Refugee Council
Remote Controls: how UK border controls are endangering the lives of refugees

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Contents

Executive Summary

This report presents the findings of a one-year Refugee Council project, which examined the impact of the UK's border controls on refugees' ability to escape persecution and find protection. The project was guided by an International Advisory Group of leading NGOs, lawyers, academics and UNHCR, and fieldwork was undertaken in Turkey to review the impact of border controls in a key transit country for refugees.

Policy context

The dramatic decrease in the number of refugees coming to the UK over the last 20 years is not matched by any decrease in conflict around the world. In fact, the global number of refugees and those displaced within their own country has increased. The Refugee Council is concerned that the plethora of UK border controls placed overseas and aimed at preventing irregular migration is preventing refugees fleeing from their own countries and getting to a place of safety.

The Refugee Council believes that the UK government needs to recognise that wherever it operates border controls, or influences the border controls of other States, refugees will be moving across those borders because they need to escape from persecution and human rights abuses. In order for the UK Government to comply with its legal and moral obligations, it must ensure that its border controls do not result in refugees being unable to escape their countries of origin or being sent back to persecution. Such practice, known as *refoulement*, is prohibited by the 1951 Convention relating to the Status of Refugees, to which the UK is a signatory.

Key findings

- **The UK government's 'upstream' migration controls risk blocking refugees who are trying to escape their country of origin or transit.**

This report focuses on the UK Government's objective of moving migration control as far 'upstream' as possible in order to stop irregular migrants reaching the UK. Since there is no legal way to travel to the UK for the specific purpose of claiming asylum, refugees are forced to travel irregularly in 'mixed flows', and hence encounter the same border controls as other irregular migrants.

This study explores the various overseas UK border controls and their impact on refugees. The report demonstrates that a request for documentation is often the first obstacle faced by a refugee trying to escape. Refugee respondents explained that they were unable to obtain passports when their country was in a state of upheaval. To compound this difficulty, visas are required for many nationalities. Our research shows that the imposition of visas on nationals of countries such as Iraq, Somalia and Zimbabwe make escape from persecution extremely difficult.

- **Leading refugee law expert, Guy Goodwin-Gill has provided a legal analysis for this report, in which he questions whether anything remains of the right 'to seek' asylum in 2008, the 60th anniversary of the Universal Declaration of Human Rights.**

Today's 'rights-holders' are faced with obstacles put in place by States to curb irregular migration. However, States bear responsibilities for actions taken outside their territories. Most crucially, refugees should not directly, or indirectly, be sent back to a place of persecution or torture as a result of the actions of UK officials at home or abroad. A decade after the Human Rights Act, Goodwin-Gill concludes that it is unclear whether the UK's specific human rights obligations are integrated sufficiently, or at all, into its migration and asylum policy and practice.

- **The protection-blind use of technology in border control ignores the needs of refugees who are forced to travel irregularly.**

The UK's use of technology in the field of border control is also examined in this report. The Refugee Council finds it remarkable and disappointing that in implementing a sophisticated and expensive border control system, refugees' protection needs have been entirely ignored. Our refugee respondents expressed a particular fear that the use of biometrics to 'fix' individual identity leaves no room for legitimate explanations for the use of irregular travel by refugees, as provided for by Article 31 of the 1951 Refugee Convention.

- **Interception activities conducted by the UK's outposted immigration officials and private carriers contain no safeguards for persons who may need international protection, and could even lead to *refoulement*.**

The report considers the responsibilities of outposted immigration officials, whose work with airlines and government counterparts throughout the world aims to intercept irregular travellers on their way to the UK. Our research found that outposted UK immigration officials, as well as the government and private sector actors the Government relies on to implement UK immigration controls, are not tasked with nor trained in refugee protection. We found that immigration and airline officials have no knowledge of systematic procedures to follow in order to identify refugees and ensure that they are protected. The Refugee Council is particularly concerned as these officials enforce the UK's border controls in refugees' countries of origin and transit, thereby heightening the risk of direct and indirect refoulement. The risk particularly affects refugees in transit zones. We also found that there is no monitoring or publicly available information, as to who is stopped, whether they are refugees in need of protection, or what happens to them after they are intercepted.

- **Private carriers who are forced to operate migration controls are not trained in refugee protection and are not sufficiently accountable for actions which may lead to refoulement.**

Our research revealed that much of the UK's immigration control is in practice carried out by private carriers such as airlines and security companies contracted by airlines and other carriers. The threat of carrier sanctions on private companies, including a £2000 fine per improperly

documented passenger brought to the UK, means that individuals suspected of intending to claim asylum in the UK are classified as a threat and therefore likely to be refused boarding. Identification of such risky passengers is based on little more than ad hoc profiling by carriers, and the use of 'gut feeling' to intercept individuals suspected of travelling irregularly or of intending to destroy their travel documents before arriving in the UK. Carriers showed little awareness of basic refugee protection principles, including the prohibition on refoulement. There is a lack of transparency surrounding private carriers' immigration control activities. This makes it difficult to guarantee that refugees' lives are not put at risk.

- **There must be a solution to the needs of refugees in order to prevent irregular and dangerous travel to safety in Europe.**

As a result of our findings, we identified an urgent need for safeguards to be incorporated into the UK's border activities in order to protect refugees. At the same time, the Refugee Council believes that the UK government should explore measures that could proactively facilitate safe passage for refugees.

Secondary effects of border control

- **Stronger borders mean that refugees have to take greater risks to find safety.**

In Chapter Six of this report, we present our findings that strengthened border control displaces refugees into more dangerous routes and methods of travel. Refugee respondents described the life-risking routes they had to take in order to reach safety. The fear of dealing with smugglers, travelling through lawless zones and encountering border guards was particularly traumatic for vulnerable groups, such as women and children. Our research found that since refugees are compelled to leave their country, the UK Government's overseas marketing campaigns, aimed at persuading individuals to 'stay at home', lacks relevance for them. Instead, the lack of safe legal routes means that refugees have to take even greater risks to escape.

- **Refugees in countries that do not offer adequate protection are in a state of 'permanent transition' and struggle to survive.**

Chapter Seven of this report describes what life is like for refugees in a country of transit. Turkey is one, but not the only, example of a country where refugees can be described as being in permanent

transit. Our research fieldwork revealed that refugees in Turkey live on the very edges of society, finding it difficult to survive. We heard accounts of vulnerable refugees resorting to prostitution to survive, and lesbian and gay refugees living in unsafe communities. Overall, we were told by the majority of respondents that refugee integration was simply not an option in Turkey.

- **NGOs and UNHCR are denied access to border and transit areas where refugees are intercepted, sometimes resulting in refoulement.**

The Refugee Council found it of extreme concern that NGOs and UNHCR are routinely denied access to individuals who are intercepted at the Turkish border, within Turkey, and particularly in transit zones and in detention facilities. If NGOs or UNHCR hear of intercepted individuals at all, it is often 'too late' as the individuals may have already been sent back to their countries of origin. As a result, our respondents felt that the protection of refugees was not always guaranteed, and they pointed to well-publicised recent accounts of refugee refoulement.

- **Refugees who have to wait years in countries of transit will search for their own durable solution.**

In Turkey, our research revealed that refugees wait between two and ten years for a decision on their asylum claim, then have to wait again to be resettled to a country where they can rebuild their lives. As a result, some refugees seek a sustainable solution themselves by moving on, irregularly, to reach sanctuary within the EU. Whilst the UK seeks to implement its objective of decreasing arrivals to the UK by working in partnership with countries such as Turkey, we found that where refugees cannot enjoy protection, they will logically seek to move on to a safe place.

- **International responsibility-sharing for refugees is not best achieved by containing refugees at the borders of the EU.**

The Refugee Council believes that international responsibility-sharing does not mean containing refugees at the EU's borders. Rather, it requires increasing refugee protection standards and ensuring that refugees are able to reach a place of safety.

Recommendations

The Refugee Council would like to make the following recommendations which we believe are necessary to ensure protection safeguards in the context of the UK's extra-territorial border control.

General

Refugee protection should be included as an integral part of the UK's border strategy.

The UK government should consult with civil society and UNHCR on the implementation of protection safeguards in the context of extra-territorial immigration control.

Visa Restrictions and e-Borders

Visa requirements should never be imposed with the aim of preventing asylum seekers from reaching a State's territory.

The UK and other EU States should examine their visa policies regularly, and in emergency situations should suspend visa requirements to enable people to flee an area of conflict or severe human rights abuse. In such emergency situations, the international community should suspend visa requirements simultaneously, in a spirit of burden sharing, for determined periods of time for nationals experiencing humanitarian crises.

Negotiations with countries on the lifting of visa restrictions, in exchange for increased efforts to control irregular migration to the UK and readmission agreements, must include protection safeguards. Individuals should not be transferred to countries from where they do not originate. Where, however, agreements are signed to return non-nationals, they should contain guarantees of full access to fair and efficient refugee status determination procedures, and protection against *refoulement*.

The UK should explore the facilitation of legal travel for those in need of protection, where encountered at Consulates in countries of origin or transit.

Where aspects of consular activities are outsourced to private contractors, such as processing visa applications, the UK should ensure individuals with protection needs are still able to access the Consulate.

When considering the treatment of individuals who travel without proper documentation, the UK should take into account the lack of choice of those fleeing persecution, including where there are no facilities for issuing passports within the country of origin, due to it being a country in upheaval or where certain profiles are illegitimately denied passports.

The UK's assessment of risk in the context of routes and nationalities should include the risks posed to the individual, not just the State. This could involve an analysis of situations that may include refugee flows, including where vulnerable groups could be travelling on dangerous routes.

The identification of risks to individuals should be shared with outposted immigration officials and private carriers.

Safeguards should be put in place to ensure that where a false identity is used for the purposes of fleeing persecution, the false identity is not electronically 'fixed' as this could lead to inappropriate refusal of an asylum claim and possible chain *refoulement*.

Policy and practice should reflect that the fact of being a failed asylum seeker does not mean that an

individual will never have a legitimate refugee claim in the future.

A risk assessment on the impact of e-Borders on refugee protection should be conducted by UKBA. This should include an examination of safeguards to ensure that data-sharing systems under no circumstances allow for information on individual asylum applicants to be shared with countries where an individual is at risk.

Regular updates on the e-Borders programme should be disseminated and stakeholders in the NGO sector should be invited to input into developments.

The advantages and risks of Protected Entry Procedures (PEPs) should be fully explored by an independent body.

Outposted immigration officials

The UK should put systems in place to ensure that the actions of its outposted immigration officials do not result in direct or indirect *refoulement* of individuals with protection needs.

The UK should ensure agreements between the UK and third countries that allow UK immigration officials to function on their territory are transparent. These agreements must contain clauses on UK responsibility to respect the principle of *non-refoulement* and should include measures to ensure access to protection wherever its immigration officials conduct measures to control irregular migration.

The UK should encourage host countries to allow intercepted individuals to have access to UNHCR, independent legal advisers and NGOs, in particular in transit zones.

UKBA should ensure that regular independent monitoring is carried out to ensure extra-territorial border control is compliant with refugee protection, and in particular the prohibition on direct and indirect refoulement.

The UK should provide easily accessible advice and guidance on the responsibilities of outposted border officials in respect of refugee protection. This should include procedural guidelines on what to do when encountering a person in need of international protection.

Outposted UK immigration officials should receive training on international refugee and human rights legislation and procedures.

The UK should provide training to outposted immigration officials on the identification of vulnerable individuals and how to meet their needs.

UKBA must demonstrate that the activities of all outposted immigration officials are implemented in accordance with domestic equality obligations.

The role of the ILO and ALO should be clarified and a list of activities and powers made publically available.

Non-sensitive information with reference to general trends of persons stopped from coming to the UK should be shared publically.

Frameworks for working arrangements between ALOs/ILOs, private carriers and host authorities should include reference to the importance of ensuring the individual details of refugees are not shared with countries of origin or transit.

UK and EU operational manuals for ILOs and ALOs should include reference to refugee protection and practical instructions regarding action to be taken if a passenger expresses protection needs.

ILO/ALOs should be fully aware of local institutions and organisations that assist refugees and others in need of international protection and refer individuals on accordingly.

The UKBA, in conjunction with UNHCR and NGOs should explore giving ALOs the power to allow undocumented refugees safe passage to the UK in circumstances where they may be at risk. This could include a hotline facility to support ALOs to use this power when encountering an individual in need of protection.

ALOs should keep records of the details of intercepted persons, including whether they expressed protection needs.

The remit of the Independent Police Complaints Committee (IPCC) has recently been extended to cover matters of immigration enforcement. UKBA should ensure that the IPCC also has oversight of the activities undertaken in the context of juxtaposed controls, in particular if these are rolled out to refugee countries of origin and transit.

Carrier Sanctions

Records should be kept and made public as to the number and characteristics (age, gender, nationality, vulnerability) of persons who are intercepted, including whether any expressed protection concerns.

Carriers should be encouraged by UKBA to seek guidance when they come across an individual who may have protection needs.

UKBA should consider how to support carriers who come across passenger who may have protection needs, including waiving fines.

UKBA training for carriers should cover their obligations under international refugee and human rights legislation.

Private carriers should be fully aware of procedures for the local system of referral to UNHCR, independent legal advisors and NGOs. Where private carriers contract out interception functions to private security firms, they must adhere to protection safeguards.

Where an individual is to be returned, a mandatory return interview should be conducted to afford individuals the opportunity to express protection concerns and to access independent legal advice.

UKBA should encourage host countries and carriers to allow time for access to UNHCR, NGOs and independent legal advisors.

Displacement onto dangerous routes

All Interior Ministry and border control staff, in countries where the UK seeks to influence the operation of national border control operations, should receive training and awareness-raising on refugee issues and on identifying victims of trafficking.

Attention should be paid by outposted immigration officials and carriers to the needs of vulnerable groups, including vulnerability based on age, gender and sexuality.

Refugees in permanent transition

The UK should use its influence to increase standards of refugee protection and respect for the principle of *non-refoulement* internationally.

Where the UK is involved in interception activities in the territory of a third country, it must ensure access to adequate asylum procedures and guarantees that refugees will not be refouled.

UNHCR and NGO access to individuals intercepted at air, land and sea border zones should be written into agreements the UK makes with countries in which it conducts extra-territorial immigration control. The presence of independent humanitarian organisations in detention facilities at the border and inland should also be considered.

Foreword

Oktay Durukan, Refugee Advocacy and Support Program, Helsinki Citizens' Assembly

In 2007, asylum applications in the European Union reached a 20-year low. Unfortunately, this is not a reflection of the world becoming a more peaceful place. Whilst Fortress Europe as a critical concept appears out of fashion, over the last decade the vision of a heavily fortified, securitised European borderline to protect Europe from unwanted 'illegal migrants' has become a reality to an unprecedented degree. Although individuals escaping war and persecution are supposed to be the exception to the rule – the beneficiaries of legally sanctioned protection and compassion – refugees are often forced to resort to the same irregular channels to leave their countries of origin and travel towards safety. Despite this, Europe continues to devise and perfect a formidable arsenal of migration control tools and policies, which barely make exceptions for refugees, and fail to take stock of European governments' international legal obligations towards individuals in need of protection.

Gone are the days when governments were solely relying on visa requirements and simple document checks at arrival. Europe is taking 'the battle against illegal migration' further and further away from the actual European borders. Recent years have seen the EU-wide development of a range of externalised 'non-arrival' measures including sanctions on private carriers, posting of immigration liaison officers abroad and interception of boats in international waters and in ports of departure through cooperation agreements with governments in regions of transit. By 'externalising' and 'sub-contracting' migration control functions, European States effectively shift responsibility for refugees to third countries. Where they operate outside EU territories, governments attempt to avoid their human rights responsibilities and are subject to minimal scrutiny and accountability.

Those refugees fortunate enough to reach European territories face an array of post-arrival, 'non-admission' measures meant to deter and divert people from seeking asylum in Europe. The practices range from the automatic trigger of 'readmission agreements' for returning asylum seekers to so-called 'safe third countries', widespread use of detention for asylum claimants and restrictions on access to employment and family reunification, to more insidious diversion measures such as the creation of legally fictitious 'international zones' at airports and the frequent unlawful practice of 'pushing back' irregular migrants apprehended in proximity to borders, without registering their presence, let alone screening for protection needs.

With the launch of the European Agency for the Management of Operational Cooperation at the External Borders of the EU Member States, FRONTEX, the management of the EU's external borders seems more effective than ever. But does Europe's formidable migration control apparatus adequately and sufficiently differentiate between individuals who may be in need of international protection and other migrants? What is the price a refugee has to pay to access safety and protection in Europe? This is a matter of life and death. For refugees, staying home is not an option. In the absence of safe and legal ways to reach European territories, they are forced into dangerous and abusive situations, and are obliged to embrace the perils of life-threatening journeys and the unscrupulous services of smugglers and traffickers.

While too many individuals die in their attempt to reach safety in Europe, many others are indefinitely trapped in regions of origin and countries of transit, struggling to survive on the compassion of governments that lack the legal and administrative infrastructure and resources – and often the will – to extend them the protection they need and deserve. Turkey is indeed one such key country of transit, uniquely positioned as an EU accession country situated at the geographic and political margins of Europe.

Over the past five years, the Helsinki Citizens' Assembly (hCa) has been leading emerging efforts on the part of Turkey's NGO and human rights community to promote and secure the protection of refugees who make their way to Turkey. hCa's work in the area of refugee rights ranges from comprehensive legal assistance vis-à-vis the United Nations High Commissioner for Refugees (UNHCR) and the Turkish government, to monitoring and advocacy activities aiming to improve policies and practice affecting asylum seekers. Earlier this year hCa became the first Turkish NGO to join the European Council on Refugees and Exiles (ECRE) and immediately became involved in ECRE's advocacy focus on defending refugees' access to Europe. We consider the Refugee Council's Protection-Sensitive Borders Project as a very timely and necessary intervention.

