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*The Asylum Crisis:
A Human Rights Challenge for the
EU*

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The Asylum Crisis: A Human Rights Challenge For The European Union

More refugees, less protection

The international system to protect refugees is in crisis. In the decade since the end of the Cold War the numbers of men, women and children fleeing from persecution and violent conflict or seeking to escape a life of poverty and deprivation have grown to staggering levels.

The growing numbers of refugees is neither a temporary problem nor the random product of chance events. It is the predictable consequence of human rights crises, the result of decisions made by individuals who wield power over people's lives.

Once refugees manage to escape their country, the vast majority find refuge in poor countries in neighbouring regions in the South, where most are doomed to spend years on end in refugee camps. If they attempt to reach the West, refugees are faced with a formidable array of obstacles like carrier sanctions and other measures to make travel to safety difficult if not impossible. So they find themselves at the mercy of the unscrupulous trafficking industry that feeds on the closed border policies of the West.

Those who manage to beat the odds and reach the affluent countries receive an increasingly hostile reception. The language used by politicians and the media reduces people to "flows of illegal immigrants" which

seemingly threaten social stability and even national security. The stated desire to protect “real refugees” is used as justification for erecting barriers so high as to keep everyone out.

Constructing Fortress Europe

One of the EU's priorities is the task of creating “an area of freedom, security and justice” in Europe. Central to that endeavour is the EU common asylum system which is now taking shape. In the desire to build “Fortress Europe”, there is ground for real concern that the new asylum system may in a number of respects be in breach of international human rights and refugee law:

- _ Refugees are prevented from reaching EU territory through immigration control measures which may not take into account international obligations towards refugees;
- _ If they reach the EU, refugees may be unlawfully detained, and access to fair and satisfactory asylum procedures denied;
- _ If they gain access to procedures, these may be accelerated in ways that do not fulfil the minimum requirements of fair and satisfactory asylum procedures;
- _ Even if they are afforded access to a fair and satisfactory asylum procedure, effective and durable protection may not be ensured.

As the UNHCR stated in January, 2001¹:

"In UNHCR's view, the question of access to territory is key to a common asylum procedure and a uniform status. Having the best asylum procedure and the most generous refugee status is of no use unless refugees can actually gain access to territory and admission to procedures. The Tampere European Council's commitment to the absolute respect of the right to seek asylum cannot be fulfilled so long as the European Union maintains an increasingly tight "migration fence" around its external borders without putting in place adequate safeguards to mitigate the negative effects of migration control on people who need international protection."

EU efforts to erect barriers do not end internally. The EU is extending its borders by seeking engagement with refugee producing countries to curb migration and to facilitate repatriation. Readmission clauses are nowadays negotiated as standard elements in agreements the EU concludes with third countries, some of them gross human rights violators, trading human beings in exchange for financial aid. This one-sided orientation hinders the development of a more comprehensive approach, as shown by the experience of the High Level Working Group on Asylum and Migration. Set up in 1998 to tackle the root causes that force people to leave their countries, it has focused on control and

¹ UNHCR's preliminary observations to the Communication from the European Commission "Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum", para. 7.

repatriation rather than on protection and prevention, and has barely begun to touch the human rights crises in the countries in question.

At the same time, in stark contrast with the enormous obstacles that refugees have to overcome to find refuge and protection in the EU, is the ease with which arms continue to find their way from Europe to fuel violent conflict. The lack of border controls over arms transfers to countries that violate human rights is ample testimony to the failure of Europe to translate its human rights intentions into consistent action.

Refugee protection – the black spot in Europe’s human rights ambitions

While the European Union has over the last decade established a strong human rights mandate, refugee protection is the black spot in the EU’s human rights ambitions. Asylum is not just a policy instrument: it is a legal right, a vital tool of human rights protection that poses legal obligations upon governments. Of course, states are entitled to control entry onto their territory, but they are also and at all times bound to respect the right to asylum.

Unfortunately, the current overriding concern is control, not protection. The EU’s new asylum system, as proclaimed solemnly at the 1999 Tampere summit, was to be anchored in the “full and inclusive application of the Geneva Convention”. Established 50 years ago as a cornerstone of human rights protection, the UN Refugee Convention has become the one international human rights instrument that governments now openly dare to call into question.

