. The Danish Refugee Appeals Board in 1998 took the position that a "security zone" existed in northern Iraq, although it also mandated that adjudicators apply the internal flight concept on a case-by-case basis. At the time of this report going to print Austria, Belgium, Denmark, Norway, Sweden, Switzerland and the UK had temporarily suspended decision making on Iraqi asylum applications.
- ¹⁴ UNHCR, Measures to Address the Problem of Iraqi Refugees in the Neighbouring Countries, June 1999.
At the time of this report going to print, UNHCR has released new guidelines for governments in light of the military action against Iraq (Geneva, 26 March 2003). The guidelines call for a ban on returns and a suspension of individual asylum procedures of currently pending and new asylum applications from Iraq until further notice.
- ¹⁵ US Central Intelligence Agency, *The World Fact Book – Jordan*, (www.odci.gov/cia/publications/factbook/geos/jo.html).
- ¹⁶ UNRWA, Report to the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East: 1 July 2000—30 June 2001, (General Assembly, Official Records, 56th Session, Supplement N. 13, A/56/13), p.6.
- ¹⁷ Although Turkey only hosts 10 000 registered refugees and asylum seekers, this is only a small fraction of the estimated one million illegal immigrants in the country, many of whom would qualify for refugee status.
- ¹⁸ More recently in January 2003, the United States cancelled all resettlement of Iraqis out of the Middle East.
- ¹⁹ For further information see the Factsheet on the US Resettlement Programme, <http://www.state.gov/g/prm/>.
- ²⁰ See also <http://www.cic.gc.ca/>.
- ²¹ USCR, World Refugee Survey, 2002.
- ²² *Ibid.*, p. 4.
- ²³ *Refugee Reports*, Vol. 22, No. 12, December 31, 2001, p. 6.
- ²⁴ UNHCR, *Trends in Asylum Applications Lodged in Europe, North America, Australia, and New Zealand*, 2001, Population Data Unit, 31 January 2002, Table 4, Top 40 nationalities of asylum applicants in 26 industrialized countries, 1999-2001, p. 9.
- ²⁵ UNICEF Document on Humanitarian Assistance to Somalia 2000-2001, p. 4.
- ²⁶ UN Consolidated Inter-Agency Appeal Strategy Paper for Somalia 2001, p. 5.
- ²⁷ Statistics from UNHCR, table entitled "Somali Returnees since 1992," by James Thande, Table 2, and "By Destination," page 1 of file D:\cbo\11-stat.xls.
- ²⁸ UNHCR, table entitled "Somali Returnees since 1992," by James Thande, Table 1, and "By Country of Asylum," page 1 of file D:\cbo\11-stat.xls.
- ²⁹ IRIN-CEA, August 22, 2001.
- ³⁰ Since the election of the new government, conditions have changed with the government giving priority to addressing the refugee protection situation in the country.
- ³¹ Binaifir Nowrojee, "In the Name of Security: Erosion of Refugee Rights in East Africa," *World Refugee Survey* 2000.
- ³² "Kenya: Refugee Children Murdered at 'Secure Residence' in Nairobi," Human Rights Watch press release, April 23, 2001.
- ³³ UNHCR Press Release: "UNHCR receives report on Nairobi investigation", 25 January 2002. Accessed on-line: <http://www.unhcr.ch>.
- ³⁴ UNHCR Resettlement Handbook (updated) July 2002, I/2.
- ³⁵ The other two durable solutions are voluntary repatriation and local integration. See: Chapter 2, UNHCR Resettlement Handbook (updated) July 2002.
- ³⁶ Refugees referred by UNHCR for resettlement must meet at least one of the following eight criteria: Legal and Physical Protection Needs, Survivors of Violence and Torture, Medical Needs, Women-at-Risk, Family reunification, Children and Adolescents, Elderly refugees and Refugees without Local Integration Prospects. See: Chapter 4, UNHCR Resettlement Handbook (updated) July 2002.
- ³⁷ Given the focus on processing in the region, this study does not examine the integration stage of resettlement. A detailed

- and comparative examination of the integration process may be found in the final report of the International Conference on the Reception and Integration of Resettled Refugees: (<http://www.integrationsverket.se/internatconf/intconf.html>).
- ³⁸ In 2003, the UK has also agreed to a resettlement quota of 500.
- ³⁹ Switzerland has also traditionally been a country of resettlement, however since 1999 Switzerland has suspended its participation in the resettlement scheme, citing its difficulties in coping with the increased numbers of refugees arriving spontaneously (ECRE Country Report, 1999).
- ⁴⁰ New Zealand could be included in this group although in terms of actual resettlement places in 2001, it resettled only 740 refugees.
- ⁴¹ The Canadian resettlement program has recently development a dossier consideration procedure for urgent and emergency resettlement cases. No such special consideration exists in the US resettlement program.
- ⁴² Recent changes in Canadian legislation aim at diminishing the significance of the integration requirement in decision making on resettlement applications.
- ⁴³ This 'exile-oriented' solution to refugee problems came to dominate both government and UNHCR responses during the Cold War. See: Gervase Coles, "Approaches to the refugee problem today" in Gil Loescher and Liala Monahan (eds.), *Refugees in International Relations*, Oxford: Oxford University Press, 1989.
- ⁴⁴ See: Gil Loescher and John Scanlan, *Calculated Kindness: Refugees and America's Half-open Door*, New York: The Free Press, 1986.
- ⁴⁵ UNHCR Resettlement Handbook (updated) July 2002, 1/5.
- ⁴⁶ UNHCR, *State of the World's Refugees*, 2000, 84.
- ⁴⁷ *Ibid*, 83.