Europe's failure to allow access to protection for refugees has consequences. At a minimum, Europe sets a 'bad example', particularly for States in Europe's immediate neighbourhood. The fear of becoming a 'dumping ground' for migrants and refugees motivates governments like Turkey to adopt similar indiscriminate migration control measures aimed at keeping the 'mixed flows' of migrants and refugees at bay, and removing those who did manage to arrive back to countries of transit and origin further to the east and south. At worst, Europe proactively sets transit countries like Turkey up as 'partners in crime', as gatekeepers of Fortress Europe expected to intercept and return irregular migrants and potential asylum seekers at whatever cost. On 23 April 2008 Turkish authorities forced a group of Syrian and Iranian nationals, including 5 UNHCR-recognized refugees, to cross the Tigris river separating Turkey from Iraq. Four persons, including a refugee, were swept away by the strong river current and drowned. Sadly this incident is hardly an isolated affair. It is a tragic reminder of what happens when people escaping

persecution are denied access to safety at the EU's frontiers.

The reality is that the overwhelming majority of violations and instances of refoulement never come to the attention of either the UNHCR or refugee advocates like hCa. In the absence of any independent monitoring bodies and an effective judicial review mechanism, it is hardly possible to speak of any meaningful oversight of border activities. This out-of-sight-out-of-mind effect is arguably an outcome of a calculated secretiveness in the Ministry of Interior's (MOI) operations, and Turkish border authorities' hostile attitude towards attempts by independent actors to monitor their practice. hCa and a handful of other human rights NGOs struggle to overcome major capacity and resource issues as well as legal obstacles in their quest to establish a significant monitoring presence across the country.

I would like to thank colleagues at the Refugee Council for initiating this very important project, which we believe provides a great opportunity for boosting advocacy efforts in the UK and beyond to make Europe once again a safe haven for victims of persecution.

Chapter One – Introduction

Background to the Protection Sensitive Borders Project

For the last 20 years, the numbers of people claiming asylum in Europe has been declining. The Refugee Council has been increasingly concerned that this decline has not been accompanied by comparable falls in global conflicts and human rights abuses. In 2006, the Refugee Council became interested in examining whether the UK's border controls operating outside UK territory were denying refugees access to the UK. It decided to designate its voluntary income to fund a Research and Policy Officer for one year to work on its 'Protection Sensitive Borders Project', launched in August 2007.

This research has benefited from, and is part of, an increased recognition in human rights circles that indiscriminate border control may render the human right to seek asylum obsolete.[1] The Refugee Council's research was designed to address the gap in knowledge as to whether the UK's increased and extra-territorial border control could actually prevent an individual accessing asylum and, if so, what could be done to rectify this?

Methodology

The methodology employed in this project was shaped by the nature of the subject matter: how refugees navigate obstacles placed in their path in order to access a place of safety is an elusive matter. This was reflected in the methodology employed in this project; for example the difficulty of interviewing a refugee who 'did not make it' to the UK combined with the sensitivity of researching irregular travel due to refugees' fears of backlash by smugglers and/or being subjected to punitive government measures. States are also reluctant to share plans which involve State security and border control. These factors meant our research took an experimental path.

International Advisory Group

An International Advisory Group of leading academics, NGOs, lawyers and refugee community organisations was established at the outset of the project to steer the research and lend valuable expertise in what is a complex field. Irregular migration and refugees encompasses considerations that are humanitarian, legal, geographical and technical, and includes the dynamics of international relations and responsibility sharing. The Advisory Group met twice and provided regular input into the project via a virtual forum.

Scoping Exercise

An extensive scoping exercise was conducted to establish lessons learned about the impact of extra-territorial border control on refugees from existing research, including academic and NGO publications. The exercise also looked wider to examine UK government policies, discussions in the UK Parliament, policy documents from the European Union and domestic and international media reports. With this understanding, it was then possible to identify gaps in publicly available knowledge as well as key stakeholders whom we wanted to interview to find out more. Stakeholders fell into four broad categories: refugees, government, NGOs/UNHCR and private carriers. Respondents were drawn from the UK and from our chosen fieldwork country of Turkey.

Interview Schedules

Four questionnaires were designed to cover the four categories above in order to elicit information based on the expertise of the respondents.[2] For example, we asked refugees about their personal experiences of crossing borders, and we asked government officials about the purpose and implementation of border control.

The questionnaires were used as the basis for semi-structured interviews including open-ended questions to prompt the interviewee to give information related to their 'on the ground' experience. The advantage of this flexible approach was that a large amount of relevant data was gained, some of it sensitive. The nature of the subject matter – escaping persecution and being forced to travel irregularly and often dangerously across a border – meant that it was necessary to build trust with respondents by assuring them that the information they gave to us would remain confidential, and any quotes would be anonymised. We were unable to collect quantitative data since figures as to how many persons are intercepted, sent back or allowed passage are not publicly available.

Field Research

A research trip to a country through which refugees transit to the UK gave us a broader picture of access to asylum as an international issue, as well as facilitating exploration into the border control with which we were most concerned – that which is 'exported' by the UK and is being implemented outside UK territory. The premise for our research was that in any mixed flow of people, there are likely to be some who need international protection. Our one base line was that the UK's border controls should not in any way prevent that protection being sought and received.[3]

In selecting a country for fieldwork, we considered the following criteria: the location of outposted UK immigration controls; a country's geographical position in relation to refugees who transit to the UK; likelihood of gaining information in a short period of time overseas; the presence of local refugee NGOs and UNHCR that could assist in making logistical arrangements during our research trip with our visit; and the security of the country. Turkey was selected as best fitting our criteria. Furthermore, as a country that borders both the EU and refugee countries of origin such as Iraq and Iran, Turkey is also a country of refugee origin itself as well as being a potential EU candidate country.

Respondents: Refugees

When designing the interview schedules, we prioritised the need to learn more from refugees themselves. In the context of researching access to asylum, this did not prove an easy task. Refugees had reservations about disclosing information about risky journeys, often due to their sense of shame at being forced into taking irregular routes facilitated by smugglers or traffickers. In certain cases, the journey was a memory the refugee would rather forget, since the experience included extremely dangerous border crossings, risking life and being separated from family.

Interviewees were accessed through various contacts including NGOs, RCOs and the Refugee Council One Stop Service as a way of identifying respondents by using 'gatekeepers'. This entailed following up leads from Refugee Council colleagues and refugee community organisations as to which refugees were able and willing to share their experience of their journey from country of origin to the UK. We were fortunate that four refugees from refugee community organisations in London and three clients from the Refugee Council's office in Leeds agreed to be interviewed, as well as eight representatives from refugee community organisations in both London and Leeds. We attempted to reflect different nationalities as well as considerations of immigration status, age and gender in the sample of interviewees. The main criteria for interview participation was that the individual was able and willing to talk about access issues. Interviewees were guaranteed full anonymity and were compensated for their travel costs.

Interviews with refugees in Turkey were facilitated by the various NGOs we visited, as well as by UNHCR. We interviewed five refugees in Turkey. The reason for the low number was that Turkish NGOs and UNHCR were our 'gatekeepers' and themselves provided comprehensive information about refugees' journeys and experiences. They were unable to identify many refugee respondents for us to interview, as they believed most refugees in Turkey, a transit country, would not talk about their intentions to move on to another country of asylum. In addition, NGOs and UNHCR shared concerns that our interviewing refugees would lead their clients to expect an increased service. NGOs were further concerned that refugees may believe that participation in our study would have a positive or negative effect on a pending refugee claim. Despite

this, interviews with refugees in Turkey elicited qualitatively rich data, and the grassroots expertise drawn from NGO and UNHCR interviews significantly broadened our understanding of border crossing and the situation for refugees in Turkey.

Government

We identified government officials as key stakeholders, given their evident policy making and implementation role in managing immigration and border control. UK government representatives co-operated with our research as well as being interested in our study. We were pleased that UK officials, based in the UK and Turkey, shared our view that access to asylum in the context of mixed flows of refugees and migrants is a complicated area. The Refugee Council sincerely hopes to harness this interest and build on these relations in the future. Unfortunately, Turkish government officials were unavailable for interview, although they signalled their interest in the project and the Refugee Council is seeking to work with them to ensure our recommendations are disseminated and acted upon wherever possible.

NGOs and UNHCR

Our research would have not been possible without the support and expertise of NGOs, as well as the UNHCR in Turkey. Our interviews with them provided a 'big picture' view of the situation in Turkey for refugees, including systematic difficulties involved in getting to, and seeking asylum in, Turkey. On the UK side, we received input from NGOs, including the European Council on Refugees and Exiles, and the Immigration Law Practitioners Association as well as UNHCR's London office via their representation on our Advisory Board. In addition, we were invited to present the Project's initial findings at an academic conference where we benefitted from multi-disciplinary input.[4]

Private Carriers

We interviewed private carriers, for example private airlines, operating in Turkey as they play a crucial role in immigration control. Since they are at risk of being fined £2000 for every improperly documented passenger they bring to the UK, they carry out stringent checks and often refuse transit or boarding. We were warmly received by the carriers (mostly private airlines) and received a detailed explanation of their role in immigration control and the impact of this on the airline staff, passengers and the airline companies.

Summary

The methodology used in this Project has entailed gathering a wide range of perspectives – of refugees, NGOs, UNHCR, private carriers and Government officials – on the issue of access to asylum. As a result, the Refugee Council believes that the recommendations we have made in this report are both realistic and achievable.

1   Universal Declaration of Human Rights 1948, (Article 14 (1)), Paris: United Nations General Assembly. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2   see Annexe One on page 74

3   The Refugee Council recognises the rights of States to control their borders and does not advocate that all refugees who encounter UK border control be brought to the UK.

4   Modern Law Review seminar, Extraterritorial Immigration Control: Legal Challenges, Queen Mary Graduate School of Law, 13 June 2008.

Chapter Two – Contextual Overview

In the light of increased measures employed by States to prevent irregular migrants, including refugees, from even reaching the UK, Guy Goodwin-Gill asks in this report '*whether anything remains even of the right 'to seek' asylum*'. This section will provide an overview of interception, including the UK government's border management policies and activities which are aimed at decreasing the number of arrivals to the UK. Similar trends at EU level, where 'externalisation' policies aim to engage bordering States in the prevention of entry to the EU, will also be explored. We will examine the view of the United Nations High Commissioner for Refugees on the impact of border controls on the protection of refugees travelling in 'mixed flows'.

Background: The right to seek asylum

2008 marks the 60th anniversary of the Universal Declaration on Human Rights, Article 14 of which sets out the right to seek asylum:

"Everyone has the right to seek and enjoy in other countries asylum from persecution."

The Refugee Council believes that this fundamental human right is under threat and that the UK government and its EU counterparts should adopt all measures possible to avoid preventing refugees from fleeing persecution and finding protection.

There is no legal way to travel to the UK for the purpose of seeking asylum. Refugees therefore often have to use the same routes, employ the services of the same smugglers, obtain fraudulent travel documents from the same suppliers and, crucially, encounter the same border controls as non-refugees. The Refugee Council believes that these border controls which are designed to prevent all immigrants from travelling to the UK must be made more sensitive to the protection needs of refugees travelling within mixed flows. It is this belief which has given rise to this study.

The reason for the Refugee Council's concern is that border control involves stopping and/or diverting individuals back to their country of origin or transit. The consequences for refugees are extremely serious as, if intercepted, they could be at risk, directly or indirectly, of return to the very persecution and human rights violations from which they have fled. This process of returning an individual to a place where his/her life or freedom would be threatened for a reason outlined in the

1951 Refugee Convention[5], is known as *refoulement* and is prohibited by the 1951 Convention relating to the Status of Refugees to which the UK is a signatory.

The Refugee Council believes that States face a challenge of establishing ways of guaranteeing that those in need of international protection are not denied access to protection as a result of States' broader migration control programmes. For example, the UK operates much of its border control overseas and states that:

"Tougher checks abroad help keep Britain safe by stopping risks to our country coming close." (Home Office, 2008b: 6)

Over the past decade, the Refugee Council has called on the UK government to assess the impact of its immigration controls on those seeking asylum and on the international refugee protection regime, and to put appropriate safeguards in place. Furthermore, as a member of ECRE, we have this year played a leading role in a European wide advocacy focus on access to asylum.[6] The Refugee Council concurs with ECRE that there is little point in having a Common European Asylum System if there is no way for refugees to access it.

Global numbers

The total number of international migrants was estimated at about 76 million persons in 1960 (IOM, 2005: 379). Forty-five years later, the estimated number had more than doubled to almost 191 million.[7] Within these global movements, asylum-seekers and refugees constitute only a very small proportion.[8] UNHCR estimates that global refugee numbers had actually been decreasing between

2000 and 2005 to reach a 25-year low of approximately 8.4 million at the end of 2005 (UNHCR, 2006c: 3). However, global refugee numbers have been increasing over the past two years, and the latest estimates from UNHCR show that by the end of 2007 there were 11.4 million refugees, the majority of whom had found asylum in developing countries, particularly in Africa and Asia (UNHCR, 2007b: 2).[9] Europe, on the other hand, while experiencing a significant increase in the number of international migrants, actually hosts only a relatively small proportion of the world's refugees.[10] At the end of 2007, this figure stood at 14 per cent (approximately 1,580,000 refugees). The UK now hosts less than 300,000 refugees, representing 2.6 per cent of the world's refugees (UNHCR, 2007b: 8).

Increasing numbers, decreasing sympathy

In the 1990s, increasing numbers of asylum applications across Western Europe, accompanied by decreasing rates of acceptance for refugee status, resulted in heightened hostility and suspicion towards asylum seekers amongst sections of the media, politicians and the general public.[11] Terms such as 'bogus asylum seeker' and 'queue-jumper' became accepted media and governmental language used to describe a population that was increasingly being associated in public discourse with economic migration, abuse of the welfare state and terrorism.

In response to the perceived abuse of the asylum system by non-refugees and the domestic pressures of negative public opinion, States have employed a number of internal and external measures to ensure that asylum seekers are deterred from reaching the UK. The Refugee Council notes that the UK's harsh internal asylum policies such as detention, fast-tracking and reduced legal assistance for asylum applicants, combined with external measures to prevent individuals even entering the territory, have resulted in the dramatic fall in the numbers claiming asylum in the UK. Our concern is that these measures have negatively affected not only non-refugees but also refugees. This is supported by UNHCR in the following statement:

"Unregulated migration can place serious strains on national asylum systems and provoke public hostility towards all foreign nationals, irrespective of their legal status. It can also prompt the imposition of restrictive border controls which fail to make the necessary distinction between prospective entrants on grounds of their need for protection, which lead

to incidents of refoulement, thereby undermining the objective of effective refugee protection." (UNHCR, 2007h: 5)

What is interception?

In this study we focus on the external measures which aim to prevent entry to the UK's territory at the earliest possible stage. The Refugee Council has chosen this focus because there are very few studies of such external border control measures, particularly in the UK context, and little public scrutiny of their operation or impact.

Border controls have adapted to modern forms of 'irregular' travel. Hence the traditional understanding of border controls as something solely implemented at the State's territorial border, at train stations and at airports by the State's immigration officers, has become a thing of the past. States have found that a more effective method of preventing irregular travel to their territory is to target unwanted migrants at the earliest point in their journey. Commentators now refer to 'non-arrival measures'[12], 'interdiction' or more commonly, 'interception'. 'Interception', like the phenomenon it seeks to tackle, appears to have no universally agreed definition but UNHCR has outlined a provisional definition which proposes that interception includes:

"all measures applied by a state, outside its national territory, in order to prevent, interrupt or stop the movement of persons without the required documentation crossing international borders by land, air or sea, and making their way to the country of prospective destination." (UNHCR, 2000b: 2)

UNHCR's Executive Committee subsequently refined the definition to refer only to active measures to prevent access to the territory, including:

'measures employed by States to:

1. *prevent embarkation of persons on an international journey;*

2. *prevent further onward international travel by persons who have commenced their journey; or*

3. *assert control of vessels where there are reasonable grounds to believe the vessel is transporting persons contrary to international or national maritime law;*

where, in relation to the above, the person or persons do not have the required documentation or valid permission to enter…'. (UNHCR, 2003d)

For the purposes of this study, the Refugee Council considers interception in the broadest sense to include visa controls and the imposition of civil penalties on carriers, such as airlines, that bring in improperly documented migrants (carrier sanctions), and the more active measures such as interception and diversion by immigration officials posted in refugee regions of origin and transit.

Extra-territorial responsibilities

The Refugee Council notes that European States have increasingly extended their border controls further away from the external borders of Europe outwards towards the high seas and onto the territory of third countries. In Guy Goodwin-Gill's legal analysis in *The Legal Dimensions* on page 23 of this report, he states:

"Non refoulement is precisely the sort of obligation which is engaged by extra-territorial action, for it prohibits a particular result – return to persecution or torture – by whatever means, direct or indirect, and wherever the relevant action takes place."

ECRE has challenged the notion of a 'legal black hole' and emphasised that States have to respect international and European refugee and human rights law when conducting their extra-territorial activities (ECRE, 2007). UNHCR has also stated its view that, in international law, no distinction is made for actions taken outside of State territory, nor for the actions of those contracted by the State, when it comes to deciding responsibility for respect for human rights (Brouwer and Kumin, 2004).