It is true that of the millions adrift in the world, many do not fall under the scope of the UN Refugee Convention. That does not however diminish

their need for protection. Indeed, one of the great challenges in today's asylum crisis is how to provide effective and durable protection to those who do not qualify as refugees under the Convention, including many internally displaced people, but who nevertheless have reason to fear for their life or safety.

A plea for moral leadership world-wide

The development of a common EU asylum system should be seen as a process that may help resolve some of the problems that are inherent in the present divergent practices of EU Member States, by ensuring that the "minimum standards" that the EU is currently proposing do equal "maximum protection" for refugees.

The Laeken Summit, in reviewing the progress towards a common asylum system, has the opportunity to develop the Tampere spirit by sending a strong signal that the end result of harmonization will not be the lowest common denominator. There are good examples of best practice at EU level, such as the proposal presented by the European Commission to define persons in need of international protection, which takes notable steps to ensure that those who should come under the UN Refugee Convention and other international human rights treaties, do not fall through the net.

By adhering to existing and developing international standards of refugee protection, the EU will be contributing to the integrity of the international protection system at a time when the UNHCR has engaged in global consultations marking the 50th anniversary of the UN Refugee

Convention with the precise aim of reaffirming and revitalizing the global refugee protection system.

Now more than ever, it is time for a different kind of political and moral leadership.



AMNESTY INTERNATIONAL

APPEAL TO THE LAEKEN SUMMIT

- Amnesty International calls on the Laeken Summit to develop a comprehensive approach to the realisation of the full spectrum of human rights. This is a greater challenge than ever, and must be based on the full, inclusive and non-negotiable application of the entire body of international human rights, humanitarian and refugee law, as a means to preventing human rights violations that cause people to flee and seek refuge elsewhere.
- Amnesty International calls on the EU Heads of State or Government meeting in Laeken to bring the asylum debate into the human rights perspective and undertake a leading role in the world for the protection of human rights and refugees, as one of the foundations of the “Future Europe”.
- Amnesty International calls on the Laeken Summit to express a clear, explicit and unequivocal commitment to the right to asylum in the EU, as enshrined in the Charter of Fundamental Rights, as an essential commitment to human rights protection, by ensuring that any asylum system established at EU level does ensure access of refugees to its territory and to fair and satisfactory asylum procedures which guarantee the full and inclusive application of the UN Refugee Convention and of other international human rights treaties.

_ In particular, Amnesty International calls on the Laeken Summit to ensure that the following principles are expressly enshrined in any future common European asylum system:

1. *Express commitment to international standards for the protection of refugees, so that the obligations of Member States under international human rights and refugee law are fully respected.*
2. *Concrete action to combat human rights abuses, and in particular the effective control of arms exports to third countries, which may be used to commit human rights violations and force people to flee.*
3. *Access to territory and to procedures, so that immigration-control measures do not in effect prevent asylum seekers from obtaining access to EU territory and to fair and satisfactory asylum procedures.*
4. *Non-refoulement, so that no-one can be returned to a situation where they may be at risk of serious human rights abuses.*
5. *Effective and durable protection for refugees for as long as they continue to be at risk in the country they have fled.*
6. *Protection for all who need it, by ensuring the full and inclusive application of the UN Refugee Convention.*
7. *International solidarity and responsibility sharing for the protection of refugees world-wide.*
8. *International accountability, by contributing to the establishment of an independent, impartial mechanism to monitor compliance of States Parties with the UN Refugee Convention and its 1967 Protocol.*

REFUGEES IN EUROPE THE REAL STORY

Case studies illustrating how EU countries currently treat refugees - a warning to EU member states formulating common rules for dealing with refugees across Europe.

There are many conflicting images of asylum seekers in Europe - most of them negative.

Amnesty International presents a snapshot of the real situation.

Why have they come here? How are they being treated? Where do they end up?

As part of a European-wide information campaign, Amnesty International traces the journeys of asylum seekers who pass through the asylum system in various countries.

