



**UNHCR Global consultations – Third track – Information Note for the third and fourth themes – The search for protection-based solutions – Protection of refugee women and children**

***I. The search for protection-based solutions***

**A. The EU and voluntary returns**

A.1. Voluntary return as one of the three long-term solutions identified to the problem of refugees is to be based on three **main principles**: full respect of the principle of non-refoulement and of human rights and fundamental freedoms; responsibility of countries of origin to restore national protection; co-operation with Countries of origin and transit. Furthermore large return movements to countries of origin of people who benefited from protection in host countries usually go together with reconstruction and development challenges. They may require, in some cases, certain specific solutions or a gradual approach in host States and in countries of origin and transit such as postponing the return decisions, allowing exploratory visits or stays, drawing up assistance “packages” from basic ones (information, transport, small financial allowances) to more developed and tailored ones prepared some time in advance (training, incentives for non-skilled, skilled and high skilled persons etc...), and readmission, transit and transport arrangements.

A.2. The first **EU legislative instrument** dealing with returns of persons under protection is the Directive on Temporary protection adopted in July 2001. Apart from the maximum duration set for a temporary protection scheme, the Directive states that TP can be ended at any time by a Council of Ministers decision, based on the establishment of the fact that the situation in the country of origin is such to permit the safe and durable return of those granted TP with due respect for human rights and fundamental freedoms and Member States’ obligations regarding non-refoulement. Furthermore the Member States shall take the measures necessary to make possible the voluntary return of persons enjoying TP or whose TP has ended. The Member States shall ensure that the provisions governing voluntary return of persons enjoying TP facilitate their return with respect for human dignity. The Member States shall ensure that the decision of those persons to return is taken in full knowledge of the facts. They may provide for exploratory visits.

The Commission proposal for a Directive approximating refugee concept and status foresees that Member States shall grant persons enjoying international protection access to voluntary return programmes for those who wish to return on a voluntary basis for their country of origin.

A.3. A **large consultation process** on a Community return policy especially targeted on return of illegal residents has been launched by the Commission on 10 April 2002 with a Green Paper (COM(2002)175 final). It can be consulted on the Europa (Europa.eu.int) Commission website (Directorate General Justice and Home Affairs). Reactions from interested parties, including third countries, international organisations, NGOs, academia and other interested civil society organisations and individuals, are to be sent before 31 July 2002 to:

The Director General, Directorate General Justice and Home Affairs, European Commission, Rue de Luxembourg 46, B-1049 Brussels,

jai-immigration-asile@cec.eu.int

A.4. Against the background of **asylum policy**, the European **Commission** has **experience in the management of return projects** to encourage the voluntary return of refugees, displaced persons and rejected asylum seekers from EU Member States to their countries of origin. Since 1997 projects have been financed both in the framework of Joint Actions and the European Refugee Fund. In 2000 and 2001, voluntary returns constituted an average of 26,5 % of the breakdown of ERF actions in Member States. The emphasis has been on influencing the individual and his or her family to take the decision to return, running the projects essentially in the EU Member State themselves. As far as the Joint Actions were concerned, the projects concentrated on preparation for return through subsidised exploratory visits and counselling on the situation in the country of origin, vocational training and employment, assistance in creation of small enterprises in the country of origin and post-return assistance and follow-up.

The projects have had varying levels of success. Generally speaking, projects run by organisations with long experience and highly developed methodology had greater success. The following elements formed part of the more successful projects:

- Sufficient knowledge of country of origin;
- Links to country of origin such as office, contact person, collaboration with local organisations;
- Selection of potential returnees to ‘match’ the return project;
- Comprehensive projects including counselling, training, pre and post-return assistance and follow-up;
- Projects designed to help the return local community. This reduced local hostility to returnees;
- Working together with other reconstruction and rehabilitation projects and programmes in the country of origin.

Furthermore, following the adoption of Action Plans drawn up by the EU High Level Group to develop a comprehensive approach to migration, addressing political, human rights and development issues in countries and regions of origin and transit, a specific budget line has been created, which will soon be converted in a formal program. Implementing actions are divided into three strands, one of which is the support to voluntary return to countries of origin and strengthening their ability to cope with their readmission obligations towards the EU and its Member States, including support to flanking measures integrated into Readmission Agreements signed between the Community and third countries. Non-exhaustive examples of actions financed through this instrument can be found in annex.

