

European Commission

Green Paper on the future Common European Asylum System

Response by Ken Livingstone, the Mayor of London

August 2007

I. Introduction

The arrival of people fleeing conflict and danger is not only part of London's history, but inevitably part of its future. Today, as in past generations, they help develop its economy and social, cultural and civic life, for the benefit of all Londoners. By giving refugees sanctuary, London is enriched.

The Mayor of London, Ken Livingstone, recognising its importance for the city's future, is clear that policy on asylum and refugee issues connects directly with its statutory duty to promote:

- The city's social, economic and cultural developments, on a sustainable basis;
- Equalities, health and community safety for Londoners.

He therefore welcomes this opportunity to comment on the Commission's Green Paper on a Common European Asylum System and to contribute to the important debate, which it has launched.

The following document sets out the key principles, which the Mayor believes should feature in a Common European Asylum System (CEAS).

II. The Mayor's response to the Green Paper

1. City experience

- The Mayor of London welcomes the harmonisation of asylum procedures at EU level and the development of an EU framework for integration policies, provided these processes are informed by cities' experience. EU-wide frameworks of this kind could protect immigration and asylum policy from fluctuating national priorities and a sometimes-hostile debate, based on shortsighted political concerns.
- National policy and legislation on immigration, asylum and integration have profound effects within the EU's major cities, socially and economically. Cities are also likely to have more knowledge than any other public authority about what works on the ground. However, in many EU Member States city authorities have only a very limited say in the policy development process. It would make sense for decision makers to liaise regularly with regional and local authorities, to inform themselves about the impact of policies at city level and to consult city authorities on policy developments.

- Europe's greatest cities know that they have a lot to gain from asylum seekers, refugees and immigrants in general, who have contributed enormously to both social and economic wealth. They also have the most to lose from any policies that consign immigrants and asylum seekers to long-term poverty and exclusion. Cities' interests require asylum reception policies, which, from arrival, promote rather than hinder the long-term integration of refugees. If a Common European Asylum Policy is to work and good practice on integration of immigrants is to be established, decision makers at EU level need to start talking to the EU's large cities.

2. Processing of asylum applications and other asylum procedures

- If asylum legislation is not to generate a rising level of social exclusion in Europe's large cities, the harmonisation of national asylum procedures at EU level must guarantee the fair and transparent treatment of asylum claims – including adequate advice to applicants – and must allow for the eventual integration of people who cannot in practice be removed from the national territory within a reasonable timescale.
- In order to enhance the effectiveness of the current asylum procedures the future Common European Asylum System should ensure that:
 - A common process for claiming asylum in Europe is set and the current situation of "asylum shopping" which leads to uncertainty for the future is changed;
 - Legal routes to claiming asylum are regularised among Member States. The current non-legal route for claiming asylum in the UK can create a situation where asylum seekers are exploited in the informal economy and can lead to destitution;
 - The decisions on asylum applications are made in a timely manner ensuring an applicant has a decision on their claim within a reasonable time following their application;
 - Rejection of asylum claims on purely formal grounds is avoided;
 - Means are available to find solutions for the status of rejected asylum seekers who cannot be repatriated for legal, practical or humanitarian reasons within five years of the decision of their claim;
 - Asylum seekers and refugees are able to access good-quality, independent legal advice; lack of legal advice can increase uncertainty and a sense of powerlessness as applicants try to negotiate the asylum process – often including an appeal stage – with no control over their future and fear of a possible negative outcome that can lead to destitution and social exclusion.
 - Asylum seekers are entitled to receiving advice on their benefits and rights associated with their status in addition to the advice they should be receiving on the legal proceedings of their claim;
 - Country information which is used to assess the validity of an asylum claim should be consistent across the EU and the maintenance of such information should be developed at Commission level by an independent board of experts drawn from Member States, academia and representatives of refugee agencies;