- ⁴⁸ See: UNHCR, "International Conference on Indo-Chinese Refugees. Report of the Secretary General [Annex: Declaration and Comprehensive Plan of Action (CPA)]," <http://www.unhcr.ch> (cited 1 March 2002).
- ⁴⁹ The CPA has been criticized for a number of reasons. First, RSD procedures in the region varied considerably, were often inadequate and were premised on the assumption that the 'boat people' were predominantly economic migrants, not refugees. Second, the low standards of care and maintenance in asylum centers were reported to frequently violate international standards, motivated by a desire to deter future asylum seekers. Third, scholars have argued that the conditionality of asylum for resettlement runs contrary to the principles of international law. Fourth, incidences of forced return of failed asylum seekers were frequently denounced by human rights organizations. Finally, it has been argued that the CPA created a 'market system' where immigration and political considerations overshadowed asylum considerations and which was dominated by US geopolitical interests. See: Shamsul Bari, "Refugee Status Determination under the Comprehensive Plan of Action (CPA): A Personal Assessment," *International Journal of Refugee Law*, Vol. 4, no. 4, 1992; W. Courtland Robinson, *Terms of Refuge: The Indochinese Exodus and the International Response*, London: Zed Books, 1998; Astri Shurke, "Burden Sharing during Refugee Emergencies: The Logic of Collective versus National Action," *Journal of Refugee Studies*, Vol. 11, no. 4, 1998.
- ⁵⁰ UNHCR, *State of the World's refugees*, 2000, 84.
- ⁵¹ By the end of the Comprehensive Plan of Action, over 1,950,000 refugees had been resettled by 1995,; 1, 250,000 to the United States alone.
- ⁵² See Section on the CPA in this report.
- ⁵³ UNHCR, "Resettlement in the 1990s: A Review of Policy and Practice", October 1994, 1.
- ⁵⁴ See: B.S. Chimni, "From resettlement to involuntary repatriation: towards a critical history of durable solutions to refugee problems," *New Issues in Refugee Research*, Working Paper No. 2, UNHCR, May 1999.
- ⁵⁵ USA, Canada, Australia, New Zealand, Finland, Sweden, Norway, Denmark, Switzerland and the Netherlands.
- ⁵⁶ Updated July 2002.
- ⁵⁷ See: "Internationalizing Resettlement" in "Opening Remarks by the Assistant High Commissioner for Refugees, Mr. Soren Jessen-Petersen," Annual Tripartite Consultations on Resettlement, Geneva, 20 June 2001.
- ⁵⁸ "New Directions for Resettlement Policy and Practice," Standing Committee 21st Meeting, EC/51/SC/INF.2, 14 June 2001, paragraph 4.
- ⁵⁹ See: "Background Note for the Agenda Item: Strategic Utilization of Resettlement to Enhance Asylum and Protection Prospects," Annual Tripartite Consultations on Resettlement, Geneva, 20 June 2001.
- ⁶⁰ "New Directions for Resettlement Policy and Practice", Standing Committee 21st Meeting, EC/51/SC/INF.2, 14 June 2001, paragraph 8.
- ⁶¹ See: 'Rediscovering Resettlement,' address by Mr. Ruud Lubbers, High Commissioner for Refugees, Annual Tripartite Consultations on Resettlement, Geneva, 20 June 2001.
- ⁶² Executive Committee of the High Commissioner's Programme, Conclusion on International Protection (No. 90 (LII) – 2001).
- ⁶³ See: UNHCR Press Release: 'UNHCR receives report on Nairobi investigation,' 25 January 2001. Available on-line: <http://www.unhcr.ch>
- ⁶⁴ As of January 2003, the United States cancelled resettlement of Iraqis out of Iraq.
- ⁶⁵ In the case of Australia and as articulated by some political parties in the Netherlands and other European countries.
- ⁶⁶ See for example, the latest UK Proposals on A new vision for Refugees (05/02/03).
- ⁶⁷ This question was initially discussed at the 2002 ATC.
- ⁶⁸ See: Report of the Nordic Regional Resettlement Meeting, Oslo, 6 – 7 November 2001.
- ⁶⁹ *Ibid*.
- ⁷⁰ Executive Committee of the High Commissioner's Programme, Conclusion on International Protection (No. 90 (LII) – 2001).
- ⁷¹ See Chapter 5 of updated UNHCR Resettlement Handbook (updated) July 2002.
- ⁷² UNHCR Resettlement Handbook (updated) July 2002, Section 4.9.
- ⁷³ For more information on the ICMC – UNHCR Resettlement Deployment Scheme, see: <http://www.icmc.net>.

- ⁷⁴ See: Michael Alexander, "Refugee Status Determination Conducted by UNHCR," *International Journal of Refugee Law*, Vol. 11, no. 2, 1999, 251 – 289.
- ⁷⁵ For more information on the ICMC – UNHCR Resettlement Deployment Scheme, see: <http://www.icmc.net>.
- ⁷⁶ As discussed at the EXCOM Standing Committee meeting of June 2001.
- ⁷⁷ UNHCR, "New Directions for Resettlement Policy and Practice," Standing Committee 21st Meeting, EC/51/SC/INF.2, 14 June 2001, paragraph 10.
- ⁷⁸ A detailed report of the verification exercise has since been made available. Available from UNHCR, it is entitled "Report on the UNHCR P-2 Somali Bantu Verification Exercise in Dadaab, November 28 to December 28, 2001, by Andrew Hopkins, UNHCR, Branch Office Kenya, 187 February 2002.
- ⁷⁹ Jack Straw, UK Home Secretary, Speech to the Institute for Public Policy Research, "An Effective Protection Regime for the Twenty-first Century," February 6, 2001.
