

**The Immigration and Asylum Unit
'Green Paper on Asylum'
Directorate General Justice
Freedom and Security European Commission B-1049.
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INTRODUCTION

This is a submission from Professor. B. E. Harrell-Bond, OBE,¹ Forced Migration and Refugee Studies Programme, American University in Cairo, in response to para. 5 of the Commission Green Paper, Future of the Common European Asylum System (COM (2007) 301).

5. EXTERNAL DIMENSIONS OF ASYLUM

5.1 Supporting third countries to strengthen protection

The present funding arrangements to third countries are the major impediment to the use of development funding for the protection of refugees rights.

Donors have consistently failed to provide incentives for governments to take an integrated approach to development by targeting 'beneficiary blind' funds to developing the poorest urban and rural areas where most refugees reside dispersed among the population.²

Self-settled (or, as UNHCR terms them, spontaneously settled), refugees are nearly always more numerous than the encamped. While many have chosen to avoid camps, others have been forced to flee from camps because of protection issues. They are not usually registered by UNHCR or governments.³ Although many have successfully

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² Efforts to take such an approach to integrated development have been largely failures, from the 1984 Second International Conference on Assistance to Refugees in Africa (ICARA II), to the special provisions of Lome III and Lome IV, to the more recent 'refugee affected area approach' and 'targeted development assistance' of UNHCR under its Convention Plus Initiative.. They failed largely because recipient governments were not engaged in the implementation. This is in great contrast to the CIREFCA process in Central America which managed to close all camps. In the case of Mexico, Guatemalan refugees had the choice whether to repatriate or become citizens of their host state.

³ Ironically, they are also excluded from repatriation programmes. In January 2006, at the height of UNHCR's 'promotion' of repatriation programme, a group of refugees who had been forced to leave camps because of insecurity and were living in Arua Town, Uganda, related their fears of return. Their colleagues who were attempting to cross back into Sudan with possessions acquired during their exile, by

‘integrated’ into the local economy, their lives remain insecure because of the encampment policy which insists that all refugees live in camps and the fears that this policy could be ‘activated’ by any petty official at any time and for any reason.⁴

Refugees are never included in the indicative plans for development by third country governments and donor funding for development excludes refugees. Funding for refugees in camps comes out of donors’ ‘emergency’ sources, e.g. ECHO. ‘Emergency funding’ is, by definition, short-term, usually only for one year at a time. In addition, the ‘emergency’ nature of such funding impedes long-term planning, which is essential both for development to occur and for the local integration of refugees.

Nearly all EU government’s ‘emergency’ funding for refugees is channelled through the Office of the UN High Commissioner for Refugees (UNHCR) to the non-governmental organizations (NGOs) who work as implementing partners of UNHCR in refugee camps.

Refugees can not contribute to the development of a third country when confined to camps, nor can their rights be protected in camps or their meaningful integration into the host country be realized.⁵

The EU needs to remind itself of the dramatic differences the provisions of the Economic Union of West African States (ECOWAS) made to the situation of refugees in that region. As freedom of movement was permitted for citizens of West African States, many refugees could escape war and persecution without seeking asylum or being encamped. Ivory Coast, for example, requested refugees to remain in one province but encampment was not prescribed. UNHCR, however, established camps and segregated refugee primary schools until funds ran out. They then asked the government to absorb the encamped refugee children into Ivory Coast local schools without extra funding to cover the additional costs.⁶

Camps should only be opened as a temporary mechanism to deal with mass influxes. Instead of relying on refugee camps as a principal solution, economic integration and the corollary freedom of movement should be encouraged from the moment of arrival.⁷

bicycle or on foot, a very short distance, had already been looted. They said that Ugandan had threatened them: ‘You came with nothing, you will return with nothing’.

⁴ Kaiser, T. et. al. 2005 “‘We are stranded here together’: Freedom of movement, settlements, and self-settled refugees in Arua and Moyo Districts’, Refugee Law Project, Working Paper No. 14, February; Okello, M et. al. 2005 “‘There are no refugees in this area’: Self-settled refugees in Koboko’, Refugee Law Project Working Paper No.18, November.

⁵ See Verdirame, G. and B.E. Harrell-Bond 2005 *Rights in Exile: Janus-Faced Humanitarianism*, Berghahn Books and the US Committee for Refugees and Immigrants’ Campaign to End Warehousing, www.refugees.org

⁶ For an analysis of the successes and failures of this programme, see Kuhlman, T. (2002) ‘Responding to protracted refugee situations: a case study of Liberian refugees in Cote d’Ivoire’, EPAU, July.