- The list of safe countries should be revised regularly to reflect episodes of conflict and oppression as they arise around the world. In addition, there should not be a blanket assumption that the so-called ‘safe countries’ are safe for all social groups. The determining criteria for granting asylum should include in addition to the fear of persecution on the grounds of race, religion, nationality, and political opinions other such as sexual orientation; and they should cover acts of persecution by both State and Non- State actors. For example, Jamaica and other countries in the Caribbean are considered generally ‘safe’ but there is evidence of danger of persecution to Lesbian Gay Bisexual Transsexual (LGBT) people living openly in those countries. Those making decisions on claims for asylum should therefore be trained in the specific experiences of equality groups;
- Training is provided for key sector staff such as border control staff, law enforcement, doctors, and teachers in dealing with asylum seekers and refugees so that their needs are identified and cared for;
- Channels of dialogue are set up between the EU institutions, public authorities (national, regional and local level), and the voluntary sector;
- Refugee communities are engaged in the decision-making process, and active involvement in consultations (like the present one);
- Raising awareness of refugee and asylum seeking issues eliminates public and media hostility;
- Further work is done to learn from best practice to enable more effective and fair screening processes to assess the age of children seeking asylum. The Immigration Law Practitioners Association (in UK) has recently developed recommendations on this issue¹. These include a holistic approach to assessment which does not rely on only one method, the development of specialist multi-agency age assessment centres, implementing a *benefit of the doubt* approach rather than an assumption of disbelief and closer monitoring, to ensure that countries follow their own guidance (which is often very good) when assessing young refugees.

3. Reception conditions for asylum seekers

3.1 Material reception conditions

- Major social problems are created for cities when policy sets support for asylum seekers so low that they live in poverty. Such policy on asylum support can undermine community cohesion, community safety and the long-run prospects of integration for those who gain refugee status. Asylum seekers awaiting determination of their claim in accordance with international treaty rights should be provided with adequate means to support themselves and maintain health, and must not be forced into destitution by policies that refuse them material support.
- In particular, asylum seekers should receive basic assistance (including, legal advice, accommodation, health and psychological assistance, support on

¹ Crawley, H (2007), *When is a child not a child? Asylum, age disputes and the process of age assessment*, Immigration Law Practitioners’ Association (ILPA) www.ilpa.org.uk

issues of personal life and community safety) upon arrival to maintain dignified conditions.

- Material reception conditions should take account of the specific needs of the different equality groups (i.e. gender, disability, age, sexuality, race, and faith).

4.2 Access to the labour market

- The Council Directive 2003/9/EC laying down the minimum standards for the reception of asylum seekers, article 11, leaves it to each Member State to decide if and when an asylum seeker can access the labour market. This restrictive approach is unfortunate. City experience shows that excluding asylum seekers from the labour market hinders long-term integration possibilities of people granted the right of residence, deepens social exclusion and encourages unregulated, explorative work. Employment is a fundamental right for the reacquisition of personal dignity. Also, asylum seekers often bring with them skills that help drive innovation. They are potentially an important source to economic development in cities. Asylum seekers should have access to the labour market within a reasonable time after making a claim. Refugees should gain access to it as soon as their status is confirmed. National asylum and labour laws, and local administrative practice, should be adapted to allow asylum seekers and refugees to the labour market on this basis. National governments should provide clear information on employment rules to employers, via the appropriate bodies in each country.

4.3 Detention

- The harmful practice of detaining refugee children should be ended and a clause stating this should be included in the future CEAS. In the UK, Bail for Immigration Detainees (BID)² has recently produced a report highlighting the impact of family detention and detailing how to challenge detention of children.

5. Granting of Protection

5.1 Granting protection & the associated rights and benefits

- The Mayor would welcome a common European definition to describe the status of asylum seekers and refugees. He would further support the simplification of the refugee status if it was allowing for one set of rights and benefits to “vulnerable third country nationals in need of protection”. Above all, the Mayor's view is that rights and benefits should be consistent whatever the protection status of an individual in all EU Member States.

5.2 Non-removable persons

² The report can be found on: <http://www.biduk.org/pdf/children/BIDFamilyHandbookFINAL.pdf>

- Where there is evidence that non-removable persons constitute a community a CEAS should consider the needs of such a community in the context of consistence of treatment and eventual regularisation of their situation.

6. Appropriate response to situations of vulnerability

- Health can be undermined both by living conditions for people awaiting an asylum decision, and by the strain of the decision-making process. Health determinants triggered in this early phase can then influence health status long after a positive decision. It is therefore important that asylum seekers and refugees have access to health care and any health risks are identified and treated at an early stage;
- The immigration status of asylum seeking children, while clearly a major factor in their lives, should not result in inequality of support from any of the children's services designed to protect children living in EU countries. Asylum seeking children form their first impressions of the country where they are seeking asylum from their experiences when they arrive. Their reception and care can develop into a relationship of trust and belief in systems and 'authorities' if a carefully considered care package has been implemented on their arrival and continues into adulthood. In contrast, if they are alienated from other young people and society as a whole, this will have a negative impact upon their position in society and their ability to contribute to Europe's development;
- Special advice and support should be available for refugee women experiencing domestic violence;
- Medecins du Monde (UK) through their Project: London³, found that measures imposed to stop the so-called health tourism are actually preventing vulnerable people living in the UK, including pregnant women, from accessing vital treatment.
- London has in place health and vulnerability assessments and would share these models with other Member States, regions and cities if a harmonised system were introduced.