A.5. The voluntary return dimension is an important part of the EU strategy in regions which suffered important population displacement and refugee crisis. The reintegration of refugees and displaced persons is a key element of any crisis resolution and peace stabilisation process in a post-conflict period. Reintegration of refugees and displaced persons implies not only the rehabilitation of physical infrastructure but also the setting up of a national reconciliation process, with a proper judicial system.

The EU pursues an integrated approach covering all phases of the displacement cycle: initial displacement, protracted displacement, return and resettlement/reintegration or final integration in the country of asylum. Particular attention is thus paid to ensure a smooth transition from emergency operations, financed by the European Community Humanitarian Office (ECHO), to rehabilitation and longer-term, sustainable development, while recognising that in many conflict-thorn countries, these various types of intervention should coexist in the immediate post-conflict period, according to the situation on the ground.

Many projects of voluntary return, reconstruction and reintegration of refugees and displaced persons, have been financed in the past year in Africa (Angola, Somalia, Mozambique, Eritrea), East Timor and the Balkans (mainly Bosnia y Herzegovina and Croatia, where they represent the largest financial allocation).

## **B. The EU and local integration**

B.1. The special meeting of the European Council held in **Tampere** in October 1999 on the creation of an area of freedom, security and justice in the European Union, agreed on the need to develop common policies on migration and asylum. The fair treatment of third country nationals residing legally in the Member States, hence including refugees, was identified as one of the main elements of this policy. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.

The European Council endorsed the objective that long-term legally resident third country nationals, including refugees, be offered the opportunity to obtain the nationality of the Member States in which they reside.

B.2. A **package of anti-discrimination measures**, implementing Article 13 of the EC Treaty was successfully adopted in record time by the Council in 2000. The Directive on racial discrimination<sup>1</sup> will provide a minimum level of protection against racial discrimination common to all Member States. The Employment Discrimination Directive<sup>2</sup> prohibits discrimination on grounds of religion and belief, disability, age and sexual orientation. An Action Programme to combat discrimination came into force on 1 January 2001. It will run for six years with a budget of €100 million. It will:

- enable the Community to study and evaluate the impact of discrimination in the Member States and the effectiveness of measures to combat it;
- promote exchanges of experience and good practice between actors in the Member States
- allow to raise awareness about the problems on a European level.

A European Monitoring Centre on Racism and Xenophobia was also established which carries out research on racism, xenophobia and anti-semitism in Europe, analysing the causes and effects and identifying examples of good practice.

As part of the co-operation to combat racist and xenophobic crimes, the European Commission tabled in November 2001 a proposal for a framework decision which

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<sup>1</sup> 2000/43/EC

<sup>2</sup> 2000/78/EC

aims are on the one hand to ensure that racism and xenophobia are punishable in all Member States by effective, proportionate and dissuasive criminal sanctions, which may lead to extradition or handing over of the individual concerned and on the other hand, to improve and promote judicial co-operation by removing potential obstacles. On 25 April 2002, EU Ministers of Justice and Home Affairs underlined the importance of such a decision, against the background of an important declaration about fighting racism, xenophobia and anti-semitism.

B.3. Most of the **EU legislation** necessary for the implementation of the common legal framework for the status of third country nationals has already been prepared by the European Commission and is now in discussion in the Council. The family has a central role to play in the integration of migrants and the proposal for family reunification were the first to be presented in December 1999. A draft Directive concerning the status of long-term resident third country nationals was tabled in March 2001. These proposals cover refugees. The Commission has adopted on 12 September 2001 a Proposal for a Directive laying down minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection. It contains provisions critical for integration of refugees such as information, residence permits, long-term residence status, access to employment, education, social welfare, health and psychological care, freedom of movement etc. All these proposals are currently under consideration in the Council of Ministers.

B.4. Legislation will provide a European framework based on common minimum standards concerning the status and conditions of residence of third country nationals. However, a substantial strengthening of **integration policies** for third country nationals residing legally on the territory of the Member States is a major challenge. The success of a migration policy depends on the effectiveness of the integration policies that must accompany it. In addition to actions to combat racism and discrimination, migrants have benefited from a large number of **Community programmes**, notably those financed from the European Structural Funds particularly with respect to education and training to facilitate access to the labour market (for example the Community initiative EQUAL seeking to combat exclusion and inequality in the labour market). Measures to ensure the integration of migrants in the work-place are also included in the European Employment Guidelines. Over the period 1996-1999, the Commission financed over 700 transnational projects specifically designed for the promotion of the integration of migrants and ethnic minority communities, multicultural integration and the integration of refugees.