⁷ Since external aid is normally late, refugees take these steps themselves. For example, in Ngara District, Tanzania, when the Rwandans arrived *en masse*, local officials tried to keep them moving inland, away from the border. UNHCR, however, arrived and they became trapped by aid around Lake Benanco, in the

Regional Protection Programs (RPPs) should encourage robust integration of refugees while not confusing it with permanence. Refugees who have achieved economic stability in a host country are most able to repatriate when conditions in the country of origin are propitious.⁸ Refugees rendered destitute in camps remain an economic burden whether in the host country or on return.⁹

Insisting on refugees being included in third country governments' development planning is a measure the EU could take to enhance the economic situation and thus the protection of refugees in third countries.¹⁰ Targeting development funds through governments, in particular local governments in districts and regions that host refugees, rather than UNHCR, and earmarking them, for example, towards expanding educational facilities and hospitals to absorb refugees, would be another measure the EU could take to enhance the economic situation and thus the protection of refugees in third countries. Which third government has ever received direct funding to expand their schools to absorb refugees? There are large amounts of funding for government HIV/AIDs prevention and curative programmes, but refugees who are HIV/AIDs sufferers are excluded.

(27) If evaluated (sic) necessary, how might the effectiveness and sustainability of Regional Protection Programmes be enhanced? Should the concept of Regional Protection Programme be further developed and, if so, how?

An effective and sustainable Regional Protection Programmes must be based upon the firm foundation of law that respects refugee rights as provided in the 1951 Geneva Convention and human rights conventions.

The *Green Paper* refers to the pilot RPP in Tanzania. Tanzanian policy towards refugees has moved from one that was in the main 'refugee friendly' under Julius Nyerere¹¹ to a policy that rejects integration, emphasizes repatriation as 'the solution', confines refugees to camps without means of livelihood, and has forcibly expelled them. That this shift in policy could occur is largely due to the fact that since independence, there was no

largest camp the country had ever seen. The governments efforts at the time to disperse them (recall, Tanzania is a land rich country) were rejected.

⁸ Recall the silent disappearance of Tutsi refugees from Tanzania (who had been in exile since 1972) when the RPA took over Rwanda.

⁹ For example, in Uganda, almost half the population of the border town, Koboko, are Sudanese refugees. A similar situation obtains in Moyo, another border town. They pay taxes and use the same health and educational institutions as citizens. They are 'integrated' in that most own businesses. When the time for return comes, they are financially able to return

¹⁰ The Zambia Initiative was a government-led 'development through local integration project located in the Western Province of Zambia'. It benefited 456,000 persons including 150,000 refugees. It aimed to include the naturalisation of the refugees, but its progress was sadly interrupted by the UNHCR-led repatriation of Angolans. For an analysis of the repatriation over integration bias of UNHCR, see Harrell-Bond, B.E. 2006 'A Long Way Home', Review of Sadako Ogata's *Turbulent Decade*, Times Literary Supplement, 5 May.

¹¹ Tanzania even offered citizenship to Rwandans.

attention to building a legal foundation to underpin refugee policy. *The Refugee Act, 1998* (Act No. 9 of 1998) does not conform to the 1951 Convention.¹²

The EU's RPPs should start with provision of technical assistance to reform domestic legislation to conform to the 1951 Geneva Convention and other human rights conventions that third country states are party to. Secondly, it should engage with civil society organizations including universities¹³ to provide training in refugee rights for all actors whose daily work brings them in contact with refugees, starting with the police, immigration officials, magistrates and judges.¹⁴

(28) How might the EU best support third countries to deal with asylum and refugee issues more effectively?

One of the most enduring and robust contributions that the European Union (EU) can make in this regard is to increase funding for legal aid organizations that facilitate the processing of asylum claims.

Despite the amount of aid that annually benefits various law and human rights initiatives, most if not all third country legal frameworks fail to guarantee the rights extended by the 1951 Geneva Convention and the human rights conventions that these governments have ratified.

With the increasing number of refugee claims being adjudicated by the UNHCR in now some 80 third countries¹⁵ there is urgent need for support to third country governments to take responsibility for refugee status determination (RSD) procedures - especially since UNHCR's mandate status is not recognized by governments.¹⁶

RPPs should fund refugee legal aid in third countries.¹⁷ Providing refugees' with legal aid has the potential to create waves of transformation throughout the entire refugee system of a host country. Legal aid organizations help refugees' combat endemic abuses at the hands of host government police and security services. Persistent legal action is often a better tool of educating government officials about the status and rights of refugees than abstract training. It may also be the best means of facilitating legislative change designed to further the rights of refugees.¹⁸

¹² See Kamanga, Khoti 2005 *The (Tanzania) Refugees Act of 1998: Some Legal and Policy Implications* *Journal of Refugee Studies* 18: 100-116; Harrell-Bond, B. et al, 2000 *DanChurchAid Evaluation of the Tanganyika Christian Refugee Service (TCRS) Refugee Project in Kibondo District, Tanzania*: 5 – 19 January..

¹³ Refugee law is not even taught in most third country universities.

¹⁴ The Danish government has given bi-lateral funding to the Kenyan government to strengthen its capacity to deal with its refugee population, but the funds do not cover law reform or training.

¹⁵ See www.rsdwatch.org.