7. Integration

- The conditions of arrival and reception largely explain the deep social exclusion facing most refugees and asylum-seeking communities. Typically arriving with no assets and often with no social network, they enter an asylum system that, debars them initially from paid employment, denies state support and standard health assistance and restricts from legal aid. As a result asylum seekers who genuinely cannot return to their countries of origin may be refused asylum and then face destitution. The Mayor of London believes that if the future CEAS is to

³ <http://www.medecinsdumonde.org.uk/>. The Mayor of London said about the project: "We have known for many years the difficulties faced by the NHS services in adequately reaching certain vulnerable groups. No section of our society should be prevented by law from accessing health care. I am glad that these issues are being highlighted by Medecins du Monde UK. Project: London is helping London's most vulnerable to access health care and has highlighted important issues which must be addressed in order to ensure that those at the margins of society receive the care they need, safeguarding public health and enabling them to contribute their skills and energy to help build a stronger and more cohesive community."

enhance refugee integration, the following measures need to be implemented across the EU.

The Commission and Member States' public authorities need to:

- ❑ Draw strategies that cover the housing and medical care needs of refugees. The Mayor of London's, Refugee Integration Strategy covers: health, housing, employment, training and enterprise opportunities;
- ❑ Set up a system to recognise asylum seekers' qualifications that would facilitate their integration into the labour market and guarantee equality once they receive refugee status;
- ❑ Provide training that helps refugees improve their language skills and educational attainments and acquire transferable skills (useful whether they stay in Europe or return in their country of origin);
- ❑ Make sure that media coverage of immigration related issues not to be misleading and to aggravate public hostility towards refugees and asylum seekers.

8. Implementation - accompanying measures

8.1 Development of a common approach to issues of gender- or child-specific persecution

- The future CEAS should look at all the gender specific issues that refugees might face; for example the asylum process may impose extra pressures on women asylum seekers and refugees, such as: dependency on male partners or children (especially for interpreting), difficulty in getting language or other training because of childcare, and cultural barriers to dealing with male staff.
- Special attention should be given to refugees (children and women) victims of exploitation and trafficking. In these cases consideration should be given to fast tracking of any asylum claim and their vulnerability should be taken into account if they are returned to their country of origin.
- Need for the EU Portal to be a resource on best practice when developing common approaches to issues such as the concepts of gender, sexual and gender identity- or child specific persecution.

8.2 Creation of a European support office

- The Mayor of London would not oppose the creation of a European support office that will coordinate activities of common practical cooperation in this field. However practice in London has shown that issues of reception are better approached by strengthening partnerships at local level and by involving the voluntary sector, particularly refugee community organisations. Therefore, in the Mayor's view, the role of the European Support Office would be to ensure practical cooperation at a national, regional, and local level involving statutory bodies and NGOs.
- The Mayor of London believes that a EU office would have to facilitate learning between countries (regions and cities), by enabling those developing strategies

and programmes to learn from the integration initiatives of other Member States (regions and cities). An office that would allow national experts to visit successful integration projects would be preferable to an office that disseminates advice or guidance. In addition the EU office could undertake research studies to elaborate the current knowledge on refugee issues, in particular on the issue of multiple marginalisation of refugee women, children, LGBT and older people;

- To ensure there is clear linkage between the work of the European Support Office and Member States, national experts would have to be seconded on a rotation basis.
- The Mayor would welcome a EU portal that is up-to-date and provides links to strategies and projects of EU stakeholders.

9. Financial solidarity

- The future CEAS should ensure that financial assistance is available for all vulnerable people in need of protection and not only for people who receive status, as is the current practice.

10. Resettlement

- The Mayor would urge further analysis by Governments about *why* so few asylum seeking children take advantage of existing voluntary return packages. The findings of that research would help improve existing systems or develop alternative measures, rather than investing heavily in the return of young people to their home countries, either voluntarily or under compulsion. The Mayor believes greater benefits to them and to host countries might be gained by investment in:
 - Legal support to Unaccompanied Asylum Seeking Children (UASC) to ensure better decisions, offering a stable basis on which to build their future; and
 - Education and support for UASC while they are in the EU so they may contribute more fully to society, wherever they end up living.