The Refugee Council would like to see increased transparency and public accountability in respect of out of sight border control in order to ensure that the UK's extra-territorial controls do not result, directly or indirectly, in *refoulement*.

UK Government priorities

The broad aims set out in the UK's international priorities are to reduce arrivals, increase returns and promote the UK's migration policies abroad.

The UK Border Agency (UKBA) was launched on 3 April 2008 as a shadow agency of the Home Office, uniting border, immigration, customs and visa checks into one body. UKBA is now responsible for both border checks overseas (visas etc) as well as deciding on refugee claims made in the UK.

UKBA was established following a wide-ranging

assessment of the UK's anti-terrorism efforts, which claimed that the first line of defence against terrorism is overseas.[13] Consequently, UKBA is presented as the latest measure to tackle international crime through border controls and migration management.

"UKBA… has been formed to respond quickly to new threats to Britain's security, to stay one step ahead of lawbreakers and protect the country 24 hours a day. It is also backed up by world-leading technology that tracks the people setting out on journeys to UK ports and airports so that wanted criminals can be arrested before they cross the border."[14]

The Agency includes more than 9,000 border control officers operating in the UK and across 135 countries worldwide. UKBA's strategy is to create a single border intelligence service to bring together overseas risk assessment units, airline liaison officers and customs and immigration intelligence officers based around the globe.[15]

In the 2007 strategy document 'Managing Global Migration' the government cited its intention to introduce a 'different doctrine of control' and referred to the creation of a new offshore border. The government aims to achieve its objective of managing migration flows by:

1. Acting as early as possible to prevent the arrival of irregular migrants.

2. Making use of the collection and analysis of data, intelligence and information to allow for a more targeted response to migration flows.

3 Cooperating with third countries through bilateral and multilateral agreements, the development of compatible systems and the common use of new technology (Home Office and Foreign and Commonwealth Office, 2007).

The ultimate goal of the government is to take border controls 'upstream' to the earliest possible point in the individual's journey to the UK. This would facilitate the identification of irregular movers and "*stop or control them before they reach the UK*" (Cabinet Office, 2007: 8). Early identification and intervention of irregular migrants is preferred by the government because it is perceived to be more effective and cheaper than identification on, and removal from, UK territory. Hence the government statement:

"it is better to prevent illegal immigrants from travelling to the UK, than to remove them once they have arrived." (ibid: 56)

This early interception will be conducted by the UK's own outposted immigration officials present in countries of origin and transit. UKBA further plans to 'build the capacity' of countries of transit and origin to manage migration through the provision of training and equipment, as well as sharing practices. It intends to set up a 'rapid response system' to deploy immigration specialists abroad to offer advice, support, and training to host country immigration officials. The impact on refugees of the UK's border control efforts aimed at decreasing irregular arrivals will be explored throughout this report.

The UK views itself to be at the forefront of the use of technology in border control and is in the process of identifying ten key partner countries with which to develop 'biometric relationships' to work on their migration agenda, including visa systems and data-sharing. A detailed examination of the use of the UK's use of technology in border control is included in Chapter Three of this report.

The inclusion of different government departments in immigration control is reflected in the cooperation between the Foreign and Commonwealth Office (FCO) and the Home Office on migration control. In early 2008, David Miliband, Secretary of State for Foreign and Commonwealth Affairs, outlined the FCO's strategic priorities, revealing the new focus on border controls. One of the essential services of the FCO is now to:

"ensure, through a robust migration and visa policy, that UK borders are… closed to those who might cause harm or come here illegally" [and to] *"promote with the EU and other partners effective international cooperation that supports the UK's border and migration objectives."*[16]

The Refugee Council is concerned at the lack of a human rights approach to border control, and in particular the absence of refugee protection in plans for stronger border controls.

Europe's borders

There has been much media coverage of the attempts made by irregular migrants to get to the EU by boat, including their tragic death at sea. NGOs have highlighted human rights abuses occuring at border posts as well as the risk of indirect

refoulement when EU States push migrants back to third countries such as Libya and Morocco.

Recommendations to identify and protect refugees in mixed flows are regularly being made at EU level. ECRE has published a comprehensive overview of the impact on refugees of the EU's approach to the prevention of irregular migration entitled 'Defending Refugees' Access to Protection In Europe', in which it:

"urgently calls on EU countries to review and adapt all border management policies and operations in order to ensure the full respect of the principle of non-refoulement at its external borders." (ECRE, 2007: 2)

The Refugee Council fully endorses ECRE's recommendations to improve refugees' access to protection in Europe. We would particularly highlight concerns around the impact on refugees' access to asylum of the EU agency responsible for operational co-ordination of the EU's external borders, known as FRONTEX. In evidence given to a House of Lords Inquiry into Frontex in 2007, the Refugee Council and ECRE called for protection considerations to be included in its land, air and sea operations.[17] We also highlighted the seriousness of including protection safeguards in agreements with third countries, some of which have records of human rights abuses and a lack of respect for the principle of *non-refoulement*. In addition, we called for an improvement in data collection and for the profiles (nationality, age, gender etc) of intercepted individuals to be made publically available.

The future of European border control
The Refugee Council anticipates increased coordination at an EU level in relation to border control and the formulation of agreements with third countries. We hope that the European Commission's commitment to ensure access for those in need of protection as outlined in its 2008 Policy Plan on Asylum is fully realised.

"Legitimate measures introduced to curb irregular migration and protect external borders should avoid preventing refugees' access to protection in the EU while ensuring a respect for fundamental rights of all migrants." (European Commission, 2008: 3)

The EU's agenda for the 'external dimension', including stronger financial and technical support for third countries that host large numbers of asylum seekers, the establishment of an EU resettlement

scheme, the expansion of Regional Protection Programmes, and proposals for the examination of Protected Entry Procedures (PEPs) is not a focus of this report. However, the Refugee Council wishes to point out that it is supportive of the EU's efforts to enhance protection in third countries and is in particular supportive of an EU resettlement scheme. It is important that any attempt to manage refugee movements must be in addition to, and not a substitute for, safeguards that protect refugees arriving spontaneously.

UNHCR's approach

The Refugee Council is pleased that UNHCR has given a high priority to the protection of refugees in the context of mixed migration movements (UNHCR, 2003f) and notes its concern that States tend to address asylum pressures through 'undifferentiated' interception practices (UNHCR, 2007c). UNHCR's approach to the issue as it evolves is explored below.

EXCOM Conclusion on Protection Safeguards in Interception Measures

In 2003, UNHCR's Executive Committee published its Conclusion on Protection Safeguards in Interception Measures (UNHCR, 2003d). The Conclusion calls for the safe and humane treatment of intercepted persons with particular attention to the special needs of refugee women and children. It further calls for respect for the human rights of all intercepted persons, including the right to life and the right to seek and enjoy asylum in other countries. It recommends the training of all persons involved in implementing border controls, including both State and private actors, on the applicable standards of international law and required procedures. The need for durable solutions – integration, resettlement or return – for intercepted migrants was identified.

The Refugee Council notes that the Conclusion places responsibility for the protection needs of intercepted persons on "*the State within whose sovereign territory, or territorial waters, interception takes place*" and believes this must be viewed in the light of the prohibition on indirect and direct *refoulement* which applies to States acting outside of their own jurisdiction.

UNHCR's Ten–Point Plan

In July 2006, UNHCR presented a Ten-Point Plan of Action on refugee protection and mixed migration. The Plan outlines a number of key areas in which comprehensive action is needed in order to address protection issues arising in situations of mixed migration. Meant as a practical tool, UNHCR has published a number of Ten-Point Plans relevant to the regional context – including Eastern and Southeastern Europe. For countries such as the UK that export their borders, the Refugee Council would welcome a toolkit addressed towards protection in the context of extra-territorial control.

The High Commissioner's dialogue on mixed migration

In December 2007, the High Commissioner initiated a 'dialogue' on protection challenges within the context of mixed migratory flows and stated:

"We must ensure that efforts to improve the situation of refugees in developing regions are not used as a pretext by the world's most prosperous countries to dump protection problems onto States with far fewer resources and much weaker capacity. Refugee protection in the South is necessary but it can never be an alternative to asylum in the North." (UNHCR, 2007i)

UNHCR believes that international migration cannot be controlled through interception measures and migration management alone, but that a comprehensive solution must straddle policy areas, taking account of human rights, conflict resolution, reconstruction, environmental degradation and development. It has called on States to work together on a bilateral and regional level, to guarantee the human rights of migrants are protected and to offer viable alternatives to irregular movement, such as accessible, legal migratory channels.

'Protection space' within broader migration flows

More recently, UNHCR has abandoned the concept of the 'asylum-migration nexus' and chosen to replace it with the more straightforward notion of 'refugee protection and durable solutions in the context of international migration' (UNHCR, 2008b). Anxious that the nexus concept reinforced a misplaced focus on the South-to-North movement of people and neglected the role of the developing world as host to the overwhelming majority of the world's refugees, UNHCR has sought to broaden the agenda beyond the key concerns of industrialised States. UNHCR appears keen, however, for Western States to acknowledge links between their actions and the impact on neighbouring States.

This new rhetoric allows UNHCR to incorporate into its programme less traditional policy areas, in order to advocate for a more comprehensive and integrated approach. UNHCR now takes a more vocal stand on mixed flows that see refugees moving with other migrants, the mixed motivations of migrants, the onward movement of both recognised refugees and asylum seekers, the protection afforded to victims of trafficking, and the provision of legal migration opportunities to prevent irregular movement. According to Erika Feller, the Assistant High Commissioner for Protection, it is "*really important for UNHCR to play a role in relation to the management of mixed migration situations by States, because it will be to the detriment of refugee protection if we don't… Our involvement is designed to make some space in the broader management of this problem, some space for protection.*"[18]

Human rights of non-refugees

Whilst this study focuses on refugees, the Refugee Council would reiterate that although a migrant may lack legal immigration status as a result of travelling irregularly, s/he is still protected by her or his fundamental rights as a human being. ECRE supports this position and demands that UNHCR guidelines on the humane treatment of all migrants, as defined in the 'Conclusions on Protection Safeguards in Interception Measures', be taken into account during interception activities (ECRE, 2004a). The Red Cross has echoed this concern about the inhumane and degrading treatment caused to migrants, including children, and urges "*all European and bordering States to respect the human dignity of all migrants who are coming to and staying in Europe for various reasons regardless of their ethnic origin, gender, religion, nationality or legal status and according to applicable International Law and to ensure them a fair and humane treatment*" (Red Cross EU Office, 2006: 2).

International Organisation for Migration (IOM) programme and priorities

IOM is an intergovernmental organisation whose role is to facilitate humane and orderly migration, while also reducing irregular migration which, it believes, constitutes a significant threat to States' ability to implement their migration control programmes.

In many countries, IOM's activities focus on return and reintegration. IOM has been criticised by NGOs, such as Human Rights Watch, for its partnerships with States that lack legal frameworks and infrastructures for refugees and that have poor human rights records, including in relation to migrants. Where no effective asylum regime exists, IOM's critics assert that it is impossible to know if the 'stranded migrants' assisted by IOM do, in fact, have protection needs.

IOM conducts information campaigns in countries of origin and transit to promote repatriation, and to warn of the dangers of trafficking and irregular travel. IOM also collects information on irregular migration flows and carries out research into the demand for irregular migration.

Refugee Council believes that IOM shares with UNHCR a responsibility to ensure that humanitarian concerns are taken into account by States in the implementation of measures to control irregular migration. We share Human Rights Watch's concern that IOM's lack of a human rights based approach means that the migrants it encounters, including refugees, will not be afforded appropriate procedural safeguards.

Forced returns as a non-arrival policy

The Refugee Council notes that the UK government's asylum policy is overwhelmingly focused on the return of those who have been refused asylum, and the introduction of measures to limit the State's responsibilities to those who cannot return but have not been granted status in the UK. The Refugee Council has criticised the forced return of refused asylum seekers to a number of countries that, even by conservative estimates are considered unsafe, such as Iraq and Zimbabwe. The government has deliberately embarked upon such returns in order to send a 'message' to deter future arrivals. The Refugee Council believes that forced return should not be used as a message to suggest to populations, that include individuals suffering persecution and human rights violations, that they should not leave the country where they are at risk in order to seek sanctuary in the UK.

Neglect for international obligations and responsibility sharing

The Refugee Council believes that by preventing asylum seekers from reaching the UK, the Government is shifting responsibility for refugees onto other countries, often those that are least able to provide them with the protection they need. As immigration controls increase on some routes, they become impassable, and people seek new routes of entry resulting in a displacement effect. This effect has been recognised by the UK government[19], but it

continues to intercept in States, such as Kenya, which border refugee-producing countries and already host the majority of world's refugees (UNHCR, 2007b). By preventing refugees from leaving underdeveloped and poorly resourced countries, the UK increases the social and economic costs they are forced to bear (Refugee Council and Oxfam GB, 2005). Displacing refugees onto poor countries in the region undermines the notion of burden-sharing upon which the international refugee protection system was initially conceived.

Summary

This chapter has outlined the context that refugees find themselves in when trying to obtain protection in Europe. The research that is presented in subsequent chapters of the report explores the experiences of refugees and those who work with refugees, as well as agencies tasked with enforcing extra-territorial controls, in order to assess whether our borders are protection-sensitive.

5   Article 1 A(2) of the 1951 convention relating to the Status of Refugees cites the reasons as: As a result of events occurring before 1 January 1951 and owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

6.   www.ecre.org/access_to_europe [accessed 31 October 2008].

7   Figures sourced from online population database: United Nations, Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, 2006. Trends in Total Migrant Stock: the 2005 revision. [Online] Available at: http://esa.un.org/migration/index.asp?panel=1 [accessed 27 October 2008].

8   In 1960 refugees constituted only 2.9 per cent of international migrants, increasing to only 7.1 per cent by 2005. Source: Ibid, [accessed 27 October 2008].

9   At the end of 2007, the Middle East and North Africa region hosted a quarter of all refugees (approximately 2,700,000 refugees) (UNHCR, 2007b: 7).

10   In Europe, the number of international migrants has increased significantly, particularly in the 1990s. Between 1970 and 2000, their numbers rose from 19 million to 33 million, an increase of 14 million (IOM, 2005: 381). During the same period, refugee numbers in Europe rose by only 1.8 million (United Nations, 2006).

11   According to UNHCR statistics, annual asylum claims increased from 13,000 in the 1970s to almost 700,000 by 1992 (UNHCR, 1997 cited in Gibney, 2005: 5).

12   According to Gibney "non-arrival measures" aim directly to impede access to asylum (Gibney, 2005: 4).

13   Website of the Prime Minister's Office, 2007. Statement on security by Gordon Brown to parliament. [Online] 25 July. Available at: www.number10.gov.uk/Page12675 [accessed on 28 October 2008].

14   Home Office press release, 2008. Smugglers feel the force. [Online] 8 July. Available at: www.whitehallpages.net/modules.php?op=modload&name=News&file=article&sid=115394&mode=thread&order=0&thold=0 [accessed on 30 October 2008].

15   Home Office press release, 2008. Launch of Britain's new Unified Border Agency. [Online] 3 April. Available at: http://press.homeoffice.gov.uk/press-releases/launch-of-ukba [accessed on 30 October 2008].

16   Foreign and Commonwealth Office, 2008. Better World, Better Britain. [Leaflet].

17   For more information see Refugee Council and the European Council on Refugees and Exiles (ECRE), 2007. *Joint Response to Select Committee on the European Union Sub-Committee F (Home Affairs): Frontex Inquiry*. [Online] Available at: www.refugeecouncil.org.uk/policy/responses/2007/frontex.htm [accessed 17 November 2008].

18   UNHCR. 2007. Q&A: Why UNHCR cares about migration flows. [Online] Available at: www.unhcr.org/cgi-bin/texis/ vtx/asylum ?page=interview [accessed 28 October 2008].

19   In February 2003, following the closure of the Sangatte refugee centre and the introduction of UK immigration controls and detection technology in France, Home Secretary David Blunkett stated "*Of course we are alert to the potential for displacement*". Home Office press release, 2003. UK/French cooperation key to combating terrorism and illegal migration, 4 Feb.

The legal dimensions

Any analysis of the UK's extra-territorial border controls must be framed within an accurate legal context in order to underline the obligations and responsibilities incumbent on the State. In order to achieve this, we asked Guy Goodwin-Gill, international legal expert and valued member of our project advisory group, to conduct an assessment of the UK's obligations under international refugee and human rights law in relation to border control and access to protection. We hope that this analysis will form a key contribution to the debate on migration control and will serve as a useful tool to legal practitioners, campaigners and policy makers seeking clarity on a much-disputed area of law.

A legal analysis

Guy S. Goodwin-Gill, Senior Research Fellow, All Souls College, Oxford, and Professor of International Refugee Law, Oxford University

In this 60th anniversary year of the UN General Assembly's Universal Declaration of Human Rights (UDHR), the status of one article in particular demands attention. Article 14(1) declares that, "*Everyone has the right to seek and to enjoy in other countries asylum from persecution*". But despite much international human rights law-making over the last six decades, the right to asylum, considered as an individual entitlement rather than just the privilege of the State, remains very much where it was in 1948.