¹⁶ Every refugee that is resettled much have gone through another status determination interview.

¹⁷ See the Report: Southern Refugee Legal Advocates Conference, http://www.amera-uk.org/objectives_history.html.

¹⁸ The Salon Network and the Legal Resources Foundation, Zambia, has requested technical assistance to challenge the exclusion of refugees from rights guaranteed under the Constitution.

Legal aid organizations also serve as an important means of educating asylum seekers about the RSD process, discouraging claims that have little chance of success and enabling substantial claims that may otherwise get lost to receive appropriate consideration, whether by the host government or UNHCR. Finally, refugee legal aid curtails abuses, particularly in connection with resettlement procedures, that go on within the refugee community.

Apart from legal aid, RPPs should also fund training programs for the immigration service, police and the security apparatus that provide a thorough understanding of the 1951 Refugee Convention and other international human rights instruments. Particular attention should be paid to the *jus cogens* prohibitions against torture and cruel, inhuman or degrading treatment or punishment, as refugees are routinely subject to mistreatment at the hands of police and state security agencies in third countries.

(29) How might the Community's overall strategies vis-à-vis third countries be made more consistent in the fields of refugee assistance and be enhanced?

RPPs should work with all ministries of governments of third countries rather than with a single ministry or government department focusing on refugees. As noted above, there is a tendency for governments of third countries to isolate refugee issues from those relating to the population as a whole, and this tendency should be reversed in favour of devising social programs and strategies that incorporate them.

Institutional funding preoccupations have found UNHCR **promoting** this separation and, unwittingly, encouraging the 'ideology' that refugees are an international rather than a domestic problem, for example, by preventing host governments from raising funds for assisting their own refugee populations.¹⁹ It also has been largely responsible for introducing and maintaining the encampment policy since it began operating in Africa and the Middle East.²⁰

For example, up to 1990, the Kenyan government, although operating a policy of 'benign neglect', did conduct its own status determination and '...refrained from creating obstacles to local integration and to the enjoyment of such basic rights as work, education, and freedom of movement.'²¹ It adamantly rejected the concept of refugee camps, largely because it is a land poor county. The influx of large numbers of Somali

¹⁹ See 'Refugees as an International Responsibility: The Sudanese Initiative of 1980 and its Consequences', Chapter Six, in Karadawi, Ahmed 1999 *Refugee Policy in Sudan 1967-1984*, Berghahn Books. Sudan's attempts to maintain control of its own refugee policy led to the passing of the Trust Fund bill, which would force UNHCR and foreign NGO to pool funds and to implement projects in harmony with government policy but this effort was defeated (Harrell-Bond, B.E. 1986 *Imposing Aid: Emergency Assistance to Refugees*, Oxford University Press. See also Verdirame and Harrell-Bond op.cit.:34 re. the results of Kenya's once being successful in obtaining Lome IV funds.

²⁰ See Voutira, E and Barbara Harrell-Bond (2000) "'Successful" refugee settlement" are past experiences relevant?', in Cernea, M and C. McDowell (2000) *Risks and Reconstruction" Experiences of Resettlers and Refugees*, The World Bank: 56-76.

²¹ Verdirame and Harrell-Bond op. cit.:32.

and Sudanese refugees prompted the Kenyan government to seek significant external financial assistance and, in exchange, UNHCR required land for camps, which it administered.²² In its evolution of policy, UNHCR has come to act like a state within a state.²³

In the bureaucratic jargon of post-1991 refugee regime in Kenya, refugees have to reside in camps ‘until a durable solution is found’. The NRS [National Refugee Secretariat], however, had no effective control over the administration of these camps; in March 1997, one senior official, Nimrod Wareru, complained that even his visits to these camps had to be negotiated with UNHCR.²⁴

Not surprisingly, the Kenyan government, in its fury, stopped conducting refugee status determination, started detaining and deporting refugees found outside of camps and declared that ‘refugees are UNHCR’s problem’.²⁵ Such examples of putting bureaucratic interests ahead of the interests of refugees have been documented in many more third countries where the EU would seek to establish RPPs.

5.2 Resettlement

With the global economy characterized by extreme and growing disparities, concomitant political unrest, oppression, competition, and xenophobia, designing robust criteria for allocating limited resettlement places has proven to be a particularly difficult task. Thus, one of the traditional criteria for being referred for resettlement – the impossibility of ‘integrating’ into the host society – could be applied to nearly every refugee in third countries.²⁶

Similarly, if resettlement places were targeted towards persons whose rights were being violated in third countries, all persons who are forced to reside in camps would be eligible.²⁷

As for the so-called ‘vulnerable’ cases, e.g. women-headed households²⁸ and persons with health problems that can not be treated in the host country,²⁹ if resettlement opportunities were distributed fairly, all quotas would be filled.