- ⁸⁰ See EXCOM Conclusions No. 11 (XXIX) 1978, No. 15 (XXX), 1979; No. 19 (XXXI), 1980, No. 22 (XXXII), 1981, No. 52 (XXXIX), 1988, No. 61 (XLI), 1990, No. 62 (XLI), 1990, No. 67 (XLII), 1991, No. 68 (XLIII), 1992, No. 71 (XLIV), 1993, No. 74 (XLV), 1994, No. 77 (XLVI), 1995, No. 79 (XLVII), 1996, No. 80 (XLVII), 1996, No. 81 (XLVIII), 1997, No. 85 (XLIX), 1998, No. 87 (L), 1999, No. 89 (LI), 2000.
- ⁸¹ Declaration of States Parties to the 1951 Convention and 1967 Protocol.
- ⁸² see Gregor Noll in *On The Record, OTR UNHCR* Vol. 2 Iss. 4 (Part 2), October 1998.
- ⁸³ International Solidarity and burden-sharing in all its aspects: national, regional and international responsibilities for refugees, 7 September 1998, A/AC.96/904.
- ⁸⁴ The paper gives examples of the economic impact (demands on a full range of primary goods in often very problematic economic circumstances), environmental impact (destabilizing eco-systems, demand on scarce natural resources including land), social and political impact (different cultural, ethnic, religious or linguistic background leading to social tensions), and impact on national, regional and international peace and security.
- ⁸⁵ Formal responsibility sharing arrangements for specific situations in the past, such as for example CPA or CIREFCA, have been implemented on an *ad hoc* basis. Though they were rooted in the established framework of international responsibility sharing, it was their strength that they were also tailored to the particular situations, thus allowing for a substantial degree of flexibility.
- ⁸⁶ UNHCR Agenda for Protection, Goal 3, DIP, UNHCR 2003.
- ⁸⁷ Goal 5, UNHCR Agenda for Protection.
- ⁸⁸ Goal 3, objective, 2, 2nd paragraph.
- ⁸⁹ Goal 5, objective 1.
- ⁹⁰ In this context, it is important to note that the principal objectives of structural bilateral or multilateral development efforts mostly relate to poverty reduction and institution building, and do not normally include a specific focus on improving refugee situations. Similarly, responsibility sharing systems in the refugee field do not normally incorporate a development perspective.
- ⁹¹ Convention Plus: Questions and Answers, UNHCR Department of International Protection, 20 January 2003.
- ⁹² 'Communication from the Commission to the Council and the European Parliament on Immigration and Asylum Policies', 23 February 1994, REF - COM(94) 23 final.
- ⁹³ In 1994, Germany presented a draft instrument on burden-sharing in situations of mass influx, proposing that each member's share should be based on each member state's percentage of the European Union's population, territory, and GDP. The draft also envisaged the sharing of people, showing that large receivers would not be satisfied with fiscal responsibility sharing alone. States would also be permitted to make deductions to their reception obligations, based on any military intervention in the crisis and the number of refugees already on their territory. The German draft failed to muster the necessary support. The fact that Germany would have been its first beneficiary at the expense of other member states may provide some explanation for this.
- ⁹⁴ Doc. No. 7773.94 ASIM 124.
- ⁹⁵ OJ 1995 C 262/1, 7.10.1995.
- ⁹⁶ O.J. No. L 063, 13 March 1996.
- ⁹⁷ ECRE Position on Sharing the Responsibility: Protecting Refugees and Displaced Persons in the Context of Large Scale Arrivals, March 1996.
- ⁹⁸ Council Directive 2001/55/EC of 20 July 2001, O.J. L 212/12, 7.8.2001.
- ⁹⁹ Article 25, 1.
- ¹⁰⁰ Article 25.3.
- ¹⁰¹ Council Regulation No 343/2003 of 18 February 2003, O.J. L 050, 25 February 2003.
- ¹⁰² Council Decision 2000/596/EC of 28. 09.00, O.J. L 252/12 of 6.10.2000.
- ¹⁰³ Communication from the Commission to the Council and the European Parliament: Integrating migration issues in the European Union's relations with third countries – Draft Council conclusions on migration and development, 6175/03, 7 February 2003.
- ¹⁰⁴ UNHCR, Agenda for Protection, Goal 5, Redoubling the search for durable solutions, Objective 1, para. 1.
- ¹⁰⁵ EXCOM General Conclusion on International Protection, no 71(XLIV)-1993, para. 19(n).
- ¹⁰⁶ UNHCR, Comprehensive and regional approaches to refugee problems, EC/1994/SCP/CRP.3, 3 May 1994.
- ¹⁰⁷ Excom Conclusion 80 (XLVII), Comprehensive and Regional Approaches within an Protection Framework, 11 October 1996.
- ¹⁰⁸ Such models are considered within the framework of the UNHCR Agenda for Protection and the Convention Plus (see below par. 3.3). Compare "Convention Plus" Questions and Answers, UNHCR Department of International Protection, 20 January 2003. See also Jeff Crisp, *No solutions in sight: the problem of protracted refugee situations in Africa*, paper prepared for the conference of the International Association for the Study of Forces Migration in Chiang Mai, Thailand, January 2003, and Global Consultations on international protection, *Mechanisms of international cooperation to share responsibilities and burdens in mass influx situations*, EC/GC/01/7, 19 February 2001.

- ¹⁰⁹ "Convention Plus": Questions and Answers, UNHCR Department of International Protection, 20 January 2003
- ¹¹⁰ In this regard, a fourth approach is also worth mentioning, the Zambia initiative, initiated in 2001, which particularly aims at providing solutions to a protracted refugee situation through development initiatives and which fits in the so called concept of *Development through Local Integration* (DLI). See also below, paragraph 3.1.
- ¹¹¹ UNHCR, Comprehensive and regional approaches to refugee problems, EC/1994/SCP/CRP.3, 3 May 1994.