Back in 1948, many States saw no need for a right to asylum. The United Kingdom's own proposals for the UDHR contained nothing on asylum, and when France nevertheless proposed text which would have included the right to seek, *and to be granted*, asylum, the UK led the opposition. In its view, no foreigner could claim the right to enter a State, unless it were granted by treaty. To this day, though some regional developments are helping to fill the gap, there is still no general treaty provision on asylum as a human right.[20]

Yet human rights and refugee law have themselves developed, governing many aspects of the relationship between the State and individuals within that State's territory or within the jurisdiction, custody, or control of the State. Thus, treaty obligations or obligations which are binding as a matter of customary international law, significantly limit a State's options when it comes to curtailing or obstructing the movement of people in search of refuge.

The 1951 Convention and 1967 Protocol relating to the Status of Refugees, now ratified by some 147 States, provide positive endorsement of a refugee definition which, in the face of the challenges of ethnic and gender-based persecution, has proven itself flexible enough to encompass new groups of refugees. The Convention and Protocol also lay down the fundamental principles of refugee protection – freedom from penalties for illegal entry (Article 31); freedom from expulsion, save on the most serious grounds (Article 32); and, of course, freedom from *refoulement*, that is, return in any manner whatsoever to a territory in which the refugee would be at risk of persecution.

But there are gaps in the Convention protection regime – grey areas, and matters on which the Contracting States did not anticipate a need for regulation. For example, the Convention does not prescribe which of many possible transit States should assume responsibility for deciding a claim to refugee status and asylum, while many Convention benefits, being oriented to successful settlement in the country of refuge, have a strong, sometimes exclusive territorial focus. In this apparently unregulated area, States such as the United Kingdom, other EU Members, Australia, Canada and the USA, can often be found engaged in operations to curb irregular migratory movements, including (though generally without differentiating) those undertaken by people in search of refuge and protection.

Globalisation may not have brought conflict and the need for protection to an end, but it seems certainly to have enhanced the opportunities to travel further afield. The question is, whether anything remains

even of the right 'to seek' asylum. The measures now employed to obstruct asylum seekers, as outlined in this report, raise critical questions regarding the human rights obligations of States when acting outside their territory, and whether individuals in that uncertain no-man's land called transit, are still 'rights-holders' and capable, at least in principle, of claiming effective protection. This report illustrates the very great practical difficulties facing asylum seekers today.

In fact, however, developments in the international law of State responsibility, coupled with those in the human rights field, permeate the range of activities which States may engage in beyond their borders. 'Effective protection' is not a legal concept as such, but a standard of compliance constructed with the refugee, the asylum seeker, human rights and solutions very much in mind.[21] The background to the notion is the general obligation of the State to respect and ensure the human rights of everyone within its territory or within its power or effective control.

For the United Kingdom, this is well illustrated by the recent House of Lords judgment in *R (Al Skeini and others) v. Secretary of State for Defence* [2007] UKHL 26, where the Court held that those in the 'custody and control' of the British armed forces in Iraq were protected by the Human Rights Act and therefore by the European Convention. Similarly, in *R (on the application of 'B') v. Secretary of State for Foreign Affairs* [2004] EWCA Civ. 1344, [2005] QB 643 – Afghan minors seeking protection in the British Consulate in Melbourne – the court again recognised, if not on the facts in the instant case, that the Human Rights Act was capable of applying to the actions of officials, for example, where there was an immediate and severe threat to the physical safety of individuals seeking refuge in diplomatic premises.

As a matter of general international law, it is undisputed that the State is responsible for the conduct of its organs and agents wherever they occur. The International Law Commission's articles on the responsibility of States for internationally wrongful acts make this abundantly clear.[22] Even when it exceeds its authority or acts contrary to instructions, the organ or agent exercising elements of governmental authority acts for the State.[23]

In principle, international responsibility may be engaged wherever the conduct of its organs or agents (the military, the police, officials generally) is *attributable* to the United Kingdom, and that

conduct breaches an obligation binding on the UK. To take the simplest example, the United Kingdom may no more torture foreign nationals abroad, than it may 'at home'. The 1984 United Nations Convention against Torture (CAT84) obliges a State party to take effective measures to prevent torture in any territory under its jurisdiction, but also obliges it to establish jurisdiction over all acts of torture where the alleged offender is one of its own nationals.

Non-refoulement is precisely the sort of obligation which is engaged by extra-territorial action, for it prohibits a particular result – return to persecution or risk of torture – by whatever means, direct or indirect, and wherever the relevant action takes place.[24] A State which intercepts a boat carrying refugees on the high seas and which returns them directly to their country of origin violates the principle. The fact of interception – the taking of control and custody – establishes the necessary juridical link between the State and the consequence. Equally, an intercepting State which disembarks refugees and asylum seekers in a country which it knows or reasonably expects will *refoule* them becomes party to that act. It aids or assists in the commission of the prohibited conduct.[25] It is responsible, as is the State which actually does the deed. Moreover, no State can avoid responsibility by outsourcing or contracting out its obligations, either to another State, to an international organisation or to a private agent such as a carrier.

Building on the refugee protection principle of non-refoulement, Article 3 of CAT84 expressly prohibits return to risk of torture in another State, just as the doctrine established by the European Court of Human Rights around Article 3 of the European Convention on Human Rights ('No one shall be subjected to torture or to inhuman or degrading treatment of punishment') has also underlined the *absolute* nature of protection against torture, including against return to torture. As the Grand Chamber of the European Court of Human Rights unanimously reiterated this year, in *Saadi v Italy* (Appl. 37201/06, 28 February 2008), there are no exceptions to this principle, and States must find alternative means to deal with so-called security risks, which are compatible with the protection of human rights.

States party to the European Convention have undertaken very distinct obligations – to protect the right to life, to prohibit and protect against torture,

to protect life and liberty, to provide a fair trial, and to ensure respect for private and family life, among others. European human rights doctrine recognises that, depending on the facts, these individual rights may have a limiting impact on the sovereign competence of States to determine who may enter and remain in their territory. In addition, the European Court of Human Rights has recognised that the European Convention can apply to States in relation to extra-territorial activities, though there are limitations, and that States cannot 'contract out' of their responsibilities, for example, by transferring governmental functions to an international organisation, or a private company. The primary responsibility thus remains with the State.

Other international obligations relevant to the policy and conduct of United Kingdom officials abroad can be found in treaties, such as the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD65), the 1966 International Covenant on Civil and Political Rights (ICCPR66), and the 1989 Convention on the Rights of the Child (CRC89). Article 7 ICCPR66 provides protection not only against torture, but also against cruel, inhuman or degrading treatment or punishment, while Article 3 CRC89 declares that in all actions affecting children, 'the best interests of the child shall be a primary consideration'. In ratifying ICERD65, the United Kingdom undertook to eliminate and not to engage in racial discrimination. Indeed, the Race Relations Acts, with their foundation in the UK's international obligations, were an important factor in the *Roma Rights* case.[26] Here, in a challenge to UK pre-screening at Prague Airport, the House of Lords found evidence of racial discrimination and racial profiling, contrary to British law and the UK's treaty obligations.

This case illustrates a number of legal issues relevant to the formulation of policy towards the movement of people in search of refuge. Even if the right to be granted asylum is still not formally recognized by States, nevertheless there are certain measures which States may not take in order to stop people from seeking asylum. Racial discrimination is prohibited, as are measures calculated or which have the effect of exposing the individual to the risk of torture, or cruel, inhuman or degrading treatment or punishment.

Clearly, however, the nature of airport liaison officer and similar operations in distant airports will not always allow issues and solutions to be properly identified, including rights and the need for

protection. If the United Kingdom's human rights and refugee protection obligations are to be fulfilled effectively and in good faith, more serious attention must be paid to the general obligation of co-operation and support which States have undertaken in regard to countries admitting or receiving refugees. As the Turkish representative put it at the 1989 UNHCR Executive Committee meeting, the refugee problem, 'was such that it was no longer possible to disassociate international protection from international co-operation and assistance.'

Human rights and refugee protection obligations such as those illustrated above are not contingent, but neither are they self-executing. The United Kingdom has committed itself to protect, and the Human Rights Act is a clear legislative statement of intent. A decade or so later, however, it is by no means clear that specific human rights obligations and what they imply are integrated sufficiently, or at all, into policy and practice. In short, a human rights culture throughout government seems to be still some way off.

20 These developments include the EU's Qualification Directive, which links entitlement to a residence permit to recognition as a refugee, and the extension of protection under human rights instruments, such as the European Convention and the Inter-American Convention on Human Rights.

21 For more information on 'effective protection' see Chapter Seven on permanent transition.

22 The ILC articles are annexed to UNGA resolution 56/83, 'Responsibility of States for internationally wrongful acts', 12 December 2001.

23 See arts. 4-11 generally, and arts. 7, 9, in particular; above note.

24 Goodwin-Gill, G. S. & McAdam, J., The Refugee in International Law, Oxford: Oxford University Press, 3rd edn., 2007, 244-53.

25 Art. 16 of the ILC Articles on State Responsibility (above n. 26), 'Aid or assistance in the commission of an internationally wrongful act', provides: 'A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and (b) The act would be internationally wrongful if committed by that State.' See also, Goodwin-Gill & McAdam, The Refugee in International Law, above note, 252-3, 389-90.

26 R (European Roma Rights Centre) v Immigration Officer, Prague Airport (UNHCR Intervening) [2005] 2 AC 1, [2004] UKHL 55.

Chapter Three – Visa restrictions and e-Borders

Current UK border control policy is driven by a desire to move migration control as far 'upstream' as possible. The goal is to identify irregular movements and "*stop or control them before they reach the UK*" (Cabinet Office, 2007: 8). Overseas border control activities are a major element of the UK's migration management programme, and over recent years they have moved closer to refugees' regions of origin. This section will look at some of the main border control measures implemented by the UK in refugee countries of origin or transit, that have made it harder for refugees to leave the country in which they face persecution and seek protection in Europe.

> *"By requiring a refugee to obtain proper travel documentation before fleeing his or her country to seek asylum in another country, States in fact ignore the very problems which give rise to the need for refugee protection and, in effect, deny the possibility of asylum to some refugees."* (UNHCR, 2000a: 10)
>
> *"They either come to Europe or die trying* [...] *they don't have another option."* (DF, RCO representative London)
>
> *"I had no choice, I could not have used the Zimbabwean passport and come into the UK. I couldn't."* (KI, refugee, Leeds)

Visa restrictions

The UK maintains a list of countries whose nationals are required to obtain a visa before travelling to the UK regardless of their reasons for wanting to enter the UK; these are known as 'visa nationals'. In addition, for certain purposes, such as a family reunion, obtaining entry clearance is mandatory for all non-nationals. This allows the Government to conduct checks whilst the traveller is still in his or her country of departure. At different points during the journey, through a combination of control measures including airline liaison officers, carrier sanctions and port police, this traveller can be checked by a variety of actors, positioned at key points, to decide if s/he is admissible to the UK and to prevent entry if necessary. In this way, visa restrictions form the frontline of immigration control and allow migration management to become detached from the physical border and to function efficiently at every stage along an individual's journey to the UK.

Visa restrictions allow States to screen out undesirable migrants, such as those seeking to conceal their identity for criminal purposes or those wishing to claim asylum in the UK, while facilitating the entry of others. In April 2008, the Border and Immigration Agency, UKvisas and Revenue and Customs were brought together to form the UK Border Agency. Hence, the UKBA now operates a visa service issuing visas at UK Embassies, High Commissions and Consulates abroad. Entry Clearance Officers (ECOs) based in visa offices overseas make decisions on visa or entry clearance applications.

Visa regimes as way to control asylum numbers

The UK's visa restrictions do not apply uniformly to all foreign nationals but instead are informed by the State's political, economic and historic ties. UKBA asserts that country visa regimes are normally imposed where there is evidence of the systematic abuse of immigration controls by the nationals of a particular country (Home Office, 2002). A glance at the visa restrictions imposed over the past 20 years suggests that they have been used to stop potential asylum seekers reaching UK territory:

1. In 1987 the government imposed a visa restriction on Sri Lankan nationals following an increase in the arrival of Tamil asylum seekers;

2. In 1989 the government imposed a visa restriction on Turkish nationals in response to a rapid increase in the arrival of Kurds;

3. In 1992 nationals of the former Yugoslavia and in 1994 nationals of Sierra Leone and the Ivory Coast were required to obtain visas to travel to

The introduction in 2003 of a visa requirement for citizens of Zimbabwe was in direct response to the large numbers of asylum seekers from the country. The measure was effective as the number of asylum seekers from Zimbabwe fell from 7,655 in 2002 to 3,295 in 2003 (Home Office, 2004: 3). The Government has cited this as an example of success in tackling 'abuse' of the asylum system, despite the fact that 2,240 Zimbabweans were recognised by the UK as Convention Refugees in the year before the visa requirement was introduced (ICAR, 2006: 1).

The Government does not hesitate in linking the imposition of Airport Transit Visas (ATVs) with a reduction in asylum numbers. In 2005 it claimed that:

"we have substantially increased the nationalities that require visas just to pass through the UK. This has had a significant impact on unfounded asylum applications." (Home Office, 2005: 25)

The Refugee Council believes that it is inappropriate for the Government to use visa restrictions as a mechanism to curb the arrival of refugees and asylum seekers. To use visas in this way undermines the right to seek asylum and threatens the international protection system.

The visa waiver test
In 1991, the nationals of just 19 countries were required to obtain visas regardless of their reason for travelling to the UK; that number is now 108.[27] In July 2008, UKBA conducted a visa waiver test to review all non-European countries against a set of strict criteria to determine the level of risk they pose to the UK in terms of illegal migration, crime and security. Following the test, UKBA proposed new visa restrictions for 11 countries, which would extend the 'visa net' over 80 per cent of the world's population.[28] Two of the new visa countries, Malaysia and South Africa, are countries used by refugees, including one of our respondents, to enable their irregular movement to the UK for the purpose of claiming asylum. The Government now intends to work with these countries over the next six months to reduce the risk they pose.[29]

We can assume, from the criteria used to judge the risk posed, that a country on this visa list will have to, inter-alia, increase co-operation on the readmission of its nationals from the UK and show

adequate efforts to address 'immigration abuse', including 'misuse' of the asylum system. This use of visa restrictions in the development of relations with third countries is not new. The EU and its individual Member States frequently promise to liberalise visa requirements for non-EU countries in exchange for readmission agreements.[30] Such agreements which facilitate the return of nationals of the receiving State and third country nationals, including failed asylum seekers that have passed through the receiving State, have serious implications for refugee protection. The Refugee Council believes that third country nationals should never be returned under such agreements and nationals should only be returned where their life and safety are not at risk.

Access to visas
During World War II it was common practice to issue 'protective passports' or transit visas to Jewish refugees, which either protected their holders from harm pending emigration, or enabled them to flee occupied territories.[31] In theory, humanitarian visas are available from UK Consulates.[32] The UK's system is, however, extremely limited, in part because it requires the applicant to have already left their country of origin (without which they could not be a refugee). In practice, humanitarian visas are not widely used and it is now impossible for an individual to enter the UK legally for the purpose of claiming asylum.[33]

In some cases, refugees are not even able to leave their country of origin due to the passport or visa requirements of other States. The process of obtaining a visa requires an applicant to present a valid passport as well as supporting documentation such as, in the case of a visitors visa, bank statements, a letter from an employer and a letter from the sponsor in the UK. Most categories under the immigration rules require the applicant to show that they have an intention to return home at the end of their stay. By definition refugees cannot meet that criteria. Therefore even if they do have a travel document they are forced to lie about their intentions in order to get a visa to come to the UK. Many refugees face a fundamental problem in that they are unable to approach State authorities to obtain travel documents and visas for fear of the risk this would pose to their lives. Where the State apparatus has completely collapsed, as in the case of Somalia, there is no agency to issue passports. Our respondents described situations where they were denied passports due to targeted discrimination against a minority group, or corruption within State systems:

"I couldn't [come with a passport] because in order to get passport you should pass military service for two years, you should serve military service and according to our religion we won't do this." (SV)

"When Saddam [was] president is no giving to anybody passport. Yeah, if somebody is rich man or he is in party, you know, is giving, or is in business. But anybody, no is given passport." (AD, refugee, Leeds)

In some countries, such as Iran, women are unable to obtain travel documents without permission from a male relative, and some are thus forced to rely on forged documents to leave their country of origin. Those refugees who do have identification documents are often obliged to leave them behind when they flee to the neighbouring country because they are in a rush to leave, are afraid that they will lose them, or suspect that they may robbed along the route.

"someone who has run from a civil war they don't have the time to carry all the documents they need to carry, some of them have been robbed on the road while they were coming there. Most them don't have any kind of documentation." (DF, RCO representative, London)

Applicants will be refused a visa if they fail to meet the requirements of the immigration rules, including seeking entry for a purpose not covered by the rules, failure to produce a valid passport or national identity document, or the use of false documents. Unable to access the visa route legitimately and yet still seeking a safe passage to the UK, some refugees will be forced to submit a visa application under false pretences. Those who apply for a visa and reveal, or who are suspected of having, an intention to seek asylum, will almost certainly have their application refused. One of our respondents, an elderly Somali woman who has refugee status in the UK, attempted to gain entry to the UK by applying for a visit visa at the British Embassy in Ethiopia. She was repeatedly refused and eventually reached the UK after an extremely dangerous journey that lasted two years:

"In Ethiopia they […] give negative... I don't know the reason, they give three times." (SA, refugee, London)

Visas as a deterrent

It is still unclear what impact visa requirements have on irregular migration, but there is no evidence to suggest that they deter refugees from travelling altogether. The European Commission has admitted that it is not clear:

"whether or not there is a direct link between the imposition of visa requirements and a slowing down of illegal immigration. On the contrary it seems difficult to prove a link between the lifting of visa requirements and a subsequent increase of illegal immigration." (European Commission 2004a: 13)

Imposing visas on nationals of refugee-producing countries may provide a short-term dip in asylum numbers in the UK, but those numbers are likely to recover as refugees find alternative, irregular forms of migration in order to enter the country to seek protection. Our research found that smugglers adapted quickly to the closing down of particular routes and found new ways to reach the UK. One of our respondents explained how quickly alternative routes were created when visa restrictions where imposed on Zimbabwean nationals:

"When the visa restrictions where imposed I stopped visiting the [migrants'] hostel ... I thought there would be no new Zimbabweans arriving. Then after Christmas I heard rumours that there were Zimbabweans up there so towards the end of January I went back. I was amazed; there were a lot of new arrivals. They had all come through new directions. I was amazed of how fast new routes had been established by agents." (SH, RCO representative, London)

As visa restrictions blocked the legal route to Europe, many of our respondents fled instead to neighbouring countries where they did not need a visa, including Kenya, Pakistan, Ethiopia, South Africa, Syria and Turkey. As this report has already illustrated, these countries not only host the majority of the world's refugees, but have been widely criticised for their treatment of migrants, particularly the lack of adequate procedures for providing international protection to refugees (Refugee Council, 2003a; 2003b; ICMPD, 2007; Helsinki Citizens' Assembly, 2007).