²² *ibid.*:33

²³ See Wilde, R. 1998 ‘Quis Cosodlet Isos Custodes? Why and How UNHCR Governance of “Development” Refugee Camps Should be Subject to International Human Rights Law’, *Yale Human Rights and Development Law Journal* (5).

²⁴ *ibid.*: see Chapter I, footnotes 12 and 14.

²⁵ *ibid.*:35

²⁶ The current situation of the primacy of resettlement is drastically different from the very recent past. For instance, in a field study of a camp for Burundians in Tanzania in the early 1980s, resettlement was not even considered to be one of the durable solutions by refugees. Out of 125 households queried, 80% opted for repatriation, 7% for permanent integration into Tanzanian society, and 13% wished to remain in exile in the settlement. Today, refugees are said to think of ‘going to America [as] the holy grail of refugee life’ (Jansen, B.J. 2007 ‘Airlift from the Desert: Dreams and effects of resettlement in Kakuma refugee camp, Kenya’, Paper presented at the 2nd AEGIS European Conference on African Studies, Leiden, 11-14 July, p. 4)

²⁷ The freedom of movement is fundamental to accessing all other rights.

Rehabilitation for victims of torture is nearly non-existent in third countries and many refugees are especially loathe to make such claims even to substantiate their refugee status, not to mention resettlement, due to the dynamics of torture and the resulting humiliation. A very large majority of all refugees suffer debilitating depression.³⁰

This is without considering people with other vulnerabilities that *should* be given resettlement opportunities - for example, single young men whose chances of pursuing any vocation are non-existent in their host country,³¹ and husbands who are unable to find work to support their families and are emasculated.³²

The most immediate needs for resettlement are the persons who are subject to immediate threats to their physical safety, even their lives,³³ in their host country. In our experience

²⁸ Women-headed households tend to include separated children, the aged and the infirm (see Harrell-Bond 1986, op. cit.:266-288. Definitions of the 'family' render them ineligible for resettlement. Added to that may be the 'crime' the woman committed by having travelled through more than one country to reach her host country (so-called irregular movement – which is part of Schengen but is *not* international law).

²⁹ Probably most health problems could be dealt with in the host countries, but neither UNHCR nor its implementing partners will pay for 'chronic' illnesses, for example, diabetes, heart conditions, arthritis, epilepsy, cancer, and HIV/AIDS (only a tiny number of refugees who are HIV/AIDS sufferers will benefit from the new programme to be instituted in Egypt in 2008). Persons requiring surgery for kidney transplants, hip replacements, removal of brain or other tumours, hernias, to mention but a few, will not receive treatment. Even when UNHCR pays for medical treatment through its implementing partners, it only pays *part* of the costs (25% in Egypt), making it impossible for most refugees to obtain it. There is an unwritten rule that persons over 70 years of age are not to be included in medical benefits (See Verdirame and Harrell-Bond 2005 op. cit. page 245-6 for an example of what happened in Uganda when a staff member of an implementing partner took a refugee to a hospice).

³⁰ Community mental health services should be considered by the EU as a funding priority. For example, the model applied in many third countries by Dr. Nancy Baron has been found to strengthen the refugee populations' ability to cope with all but the few cases of psychosis. See, Baron, N. 2002 'Community Based Psychosocial and Mental Health Services for Southern Sudanese Refugees in Long Term Exile in Uganda', in De Jong, Joop (ed.) *Trauma, War, and Violence: Public Mental Health in Socio-Cultural Context*, Kluwer Academic, Dordrecht: 157-203.

³¹ These are the young men who end up as 'boy soldiers', become street children or join gangs. In Egypt, gangs began as self-help groups among single young men. After the violent dispersal of the peaceful sit in Cairo, December 2004, the southern Sudanese gangs became violent, attacking each other and other refugees whom they rob. Although a project for giving these boys and girls vocational training was designed, it was never funded and the violence has increased and spread to different neighbourhoods in Cairo. The most recent murder of a non-gang member occurred on 10 June, 2007. It is worth noting that UNRWA gives half its budget for the education of Palestinians, with the result that this population of refugees been provided much of the technical expertise for the development of the gulf states; for UNHCR, education is among the last priorities and than only primary education. The EU has an opportunity to ensure that institutions of higher learning including vocational training are expanded in third countries to absorb the refugees along with the nationals of third countries, making fees available to those unable to pay.

³² They are unable to adjust to the role/power changes in the family where women become the breadwinners. Not surprisingly, alcoholism and domestic abuse become the symptoms of their malaise.