- ¹¹² See: UNHCR, "International Conference on Indo-Chinese Refugees. Report of the Secretary General [Annex: Declaration and Comprehensive Plan of Action (CPA)]," <http://www.unhcr.ch> (cited 1 March 2002).
- ¹¹³ UNHCR County Office Hanoi, Vietnam, www.un.org.vn/unag/unhcr1/unhcr.htm.
- ¹¹⁴ See: Shamsul Bari, "Refugee Status Determination under the Comprehensive Plan of Action (CPA): A Personal Assessment", *International Journal of Refugee Law*, Vol. 4, no. 4, 1992; W. Courtland Robinson, *Terms of Refuge: The Indochinese Exodus and the International Response*, London: Zed Books, 1998; Astri Shurke, "Burden Sharing during Refugee Emergencies: The Logic of Collective versus National Action", *Journal of Refugee Studies*, Vol. 11, no. 4, 1998.
- ¹¹⁵ For fourteen years all Vietnamese arriving in first asylum camps, had been *prima facie* accepted as refugees entitled to resettlement abroad. Thus, it is understandable that Vietnamese boat people arriving after the cut-off date for determination under the previous criteria believed that they were entitled to the same treatment.
- ¹¹⁶ Shamsul Bari: Refugee Status Determination under the Comprehensive Plan of Action (CPA): A Personal Assessment, IJRL Vol 4 No. 4, 1992.
- ¹¹⁷ Amnesty International, Memorandum to the governments of Hong Kong and the United Kingdom regarding the protection of Vietnamese asylum seekers in Hong Kong, January 1990, AI Index ASA 19/01/90.
- ¹¹⁸ See: Human Rights Watch: Hong Kong, Abuses against Vietnamese asylum seekers in the final days of the Comprehensive Plan of Action, March 1997 Vol 9, no. 2(c).
- ¹¹⁹ See: Amnesty International: Southeast Asia: other governments should follow Philippines government new stance on treatment of failed asylum seekers, 16 February 1996, AI Index ASA 30/01/96.
- ¹²⁰ See: Shamsul Bari, "Refugee Status Determination under the Comprehensive Plan of Action (CPA): A Personal Assessment", *International Journal of Refugee Law*, Vol. 4, no. 4, 1992; W. Courtland Robinson, *Terms of Refuge: The Indochinese Exodus and the International Response*, London: Zed Books, 1998; Astri Shurke, "Burden Sharing during Refugee Emergencies: The Logic of Collective versus National Action", *Journal of Refugee Studies*, Vol. 11, no. 4, 1998.
- ¹²¹ This paragraph draws from *Peace in Central America: transition for the Uprooted*, USCR - World Refugee Survey 1993, http://www.refugees.org/world/articles/centralamerica_wrs93.htm.
- ¹²² Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.
- ¹²³ UNHCR International Conference on Central American Refugees: Report to the Secretary General, 3 October 1989.
- ¹²⁴ In Guatemala a peace agreement was only reached in 1996.
- ¹²⁵ Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, and Nicaragua.
- ¹²⁶ UNHCR International Conference on Central American Refugees: Report to the Secretary General, 3 October 1989, and UNHCR, Comprehensive and regional approaches to refugee problems, EC/1994/SCP/CRP.3, 3 May 1994.
- ¹²⁷ For example, a school can be built with local labour, but the government has to send appropriate teachers.
- ¹²⁸ UNHCR Evaluation Report *Review of the CIREFCA Process*, 1 May 1994.
- ¹²⁹ The following paragraph draws on Barutciski and Suhrke, *Lessons from the Kosovo Refugee Crisis: innovations in protection and burden-sharing*, Journal of Refugee Studies Vol 14 no 2, 2001.
- ¹³⁰ See: Amnesty International: *Former Yugoslav Republic of Macedonia: Humanitarian Evacuation and the international response to refugees from Kosovo*, 1 June 1999, AI Index EUR 65/005/1999; and Dennis McNamara, UNHCR's special envoy to the former Yugoslavia / UN Deputy Representative of the Secretary-General in Kosovo: *The challenge for Humanitarian Intervention in Kosovo*, Royal Institute of International Affairs, Chatham House, 10 November 1999.
- ¹³¹ Astri Suhrke, Michael Barutciski, Peta Sandison and Rick Garlock: The Kosovo refugee crisis: an independent evaluation of UNHCR's emergency preparedness and response, 10 February 2000.
- ¹³² UNHCR, Guidelines for the Humanitarian Evacuation Programme of Kosovar Refugees in the former Yugoslav Republic of Macedonia, 11 April 1999.
- ¹³³ Astri Suhrke, Michael Barutciski, Peta Sandison and Rick Garlock: The Kosovo refugee crisis: an independent evaluation of UNHCR's emergency preparedness and response, 10 February 2000.
- ¹³⁴ Suhrke et al, 2000: 21.
- ¹³⁵ UNHCR response to a British Parliamentary report, included in House of Commons, International Development Committee, Fourth Special Report *Kosovo: the Humanitarian Crisis* 27 July 1999, as quoted in the UNHCR evaluation report.
- ¹³⁶ UNHCR ultimately had a limited emergency capacity and played a relatively small role in the total aid picture. The power differentials among the different actors are painfully illustrated by the example in the early days of the emergency: on 31 March, Mrs. Bonino, the CU Commissioner for Humanitarian Affairs, flew into the region in an aircraft put at her disposal by NATO and accompanied by a high NATO Commander. The same day, UNHCR's first emergency response team to be deployed in Albania was left standing at Geneva airport, denied clearance by NATO because of crowded airspace (*Kosovo refugee crisis evaluation report*, par 49).