B.5. From 2000 projects to support the integration of refugees were incorporated within the **European Refugee Fund**. This Fund, which constitutes an intra-EU financial solidarity measure for implementation of asylum policy, covers integration alongside with reception and voluntary returns. In 2000 and 2001, integration constituted an average of 28 % of the breakdown of actions in Member States.

B.6. The EU has also taken into account local integration policies for refugees hosted in third countries, through its **external and humanitarian aid and programmes**. The EU enlargement process contains such an element as well. Non-exhaustive examples of such actions can be found in annex.

## **C. The EU and resettlement**

C.1. The European Council Conclusions made in Tampere in 1999 state that it would be in contradiction with Europe's traditions to deny freedom to those whose circumstances lead them justifiably to seek access to the territory of the European Union. This in turn requires the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration. These policies must offer guarantees to those who seek protection in or access to the European Union.

The European Commission adopted a Communication on 22 November 2000 **Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum**. The Commission suggests to study the option of resettlement as part of the Common European Asylum System. The Commission is launching a study in the autumn of 2002 to identify conditions for drawing up EC instruments which would include rules on resettlement in all EU Member States or at EU level. In particular suggestions have been made to draw instruments that would allow those who are identified as in need of international protection in regions outside the EU to enter the EU by legal and organised means through resettlement schemes. The identification of such persons though must be complementary to, and not alternative to, the processing of spontaneous asylum claims in EU Member States or at borders.

C.2. Several Member States currently operate resettlement schemes as part of their asylum policy. Their experience, as the ones from other Western countries, will be critical for the findings of the above-mentioned study. The European Refugee Fund can also already be used by Member States in order to receive and integrate refugees who benefit from resettlement schemes.

## ***II. Protection of refugee women and children***

### **D. The EU and refugee women**

D.1. The European Council's conclusions at **Tampere** agreed to build the common European asylum system on a 'full and inclusive application of the Geneva Convention' therefore taking full account of the needs of women.

D.2. All the **building blocks of the common European asylum system** make reference to the special needs of female asylum seekers and refugees.

The Temporary Protection Directive adopted in July 2001 requires Member States to provide medical or other assistance to persons who have undergone rape or sexual violence. The agreed text of the Reception Conditions Directive again requires Member States to take into account the situation of persons who have been subjected to rape. Such persons should also be provided with special rehabilitation measures. Member States must ensure that basic training is provided to staff implementing the Directive with respect to the needs of male and female applicants.

The proposal for a Directive approximating the refugee concept states that where the applicant for international protection is a woman, account shall be taken of the fact

that persecution, within the meaning of the Geneva Convention, may be effected through sexual violence or other gender-specific means. Where the form of persecution is gender-specific, this should not obscure the reason why the persecutory act occurred. For example, sexual violence can be inflicted on refugee women because, for instance, of their religion, political opinion or nationality. In these cases sexual violence is purely a form of persecution and any of the Convention grounds elaborated in the proposal may be applicable. However, sexual violence to refugee women, such as Female Genital Mutilation can also be inflicted for the one and only reason of their gender. In such situations, the persecution ground “membership of a particular social group” as included in the Refugee Convention as one of the five grounds of persecution, could apply, and therefore such a person can be recognised as a refugee. The interpretation should also allow for the inclusion of groups of individuals who are treated as “inferior” or as “second class” in the eyes of the law, which thereby condones persecution at the hands of private individuals or other non-state actors, or where the State uses the law in a discriminatory manner and refuses to invoke the law to protect that group.

The remaining proposals for legislation under discussion follow similar notions. The proposal for a Regulation replacing the Dublin Convention requires Member States to have regard to persons who are dependent due to pregnancy or maternity. The Commission’s proposal for a Directive on asylum procedure recognises that when appointing a person conducting the interview and the interpreter, account should be taken of the personal and general circumstances surrounding the asylum application, which would also include gender specific needs. The Proposals also contain a general anti-discrimination provision forbidding discrimination on the basis of sex or sexual orientation.

D. 3. Although related primarily to the context of illegal immigration, the recently adopted Commission’s proposal for a Council directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who co-operate with the competent authorities is noteworthy here. This proposal defines the procedure and criteria for issue, the conditions of residence for holders (including assistance and care, access to the labour market) and the grounds for non-renewal or withdrawal of this residence permit. It is designed for victims of traffickers and smugglers. Given the fact that some persons seeking international protection cross frontiers through networks of traffickers or smugglers, or that some victims of the latter want to apply for protection in view of the dangers of reprisals which they run after having co-operated, it is interlinked with protection. This new proposal is without prejudice to protection instruments. Finally, a specific disposition deals with victims with special needs (for example victims of sexual exploitation and violence).