³³ In Cairo, AMERA-Egypt received three women in two weeks who were at risk of honour murder, one was abducted by the Sudanese security and held for two days before being released. Numerous refugees have been detained and seriously tortured by the Egyptian police. Even if such persons are 'referred' to embassies for resettlement, it takes months, even years for them to reach safety. An EU Resettlement Programme needs to have the capacity for a rapid response to such cases.

such cases are the most likely to be passed over (i.e. completely ignored) by the resettlement programmes operating in third countries in the Middle East and Africa.³⁴ This is despite the urging of the UNHCR Handbook on Resettlement that:

Among cases to be promoted for resettlement, priority attention should be given to those refugees with acute legal and physical protection needs and, in particular, to the most vulnerable, such as women-at-risk and unaccompanied children for whom resettlement has been found to be in their best interests.³⁵

Another danger to which the EU member states should *not* succumb is adopting the US policy for rejecting persons for resettlement who fall under the US ‘material support’ ban or any new and additional exclusion criteria.³⁶ The application of the provisions of the exclusion clause provided for in the 1951 Geneva Convention is sufficient to weed out persons who constitute a security threat.

Persons who have been rendered stateless in their country of origin and who have sought asylum in a third country are another category to which a EU resettlement programme should seriously attend; a prominent example of this phenomenon are people of mixed Eritrean/Ethiopian marriages.³⁷

Currently, the way resettlement programmes are managed in third countries only creates the chaos of unfair expectations, bribery, and fraud among the refugee population, among those ‘selected to select’, and even UNHCR officials.³⁸ The Kenya fraud case got

³⁴ Persons reporting protection problems, rape, detention, harassment and beatings on the street or in the camps to UNHCR and refugee legal aid NGOs are treated with scepticism and are required to get police reports which identify their assailant. Frequently they cannot identify them. If the security of their home government pursues them in the host country, a situation that *frequently* obtains in *many* third countries, there are few if any safe houses in which to protect them, and ‘protection areas’ of camps are notoriously unsafe (e.g. Dadaab camp in Kenya). Documented cases of disappearance due to such a cause abound. The Ethiopian, Eritrean, Sudanese, and Chinese embassies are especially active in this regard. In the Great Lakes, such hot pursuit occurs from Rwanda and formerly the SPLA.

³⁵ There is a serious neglect of separated or unaccompanied minor cases in resettlement programmes with different rules obtaining concerning at what age they might be considered eligible in different constituencies and by different resettlement countries. In the meantime, their care in third countries is neglected. There is need for research and for the EU to develop a common policy for supporting such children in third countries, in particular their education, and resettling them where appropriate.

³⁶ For example, a Somali minor, captured by a militia, beaten so he lost his hearing, and forced to do slave labour, escaped and managed to find asylum in a third country. He was rejected for resettlement by the US for giving ‘material support’.

³⁷ For an example, one such case, an Oromo woman, married to an Eritrean who was deported by the Ethiopian government to Eritrea. She was raped by an official and he threatened to deport her small sons to Eritrea. She escaped to a third country where she has been rejected for refugee status. She brought her small son who is an epileptic. She has no rights to medical care for him and lives illegally. An EU Resettlement Programme should not exclude such cases. See Thomas, L. 2006 ‘The Son of a Snake is a Snake: Refugees and Asylum Seekers from Mixed Eritrean-Ethiopian Families in Cairo’, Working Paper No. 7, June (see www.aucegypt.edu/fmrs)

³⁸ In situation where resettlement is limited to a comparatively tiny portion of the refugee population, the inevitable jostling for those few spots undermines the integrity of the process. Those who lack in money or social acceptance are less likely to reach the ‘holy grail’ of resettlement even despite satisfying the relevant

international attention after it was exposed in the national press by refugees,³⁹ but in every country where there is resettlement it is accompanied by these problems. Particularly troubling are cases of refugees victimized by the camp community who are unable to take advantage of resettlement (despite being in dire need of it) because they are out of favour with the community leaders selected to recommend appropriate candidates.⁴⁰

The challenge for the EU is to convince member states of both the need to substantially increase the numbers of refugees received per annum in the spirit of burden sharing *and* the funding made available for 'development' (understood as including the need to address the human rights contest in which refugees are expected to live, as well as infrastructure development) in third countries.

A corollary goal is to devise new ways of making the resettlement verification process more robust, thereby reducing the ability and the incentive to 'buy' into resettlement. One such option is to have resettlement coordinated by a central organization in each third country to which other NGOs refer suitable cases. Cooperation of this sort is already facilitated by a model programme, HIAS Refugee Trust of Kenya (HRTK). It receives resettlement referrals from other NGOs that deal with the RSD process; no refugee directly approaches the HIAS Trust. Another solution is to follow closely academic writing and human rights reports produced by neutral and independent researchers, who are often more successful in identifying appropriate resettlement cases than partisan NGOs.

(30) How might a substantial and sustained EU commitment to resettlement be attained?

UNHCR Resettlement Criteria. Scarcity of resettlement opportunities and the impact of the basic economics of supply-and-demand, as well as the lure of Western prosperity remain the most important determinants of the resettlement process. However, UNHCR and some international NGOs have contributed to resettlement being seen as a prize to be won, rather than as a solution by putting forward for resettlement the most proactive and assertive members of the refugee community, rather than those genuinely in need. In addition, UNHCR and aid workers may have contributed to the problem by giving false hopes of resettlement and creating unsubstantiated expectations. (See Jansen 2007 op. cit.)