If the lowest common denominator prevails in the proposed EU Common Asylum and Immigration Policy, then what follows will be the sad reality for asylum seekers in a future "harmonised" Europe.

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WHY REFUGEES FLEE

People fleeing violence, torture or other forms of persecution have few options. These "asylum seekers" are fathers, daughters, sons and mothers.

Afghanistan

"First they rounded up the people in the streets. They then went from house to house and arrested the men of the families except for the very old men. Nothing could stop them, and they did not spare any of the houses. In one house, the mother of a young man whom the Taleban were taking away held onto him saying she would not allow him to go away without her. The Taleban began to hit the woman brutally with their rifle butts. She died. They took away the son and shot him dead. They were our neighbours. When they arrested the people,

they tied their hands behind their back and took them away. They took them to areas behind Bazar Kona and fired at them. They executed a lot of people.”

China

“Yusuf (not his real name) a member of the Uighur ethnic minority in China, was arrested for suspected political activity. He was interrogated in an underground chamber. He was given electric shocks with electro-shock batons. The shocks were applied all over his body, including in his mouth and on his penis, causing intense pain. The interrogators hit him on the bones of the legs with a wooden baton. They made him kneel down and hit him on the thighs and the shoulders with the baton. While tortured, he was made to wear a kind of metal helmet which came down over his eyes. The interrogators used this helmet to prevent fatalities; some prisoners, unable to bear the pain of torture, would try and kill themselves by bashing their heads against the walls.”

Angola

“During the attack, the assailants had shot through the locked door of the house of a 27-year-old primary school teacher, Mukwata Kolinus Faniso, then entered the house firing. They killed the teacher and badly injured his wife. Jan Kavura Thikoko, aged over 70, emerged from his house to see what was happening. The attackers reportedly asked his name and, after he replied, shot him dead at point-blank range. In a nearby homestead, another elderly man, Kushamura Kapinga, was also killed and another teacher narrowly escaped detection and possible death because his wife hid him in the bedding. After the attack the villagers abandoned their homes and went to live in the bush some distance to the south where attacks were less likely but where living conditions were precarious.”

WARNING: Deficiencies in EU policies on third countries, such as inadequate controls of small arms exports from and through EU member states to third countries, may contribute to the conditions which force people to flee their countries and seek refuge in the European Union. contribute to the conditions which force people to flee their countries and seek refuge in the European Union. the European Union. contribute to the conditions which force people to flee their countries and seek refuge in the European Union.

DON'T LET THEM OFF THE BOAT!

Asylum seekers cannot lodge effective claims or tell their story if they are not allowed to "get off the boat". This is the case of a Senegalese asylum seeker who was deliberately stopped from landing on EU territory, or communicating with human rights organisations in violation of the international obligations of EU countries.

Seik (not his real name) fled persecution in Senegal. When he arrived by boat in Spain, Spanish police initially prevented him from accessing human rights organisations, which prevented him from lodging an asylum claim.

Seik suffered torture and ill-treatment in Senegal where he was forcibly recruited in 1995 by the guerrilla movement MFDC (who had killed his uncle), and then subsequently captured by the Senegalese military. He managed to flee to Guinea Bissau and then Dakar where he stowed away

on the ship "Atlas Rex" which arrived at Vigo harbour in Spain, on 13 November 1995.

Spanish police prevented Seik from coming ashore. Representatives of Amnesty International, other human rights organisations and trade unions were prevented by the police from boarding the ship to speak to him. Despite a court order to allow access to the human rights representatives, Spanish police prolonged the affair by insisting that the shipping company concerned be approached first, by which time the ship had sailed on to the Spanish port of Marin. There, Spanish police once again prevented access to the ship, in breach of the previous judicial decision. Finally, the human rights organisations lodged an asylum application on behalf of Seik and as a result of it, police finally allowed him into the custody of the Red Cross.

Seik's asylum claim was declared inadmissible on 17 November on the grounds that it did not contain the reasons for his claim (due to the fact that he was unable to state these clearly because of lack of access to human rights organisations and interpreters). Despite the fact that the decision acknowledged the difficulties created by the police to access legal assistance and interpreters, as well as the appeals made by Amnesty International to the UNHCR and to the asylum authorities on behalf of Seik, his first appeal was rejected.