D.4. Gender issues are mainstreamed in EU external and humanitarian aid and programmes.

## **E. The EU and refugee children**

E.1. The **Charter of Fundamental rights** of the European Union signed and proclaimed in December 2000 states, in its article 24 on the rights of the child, that “Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and

maturity. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration".

E.2. In pursuing the goal of a 'full and inclusive application of the Geneva Convention' and the respect for human rights that is the foundation of European asylum policy, the European Commission is proposing that the '**best interests of the child**' shall be taken as the primary consideration in all the instruments that are making up the building blocks of the common European asylum system.

The Temporary Protection Directive requires Member States to reunite families taking into consideration the best interests of the child. It also includes provisions to ensure that minors resident under the temporary protection regime are given access to education under the same conditions as nationals of the host Member States. Unaccompanied minors are to be provided with accommodation and representation as soon as possible taking into account the views of the child in accordance with its age and maturity.

The generally agreed text of the Reception Conditions Directive explicitly states that the best interests of the child shall be a primary consideration. Member States are required to take in account the vulnerability of minors when providing material reception conditions and health care. They must ensure access to rehabilitation services and appropriate mental health care when children have suffered from any form of abuse or from armed conflicts. Member States are required to maintain family unity wherever possible, ensure access to schooling and education and provide appropriate accommodation and care to unaccompanied minors.

Both instruments include a legally binding EU definition of unaccompanied minors: third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.

In the Commission's proposal for a directive on qualification and status as refugees or as persons who otherwise need international protection, Member States are required to have regard to child-specific forms of persecution when assessing applications for international protection from minors. In addition the definition of 'membership of a social group' is held by the Proposal to include groups on the basis of age.

The Commission's proposal for a Directive on asylum procedures includes specific guarantees for unaccompanied minors. They should be provided with a representative to assist them and officials dealing with the case of unaccompanied minors should receive training with regard to the special needs of minors. For Member States that use medical examinations to determine the age of unaccompanied minors they are required to inform the minor of the possibility of a medical examination. A decision to reject an asylum application cannot be made solely on the basis that a minor refused to undergo a medical examination. In the new modified Commission's proposal for family reunification, refugee unaccompanied minors deserve special attention: they can reunite with their parents or other relatives if the minor has no parents.

E.3. Improvement of **statistical data on unaccompanied minors** is critical for assessing trends and providing adequate treatment and protection to those

concerned. The future EU plan of action on improving asylum and migration statistics will include such an aim.

E.4. The **EU Programme Odysseus**, which aimed at improving co-operation between Member States in the field of asylum, migration, visas and external frontiers, has substantially (70%) supported the UNHCR/Save the Children International Programme “**Separated children in Europe**”. The Programme issued a statement of good practice and was enlarged to Candidate countries.

Examples of EU action in favour of refugee women and children can be found in the Annex.

#### **F. The European Commission reaction to abuse of refugee children and young women in West Africa**

F.1. The EC was very disturbed about the reports on allegations on **abuse of refugee children and young women in West Africa**. The EC considers that this is an abuse of power of the worst kind, which cannot be tolerated. The Commission unreservedly condemned the practice of demanding sexual favours in return for access to humanitarian services.

F.2. The EC Humanitarian Aid Office (ECHO) has consistently argued for a stronger international presence of qualified people in the camps. ECHO's strategy for 2002 foresees to provide increased humanitarian funding dedicated to the assistance and protection of children in all regions of the world. Special assistance will go to protection of children affected by armed conflicts.

F.3. The EC asked UNHCR for immediate action and monitoring and commended the swift way in which UNHCR and its implementing partner organisations took action in this matter both on headquarters and field level. The EC hopes that the plethora of measures taken will bring quick results.



**Non-exhaustive examples of actions related to the third and fourth themes financed recently by the EU, under budget lines linked to relations with third countries, external and humanitarian aid and programmes**

**1. Voluntary returns**

- Examples of projects selected in 2000 and 2001 under the budget line “Aid to uprooted people”

**Afghanistan, Pakistan, Iran:**

- Assistance to returnees, internally displaced people and local communities (EC grant to NGOs = € 8.874.450)
- Programme of assistance to Afghan returnees from Pakistan and Iran (EC grant to UNHCR = € 1.000.000)
- Care and maintenance for refugees (EC grant to UNHCR = € 1.000.000)
- Programme of assistance to the voluntary repatriation of Afghan refugees in Iran (EC grant to UNHCR = € 1.000.000)
- Programme of education of Afghan refugees in Pakistan (EC grant to UNHCR = € 1.900.000)
- Assistance to sustainable return in eastern Afghanistan (EC grant to Madera = € 3.800.000)
- Sustainable reintegration and rehabilitation programme (EC grant to Ockenden International = € 1.200.000)