- ¹³⁷ Barutciski and Suhrke in *Lessons from the Kosovo Refugee Crisis: innovations in protection and burden-sharing*, Journal of Refugee Studies Vol 14 no 2, 2001 argue that there is a legal case for not considering first asylum as an unconditional obligation on all states in all refugee situations, but that there is a moral-political case for encouraging states to share refugees for whom they feel they have a special responsibility. The recognition of such exceptional situations can, according to the authors, strengthen the international refugee regime. "The Kosovo emergency sug-

gests that a clearly exceptional situation where burden-sharing can be considered imperative, is one when vulnerable states are faced with a mass influx of refugees that may export the conflict and lead to serious destabilization."

- ¹³⁸ UNHCR *Statistical Yearbook 2001* (UNHCR, Geneva) p. 113.
- ¹³⁹ Country reports for the United States for 1997-2001, *World Refugee Survey*, (U.S. Committee for Refugees, Washington, D.C.
- ¹⁴⁰ UNHCR *Statistical Yearbook 2001*, pp. 119-120.
- ¹⁴¹ United States country report, *World Refugee Survey 2002*.
- ¹⁴² *Refugee Reports 2001 Statistical Issue*; (U.S. Committee for Refugees, December 31, 2001), p. 6.
- ¹⁴³ UNHCR, *The State of the World's Refugees: Fifty Years of Humanitarian Action* (Oxford: Oxford University Press, 2000): p. 325.
- ¹⁴⁴ UNHCR, *Trends in Asylum Decisions in 38 Countries, 1999-2000* (Geneva: UNHCR Population Data Unit, 22 June 2001).
- ¹⁴⁵ UNHCR, *Trends in Asylum Applications in Industrialized Countries 1999-2001* (Geneva: Population Data Unit, February 2002).
- ¹⁴⁶ UNHCR, *Reconciling Migration Control and Refugee Protection in the European Union: A UNHCR Perspective* (Geneva: UNHCR, October 2000): p. 5.
- ¹⁴⁷ IOM and UNHCR, *Refugee Protection and Migration Control: Perspectives from UNHCR and IOM*, paper presented at UNHCR Global Consultations, Second Meeting in the Third Track (28-29 June 2001): Protection in Individual Asylum Situations (EC/GC/01/11, 31 May 2001).
- ¹⁴⁸ UNHCR, *Agenda for Protection*, (Geneva: UNHCR, June 10, 2002) pp. 9-11.
- ¹⁴⁹ UNHCR, *Trends in Asylum Decisions in 38 Countries, 1999-2000* (Geneva: UNHCR Population and Geographical Data Section, 22 June 2001): p. 3.
- ¹⁵⁰ *Ibid.*, p. 3.
- ¹⁵¹ UNHCR Executive Committee, *Interception of Asylum-Seekers and Refugees: The International Framework and Recommendations for a Comprehensive Approach* (EC/50/SC/CRP.17, 9 June 2000).
- ¹⁵² The areas of European integration that are addressed under this heading include those relating to asylum and immigration, cross-border criminal issues, drugs and terrorism, and judicial and police cooperation and as matters of Justice and Home Affairs in the European Commission. See: Joanne van Selm, 'Asylum in the Amsterdam Treaty: a harmonious future?', *Journal of Ethnic and Migration Studies*, Vol. 24, No. 4 (1998) and Pieter Boeles, 'Introduction: Freedom, Security and Justice for All', in E. Guild and C. Harlow (eds), *Implementing Amsterdam: Immigration and Asylum Rights in EC Law* (Oxford: Hart, 2001).
- ¹⁵³ In relation to asylum see further Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, COM 578, 20 September 2000 and COM (2002) 326 final, 18 June 2002 and Proposal for a Council Directive on minimum standards on the qualification and status of third country nationals and stateless persons as refugees or as persons otherwise in need of international protection, COM (2001) 510, 12 September 2001. See also, Council Directive on the reception of asylum seekers, 2003/9 EC, OJ L 31, 6.2.2003 and Council Regulation Dublin II, (EC), No 343/2003, OJ L 50, 25.2.2003.
- ¹⁵⁴ A comprehensive analysis of the HLWG from which this paper draws is Johannes van der Klaauw, 'Building Partnerships with Countries of Origin and Transit', in Clotilde Marinho, ed., *Asylum, Immigration and Schengen Post-Amsterdam: A First Assessment* (Maastricht, The Netherlands: European Institute of Public Administration, 2001): pp. 21-46. ECRE and USCR also interviewed staff members of the HLWG in Brussels in November 2001.
- ¹⁵⁵ High Level Working Group on Asylum and Migration, *Report to the European Council in Nice*, 13993/00 JAI 152, AG 76, 29 November 2000.
- ¹⁵⁶ Conclusions EU General Affairs Council, Luxembourg, 15 April 2002.
- ¹⁵⁷ Modification of the terms of reference of the High Level Working Group on Asylum and Migration, 30 May 2002, 9433/02.
- ¹⁵⁸ *Ibid*, para. 4.
- ¹⁵⁹ Presidency contribution to the European Conference on Migration, Panel No 3 Partnership with countries of origin - experience of the Council of the European Union's High level Working Group on Asylum and Migration, 3 October 2001, SN 4107/01.
- ¹⁶⁰ Seville European Council, Presidency Conclusions 22/6/2002, 200/1/02.
- ¹⁶¹ Communication from the Commission to the Council and the European Parliament: *Integrating migration issues in the European Union's relations with third countries*, 3 December 2002, COM(2002)703 final.
- ¹⁶² B7-667, Cooperation with third countries in the field of migration.
- ¹⁶³ Susan Martin, "Global Migration Trends and Asylum, New Issues in Refugee Research, Working Paper No. 41, (Geneva: UNHCR, April 2001).
- ¹⁶⁴ USCR Refugee Reports, Vol. 16, No. 12, December 31, 1995, p.4.