Upon finding themselves in a country that does not provide adequate protection, our research findings confirmed that many refugees are forced into irregular migration in order to find safety elsewhere. Some will continue on their route without documents and forge a dangerous, clandestine path through Europe, hidden under a lorry or concealed within cargo holds, dodging border controls along the way.

"Most of them – I'm not saying everybody but I would say 92 per cent of them, they are with no documents." (AA, RCO representative, Leeds)

Others find a way to acquire false documentation, either buying a false passport for a country that does not require a visa for the UK, or purchasing a valid visa using false supporting documentation. The market for forged documents within countries bordering refugee-producing States is burgeoning and, according to UKBA, there are more forged passports in circulation than ever before. It appears that some refugees can use money and connections to purchase the necessary documentation to enable them to travel to Europe and the UK in safety.

"As Pakistan is totally corrupted you can buy everything and you can sell everything – and that's a freedom of corruption there. That's easy for those agents to make any false documents." (AFM, RCO representative, London)

By denying them a legal and safe route to protection, the UK and other EU States are obliging refugees to participate in illegal activities in order to reach a country in which they can claim asylum. In so doing, these countries are feeding an international criminal industry that is based on the smuggling of individuals desperate to leave the country of persecution (see Chapter Six).

The case of Zimbabweans and passports
Our research discovered that Zimbabwean refugees are reliant on Malawian and South African passports in order to flee the region and seek protection elsewhere. Corruption in the countries bordering Zimbabwe means that refugees are able to falsely acquire documents, although pressure from the UK to improve document issuance and verification is making this more difficult.[34] Increased border controls at South African airports have made it significantly harder for Zimbabweans to leave the country using a South African passport, as they are now questioned and required to provide supporting documentation to prove their nationality.

As the South African route becomes more difficult, Zimbabwean refugees are increasingly using passports from Botswana, Malawi and Zambia. If they succeed in making it to the UK with the passport of another State, then they must prove they are not a national of that State or risk being returned to that State by the UK Government, and eventually refouled to Zimbabwe. UKBA frequently relies on

the fact that a Zimbabwean asylum seeker has arrived on a Malawian passport in order to dispute the nationality, and hence the credibility, of the applicant. Considered to be Malawian, their asylum claim is rejected and they are returned to Malawi. Our research revealed that, rather than being returned to the UK, these Zimbabwean refugees are admitted to Malawi, detained and charged by the Malawian authorities with the crime of acquiring false documents. They are then frequently *refouled* to Zimbabwe and little is known about their fate at the hands of the Zimbabwean authorities.

Destruction of documents and lack of documents
A number of our respondents did manage to fraudulently acquire documents with the help of an agent who then took responsibility for the papers during the journey. Upon arrival in the UK, the agent then vanished, leaving the refugee without documentation.

UKBA does not distinguish between refugees and other 'high risk' travellers attempting to enter the UK irregularly for the purpose of committing a crime.

"The system of overseas checks, including the existing visa regimes and the Airline Liaison Officer (ALO) network, allows border agencies to filter out high risk or inadequately documented individuals before they arrive in the UK." (Cabinet Office, 2007: 21)

It has long been a criminal offence to seek to enter the UK in contravention of immigration laws but, in recent years, the Government has significantly increased the number of criminal offences under which individuals may be prosecuted for irregular entry. Under Article 31 of the 1951 Refugee Convention, refugees should not have any penalties imposed upon them as a result of entering or being present in the UK in contravention of immigration laws if there is a good reason why they are/were unable to comply with those laws; and provided they present themselves to the domestic authorities without delay. The Government introduced a defence for refugees in Section 31 of the Immigration and Asylum Act 1999 but the scope of this defence is much narrower than the protection afforded under the 1951 Refugee Convention. Under Section 2 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, it is a criminal offence "*if at a leave or asylum interview he does not have with him an immigration document*". A number of

prosecutions have been brought where a passenger had failed to produce a valid passport at interview or on arrival, including where smugglers had destroyed or confiscated the travel document (both false or valid) on which the passenger had travelled. Complying with the instructions or advice of a smuggler, as some of our respondents did, only constitutes a reasonable defence if it is unreasonable in all the circumstances to expect non-compliance. In October 2006, the Lord Chief Justice ruled[35] that a conviction under Section 2 would not apply if at no stage in the defendant's journey to the UK did s/he use a valid passport.[36] However, if a valid passport was used at some stage of the journey, and it is not presented when required, perhaps because it has been destroyed or given back to the smuggler, the offence may be committed. Furthermore, under Section 8(3)(a) of the 2004 Act, UKBA decision makers and judges are obliged to consider whether failure to produce a passport without reasonable explanation may damage the credibility of the asylum applicant.

In the Refugee Council's view, the failure to provide a valid passport must not impact on the asylum claim of the individual, and the prosecution of asylum seekers under Section 2 is entirely incompatible with Article 31 of the 1951 Refugee Convention. Our objection to this treatment of asylum seekers has been echoed by one of the most senior judges in England and Wales. Lord Justice Sedley wrote:

"As is obvious, many people fleeing persecution have no option but to travel on false papers. An enactment which may have the effect of prescriptively requiring a judge to disbelieve an individual's otherwise credible story, and so possibly send them back to torture or death, is a serious invasion of judicial independence." [37]

Risk Assessment Units at Entry Clearance Posts
UKBA is committed to targeting inadequately documented travellers and is developing its enforcement programme overseas. Risk Assessment Units (RAUs) are based in high-volume, 'high-risk' posts, and work with the host country police to deter fraud and forgery by arresting those submitting forged documents for visas. It is not known how many of those arrested wished to make a claim for asylum in the UK, nor what has happened to them after their arrest. UKBA intends to expand this programme to

other posts where fraud is common, bringing the total to approximately 25 RAUs worldwide.[38]

Our research shows that it is often impossible, or extremely dangerous, for refugees to acquire the necessary documentation from their own State authorities or from UK visa offices, that would enable them to travel to the UK legally and safely. As this report has already indicated, it is wrong to penalise refugees for their irregular arrival in the UK. UNHCR has recognised the inherent difficulty[39] in acquiring documents for the purpose of travelling legally to Europe and stresses that asylum seekers and refugees must not be liable to criminal prosecution or penalty for irregular entry or presence in the State. Whilst targeting the fraudulent use of documentation is a legitimate Government aim, the consequences for people fleeing persecution can be very serious. These measures risk trapping persecuted individuals within the country of origin, and exposing them to further human rights violations or inhumane or degrading treatment.

Technology and access to asylum
Within Europe, the UK is leading the way in developing technology to make visa applications a more secure tool for the purpose of monitoring and controlling immigration. The movement towards an electronic system of border controls is largely motivated by concerns about security, and is heavily influenced by the conclusions of the US 9/11 Commission (National Commission On Terrorist Attacks Upon The United States 2004). The conclusions attributed the failure to pre-empt 9/11, in part, to inadequate border controls and the report suggested that up to 15 hijackers could have been intercepted at the border had more effective systems been in place. The Commission suggested that if the border control had been able to identify fraudulent documentation the attack might never have happened.

Establishing passenger identity, monitoring that identity through electronic surveillance and sharing intelligence between airlines and State authorities, have become the new tools of a border control system focused on identifying high risk passengers before they reach UK territory, while also facilitating legitimate travel. The Home Office has described a *"triple ring of border security"*[40] that starts on foreign territory, is reinforced at the border and then completed inside the country itself. Each of these checkpoints is an opportunity to expose fraudulent documents or track suspicious behaviour.

Biometrics

The UK government first began collecting biometrics in 1993 to 'fix' the identity of asylum applicants in order to reduce 'abuse' of the system. The Nationality, Immigration and Asylum Act 2002[41] allows the UK to require people to provide biometric information when applying to enter or remain in the country. In February 2004, new provisions were introduced to extend the Government's fingerprinting powers.[42] In July 2003, the Home Office conducted a trial of compulsory fingerprinting of visa applicants in Sri Lanka.[43] The project cost £1million and during six months 14,000 sets of fingerprints were taken but only seven undocumented asylum applicants were identified and a further two people were prosecuted for destroying their passports after entering the UK.[44] Shortly afterwards, UKBA ran a number of pilot projects, including Project Semaphore,[45] to test biometric visa issuance as part of a new system of electronic border controls on a number of key routes in and out of the UK. The pilots allowed UKBA to check passenger details against border agency and police databases in the UK, in order to highlight any suspect individuals. The pilots were considered a success[46] and the Government felt confident that biometric data collection held the key to managing migration through the monitoring of individual identities.

"biometrics… are now well established as the most secure way of fixing an individual to a unique identity." (Home Office, 2006: 6)

e-Borders

The e-Borders programme was set up in 2004 as the overseas element of the Home Office's risk-based system of identity management. The programme consists of a multi-agency unit, the e-Borders Operations Centre (eBOC), which brings together staff from UKBA, Revenue and Customs, Serious Organised Crime Agency (SOCA) and the police. It was established with the intention of creating a single pool of information provided by air, sea and rail carriers, on suspect identities and risky individuals, including those who had committed immigration offences, to be accessed quickly and easily by authorised officers for the purpose of denying entry to unwanted migrants.

The first threshold in the alert system is at the point of visa issuance. The global collection of biometric data from visa applicants was formally launched in 2006 and has now been rolled out across 135 countries covering around 75 per cent of the world's population. All UK visa applicants, apart from those

benefiting from a limited number of exemptions,[47] are required to provide biometric data (ten-digit fingerscans and a digital photograph) as part of the application process. This data is then cross-matched against immigration databases in the UK to reveal if the applicant has already been fingerprinted, why and with which identity. A Memorandum of Understanding between UKvisas and the National Police Improvement Agency in August 2007 also enables visa staff to check fingerprint data against criminal and counter-terrorist records (Cabinet Office, 2007). Applicants are scored against risk profiles in order to identify a potential security risk, and compared against a 'watch list' of suspects and previous offenders. So far, more than 2 million sets of fingerprints have been recorded.[48]

While travel is underway, eBOC currently collects the biometric data from visa issuance points, along with electronic Advanced Passenger Information (API) data and Other Passenger Information (OPI) direct from carriers. This information is subjected to further electronic background checks so that UK immigration control staff posted overseas can advise carriers not to board a suspect individual, even at the last minute. A passenger's passport is swiped at the airport when entering the UK in order to capture the biometric data stored in the visa. The individual's record is retrieved from a database and the fingerprints are checked by the system against those of the visa holder. Not only are passengers electronically monitored as they enter the UK but, in the future, e-Borders will also record departure information so that future visa applications can be informed by past compliance with immigration requirements. The Government hopes that e-Borders will cover the majority of passenger movements by 2009 and 95 per cent by 2011 (Home Office, 2007a: 16).

According to UKBA, biometric data collection allows the Government to 'fix' an identity at the earliest opportunity so that it can be referred to at any future point. This emphasis on 'fixing' identity and then 'locking' it to the individual passenger is key to the e-Borders programme, as it supposedly undermines efforts to travel irregularly on false documents and makes it easier for the Home Office to identify and remove migrants who arrive without any identification document at all.

"New fingerprint visas are fast becoming our first line of defence against illegal immigration. By establishing people's identities beyond any doubt before they enter the UK we can stamp out multiple

applications and identity fraud – ensuring entry only to those who are welcome."[49]

Effectiveness of e-Borders

Confidence in the e-Borders system stems from the Government's faith in technology and UKBA's belief that the electronic system is grounded in the faultless analysis of 'intelligence'. However, history has taught us that whenever Governments invest in new technology to control their borders, smugglers and traffickers soon find ways to circumvent them. Our conversations with airline carriers in Turkey suggest that the use of biometric identifiers is no exception. Their document handlers are increasingly confronted with top quality forged documents, including passports and visas, made using the latest technology developed by black market manufacturers. While demand continues there will always be a market for forged documents. As the technology develops the cost will simply increase. An even greater proportion of refugees will either be forced to pay large sums to unscrupulous agents or be obliged to find a cheaper, more dangerous route to safety.

It is difficult to judge whether the introduction of biometric controls has had a significant impact on the ability of refugees to acquire a visa. Visa applications for 2007 were approximately five to ten per cent lower than the same period the previous year. UKvisas stated that biometrics have had a short-term impact on demand in countries where they have been introduced, but that applications recovered to previous levels within a couple of months.[50] There is no way of knowing how many of those who were refused visas were refused because it was suspected that they would later claim asylum in the UK. This information is not collected by entry clearance officers.

Risks involved in fixing identity and e-Borders: Disputed nationality

The requirement to provide a fingerprint may put some refugees lives at risk. For example, one of our respondents told us that a Somali refugee is unlikely to possess a valid Somali travel or identity document. He may have to use false documents to obtain a visa to enter the UK. If a Somali refugee has used false Ethiopian documents to obtain a visa, and then makes an asylum application in the UK using his real identity, it is possible that he will be identified by his fingerprint and presumed to be Ethiopian. Such a case might be dealt with under accelerated procedures and refused, with the possibility that he may be removed to Ethiopia. He may then be vulnerable to expulsion from Ethiopia

and refoulement to Somalia. In the case of a refugee forced to lie about his identity in order to flee persecution, the fixing of an identity has a negative effect on credibility, which could lead to a refusal of asylum.

Margin for error

Electronic border controls rely on biometrics to produce a fixed identify for each passenger, but the reliability of biometric identification has been challenged (GCIM 2005). Fingerprint matching is not straightforward, nor is it infallible and, like any biometric identification system, it contains a high chance of false non-matches (where valid individuals are refused border entry because the technology fails to recognise them), and false matches (where an individual is matched to another individual incorrectly).[51] Even with a multi-characteristic biometric system, using several biometric measures, this seriously undermines the reliability of biometric identification. The French Data Protection Authority CNIL investigated one of the EU-wide biometric databases that relies on fingerprint matching, the Schengen Information System, and found that almost 40 per cent of the alerts were unlawful or wrong.[52] For an asylum seeker the unreliability of biometric techniques could have significant impact. If a person is wrongly matched during the visa application process, s/he would have little chance of proving that the £6 million system is at fault.

Data sharing

At the moment, biometric data is shared broadly amongst UK Government agencies. The Immigration, Asylum and Nationality Act 2006 (Duty to Share Information and Disclosure of Information for Security Purposes) Order 2008 creates a duty on UKBA and the police, to share travel-related data on international passengers, crew and services if it is likely to be of use for immigration, police or certain security purposes. UKvisas has recently indicated that it will consider sharing enrolment facilities with EU partners and, in the future, will explore plans to share biometric information with other countries.[53] UKBA is negotiating access to Europol[54], the second generation Schengen Information System (SIS II)[55] and the EU Visa Application System for further comparison of personal data. It intends to extend this relationship beyond Europe so that security, intelligence and law enforcement agencies in the US, Australia and Canada can contribute to immigration 'watch lists' and compare details of passengers with their own databases (Home Office, 2007a).

The inter-operability of databases will allow law enforcement authorities in the UK and beyond, to access immigration information for purposes other than migration control. The Refugee Council is concerned about the potential for sharing data in the future with countries of origin or transit which could pose a significant risk to asylum seekers and refugees, should their details be shared with third countries, particularly their country of origin. Even the European Commission, which has proposed a centralised database to store the biometrics of all EU travel document holders, has conceded that further research is necessary to "*examine the impact of the establishment of such a European Register on the fundamental rights of European citizens, and in particular their right to data protection.*" (European Commission, 2004c: 8)

Recent scandals relating to data security in the UK have highlighted the dangers of collecting and storing large amounts of sensitive personal information. Most of the criticism has focused on the difficulties involved in securing large data stores and the possibility of data being lost or stolen by criminal agents. A large database of biometric data could become a risk to privacy through the disclosure of personal information and the use of biometric data for other purposes.[56] Airline check-in procedures will involve verifying the validity of travel documents, and airlines may then hold the biometric data. Currently there is no clear information of how this data is stored or used by any of the many private actors involved. Templates containing the biometric data and personal details of asylum seekers and refugees are particularly vulnerable to abuse. If State agents in the country of origin obtained this information, refugees and their families would be in danger.