**Burma/Myanmar, Bangladesh, Thailand**

- Care and protection of Burmese refugees in Thai camps (EC grant to NGO = € 1.200.000)
- Assistance to returnees, IDPs and local communities in the Rakhine North State (EC grant to UNHCR = € 4.000.000)
- Food and cooking for refugees in the Thai camps (EC grant to the Burmese Border Consortium = € 2.000.000)
- Improving the livelihood of vulnerable populations (EC grant to ACF = € 1.990.000)

**Bhutan, Nepal**

- Programme of assistance to refugees (EC grant to UNHCR = € 1.500.000)
- Protection and assistance to refugees (EC grant to UNHCR = € 1.000.000)
- Examples of projects selected in 2000 and 2001 under the budget lines "rehabilitation"

**East Timor**

- Voluntary return and reinsertion of refugees (EC grant to TFET = € 6 000 000)

- ACP countries

The former horizontal instrument for refugees (former article 255 of the Lomé Convention) does no longer exist as such in the new EU-ACP agreement (Cotonou agreement). Nevertheless actions in favour of refugees and displaced person do continue, but in the framework of national instruments (national indicative programmes), without any change in the overall approach.

- Pilot-projects under the 2001 budget line B7-667 “Co-operation with third countries in the field of migration”:

#### **Afghanistan/Pakistan**

- Protection assistance to Afghan refugees (EC grant to UNHCR = € 885.581)

#### **Albania**

- Sustainable return, reintegration and development in Albania through consolidated preparatory actions for migration management (EC grant to IOM = € 635.883)

#### **Iraq/Turkey**

- Elaboration of an action plan to increase sustainability of returns to Northern Iraq through training and income generation activities (EC grant to IOM = € 171.157)

#### **Somalia**

- Integration and voluntary returns (EC grant to Save the Children Denmark = € 533.821)

#### **Sri Lanka**

- Capacity building in migration management and preparatory action for return and reintegration (EC grant to IOM = € 1.082.513)

- ECHO/Humanitarian aid projects

#### **FRY**

- ECHO financed UNHCR in 2001 for a repatriation programme aimed at refugees in Serbia willing to go back to their place of origin in Bosnia or Croatia (1,2M€). This program includes go-and-see visits to places of origin, final transportation of the persons and the goods upon return, legal assistance as well as cash grants for return. The program will continue to be financed by ECHO in 2002.

#### **FYROM**

- In 2001 and 2002, ECHO financed UNHCR for a programme of repatriation for the old caseload of refugees from Kosovo. This "voluntary repatriation scheme" offers a "cash grant" to returnees. The whole project amounted to 0.9 M€, of which one third was devoted to repatriation, and to 0,6 M€ in 2002, of which 291 816€ for repatriation.

## **2. Local Integration**

Readers are also advised to refer to some examples included in the European Commission's information note for the first theme (protection of refugees in case of mass influx) circulated in March 2001.

- ECHO/Humanitarian aid projects

- ECHO has actively participated in several missions and meetings on the "Zambia Initiative" which is a collaborative effort between UNHCR and the Government of Zambia, promoting durable solutions including local integration. It also focuses on non-targeted programs that bring benefits to refugee communities and local communities. The recent €3 million Financing Decision (adopted 2 April 2002) should be seen as EC support for this initiative.

### **3. Refugee women and children**

- ECHO/Humanitarian aid projects

#### **Guinea - Sierra Leone**

ECHO has since 1998 funded a range of psycho-social support projects benefiting traumatized refugee children, including occupational sessions and basic introductory professional training for the older ones. The main partner is the French NGO Enfants Réfugiés du Monde :

- Psycho-social help and education for Sierra Leonean and Guinean refugee children (2001: € 430.000 ; 2002 : € 330.000).

#### **Balkans**

- Health and nutrition support to Macedonian refugee women and children - Kosovo (2001: € 300.000).

- Social, integrative and non-formal education support for refugee children, teenagers and women in fYROM in relation with ethnic minorities and host communities (2001: € 250.000).

#### **Middle East**

- Education and psycho-social program for Palestinian refugee children in the Gaza strip (2001: € 400.000).