- ¹⁶⁵ USCR Refugee Reports, Vol. 15, No. 12, December 31, 1994, p. 2.
- ¹⁶⁶ USCR Refugee Reports, Vol. 16, No. 4, April 29, 1995, p. 2.
- ¹⁶⁷ USCR Refugee Reports, Vol. 16, No. 2, February 28, 1995, p. 9.
- ¹⁶⁸ USCR Refugee Reports, Vol. 15, No. 10, October 27, 1994, pp. 14-19.
- ¹⁶⁹ USCR Refugee Reports, Vol. 17, No. 1, January 31, 1996, p. 5.
- ¹⁷⁰ Representative UNHCR Australia, 2 October 2001, quoted by USCR in Australia report 2002.
- ¹⁷¹ See Human Rights Watch: Australian refugee policy is "Not for export," 26 September 2002, and "By invitation only," 10 December 2002.
- ¹⁷² IGC, Working Paper on Reception in the Region of Origin (Geneva: IGC, September 1994); IGC, Reception in the Region of Origin: Draft Follow-Up to the 1994 Working Paper (Geneva: IGC, August 1995); IGC, Study on the Concept of Burden-Sharing (Geneva: IGC, March 1998); and IGC, Responsibility-Sharing: The Kosovo Humanitarian Evacuation Programme As a Case Study (Geneva: IGC, 2000).
- ¹⁷³ Jack Straw, Speech at European Conference on Asylum, Lisbon, June 2000.
- ¹⁷⁴ Communication from the Commission to the Council and the European Parliament, Towards a common asylum proce-

dure and a uniform status, valid throughout the Union, for persons granted asylum, 22 November 2000.

- ¹⁷⁵ For example, at the time of the Dutch elections in the spring of 2002, practically all major Dutch political parties expressed their wish to integrate the region of origin in a comprehensive approach to manage refugee flows and to reduce the number of asylum requests filed in the Netherlands. It was also argued that improved reception conditions in the regions of origin could eventually justify returning asylum seekers to the countries of first asylum in the region where their claims could be processed. The Christian Union, one of the Dutch political parties, was one of the parties promoting exclusive processing in the region, while explicitly stressing the importance of protection. However, during a seminar with NGO's in spring 2002, Mr Rouvout, the leader of the Christian Union, appeared not to be aware of the consequences of the party's positioning, i.e. the enormous costs involved in processing up to 17 million refugees, potentially augmented with IDP's who might leave their country if there were processing centres in neighbouring countries. The party also had not considered ways to improve the worrying living conditions in the camps, including security aspects, which refugees would face while awaiting the outcome of procedures. (Dutch Working Group on International Refugee Policy, *Meeting on Reception and Processing in the Region*, 22 February 2002 The Hague). In July 2002, in the basis-agreement to the Dutch coalition government, the principle was agreed that refugees were only to be accepted through resettlement: (*However*) *the Netherlands aims at amending the Refugee Convention. Asylum will only be provided in the region of origin, and asylum claims will be assessed by UNHCR. The Netherlands will in that framework proportionally accept refugees who are recognised under the Convention and who, according to UNHCR, have to be resettled.* (Dutch Parliamentary Document, TK 28375 no 5, 3 July 2002).
- ¹⁷⁶ IGC, Working Paper on Reception in the Region of Origin (Geneva: IGC, September 1994): pp. 7-10.
- ¹⁷⁷ UNHCR, Communication from the European Commission on a Common Policy on Illegal Immigration COM(2001) 672 final. UNHCR's Observations, Geneva, July 2002.
- ¹⁷⁸ Gregor Noll, Jessica Fagerlund and Fabrice Liebaut, Study on the feasibility of processing asylum claims outside the EU against the background of the common European asylum system and the goal of a common asylum procedure, Danish Centre of Human Rights and European Commission, December 2002. Previously the Danish Centre for Human Rights had completed a study on the role of EU diplomatic representations in processing asylum requests abroad. See Gregor Noll and Jessica Fagerlund, *Safe Avenues to Asylum: The Actual and Potential Role of EU Diplomatic Representations in Processing Asylum Requests*, The Danish Centre for Human Rights, Copenhagen, April 2002.
- ¹⁷⁹ The authors did not consider procedures in the country of origin, but only in a third country in the region.
- ¹⁸⁰ Links will generally mean family links. The authors suggest the (non exhaustive) list of the following elements: Existence of substantial family or community linkages (ethnic or religious group), existence of a substantial relationship between applicant and Member State due to the applicant's earlier

migratory record (legal presence in the country from which entry is sought for work or study purposes, or existence of substantial linguistic and cultural linkages).

- ¹⁸¹ For example, the person would only be admitted to an accelerated procedure with fewer procedural safeguards.
- ¹⁸² It has been argued by example by Noll, op cit, p.241, that it would be possible to follow criteria developed by national courts in Europe in elaborations of the application of 'safe third country-clauses.'
- ¹⁸³ Noll (p. 136) for example refers to the successful Swiss procedure, which dealt only with a limited number of applications cases (844 in 1999, 601 in 2000 and 757 in 2001), leading to granting of the visa request in, roughly, 1 out of 6 cases (144 in 1999, 91 in 2000 and 130 in 2001, of whom, for unknown reasons, only respectively 100, 60 and 54 have been registered as actual arrivals in Switzerland).
- ¹⁸⁴ In a 2001 refugee census, the government of Iran registered 203,000 Iraqis in the country. The figures for registered Iraqi refugees in the other countries mentioned were received from UNHCR offices in the region.