Protected Entry Procedures

In 2002, NGOs called for the introduction of exemptions from visa requirements for individuals fleeing persecution and human rights abuses, and began exploring the possibility of Protected Entry Procedures (PEPs) (Sianni, 2003: 26). PEPs entail the suggestion that people at risk of persecution may approach consular authorities to apply for a visa. In determining eligibility for a visa, immigration officers should consider an individual's particular circumstances if it appears that they are at risk of persecution, whether they are in their country of origin or whether they are in a neighbouring country. In exceptional,

emergency cases, where it appears that someone has an urgent need to flee persecution, visas should be granted to asylum seekers seeking entry clearance at consular authorities. Procedures must be flexible, since people at risk of persecution may not be able to fulfil all the usual visa requirements, for example possession of a valid passport, an intention to return to the country of origin, or sufficient money to cover the cost of their stay and return. Ultimately, visas should allow entry to the territory for the purpose of accessing that country's refugee determination procedure.

Summary
The UK, by using visa restrictions and the e-Borders programme to strengthen the borders, is closing and locking the doors to those seeking protection in the UK. Our research confirms that "*the imposition of visa restrictions on all countries that generate refugees is the most explicit blocking mechanism for asylum flows and it denies most refugees the opportunity for legal migration*" (Morrison and Crosland, 2001). As this report will show in Chapter Six (Displacement onto dangerous routes and methods), visa regimes are one of the primary reasons why asylum seekers and other migrants must resort to the services of smugglers, use false documents and expose themselves to extreme danger and the possibility of interception and *refoulement*. As the visa regime is harmonised across the EU, the Refugee Council shares concerns that the entire region will become inaccessible for the purpose of seeking asylum (Brouwer and Kumin, 2004). This situation will only become more severe with the introduction of new technology to support and develop the identity management element of the UK's border control programme.

Recommendations
Visa requirements should never be imposed with the aim of preventing asylum seekers from reaching a State's territory.

The UK and other EU States should examine their visa policies regularly, and in emergency situations should suspend visa requirements to enable people to flee an area of conflict or severe human rights abuse. In such emergency situations, the international community should suspend visa requirements simultaneously, in a spirit of burden sharing, for determined periods of

time for nationals experiencing humanitarian crises.

Negotiations with countries on the lifting of visa restrictions, in exchange for increased efforts to control irregular migration to the UK and readmission agreements, must include protection safeguards. Individuals should not be transferred to countries from where they do not originate. Where, however, agreements are signed to return non-nationals, they should contain guarantees of full access to fair and efficient refugee status determination procedures, and protection against *refoulement*.

The UK should explore the facilitation of legal travel for those in need of protection, where encountered at Consulates in countries of origin or transit.

Where aspects of consular activities are outsourced to private contractors, such as processing visa applications, the UK should ensure individuals with protection needs are still able to access the Consulate.

When considering the treatment of individuals who travel without proper documentation, the UK should take into account the lack of choice of those fleeing persecution, including where there are no facilities for issuing passports within the country of origin, due to it being a country in upheaval or where certain profiles are illegitimately denied passports.

The UK's assessment of risk in the context of routes and nationalities should include the risks posed to the individual, not just the State. This could involve an analysis of situations that may include refugee flows, including where vulnerable groups could be travelling on dangerous routes.

The identification of risks to individuals should be shared with outposted immigration officials and private carriers.

Safeguards should be put in place to ensure that where a false identity is used for the purposes of fleeing persecution, the false identity is not electronically 'fixed' as this could lead to inappropriate refusal of an asylum claim and possible chain *refoulement*.

Policy and practice should reflect that the fact of being a failed asylum seeker does not mean that an individual will never have a legitimate refugee claim in the future.

A risk assessment on the impact of e-Borders on refugee protection should be conducted by UKBA. This should include an examination of safeguards to ensure that data-sharing systems under no circumstances allow for information on individual asylum applicants to be shared with countries where an individual is at risk.

Regular updates on the e-Borders programme should be disseminated and stakeholders in the NGO sector should be invited to input into developments.

The advantages and risks of Protected Entry Procedures (PEPs) should be fully explored by an independent body.

27 This includes 51 countries whose nationals need a visa to transit through the UK – DATV. For more information see Home Office. Visa and transit visa nationals. [Online] Available at: www.ukvisas.gov.uk/en/doineedvisa/visadatvnationals [accessed 21 August 2008].

28 The countries are Bolivia, Botswana, Brazil, Lesotho, Malaysia, Mauritius, Namibia, South Africa, Swaziland, Trinidad and Tobago and Venezuela.

29 Home Office press release, 2008. Results of Britain's first global visa review, [Online] 10 July. Available at: www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2008/resultsofBritainsfirstglobal [accessed 21 August 2008].

30 In 2006, the EU and Russia signed agreements on visa facilitation and readmission of illegal immigrants. This was followed, in January 2008, with the entry into force of agreements on visa facilitation and readmission with Albania, Bosnia and Herzegovina, Montenegro, Serbia and the Former Yugoslav Republic of Macedonia. For more information see European Commission, Enlargement (News about "Visa"). [Online] (Updated 26 May 2008). Available at: http://ec.europa.eu/enlargement/press_corner/whatsnew/visa_en.htm [accessed 31 October 2008].

31 In 1944, the Swedish legation in Budapest issued documents to Hungarian Jews that bestowed upon the holder presumptive Swedish citizenship, hence shielding them from harm. It is estimated that this action saved the lives of approximately 50,000 people. For more information on the use of 'protective passports' and visas during World War II see Noll, 2002.

32 Although there is no provision in the UK Immigration Rules for someone to be granted a visa for the purposes of coming to the UK to claim asylum, the Embassy or Consulate could refer an entry clearance application to the UK Home Office, if the person was already outside of their country of origin,

could demonstrate a prima facie case for Convention status, had close ties with the UK and could provide evidence that the UK was the most appropriate country of refuge.

33 There are no official statistics recording UK practices regarding protected entry procedures. Although there is no information on the number of people who request asylum at UK representations, it is estimated that ten cases are referred to the Home Office from representations abroad, per year. Of these, very few receive positive decisions on entry clearance from the Home Office. For more information on UK use of protected entry procedures see Noll, 2002.

34 The UK has threatened to impose a visa restriction on South Africa if it does not tackle the problem of irregular migration through the country. For more information see Home Office press release, 2008. Results of Britain's first global visa review, [Online] 10 July. Available at: www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2008/resultsofBritainsfirstglobal [accessed 21 August 2008].

35 Soe Thet v Director of Public Prosecutions [2006] EWHC 2701 (Admin). [Online] Available at: www.bailii.org/ew/cases/EWHC/Admin/2006/2701.rtf [accessed 31 October 2008].

36 For more information see Refugee Council, 2006. Convictions for failure to produce documents under Section 2 of the Asylum and Immigration (Treatment of claimants) Act 2004 – asylum seekers may have right of appeal. October 2006. [Policy briefing] [Online] Available at: www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/briefings/section_2_october_2006.pdf. [accessed 21 August 2008].

37 Verkaik, R., 2008. Asylum seekers put at risk by law, warns top judge. The Independent, [Online] 2 July. Available at: www.independent.co.uk/news/uk/home-news/asylumseekers-put-at-risk-by-law-warns-top-judge-858323.html [accessed 31 October 2008].

38 For more information see Memorandum submitted by UKvisas to the Select Committee on Home Affairs, Fifth Report Session 2005-2006. Tackling Abuse of the Visa Issuing Operation. 27 February 2006. [Online] Available at: www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/775/775awe35.htm [accessed 21 August 2008].

39 "*Often it is impossible, or too dangerous, for a refugee to obtain the necessary travel documents from the authorities*". Source: Council of Europe and UNHCR, 2002. Proceedings: "Round Table Process" on carriers' liability – Second expert meeting on carriers' liability, Topic B: Respect of the humanitarian dimension. Brussels, Belgium 24 June 2002.

40 Home Office press release, 2007. Border security strengthened by fingerprint technology. 9 October.

41 Section 126 of the NIA 2002 empowers the Secretary of State to require 'specified information' about an applicant's 'external physical characteristics'.

42 The Statutory Instrument allowing for the collection of fingerprints from certain visa applicants and holders of 1951 Convention Travel Documents came into force in February 2004. See Home Office press release, 2004. Increased use of biometrics to tackle asylum abuse. 21 January.

43 This followed new legislation under Section 126 of NIAA 2002 which empowers the Secretary of State to require applicants for British visas or entry clearance to provide 'specified information' about their 'external physical characteristics'.

44 From Commons standing committee debate: www.parliament.the-stationery-office.co.uk/pa/cm200304/cmstand/deleg2/st040209/40209s01.htm and Home Office press release, 2004. Increased use of biometrics to tackle asylum abuse'. 21 January.

45 Home Office, How we tested e-Borders. [Online] Available at: www.ukba.homeoffice.gov.uk/managingborders/technology/eborders/testingborders [accessed 28 March 2008].

46 Success has been measured in terms of the amount of data gathered and number of arrests: "'*Project Semaphore' has already captured data on 21 million passenger movements, and issued over 9,000 alerts to the border agencies.... To date over 800 arrests have been made.*" (Home Office, 2007a: 16).

47 People who are exempt from immigration control are not required to provide their biometric data. In addition, there also exist certain categories of people that are subject to immigration control but are not required to provide their biometric data, including diplomatic couriers and diplomats visiting the UK on the official business of their government. For more information on exemptions see: www.ukvisas.gov.uk/en/ecg/chapter5

48 Home Office press release, 2008. Results of Britain's first global visa review. 10 July.

49 Home Office press release, 2007. Border security strengthened by fingerprint technology. 9 October.

50 UKvisas, 2007. Entry Clearance User Panel Meeting. 25 October 2007.

51 Open letter to ICAO: A second report on 'Towards an International Infrastructure for Surveillance of Movement. 30 March 2004. [Online] Available at: www.eff.org/files/filenode/rfid/icaoletter.pdf [accessed 8 August 2008].

52 For further details see Brouwer, E., (forthcoming) Digital Borders and Real Rights; Effective remedies for third-country nationals in the Schengen Information System (Immigration and Asylum Law and Policy in Europe).

53 UKvisas, 2007. Entry Clearance User Panel Meeting. 25 October 2007.

54 Europol is the European Law Enforcement Organisation which aims at improving the effectiveness and co-operation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international organised crime. For more information see Europol. Welcome to the European Police Office. [Online] Available at: www.europol.europa.eu/ [accessed 29 October 2008].

55 The Schengen Information System (SIS), is a secure governmental database system used by the participating countries of the Schengen Agreement Application Convention (SAAC) for the purpose of maintaining and distributing information related to border control and law enforcement. For more information see the House of Lords, 2007. European Union Committee, 9th Report of Session 2006-07, Schengen Information System II (SIS II). 2 March 2007. [Online] Available at: www.publications.parliament.uk/pa/ld200607/ldselect/ldeucom/49/49.pdf [accessed 29 October 2008].

56 The collection, storage and analysis of biometric data is currently managed by commercial actors forming a conglomerate called 'Trusted Borders', including the large defence contractor Raytheon. For more information see: Daon press release, 2007. Trusted Borders becomes preferred bidder for e-Borders contract: Daon to provide biometric software and services. [Online] December 2007. Available at: www.daon.com/news/2007/7_12_2007.html [accessed 28 March 2008].

Chapter Four – Outposted immigration officials

In a further attempt to take immigration control closer to the source of the 'problem', EU Member States, including the UK, have been posting representatives in foreign countries for the purpose of reducing irregular migration. These representatives take the form of Immigration Liaison Officers (ILOs), Airline Liaison Officers (ALOs), juxtaposed controls[57] and, more recently, Migration Delivery Officers (MDOs). This section will explore the role and responsibilities of the UK's representatives posted overseas and examine the impact on individuals seeking protection within the UK.

"In some countries, efforts to control illegal migration are failing to make a proper distinction between those who choose to move and those who are forced to flee because of persecution and violence. All too often, we see refugees turned away at the borders of countries where they had hoped to find safety and asylum."
(Antonio Guterres, UN High Commissioner for Refugees, World Refugee Day, June 2008)

Immigration and Airline Liaison Officers

In the European Council's definition, an Immigration Liaison Officer is *"representative of one of the Member States, posted abroad by the immigration service or other competent authorities in order to establish and maintain contacts with the authorities of the host country with a view to contributing to the prevention and combating illegal immigration, the return of illegal immigrants and the management of legal migration"*.[58] Although informal contacts between outposted national immigration officials had been in place for some time, in 2004 the EU set up a network of Immigration Liaison Officers to coordinate immigration control and is currently developing a common manual in order to facilitate cooperation within the network (European Council, 2006).

The term 'Immigration Liaison Officer' (ILO) refers to immigration staff posted to Member States' diplomatic missions overseas, including within the EU and to countries of origin or transit for refugees. By 2006, the UK had ILOs in 14 locations covering 26 countries including the Ukraine and Turkey (European Council, 2006). The term also covers Member State immigration representatives posted

to international airports abroad, more specifically known as Airline Liaison Officers (ALOs). The UK began posting ALOs abroad in 1983 and, as of August 2007, has 34 permanent representatives posted in 31 locations as well as five additional 'floater' and regional ALOs. Deputy ALOs provide support in 12 locations.[59] In total the UK's overseas immigration network covers at least 126 countries.[60]

UK Airline liaison Officers were introduced to *"address issues at nexus points for illegal movements"* (Cabinet Office, 2007: 39), and they work with airlines in key locations for irregular migration. The locations *"are selected primarily on the basis of the number of inadequately documented passengers who have recently arrived in the UK"* and include key countries of origin or transit for refugees, such as Kenya, South Africa, Pakistan, Malaysia and Egypt.[61]

Role and responsibilities of liaison officers

According to the International Air Transport Association (IATA) Code of Conduct for Immigration Liaison Officers,[62] the purpose of a liaison officer is to '*reduce the number of improperly documented passengers travelling from or through*' the country in which they are posted. The code explains that typical activities include verifying documents on behalf of national authorities, providing advice on relevant legislation to host country authorities, and delivering training on identifying false documents. An examination of the Draft Common Manual suggests that their role extends beyond simply advising on appropriate documentation. ILOs are also charged with gathering information on irregular immigration trends and routes, including smuggling and trafficking, facilitating the exchange of

investigative information between national authorities and enabling returns. There is a lack of transparency regarding the role of immigration liaison officers within the migration control programme. There is also a lack of information on cooperation between ALOs from other Member States and with host country immigration officials, and reports on the activities of ALOs are confidential on the grounds of containing "*sensitive information*".[63]

The ALOs' more specific mandate is to reduce the number of inadequately documented arrivals (IDAs) in the UK. They do so by supporting carriers in discharging their responsibilites under Sections 40 and 41 of the Immigration and Asylum Act 1999 (as amended), which obliges carriers to identify and intercept improperly documented passengers or risk incurring a civil penalty (for more information on carrier sanctions see Chapter Five). As such, they offer advice to carriers on the acceptability of documents presented for travel and whether or not the airline is likely to be fined if they allow embarkation. Usually, carriers will alert the on-site ALO who, depending on their airport access rights, will appear in person to verify documents and advise. This can be difficult when, as in the case of Turkey, the ALO has not been granted access to the airport at all, and is instead based in another country, in this case Greece.[64] On occasion, the ALO may request an in-depth interview with the passenger to establish how s/he acquired the documents presented.

UK ALOs can also access the J-Vox mechanism, a large database which contains risk lists from UKBA, police and customs, particularly regarding anti-terrorism. If an ALO is aware of a passenger whose name appears on the database, they can release an alert to carriers and other ALOs. UK ALOs submit monthly activity reports with details on interceptions including nationality and type of forgery, but they do not record the identity or biometrics of the individuals they intercept. Regional managers conduct trends analyses on data relating to forgeries and interceptions, and this information is fed back down to ALOs, who may share it informally with host country authorities and airline staff.

ALOs and refugees
Currently ALOs do not operate formal UK immigration controls and they have no legal powers in a foreign jurisdiction. They have no power to compel an airline to either accept or refuse a passenger, nor can they arrest or prosecute criminals.

Their role is 'purely advisory' but it is reasonable to assume that carriers will follow this advice rather than risk a heavy fine. Our research found that advice to airlines to refuse embarkation was almost always followed. In light of this, it is of concern that liaison officers are not aware of any responsibility to ensure that individuals with protection needs are given access to an asylum procedure.

The European Council Regulation establishing the ILO network (which, as stated earlier, incorporates ILOs and ALOs) does not include any specific mention of Member States' international obligations towards refugees and asylum seekers. Very little emphasis is placed on training liaison officers or those they work with to identify or respond to the needs of refugees. Their own training is heavily focused on security and criminality in relation to border checks, and touches on humanitarian issues only peripherally.[65] They are given some awareness training on trafficking but are not taught the skills required to respond to the needs of victims of trafficking, particularly those wishing to seek asylum. In most situations, ALOs will refer any trafficking victims to the local immigration authorities. The training they provide to airline staff, authorities and host country immigration services covers UK passport and visa requirements, document verification and forgery awareness, and does not include any content on international refugee and human rights legislation and procedures. It is unclear whether this training includes profiling, although UKBA has stressed that it is not encouraged as the Agency prefers to focus on document validity rather than the intentions of the passenger.