On 22 November, Seik was taken to Madrid, for deportation to Dakar. His lawyer then lodged a judicial appeal. On 24 November 1995, the judicial authority allowed Seik to stay in Spain while it examined the claim. Several months later, it declared his claim admissible, forcing the asylum authorities to examine the application on the merits. Months

later, tired of waiting for a decision on his asylum claim, Seik decided to obtain a temporary residence permit.

WARNING: Some EU countries are already flouting existing international standards concerning the right of access to EU territory for those fleeing persecution. The EU is now in the process of drawing up common immigration rules which do not take into account the international obligations of EU countries towards refugees. Carrier sanctions, visa regimes, "reception in the region" schemes designed to control illegal immigration may have dire consequences for refugees fleeing torture, persecution and life-threatening events.

"SAFE" COUNTRIES NOT SO SAFE

Asylum seekers are not receiving the same level of protection throughout the EU, but they are still returned to the first "safe" country where they landed, even if this "safe" country offers them little protection.

Kumar (not his real name) a Sri Lankan, is a typical victim of the varying standards of refugee protection currently operating across the European Union. He has been persecuted by both sides in the independence conflict in Sri Lanka, persecution which was not recognized by at least one EU country - Germany.

Kumar lived in Jaffna in an area controlled by the Tamil organisation, the LTTE, which is engaged in an armed struggle for independence. He was held prisoner by the LTTE for three months and forced to carry out menial work for them.

He escaped to Colombo where he was subsequently arrested by the Sri Lankan army and accused of being a member of the LTTE. He was imprisoned, tortured and ill-treated by the Sri Lankan soldiers. The abuse included being whipped with an electric cable, and strung up by his feet with chains from a bar in the ceiling. While he was hanging, he was beaten on the soles of his feet and lower back with a plastic pipe filled with cement.

After his family paid a bribe to the army, he was released, but subsequently picked up by the army and the police on two further occasions where he was beaten again, including having a heated iron rod pressed against his arm. After his release, he fled to Germany.

Kumar's asylum claim was rejected in Germany after a short, oral hearing, where the courts found that his alleged torture was not relevant to his claim, as these "excesses of isolated executive organs" could not be imputed to the Sri Lankan state. In addition, as the LTTE was not a "state", then ill-treatment by this group did not fit into the definition of political persecution by a "state" and could therefore not be presented as evidence of the need for asylum. He was told to return to Sri Lanka.

Kumar then travelled to the United Kingdom where he again claimed asylum. Despite new medical and other evidence presented in the UK, and the fact that this country grants protection to individuals in the same situation than Kumar, the UK decided to return him to Germany. Under the so-called "Dublin Convention", he can be returned to the first country where he claimed asylum within the EU because all EU countries are deemed to be "safe" countries. He argues that Germany did not provide the protection he so desperately needed and fears that from Germany he will be returned to Sri Lanka.

WARNING: Even if refugees reach EU territory, their access to fair procedures to determine their asylum claim may be denied in some EU countries. The use of "safe country" concepts does not ensure that a country is indeed "safe" or that it will provide effective and durable protection.

TREATED LIKE CRIMINALS

Asylum seekers are NOT convicted criminals but in some part of the European Union, that is how they are being treated.

Cardiff Prison, U.K:

"The situation in Cardiff prison hit the press when asylum seekers were taken in handcuffs to a local hospital. That shocked many people in Cardiff and elsewhere. When we visited the prison, the authorities told us that asylum seekers were treated the same as other prisoners because they were in a prison regime. In one cell, we met a Pakistani - a very cultured man - who was a scholar, and the author of 37 books. He could not understand why he was being detained. We met a Tamil from Sri Lanka, who had left Sri Lanka because of the daily violence there. He had owned his own bakery. We met an Iranian who was a technician in an oil refinery. We met a man from Kosovo, whose father and brother had disappeared. He was frightened for his life so he decided to flee." - Statement by Ann Clwyd MP, U.K. House of Parliament, 11 July, 2001.