- ¹⁸⁵ Figures for 1989 through 2000 were compiled from UNHCR's *Background Paper on Refugees and Asylum Seekers from Iraq*, (June 2000), and UNHCR's *Trends in Asylum Decisions in 38 Countries, 1999-2000* (June 22, 2001). The figure of 90,000 also included grants of asylum in 2001 to Iraqi nationals in Germany, the United Kingdom, Austria, and the United States. Because information on asylum decisions in other Western countries was not available, the figure of 90,000 should be taken as a baseline for Iraqis with refugee status in Western countries.
- ¹⁸⁶ Between 1989 and the end of 2000, 53,425 Iraqi nationals were granted some form of humanitarian status in European countries, according to statistic provided in UNHCR's *Background Paper on Refugees and Asylum Seekers from Iraq*, (June 2000), and UNHCR's *Trends in Asylum Decisions in 38 Countries, 1999-2000* (June 22, 2001). Although complete figures were not available for 2001, the United Kingdom granted exceptional leave to remain to 1,800 Iraqis during the year and Sweden granted some form of protected status to another 3,040 Iraqis, according to statistics provided by their respective governments.
- ¹⁸⁷ *Refugee Reports: 2001 Statistical Issue*, US Committee for Refugees, (Vol. 22, No. 12, December 2001, Washington, D.C.).
- ¹⁸⁸ The Australian government provided the figure for Australia. The Canadian resettlement figure came from the Canada country report, *World Refugee Survey 2002*, (US Committee for Refugees, Washington, D.C.).
- ¹⁸⁹ For example, Sweden resettled 335 Iraqis in 2000, and Norway resettled 50, according to the *World Refugee Survey 2001*. A total of 5,500 Iraqis were resettled in 2000, most to the big three resettlement countries, the United States (3,152), Canada (982) and Australia.
- ¹⁹⁰ These statistics are a compilation of USCR statistics reported in the *World Refugee Survey* and *Refugee Reports* and statistics reported by UNHCR.
- ¹⁹¹ UNHCR.
- ¹⁹² The statistics provided in these tables were taken from various USCR and UNHCR reports.

- ¹⁹³ The Iraq Foundation web page, "A Brief History of Human Rights in Iraq": (www.iraqfoundation.org).
- ¹⁹⁴ Background Paper on Refugees and Asylum Seekers from Iraq, (UNHCR, Geneva, June 2000) p. 9.
- ¹⁹⁵ *Ibid*, p. 8.
- ¹⁹⁶ Iraq Report on Human Rights Practices for 2001, (US Department of State, www.state.gov).
- ¹⁹⁷ Iraq's Crime of Genocide: The Anfal Campaign against the Kurds, by Human Rights Watch (www.hrw.org) cites a death toll between 50,000 and 100,000, while The Iraq Foundation web page, "A Brief History of Human Rights in Iraq," (www.iraqfoundation.org) says that between 100,000 and 180,000 were "disappeared."
- ¹⁹⁸ Country Report on Iraq, *World Refugee Survey: 1988 in Review*, (US Committee for Refugees, Washington, D.C., Spring 1999).
- ¹⁹⁹ See The Iraq Foundation web page.
- ²⁰⁰ *Ibid*.
- ²⁰¹ Iraq Country Report, *World Refugee Survey 1992*, and Saudi Arabia Country report, *World Refugee Survey 2001*, (USCR).
- ²⁰² Iraq Report on Human Rights Practices for 1996, (US Department of State, www.state.gov).
- ²⁰³ Iraq Report on Human Rights Practices for 2001, (US Department of State, www.state.gov).
- ²⁰⁴ Iraq Country Report, *World Refugee Survey 1997*, (USCR).
- ²⁰⁵ Country Report on Iraq, *World Refugee Survey 2002*, (USCR).
- ²⁰⁶ *Ibid*.
- ²⁰⁷ *Background Paper on Refugees and Asylum Seekers from Iraq*, (UNHCR, Geneva, June 2000) p. 15.
- ²⁰⁸ Country Report on Iraq, *World Refugee Survey 2001*, (USCR).
- ²⁰⁹ Human Rights Watch, *World Report 2002* (<http://www.hrw.org/wr2k2/mena4.html>).
- ²¹⁰ *Ibid*.
- ²¹¹ *Ibid*.
- ²¹² *Ibid*.
- ²¹³ Iraq Country Report, *World Refugee Survey 2002*, (USCR).
- ²¹⁴ *Ibid*.
- ²¹⁵ *Ibid*.
- ²¹⁶ Iraq Report on Human Rights Practices for 2001, (US Department of State, www.state.gov).
- ²¹⁷ *Ibid*.
- ²¹⁸ Iraq Country Report, *World Refugee Survey 2002*, (USCR).
- ²¹⁹ European Legal Network on Asylum (ELENA), *Research Paper on the Application of the Concept of Internal Protection Alternative*, (2000). German law considers northern Iraq as an internal flight alternative for Iraqi Kurds with ties to the north. In 2000, the Swiss Asylum Appeal Board held that it was reasonable to expect denied asylum applicants from northern Iraq to return to the north. The Danish Refugee Appeals Board in 1998 took the position that a "security zone" existed in northern Iraq, although it also mandated that adjudicators apply the internal flight concept on a case-by-case basis.
- ²²⁰ EU High Level Working Group on Asylum and Migration, *Draft Action Plan for Iraq*, September 23, 1999.
- ²²¹ UNHCR, *Measures to Address the Problem of Iraqi Refugees in the Neighboring Countries*, (June 1999).
- ²²² In September 2000 the EU sent a Justice and Home Affairs (JHA) expert mission to Turkey to examine Turkish policy and practice in human rights, democratic governance and asylum and refugee matters. The findings are outlined in: *General JHA Expert Mission to Turkey 18-29 September: Mission Report of the Situation in the Field of Justice and Home Affairs in Turkey* (internal document).