³⁹ BBC News, 'Graft investigators forced out of Kenya', <http://news.bbc.co.uk/2/hi/africa/1178919.stm>, current to August 31, 2007.

⁴⁰ A case of a Dinka Aweil woman in the Kakuma camp (Kenya) is appalling. She was abducted by Arabs during the war, taken to Darfur, enslaved, and raped at the age of 13. She gave birth, but was recaptured and raped again at the age of 16, following which she delivered another child. She later escaped when the war in Darfur broke out. She was marginalized in the Dinka community at the refugee camp because she remained without a husband. Despite actively seeking resettlement, she was ignored by the local leaders that were charged with recommending the appropriate cases. Another refugee, a 21-year old Somali, Amina, with a mixed-race son from a Dutch father who abandoned her, was finally resettled to Canada with the assistance of an NGO in Nairobi. However, she spent years in the Kakuma camp, despite credible reports of abuse at the hands of other refugees, waiting for the resettlement decision. It appeared that the community leaders responsible for facilitating the application did not completely disapprove of her situation and felt that, since she violated a cultural norm (bearing a child out of wedlock from a non-Muslim), the repercussions were legitimate. (See Jansen 2007 op. cit. pp. 10-11)

The strongest and most enduring opposition to the enlargement of the EU commitment to resettlement comes from the Europeans themselves. This opposition often stems more from misconceptions about the goals and structure of the resettlement process than parochial xenophobia or racism.

EU should engage in a publicity and education campaign within the European Union to dispel myths about resettlement. Thus, for instance, it should be made clear that the targets of the resettlement process are the most vulnerable groups within the refugee population, which are at significant risk in their host nation.⁴¹ It should also be explained that resettlement is only one of three commonly-employed durable solutions, and is used when neither repatriation nor local integration within the host nation are possible. Finally, the publicity campaign should focus on the international obligations of the EU members under the 1951 Geneva Convention, into which they voluntarily entered. It should also be clarified that, as a *quid-pro-quo* for the strengthening of EU migration restrictions and to address widening disparities in wealth, burden sharing is not only fair but an obligation.

Naturally, convincing the EU population of the genuine need for the expansion of EU's resettlement commitment may require assurances that the resettlement system is not abused. As discussed, one option is to have resettlement coordinated by a central organization to which other NGOs refer suitable cases.

EU should also initiate an EU-wide discussion about the substantial benefits of in-migration, and resettlement as a subset of that flow. With the aging of the Western "golden billion", including the population of the EU, future sustained economic expansion, and, possibly, even the maintenance of the economic status quo depend on continued inflows of younger workforce that can buttress flagging economic growth. Achieving informed support for in-migration would go a long way to popular acceptance of resettlement.

(31) What avenues should be explored to achieve a coordinated approach to resettlement at EU level? What would be required at financial, operational and institutional level?

A formula that has in the past proven popular with EU members and their citizens is a commitment to a final goal with planned annual steps towards meeting that commitment (e.g. the Kyoto Protocol). EU should pledge to a future annual allocation of a significant number of resettlement places (e.g. 100,000 places by 2015), with a schedule towards achieving that goal.⁴² This would not only ensure that institutional, operational and financial capacities are built up over time, without a systemic shock that could make member governments rescind their support, but it would also allay fears about integration of large numbers of refugees and guarantee that resources are available to adequately address their needs.

⁴¹ Such public education should be based on empirical research about the human rights violations vis-à-vis refugees in third countries, as exemplified by Verdirame and Harrell-Bond 2005 op.cit.

⁴² In the United States (which has a quota of 70,000 per year), settled diaspora groups take a large share of the responsibility for resettling refugees.

To develop an appropriate annual resettlement goal and the schedule for attaining it, the EU should cooperate with international NGOs that have thorough understanding of the resettlement process and can advise of the type and extent of commitment required.

(32) In what other situation could a common EU resettlement commitment be envisaged? Under what conditions?

A common EU commitment should not be limited to just routine resettlement programs. Extraordinary circumstances may arise where large numbers of asylum seekers are best served through speedy resettlement in member countries, rather than protection in the region. The EU should devise protocols, procedures and plans of action to deal with sudden and unexpected humanitarian disasters that result in large flows of asylum seekers.

The prime example of the human suffering that is resulting from a lack of timely action is the situation of Iraqi refugees. Instead of creating a Comprehensive Plan of Action like that which benefited Vietnamese and Laotian ‘boat people’ at the end of 1980s, EU members have been slow in responding, allowing the suffering of tens of thousands of Iraqi asylum seekers in different countries of the Middle East to go unaddressed. Sweden was the only European state to respond with any degree of promptness, but even then only accommodated a limited number of Iraqis. Had the EU devised appropriate protocols in advance and kept sufficient resources on stand-by, it could have prompted the governments of the world to share the overwhelming burden now carried by Jordan, Syria, Lebanon, Egypt, and Turkey.