Between 2001 and 2007, the UK ALO network prevented 180,000 people with inadequate documentation from boarding aircraft to the UK [Cabinet Office 2007]. It is not known how many of these people were in need of international protection nor what their fate has been as a consequence of being denied access to the UK. There is no indication that the responsibilities of any immigration liaison officers include a requirement to examine the intercepted person's reasons for migration or to address any need for international protection. ALOs can conduct what they call 'assists', situations in which they provide ad hoc authority to carry, for passengers who do not have the appropriate documents but for whom there are extenuating circumstances.[66] Unfortunately the discretion to allow boarding for improperly documented passengers does not stretch to

individuals seeking international protection. The IATA Code of Conduct for ILOs states that whenever ILOs receive requests for asylum they should refer the applicants to the office of UNHCR, the appropriate diplomatic missions or a pertinent local NGO.[67] In practice, an ALO will, in most situations, refer any irregular passengers directly to local officials who then take responsibility for handling any request for asylum. ALOs may provide a telephone number for UNHCR, but where UNHCR is not available no guidance is provided to ALOs on the appropriate action to be taken, and they have no power to intervene to ensure an asylum claim can be lodged.

Very little is known about how many of the 'inadequately documented passengers' intercepted by UK immigration officers overseas had the opportunity to indicate their need for asylum, what procedures were followed, how many were referred to UNHCR or local asylum authorities and how many were turned back and potentially refouled. Our research suggests that UK immigration liaison officers are indeed involved in the interception of refugees, and that they may be contributing to the refoulement of people in need of protection. For example, one of our Zimbabwean respondents described the experience of a friend who tried to flee South Africa at the same time as him, but was intercepted by UK immigration officials based in the airport.

"they took him to the British embassy in Pretoria and when he was there, there were South Africans that were called in and only to find that... he is Zimbabwean, he is a true Zimbabwean and the document is […] not genuine. And so he served a couple of months [in prison] and then he was facing deportation and I don't know at the moment what happened to him… he was returned to Zimbabwe, that's what most of South African government does." (KI, refugee, Leeds)

UKBA asserts that very few intercepted passengers are refugees[68] but it is difficult to verify this as ALOs keep no formal record of the number of intercepted passengers who wish to or do claim asylum. The lack of actual applications for asylum at the point of interception gives no indication of the protection needs of the intercepted migrants. Many do not articulate their wish for asylum because they are afraid of repercussions either within the country of transit or when they are returned to their country of origin. Others choose not to claim asylum because they have been guaranteed passage by their agent

and will simply be able to use another route. As concluded by the Council of Europe and UNHCR Experts Roundtable:

"It is impossible to be precise about the number of refugees who are denied escape due to stringent checks by transport companies. The number is considered to be on the rise, however, not least since transport companies have been assisted by Governmental liaison officers in verifying travel documents."[69]

The ALO relationship with the host country authorities is just one of the factors preventing a greater role for ALOs in guaranteeing access to protection. The relationship is often fragile and ALOs are not inclined to disturb this by forcing the issue of access to asylum within the State, as they risk losing their vital airside access if they interfere in the treatment of passengers. ALOs are not concerned with the intentions of passengers and UKBA is reluctant to give them a greater role in ensuring access to protection, as it is felt this would negatively impact on their existing duties, particularly concerning their relationship with host country authorities.

Pre-clearance controls – the Prague airport case

In May, 2001 the UK began to implement 'pre-entrance clearance immigration controls' in agreement with the Czech government at Ruzyne airport in Prague. The controls consisted of UK immigration officers conducting full checks on travellers, including interviews, before they boarded the carrier, in order to decide whether or not a passenger was eligible to enter the UK. As with all immigration officers posted overseas, there was no requirement for them to do anything if they recognised than an individual was in need of international protection from persecution. On the contrary, the operation sought specifically to halt the arrival of Czech Roma asylum seekers, who had been coming to the UK in increasing numbers by 2000. The Home Office claimed that the majority of these cases were unfounded despite recognising the persecution of Roma citizens within the Czech Republic.[70] As Czech citizens did not require a UK visa for travel to the UK, passengers were stopped prior to boarding on the alleged grounds that they were not genuinely seeking entry for the purpose stated on

their valid travel documentation. The measures proved very effective;[71] over 110 people were refused leave to enter the UK during the period of the controls. During a legal challenge against the operation, the Immigration Service justified their actions by arguing that the UK is not obliged under the 1951 Refugee Convention to consider applications outside the UK, nor to facilitate travel to the UK for the purpose of applying for asylum. Despite criticism from the UK's Independent Race Monitor, the government maintained that the pre-clearance operation was not discriminatory. Although the House of Lords upheld the Government's position that it is not obliged to consider asylum claims outside its territory in its judgement on the case, the Lords concluded that the practice was 'inherently and systematically discriminatory' against Roma.

Testimony before the High Court challenge by the European Roma Rights Centre revealed that most of those stopped were Roma.[72] Such targeting is likely to be repeated in future, since the Race Relations Amendment Act (2000) allows for discrimination in immigration, asylum and nationality functions on the grounds of nationality or ethnic or national origin where this is required by legislation or ministerial authorisation.

UKBA plans for ALOs and ILOs

Evidence from UKBA suggests that the future of UK border controls will include a greater focus on 'pre-check-in activities' and targeting 'potential offenders' before they even start their journey. The extension of the existing network of airline and immigration officers is key to this goal. As early as 2005, the Home Office announced that it intended to invest £4million to extend the ALO network to a total of 42 officers supported by a 'fast response' team of 30 immigration officers, and to enhance IT systems and technology.[73] It also wants to involve immigration liaison officers in tackling criminal activities in their host country by improving links with local law enforcement.

There are plans to broaden the remit of ALOs and ILOs to cooperate more with other agencies such as FRONTEX to detect smugglers and ensure that they are prosecuted. The UK hopes to extend its cooperation with ALO networks in Europe and beyond to exchange information, develop common positions in dealing with commercial carriers and

deliver joint training. Since 2001, British and Italian ILOs have worked together in Southeastern Europe to provide training to local officials and gather intelligence on trafficking and smuggling (ECRE 2007). UKBA also intends to explore the possibility of posting Sea Carrier Liaison Officers at major maritime ports around the world. Proposed legislative change included in the Government's draft Immigration and Citizenship Bill will extend the existing 'advisory' powers of liaison officers to allow them to cancel visas or refuse permission for carriers to bring foreign nationals to the UK.[74] These powers will be very similar to those enacted by pre-clearance officers at Prague airport in 2001 (see text box on page 37). The posting of officers at Prague airport allowed the UK government to carry out immigration checks on passengers seeking to come to the UK before they boarded the aircraft, with the result that many Roma asylum seekers were denied access to protection in the UK. UNHCR issued a statement arguing that the practice "*frustrate(d) the object and purpose of the 1951 Convention contrary to the international legal principle of good faith…(and) rendered the 1951 Convention nugatory (as) it prevents provisions such as Article 31 or 33 ever being engaged*".[75]

Measures to intercept irregular migrants in countries that do not fulfill their international legal and human rights obligations towards refugees and asylum seekers, will deny refugees the right to seek and enjoy asylum from persecution and expose them to the risk of *refoulement* (see chapter seven on permanent transition). As Guy Goodwin-Gill has already explained in this report, States which intercept refugees in a country that will, or is likely to, *refoule* them back to the country of origin, are equally responsible for the commission of a prohibited act. That responsibility is incurred wherever organs or agents, including ALOs and ILOs, conduct immigration controls functions on behalf of the State. Guy Goodwin-Gill outlines that the act of interception alone is sufficient to establish the jurisdiction of the UK and sustain responsibility for the subsequent *refoulement* of the refugee.

Migration Delivery Officers

There are currently 20 Migration Delivery Officers (MDOs) posted to British Embassies in key locations overseas including Ethiopia, Kenya, the Democratic Republic of Congo (DRC), Sri Lanka, Pakistan and Turkey, as a joint FCO/UKBA initiative. The locations were chosen on the basis of internal intelligence, primarily concerning the flow of migrants, both

regular and irregular in both directions, and all appear to be key countries of origin and transit for irregular migrants.

There is still very little information available concerning the responsibilities of MDOs, as they have been tasked with investigating local migration issues and defining their role accordingly. However, our research suggests that UK MDOs seek to exert pressure on countries near to the external borders of the EU, in the hope of containing irregular migration within the region of origin. Evidence we have collected from MDOs based in Sudan, South Africa and Ethiopia suggests that their main purpose is to promote compliance with UK migration law and identify sustainable arrangements for the return of foreign nationals from the UK. They look at issues related to managed migration including trafficking, routes and methods used for irregular migration, organised immigration crime and country of origin information reports. Their work also includes analysis of the political and human rights situation within the host country, in cooperation with UNHCR. MDOs are responsible for negotiating with host country immigration authorities to influence their decision making with regard to migration policy and programmes, in order to promote the UK's migration management priorities. This will include Memoranda of Understanding on returns and visa requirements. MDOs also examine the availability and use of valid travel documents within their region, and review the UK's processes for accepting such documents.

As a potential EU accession country, Turkey is in negotiations with the European Commission regarding its capacity for reception and integration and its responsibility towards the global refugee population. Turkey's reluctance to lift the geographic limitation clause[76] and take over status determination for non-European refugees is a significant obstacle to accession. A number of EU Member States have taken this opportunity to influence the development of asylum processes in Turkey in anticipation of eventual accession. The UK is a very strong supporter of Turkey's accession to the EU and, through the UK Migration Fund, the government is active in developing migration management and asylum reception capacity within Turkey. The Migration Fund has enabled UNHCR to conduct training for the Turkish Ministry of Interior and military on refugee law, border monitoring and airport procedures including the return of third country nationals and safeguards against chain deportation. The UK also sponsors the International Organisation for Migration (IOM) to provide training for

Turkish government officials on wider migration issues including asylum, border management and migration flows. Currently the UK is not directly involved in training border guards but this may be a feature of Turkey's new border management project.

The European Union is currently funding the UK and the Netherlands to conduct a 'twinning project' in cooperation with the Turkish authorities. The project involves the construction of seven large asylum reception centres around Turkey. The UK is involved in designing the management systems for use in the reception centres, as well as introducing operational models and new technologies. According to the UK government, the proposed reception centres will help Turkish authorities with contact management and will mean that refugees will find it easier to access services, social support, and legal advice. Critically, they will also experience accelerated procedures for status determination and return to their country of origin.

At the time of writing, it is unclear whether these reception centres will be open or will involve detention, who will have access, and which legal and procedural frameworks will apply. Many of our respondents voiced fears that these centres will act as removal facilities, particularly considering the emphasis on return within the UK's migration management programme and the detention and return model used within the UK and the Netherlands.

By promoting its migration management programme in transit countries, with no regard for the level of protection afforded within that country, the UK is shifting responsibility for refugee protection onto the EU's poorer neighbours. However, it is not sufficient for the UK to transfer command and control to a third country in order to avoid application of its human rights obligations (see 'A note on State Responsibility'). The UK remains fully responsible for any human rights violations that take place during or as a result of these activities. This could include violations that occur as a result of the provision of infrastructure or finance, formal or informal agreements and working arrangements, joint patrols and training, as well as support and advice to States recognised as having a low standard of human rights protection.

Juxtaposed controls
The 1991 Sangatte Protocol established reciprocal arrangements between Britain and France under which each State was permitted to operate full

immigration controls on the territory of the other, otherwise known as juxtaposed controls. It initially only applied to persons travelling through the Channel Tunnel with motor vehicles and allowed for passengers to be arrested, detained and conducted to the territory of the state whose controls were being enforced.[77] It also provided that, where persons are refused entry or decide not to proceed to the other State, the State of departure must take them back.[78] In May 2000, following an increase in undocumented arrivals and asylum claims by those arriving by train, an 'Additional Protocol' gave permission for pre-boarding immigration controls at Eurostar stations in Britain and France. Article 4 of the Additional Protocol states that a request for asylum or other form of international protection should be examined by the State of departure where it is made either at immigration control or otherwise before the shutting of train doors.[79]

In 2001 juxtaposed controls were extended from the Channel Tunnel terminal at Coquelles to further locations in France and Belgium. In July 2002, the decision to close the Sangatte centre was accompanied by an announcement to establish British immigration controls at Calais and, later that year, French authorities began using British equipment at Calais to check for persons hidden in lorries. Section 141 of the Nationality Immigration and Asylum Act (NIAA) 2002 empowered the Secretary of State to "*make provisions for the purpose of giving effect to an international agreement which concerns immigration control at an EEA port*"[80] allowing for the development of frontier controls at sea ports. An agreement with France in 2003[81] provided for the creation of control zones in commercial ports from which there is sea travel between the two States. Within these control zones, officials of the State of destination are permitted to enforce their immigration laws, including by arrest, detention and bringing of persons to their own territory. However, the State of departure is responsible for applications for asylum or other forms of international protection which are made prior to departure. The Home Office wants to build on the perceived achievements of existing juxtaposed controls in order to share more intelligence, take advantage of new technologies for detecting people, and link their operations into developments in e-Borders. However, increased surveillance is not cheap: controls based at Paris, Lille and Brussels cost £7,102,500 in 2005-06 and £8,492,000 in 2006-07.[82] Despite the cost, France and Britain have committed to an increase in the

number of lorry checks at French and British ports. The French government has also promised an increase in the number of French undercover officers targeting gangs smuggling people into Britain.[83]

The purpose of juxtaposed controls is "*to move aspects of the UK border to ports across the Channel, to detect and deter potential clandestine illegal immigrants before they are able to set foot on UK soil, fundamentally altering the way the UK operates at its border*" (Cabinet Office 2007). The Government claims that they have been successful. In Kent the number of illegal immigrants arriving since 2002 has reduced by 88 per cent.[84] During 2006, 16,898 people were stopped attempting to cross 'illegally' into the UK from France and Belgium, and 6,801 were refused entry when they had reached UK territory.[85] It is claimed that 18,000 illegal immigrants were stopped in trucks crossing from France to Britain in 2007.[86]

As with visa restrictions and liaison officers, it is not just clandestine entrants that the Government is seeking to target with juxtaposed controls, and the Home Office has admitted that:

"*When, for example, Colombia and Ecuador were included as visa States, this was directly in response to an increase in the number of those nationals coming directly to the United Kingdom in order to apply for asylum. A similar aim is present in the juxtaposed controls in France, where asylum seekers are refused leave to enter.*"[87]

It would appear that one express purpose of the above measures is to prevent asylum seekers making a claim in the UK. Even travellers with correct documentation and a valid UK visa will be stopped from travelling to the UK if the immigration officer suspects that they may seek asylum. By preventing access, the government hopes to decrease the economic and political costs of the UK asylum system and to spare the expense of returning refused asylum seekers to their country of origin.

"*The change that has made a difference today is the shifting of the border controls from England to the French coast. We have shifted the immigration and security check and ensured that people will not get here. Stopping people entering clandestinely has to make more sense than trying to process them and send them back whence they came.*"[88]

The UK justifies the implementation of these

measures on the basis that refugees should seek asylum in the first country they reach. This policy is not grounded in international law and ignores the importance of community ties, cultural links and the sanctity of the family. Experts meeting under the auspices of UNHCR have stressed that any arrangement to encourage asylum seekers to seek protection at the first available opportunity "*should take account of meaningful links, such as family connections and other close ties, between an asylum seeker and a particular country […] The protection of the family as a natural and fundamental group unit of society is a widely recognized principle of human rights*" (UNHCR, 2003a: 2).

Delegation of responsibility to private contractors

Private contractors in the port of Calais are authorised to act independently without any UK or French officials present, and replace UK immigration officers for identified tasks, including searching vehicles and detaining individuals. This delegation of responsibility for the implementation of juxtaposed controls raises fundamental questions about sovereignty and accountability. When UK officials act on UK territory overseas, such as UK Consulates, they are within the scope of national sovereignty and under the mandate of international law. This, in turn, empowers UK courts to monitor and scrutinise the acts of UK officials. However, when UK officials subcontract activities and responsibilities to private companies they attempt to avoid engaging obligations under international and national refugee and human rights law.

Summary

The Refugee Council is concerned that, in conducting border control activities with no regard for protection needs, outposted liaison officers risk preventing access to safety for refugees. Furthermore, extra-territorial activity may lead to direct or indirect *refoulement*. This would clearly be contrary to the UK's obligations as signatory to the 1951 Refugee Convention and acts against the spirit of international responsibility sharing.

By preventing migrants from leaving their country of origin, the UK exposes refugees to the very authorities they are attempting to escape. Such actions also disregard article 13.2 of the Universal Declaration of Human Rights which states that "*Everyone has the right to leave any country, including his own, and to return to his country*". Turkey is just one country within which UK

immigration officials are posted and from which refugees originate. Sri Lanka, Ethiopia, DRC and Sudan all host UK immigration officials and yet their nationals continue to receive refugee status in the UK, reflecting the fact that they are countries from which some individuals must flee in order to seek protection from persecution.

Our research found that outposted immigration officials fail to differentiate between different types of unauthorised travellers attempting to enter the UK. They do not acknowledge the difficulties that people fleeing persecution have in obtaining a passport or visa, nor the right of refugees not to be penalised for entering a country of asylum illegally. There is further evidence to suggest that outposted liaison officers have a direct effect on the ability of refugees to find protection in a safe country, whether or not they are in possession of valid travel documentation (Sianni, 2003).

Furthermore, bilateral agreements with third countries that allow UK immigration officials to function on their territory are characterised by their lack of transparency and democratic oversight. It is, therefore, almost impossible to know whether these agreements include provisions for access to protection and whether outposted UK immigration officials have complied with these requirements.

Recommendations

The UK should put systems in place to ensure that the actions of its outposted immigration officials do not result in direct or indirect *refoulement* of individuals with protection needs.

The UK should ensure agreements between the UK and third countries that allow UK immigration officials to function on their territory are transparent. These agreements must contain clauses on UK responsibility to respect the principle of *non-refoulement* and should include measures to ensure access to protection wherever its immigration officials conduct measures to control irregular migration.