Extract from joint letter by asylum seekers quoted by Ann Clwyd MP, 11 July, 2001:

"Here at Cardiff prison we are treated like animals as compared to criminal remand prisoners and those serving sentences. Some of us have never been arrested before, and just found ourselves in a prison cell sharing facilities with convicts of different crimes, people committing suicide and unwarranted bullying from prison officers. You try and seek explanation from the local immigration officer, why you are in prison, 'the answer lies with immigration in London' (is) all he is instructed - to help you go back to your country if you are fed up..."

WARNING: Detention policies and practices in the EU sometimes fail to follow international standards. Not only are asylum-seekers held in prisons and prison-like conditions, they are also confined with convicted criminals, yet those seeking asylum have not been convicted of any crime. Detained refugees may suffer the psychological torment of not knowing for how long they will be held and the fear that they may be sent back to their persecutors. Torture victims in particular may suffer further trauma through the psychological stress of detention. Amnesty International believes that detention of asylum seekers should be avoided. No asylum seeker should be detained unless it has been established that detention is necessary, is lawful and complies with one of the grounds recognised as legitimate by international standards. Amnesty International opposes the practice of detaining asylum seekers when adequate and effective safeguards do not exist or are not followed.

“TOLERATED” BUT NOT PROTECTED

After years of persecution and repression in both Afghanistan and Pakistan, a journalist who opposes Islamic fundamentalism is left in limbo in Germany.

Mohammed (not his real name) was born in Kabul and belongs to the ethnic group of Pashtuns. As a student he worked as a freelance journalist for the journal “Saboun” and often translated for foreign journalists, despite frequent harassment by the Afghan secret services. In 1992, after being beaten, and his home bombed, Mohammed and his family fled to Pakistan.

Mohammed continued his work as a journalist in Pakistan and was known for his liberal and modern political ideas, forwarding information on the situation in Afghanistan and Pakistan to foreign journalists. He worked for the journal “SAHAR”, in which he expressed criticism of the rival fundamentalist Mujahideen groups. Mohammed helped organise demonstrations in Pakistan protesting against Islamic fundamentalism and photographed Pakistani police officers attacking and beating women and children.

Because of these activities Mohammed was known to the Mujahideen groups both in Pakistan and Afghanistan. In 1993 he was attacked in the streets of Islamabad by armed Mujahideen and subsequently detained by Pakistani police. After returning to Afghanistan for urgent family reasons, he was arrested in Kabul by armed forces of the Shi’a Party Hezb-e Wahdat and detained, interrogated and tortured for five months. He finally escaped to Pakistan from where he fled to Germany.

In Berlin, Mohammed filed an asylum claim in July 1995. His application was rejected. According to the very restrictive German laws, "persecution" can only be performed by a state or a state-like organisation. Acts of violence or human rights violations performed in the course of civil war between the warring parties is not assessed as persecution and therefore asylum seekers who escape a situation of civil war are not accepted as refugees. Therefore few asylum-seekers from Afghanistan have been given refugee status or have been granted another status ensuring effective and durable protection. Sometimes refugees fleeing non-state persecution may not be returned immediately, but remain merely tolerated ("duldung"), with no status, no rights. They can be returned to their country at any time.

Although Mohammed lodged an appeal, he realised this would take several years. Tired of the uncertainty, Mohammed withdrew his application for asylum, hoping that he would be able to stay in Germany on humanitarian grounds. In 2000, he finally received permission to stay for one year only. Now he must approach the authorities again and ask for an extension of his permission to stay.

Thus after so many years of persecution and repression, Mohammed has still not received effective and durable protection in the EU.

WARNING: The EU's Common Asylum Policy must move towards a full and inclusive interpretation of the Geneva Convention for all Member States, abolishing other forms of protection that fall well below international standards of refugee protection.

Every refugee has a unique story to tell, a story of repression and abuse, of

fear and flight. If states fulfilled their responsibilities, if they protected

their citizens instead of persecuting them - then millions of women, men

and children would not have to gamble on an uncertain future in a foreign

land, and those in exile could return home safely.....

Amnesty International, September 2001