- ²²³ See: http://europa.eu.int/comm/enlargement/dwn/report_11_00/pdf/en/tu.pdf, 8 November 2000.
- ²²⁴ Ahmet Icduygu, "The politics of international migratory regimes: transit migration flows in Turkey," *International Social Science Journal* (September 2000): 357-367.
- ²²⁵ Gareth Jenkins, *Context and Circumstance: The Turkish Military and Politics*, Adelphi Paper 337, The International Institute for Strategic Studies, London.
- ²²⁶ ECRE-USCR interview with the local ASAM office in Van.
- ²²⁷ For a detailed accounting of US Refugee Processing Priorities, see: *Refugee Reports: 2001 Statistical Issue*, (USCR, December 31, 2001) pp. 12-13.
- ²²⁸ UNRWA, *Report to the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East: 1 July 2000—30 June 2001*, (General Assembly, Official Records, 56th Session, Supplement N. 13, A/56/13) p. 55.
- ²²⁹ Jordan Country Report, *World Refugee Survey 1992*, (USCR, Washington, D.C.) pp. 102-103.
- ²³⁰ US Department of State, Jordan Country Report, *Country Reports on Human Rights Practices 2001*, (Department of State's Bureau of Democracy, Human Rights, and Labor, March 4, 2002) Section 2d.
- ²³¹ For more on the difference between the Palestinian refugee definition and the reason why the 1951 Refugee Convention is not interpreted to cover Palestinian refugees, see Gaza Strip West Bank Country Report, *World Refugee Survey 2002*, (USCR, spring 2002).
- ²³² US Central Intelligence Agency, *The World Fact Book – Jordan*, (www.odci.gov/cia/publications/factbook/geos/jo.html).
- ²³³ US Department of State, Jordan Country Report, *Country Reports on Human Rights Practices 2001*, p. 1.
- ²³⁴ CIA, *The World Fact Book – Jordan*, see footnote 49.
- ²³⁵ UNRWA Annual Report for 2000-2001, p. 6. See footnote 1.
- ²³⁶ Jordan Country Report, *World Refugee Survey 1999*, (USCR, spring 1999).
- ²³⁷ UNHCR, *BO Amman Mid-Year Country Report: Reporting Period: 01 January to 30 June 2001*, (UNHCR-Amman, Jordan) p. 7.
- ²³⁸ USCR, *World Refugee Survey* (hereafter, WRS), 2001, 2000, 1999.
- ²³⁹ WRS 2002.
- ²⁴⁰ At the time of the ECRE-USCR visit to Dadaab, the camp census was 133,542. At least another 25,000 urban refugees are unregistered. Therefore USCR settled on 160,000.
- ²⁴¹ UNICEF Document on Humanitarian Assistance to Somalia 2000-2001, page 4.
- ²⁴² UN Consolidated Inter-Agency Appeal Strategy Paper for Somalia 2001, page 5.
- ²⁴³ FAO/GIEWS: Africa Report, December 2001, page 57.
- ²⁴⁴ "7,867" asylum applications lodged in Europe and North America, Jan – Dec 2001, Trends in Asylum Applications Lodged in Europe, North America, Australia and New Zealand, 2001, Table 4 January 31, 2002. + "17,000 Somali refugees," entered Kenya, UNHCR 2002 Global Appeals, page 82 + sev-

- eral hundred to Yemen = 24,867, rounded to 25,000. Reuters, July 15, 2001.
- ²⁴⁵ "17,000," UNHCR 2002 Global Appeal, page 83. "10,000 to 15,000," USCR's field visit to Kenya, May 2001.
- ²⁴⁶ UNICEF Document on Humanitarian Assistance to Somalia 2000-2001, page 4.
- ²⁴⁷ "Welcome Home to Nothing: Refugees Repatriate to a Forgotten Somaliland," USCR December 2001.
- ²⁴⁸ WRS 2001.
- ²⁴⁹ Statistics from UNHCR, table entitled "Somali Returnees since 1992," by James Thande, Table 2, "By Destination," page 1 of file D:\cbo\11-stat.xls.
- ²⁵⁰ UNHCR, table entitled "Somali Returnees since 1992," by James Thande, Table 1, "By Country of Asylum," page 1 of file D:\cbo\11-stat.xls.
- ²⁵¹ Of the approximate 40,000 returnees, over 25,000 were from Ethiopia while some 14,000 were from Kenya.
- ²⁵² "60,000," UNHCR 2002 Global Appeal, page 85, "50,221," UNHCR/Somalia response to USCR questionnaire, January 28, 2002.
- ²⁵³ Joel Frushone, US Committee for Refugees, "Welcome Home to Nothing: Refugees Repatriate to a Forgotten Somaliland," December 2001.
- ²⁵⁴ IRIN-CEA, August 22, 2001.
- ²⁵⁵ The HLWG, established through the Justice and Home Affairs Directorate of the European Commission, was tasked with formulating five "action plans" to recommend steps the EU could take in five countries producing large numbers of asylum seekers in Europe—Somalia, Iraq, Afghanistan, Morocco, and Sri Lanka—and the surrounding regions that might attenuate migration to Europe.
- ²⁵⁶ High Level Working Group on Migration—Progress report on activities during the Swedish Presidency, Council of the European Union, 8724/01 JAI 32/AG 8, Brussels, 18 May 2001.
- ²⁵⁷ USCR-ECRE interviewed one of the aid workers in Nairobi who had been kidnapped in Mogadishu in March. See also, Agence France Presse (AFP), April 4, 2001.
- ²⁵⁸ FAO/GIEWS: Africa Report, December 2001, page 57.
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³⁰³ This sentiment was expressed to ECRE-USCR by UNHCR, the US Refugee Coordinator, the Officer in Charge of the INS in Kenya and senior NGO representatives.

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