5.3. Addressing mixed flows at the external borders

The problem in extending the protection obligations arising out of the EU *acquis* and international refugee and human rights law to recent mass influxes of people into Europe has been the *mindset* of member states that refuse to recognize that these mass migration flows are certain to include refugees seeking asylum.⁴³ Although few receiving governments have ratified The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC),⁴⁴ (lack of ratification is usually falsely justified on the grounds that domestic law already provides equivalent protections), its provisions should form part of the EU toolkit for dealing with mass flows, along with refugee and human rights law.

Although it is unlikely that most asylum seekers would have claimed refugee status or have been recognized by UNHCR or any third country enroute, some will have done so.

⁴³ This mindset has tended to be adopted by Yemen (and UNHCR), when it receives boatloads of Somali, Eritrean and Ethiopian who are likely to be all refugees fleeing war and individual fear of persecution.

⁴⁴ Signatories to date are: Azerbaijan, Bangladesh, Belize, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, Comoros, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Guinea-Bissau, Kyrgyzstan, Mali, Mexico, Morocco, Paraguay, Philippine, Sao Tome and Principe, Senegal, Seychelles, Sri Lanka, Tajikistan, Timor-Leste, Togo, Tunisia, Turkey, Uganda, Uruguay,

The EU member states must be encouraged to ensure that the refugee status conferred by the UNHCR and state signatories to the 1951 Geneva Convention are given the same legal significance which is accorded to a refugee status determination by an EU member state. The status of a refugee should be universally recognizable and transferable as soon as it is conferred by an appropriate agency (either UNHCR or the authorities of a signatory state).

Public awareness programmes need to be launched that would emphasize the dangers that genuine asylum seekers face after being rejected at the border.⁴⁵

(27) What further measures could be taken to ensure that protection obligations arising out of the EU *acquis* and international refugee and human rights law form an integral part of external border management? In particular, what further measures could be taken to ensure that the implementation in practice of measures aimed at combating illegal migration does not affect the access of asylum seekers to protection?

The EU should ensure that there is training of border and immigration personnel in the 1951 Geneva Convention, human rights law and The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC).

(33) How might national capacities to establish effective protection-sensitive entry management systems be increased, in particular in cases of mass arrivals at the borders?

A practical step that could be implemented at the border would be, on arrival, to sort out and house separately the people who arrive *en masse* by their state of origin. Those coming from known refugee-producing states are most likely to include genuine refugees. A further selection could take place to differentiate those who have sought (successfully or not) asylum enroute.

A rapid response EU task force of lawyers and paralegals specially trained and *experienced in applying* refugee and human rights law could be created to work at these arrival sites when an influx arrives.

It is imperative that lack of administrative resources not impede refugees and persons seeking asylum from accessing protection in the territory of the European Union. Civil society organizations in countries of arrival that provide refugee legal aid should be strengthened through EU funding by training and other facilities.

5.4. The role of the EU as a global player in refugee issues

⁴⁵ A case reported by COMAR, Mexico is illustrative. A Columbian, threatened by militia sought asylum in Spain. Held at the airport, interviewed by a UNHCR office, not the Spanish government, he was rejected and sent back where he was imprisoned, tortured, losing an eye and arm. He managed to escape to Mexico where he was recognized as a refugee (reported by Barbara Perez-Martinez. 2007).

(34) How could European asylum policy develop into a policy shared by the EU Member States to address refugee issues at the international level? What models could the EU use to develop into a global player in refugee issues?

The EU has a unique opportunity to introduce a fresh refugee rights-based perspective that encourages reform of UNHCR's own model that is plagued with bureaucracy that has atrophied over more than 50 years of its existence, is bogged down in institutional funding politics and is rife with mismanagement.⁴⁶

The European asylum policy should not be allowed to become an instrument of migration management (whether by design or through practice), but must remain focused on the goals of refugee protection, human rights and burden sharing.

In this context, the EU should recognize its responsibility for the safety of failed asylum seekers that are returned to the country of origin and must ensure that they are adequately protected. The vision of the Common European Asylum System (CEAS) would be a profound failure if it promotes the victimizations of the claimants it rejects.

Failed asylum seekers identified as such to the government of the origin state become not only targets for state scrutiny, but usually also experience violence, torture and disappearance. The significance of having claimed refugee status is not lost on the authorities of the origin country, and a failed asylum seeker often becomes a target for state persecution. It also carries with it the stigma of illegality of the attempted irregular migration.

The fact that it is the origin state and not a member of the EU that engages in violations of the rights of a returnee does not absolve the EU from responsibility for the potentially tragic outcome. A person in the territory of the EU benefits from the protections provided by national laws, the European Convention on Human Rights (ECHR) and the United Nations Convention Against Torture, and should not be returned in a manner that results in violations of these protections, notwithstanding that the mode of return is otherwise in compliance with national laws that govern deportation procedures.

Article 3 of the ECHR strictly prohibits the deportation of any person – no matter what their crime or suspected activity – to a country where he or she faces a real risk of torture or cruel, inhuman or degrading treatment or punishment. As interpreted by the 1997 decision of the European Court of Human Rights in *Chahal v. UK*⁴⁷, this prohibition is

⁴⁶ The current RSD procedures as practiced by UNHCR in the 80 third countries where it is the decision-maker have been the subject of sustained academic critique (see bibliography, www.rsdwatch.org). Since 2004, UNHCR has employed a consultant and he has instituted attempts to reform specific field offices. Still most offices do not conform to the standards that UNHCR insists that governments follow. For example, giving reasons for rejection, withholding evidence, granting allowing access to files by the refugee and his/her representative, and providing an independent appeal against rejection. See Wigley, Barb 2004 'The State of UNHCR's Bureaucracy', UNHCR. See also *D. and Others v. Turkey*, heard by the European Court of Human Rights, concerning the reliability of UNHCR decision-making (www.rsdwatch.org).

⁴⁷ *Chahal v. UK*, (1997) 23 EHRR 413.

paramount. UN Convention Against Torture and the International Covenant on Civil and Political Rights impose a similar proscription.

Experience elsewhere is consonant with the conclusion that a deportation that carries a significant risk of torture is not permitted. Thus, in *Suresh v. Canada*⁴⁸, the Canadian Supreme Court thought that only in exceptional circumstances (which were not present in that case) could deportation to torture be justified. The prohibition on deportation to torture was likely made absolute by the recent case *Charkaoui v. Minister of Citizenship and Immigration*⁴⁹. Similarly, in a case decided by the New Zealand Supreme Court in June 2005, *Attorney General v Zaoui*⁵⁰, the Supreme Court of New Zealand interpreted the New Zealand Bill of Rights in light of guarantees under the International Covenant on Civil and Political Rights and the Convention Against Torture, that the right not to be deported to face torture could not be balanced against considerations of national security, and such deportation was thus absolutely prohibited.

Anecdotal accounts and observations by international NGOs demonstrate that a number of third countries become particularly unsafe for failed asylum seekers once their governments are notified of the return.

In Uganda, failed asylum seekers come bearing a deportation certificate, which immediately alerts the authorities as to their status. They are not allowed off the plane until papers are handed over by the pilot to the authorities. On reaching the Entebbe Airport the person is handed over to one of the state security organizations, including the ISO (Internal Security Organization), ESO (External Security Organization), CMI (Chief of Military Intelligence), VCCU (Violent Crime Crackdown Unit), as well as DMI (Directory of Military Intelligence). A person may spend weeks in detention, and torture is almost guaranteed. Many are said to disappear into ghost houses. Only if their family are put on notice as to the time of their arrival and are at the airport and demand to know where the failed asylum seeker will end up – only then the information may be disclosed.

Although Article 23 and 28(3)(a) of the Ugandan Constitution (as amended) do not permit a person to be detained in police custody for longer than 48 hours without review and the right to medical treatment, access to legal counsel and a phone call to a relative are guaranteed, these rights are ignored.

One recent example is a case of a Rwandan woman who fled from Rwanda to Uganda and subsequently attempted to reach Belgium. On reaching Dubai, she was deported to Entebbe and spent three weeks in detention until the joint intervention of local activists, UNHCR and Amnesty International secured her release. While in detention, she was accused of being a Rwandan spy and was not allowed medical treatment, access to legal counsel or contact with her relatives.⁵¹

⁴⁸ *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3.

⁴⁹ *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 S.C.R. 350.

⁵⁰ *Attorney General v Zaoui*, [2005] NZSC 38.

⁵¹ Information gathered by The Refugee Law Project, Uganda.

Cases of detention, torture and disappearance of returned asylum seekers are by no means confined to Uganda. Deportations to Zimbabwe from the United Kingdom were recently suspended because Zimbabwean authorities insist on receiving information about the deportees and engage in their persecution.

Another recent case involved a failed asylum seeker deported from Germany who had been tortured in the Democratic Republic of Congo (DRC) and suffered consequent mental health problems. She was deported on a wrong person's papers and was held in a transit centre in Egypt for 10 days. She was ultimately returned to Kinshasa, where she was handed over to police. Only intervention by her family (who were notified of her pending arrival by a German NGO) permitted her to be rescued. She has since escaped to Brazzaville, where she has claimed refugee status.

Guaranteeing security of failed asylum seekers as required by the international legal commitments of the EU member states (and by the national legislation) requires utmost care in safeguarding the confidentiality of their personal information, the details of their claim and the reasons for their return. Ideally, in no case should national authorities be informed of the reasons for the pending return. Failed asylum seekers should be facilitated in finding another country to be returned. In addition, the EU should cooperate with the Diaspora, NGOs in the host country and the failed asylum seeker's family to ensure appropriate monitoring of the readmission and reintegration process.