The UK should encourage host countries to allow intercepted individuals to have access to UNHCR, independent legal advisers and NGOs, in particular in transit zones.

UKBA should ensure that regular independent

monitoring is carried out to ensure extra-territorial border control is compliant with refugee protection, and in particular the prohibition on direct and indirect refoulement.

The UK should provide easily accessible advice and guidance on the responsibilities of outposted border officials in respect of refugee protection. This should include procedural guidelines on what to do when encountering a person in need of international protection.

Outposted UK immigration officials should receive training on international refugee and human rights legislation and procedures.

The UK should provide training to outposted immigration officials on the identification of vulnerable individuals and how to meet their needs.

UKBA must demonstrate that the activities of all outposted immigration officials are implemented in accordance with domestic equality obligations.

The role of the ILO and ALO should be clarified and a list of activities and powers made publically available.

Non-sensitive information with reference to general trends of persons stopped from coming to the UK should be shared publically.

Frameworks for working arrangements between ALOs/ILOs, private carriers and host authorities should include reference to the importance of ensuring the individual details of refugees are not shared with countries of origin or transit.

UK and EU operational manuals for ILOs and ALOs should include reference to refugee protection and practical instructions regarding action to be taken if a passenger expresses protection needs.

ILO/ALOs should be fully aware of local institutions and organisations that assist refugees and others in need of international protection and refer individuals on accordingly.

The UKBA, in conjunction with UNHCR and NGOs should explore giving ALOs the power to allow undocumented refugees safe passage to the UK in circumstances where they may be at risk. This could include a hotline facility to support ALOs to use this power when encountering an individual in need of protection.

ALOs should keep records of the details of intercepted persons, including whether they expressed protection needs.

The remit of the Independent Police Complaints Committee (IPCC) has recently been extended to cover matters of immigration enforcement. UKBA should ensure that the IPCC also has oversight of the activities undertaken in the context of juxtaposed controls, in particular if these are rolled out to refugee countries of origin and transit.

57 The term 'juxtaposed controls' refers to the reciprocal arrangements between Britain and France under which each state is permitted to operate full immigration controls on the territory of the other.

58 Article 1 of Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network.

59 These figures are taken from UKIS Border Control, Freedom of Information Practitioner, Ref: IND-FOI-5423. [Letter] (Response to Refugee Council Freedom of Information request, 20 February 2007).

60 These figures are data from 2005 as taken from: European Council, 2006. Draft Common Manual for Immigration Liaison Officers (ILOs) posted abroad by the Member States of the European Union. (8418/06), Brussels: European Council.

61 Home Office, 2006. The United Kingdom Airline Liaison Officer Network [brochure] May 2006.

62 The Code of Conduct for Immigration Liaison Officers, October 2002, was prepared by the International Air Transport Association Control Authorities Working Group (IATA/CAWG) to promote cooperation between EU Member State ILOs.

63 UKIS Border Control, Freedom of Information Practitioner, Ref: IND-FOI-5423. [Letter] (Response to Refugee Council Freedom of Information request, 20 February 2007).

64 Meeting with airline respondent, 13 May 2008.

65 Airline Liaison Officer induction training guidance provided by the Home Office on 20 February 2007 stipulates that ALOs will receive training on 'relevant UK legislation to which the ALO will be required to work when abroad, including Data Protection, Human Rights and Race Relations'.

66 This could include British citizens who have lost their passports due to natural disasters such as the 2004 tsunami in the Indian Ocean.

67 For more information see IATA, 2002. A Code of Conduct for Immigration Liaison Officers. October 2002.

68 This information was gained during meetings with UKBA officials.

69 Council of Europe and UNHCR, 2002. Proceedings: "*Round Table Process*" on carriers' liability – Second expert meeting on carriers' liability, Topic B: Respect of the humanitarian dimension, Brussels, Belgium 24 June 2002.

70 European Roma Rights Centre & Others v. Immigration Officer at Prague Airport and Secretary of State for the Home Department, [2002] EWHC 1989, at 20 – 21.

71 In the three weeks prior to introduction of the controls, there were over 200 asylum claims at UK ports from the Czech Republic. In the first three weeks after introduction of controls, there were only around 20 asylum claims.

72 During the period of July 2001 to April 2002, fewer than 1 per cent of non-Roma Czech nationals were refused entry. In contrast 90 per cent of apparently Roma were refused.

73 Home Office press release, 2005. UK borders further strengthened with expansion of airline liaison officer network. [Online] 22 February. Available at: http://press.homeoffice.gov.uk/press-releases/Uk_Borders_Further_Strengthened_?version=1 [accessed 8 August 2008].

74 Section 25(1)(d) of the Draft (partial) Immigration and Citizenship Bill, July 2008.

75 Goodwin-Gill, G. Submission on behalf of UNHCR to the Court of Appeal considering the case of the European Roma Rights Centre and Others v. the Immigration Office at Prague Airport (…) C1/2002/2183/QBACF.

76 This clause restricts Turkey's obligations under the 1951 Refugee Convention to individuals who become refugees as a result of events occurring in Europe. Refugee status determination for non-European refugees is conducted by UNHCR. For more information see Chapter 7 on page 59 (permanent transition).

77 Article 10 of Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning frontier controls and policing, co-operation in criminal justice, public safety and mutual assistance relating to the Channel Fixed Link Sangatte, 25 November 1991 (the Sangatte Protocol), Treaty Series No. 70 (1993) Cm2366.

78 Article 18 of the Sangatte Protocol.

79 Article 4 of the Additional Protocol to the Sangatte Protocol between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic on the establishment of bureaux responsible for controls on persons travelling by train between the United Kingdom and France, Brussels, 29 May 2000 the Additional Protocol), Treaty Series No. 33 (2002) Cm5586. For more information see Ryan, 2004.

80 *Nationality, Immigration and Asylum Act 2002*. (c.41), London: HMSO.'

81 Treaty between United Kingdom and France concerning the Implementation of Frontier Controls at the Sea Ports of Both Countries on the Channel and North Sea, Cm 5832 (2003). The Treaty was given effect in Britain by the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 (SI 2003/2818).

82 Written answer from Liam Byrne to Humfrey Malins, 23 January 2008. [Online] Available at: www.theyworkforyou.com/wrans/?id=2008-01-23c.180330.h [accessed 31 October 2008].

83 Wintour, P., 2008. Britain and France to take nuclear power to the world. The Guardian, [Online] 22 March. Available at: www.guardian.co.uk/environment/2008/mar/22/nuclearpower.energy1 [accessed 29 October 2008].

84 Home Office press release, 2007. £1.2 billion pledged to strengthen off-shore border, [Online] 1 August. Available at: http://press.homeoffice.gov.uk/press-releases/e-borders-investment [accessed 26 August 2008].

85 Parliamentary question to Meg Hillier, 24 October 2007. [Online] Available at: www.theyworkforyou.com/whall/?id=2007-10-24a.124.0&s=asylum#g129.3 [accessed 29 October 2008].

86 Op cit. Wintour, P., 2008.

87 Evidence by James Munro, Assistant Director of the Immigration Service to the High Court, European Roma Rights Centre vs Immigration Officer at Prague Airport and the SSHD, 08/10/2002.

88 Hansard, 2002. Northern France. 2 December 2002: Column 614. [Online] Available at: http://hansard.millbanksystems.com/commons/2002/dec/02/northern-france [accessed 31 October 2008].

Chapter Five – Carrier Sanctions

The ability of UK immigration officials to monitor and control border points is constrained by the sheer volume of passengers, the number of embarkation points and the sovereignty of the State in which the UK is seeking to implement its own border controls. The UK can be accessed through ports all over the world. UKBA perceives overseas air, land and sea ports with weak or limited border controls as representing a significant risk to the UK's migration management programme as they are likely to be used by migrants seeking to reach the UK irregularly. It would be extremely difficult, and costly, for the government to post immigration officials at each port so it relies on private carriers, such as airlines and ferry companies, to make decisions on the authenticity of appropriate documents. This section will examine the role of private carriers in undertaking immigration control functions, and the impact of these controls on individuals seeking to enter the UK for the purpose of seeking asylum.

"Carrier sanctions pose a threat to basic principles of refugee protection, the operation of asylum procedures, procedural guarantees of a fair process and to international cooperation in resolving refugee problems." (UNHCR, Roundtable on carriers' liability related to illegal immigration, 2001)

"Between the possibility to seek protection from a foreign state and the individual fleeing persecution in his or her home state, the private transport company…[has now been] inserted." (Elspeth Guild in Gibney, 2005)

A system of civil penalties for carriers that are found to have transported irregular migrants is set out in the Immigration and Asylum Act 1999 (IAA 1999). Under this legislation, a carrier is liable to a compulsory penalty of up to £2,000 where a passenger who arrives by air, land or sea requires leave to enter Britain but fails to produce a valid identity document and, where applicable, a visa.[88] In order to avoid the fine, carriers must show that they have taken adequate steps to identify and intercept passengers attempting to travel without valid documents. As such, carriers often contract out this function to security staff whose responsibility it is to identify forged, stolen or false travel documents and visas and to refuse boarding to anyone they suspect of having inadequate documentation.

The carriers' liability scheme was amended by Schedule 8 of the Nationality, Immigration and Asylum Act 2002 (NIAA 2002) which made it more flexible; the Secretary of State now has discretion both as to the imposition of the penalty and as to its level. There is also now a statutory right of appeal against the penalties.

From 2009, the Government's 'Authority to Carry' scheme will allow the UK to refuse a carrier authority to bring passengers to the UK based on real-time checks against Government databases. This will cover all passengers who do not pass through a juxtaposed control. The system will allow carriers to check the details of a passenger against Home Office databases and receive instant confirmation that they pose no known security or immigration threat. Passengers will be checked before take-off against UK watchlists, and passenger data will continue to be processed and risk assessed at JBOC[89], during transit. The government is also encouraging carriers to copy passenger documents, especially on high-risk routes, to assist with identification, re-documentation and removal.

Scanning and detection technology

The government has been developing technology to improve detection at the borders, particularly the land and sea routes between northern France and the UK. New detection technology (NDT) including carbon dioxide detectors, X-ray scanners and heartbeat monitors, is used in conjunction with dog teams and manual searches to intercept people hiding in lorries and other vehicles heading for the UK. In February 2005 UK equipment was being used in Calais, Coquelles, Dunkirk, Ostend, Zeebrugge and Vlissingen.[90] The UK lends detection equipment free of charge to ferry and port operators in Channel and North Sea ports that are considered to be a high risk as departure points for irregular

migrants. In 2006 detection technology enabled the Border and Immigration Agency (BIA) as it then was, to intercept 17,000 immigrants attempting to cross to the UK irregularly.[91] It is not known if any of those intercepted were in need of international protection.

Training for carrier personnel

To assist carriers in meeting their obligations under liability legislation, UKBA provides training to airlines and sea carriers, including guidance on visa requirements and forgery detection. It also operates a 24-hour helpline providing on-the-spot advice on whether boarding a particular passenger might result in a fine. In 2001, it was revealed that each year this line receives 50,000 calls.[92] The International Air Transport Association (IATA), which represents the global airline industry, has also provided training to carrier personnel on detection of fraudulent documents and produces the monthly Travel Information Manual (TIM) which shows the visa (including transit visas) requirements for every country. In Istanbul, one of our airline respondents provides training to its staff on document checking and behavioural analysis. They also attend briefings before the start of their shift to highlight any concerns or alerts that have been shared with the airline by ILOs around the world.

Waiving charges

In 2002, the Home Office produced guidance for carriers on liability and charging procedures.[93] The guidance states that charges are waived if the carrier can show that it had taken all reasonable security and searching measures to ensure that no unauthorised person was allowed to board its service. Fines will also be lifted if the documents used to enter the UK are such convincing forgeries that the airline cannot be expected to identify them. UKBA has offered 'approved gate check status' to 310 stations abroad where document checks are considered sufficiently professional and fines are usually waived. Since October 2003,[94] ferry companies have been obliged to use detection technology provided by the government, and failure to do so can result in reduced access to UK ports. Airlines that fail to pay fines have been refused permission to use UK airports.[95]

Charges are also waived if, at the time of check-in, the person seeking to embark was either in imminent and self-evident danger of his or her life; had no reasonable means of obtaining the necessary documents; the United Kingdom was, in the circumstances, the only or clearly the most

appropriate destination; and the carrier had no opportunity to verify his or her acceptability with the United Kingdom authorities. The recommended course of action for the carrier is to contact the nearest UNHCR or UK representative or port of arrival, to request guidance on how best to proceed (Home Office, 2002b).

Where a charge has been incurred by a carrier in respect of a person who is recognised as a refugee under the Convention and Protocol, it is the Government's policy to refund or waive the charge. UKBA does make a commitment that in every case where refugee status is recognised, it also determines whether liability to a charge was notified to a carrier in relation to that person's arrival in the UK. However, applications for asylum take several months or even longer to decide during which time a fine is taken from the carrier. A charge will only be refunded or waived in respect of a person who is granted full refugee status under the Convention and Protocol; this procedure does not apply to any person who is admitted for any other reason. This distinction between protection statuses appears to be entirely arbitrary, and means that all improperly documented passengers who subsequently receive some form of subsidiary protection constitute a financial burden for carriers. Furthermore, our research found that one of the major international airlines flying direct to the UK reported no knowledge of the refund in cases of refugee status. As a result, travellers suspected of intending to claim asylum were frequently denied boarding.

The transfer of responsibility to private actors

The involvement of private actors, particularly overseas, makes it difficult on a practical level to ensure compliance with international legal obligations. It follows that a person wishing to raise a legal challenge where there is a breach in these circumstances would face real obstacles. The Refugee Council is concerned that the Government has effectively transferred migration management to private actors who are not trained in national and international refugee and human rights law. In his legal analysis for this report, Guy Goodwin-Gill notes that when State responsibility arises in international law, this cannot be "*contracted out*".

Our research revealed that in their dealings with irregular migrants, private carriers are motivated by three main factors:

1   avoiding financial penalty;

2   preventing security threats; and

3   maintaining good public relations.

Guy Goodwin-Gill points out that "*the nature of the airport liaison officer and similar operations in distant airports will not always allow issues and solutions to be properly identified, including rights and the need for protection*" (see page 24 of this report).

Avoiding financial penalties

By making carriers financially accountable for the arrival of irregular migrants, UKBA has aligned immigration requirements with the separate business interests of carriers and has effectively privatised migration management. Private airlines, more concerned with protecting their corporate interests, such as maximising profit, are likely to prioritise the avoidance of a £2,000 fine irrespective of the protection needs of its passengers. Some airlines do not employ trained security staff to undertake checks because of the expense involved, which means that they must rely on general airline staff to do extra checks on top of their existing workload. Confusion over 'inadmissable passengers' can result in considerable cost to the airline in the form of delays to boarding, the offloading of baggage, missed departure slots and compensation to passengers.

Airlines can also be subject to financial coercion from other actors, such as fines from the airport authorities. For example in Turkey, having intercepted an irregular passenger, one of the major international airlines then finds itself under pressure to return that individual to the place of embarkation within 48 hours, or risk incurring further fines from their national authorities. In light of this urgency, the airline's priority is to hand over responsibility for the individual as soon as possible. In most cases, the passenger will be sent back to the country in which they boarded. This very often will not be their country of origin but would almost certainly increase the risk of chain *refoulement*.

Preventing security threats

Our research found that irregular passengers are also considered a security threat, particularly on flights to the US, UK and Israel. Potential asylum seekers are considered an even greater risk due to, in the words of security staff responsible for document checks, "*their desperate state of mind that may lead them to take aggressive or threatening*

action".[96] Consequently, security staff are more likely to deliberately deny boarding to an asylum seeker in an effort to reduce perceived risk to the airline and its passengers.

Customer Service

Finally, airlines place a great deal of importance on customer service and prestige, and our research found that they were keen to avoid long delays, endless security checks and suspicious questioning for fear of antagonising passengers. As a result, airlines sought to make speedy judgements about the validity of a passenger's documents and the likelihood of incurring a fine upon arrival. It is unlikely that, in the time allowed to make this judgement, the airline staff would have the time to "*contact the nearest UNHCR or United Kingdom representative or the United Kingdom port of arrival, for advice and guidance on how best to proceed*" (Home Office, 2002b: 24), in order to verify whether the fine will be waived in respect of an improperly documented passenger in need of protection.

Financial penalties, security risks and public relations concerns have made carriers more cautious about who they allow to board their aircraft, and they have developed efficient and thorough immigration controls. These controls involve more than simply reviewing the passport or visa but also include behavioural analysis and profiling. Our research found that security personnel contracted by airlines rely more on behavioural analysis than document verification for the purpose of identifying irregular passengers and are influenced by guidance produced by the US on monitoring and interviewing suspect individuals.[97] Even if documents are valid, staff routinely attempt to identify passengers who are likely to destroy their documents en route, including those who may wish to claim asylum upon arrival in the UK. Passengers may be interviewed and, if considered suspicious, the airline may decide to take a digital photograph of the individual and make copies of their documents, which will then be sent to UKBA should the passenger destroy the documents en route. Alternatively, the airline may confiscate the documents and give them to the cabin crew for the duration of the flight. If the suspicion is particularly strong, the passenger may be denied boarding and, if in transit, may be returned to the country of embarkation.

By deliberately intercepting and refusing boarding to asylum seekers, private airlines are effectively

denying access to the UK asylum system, preventing people from leaving a country where their life is at risk and undermining the fundamental right to seek international protection. Of great concern is that security personnel send a monthly report, including the names of intercepted passengers, statistics and trends to client airlines and consulates. The collection and sharing of data, particularly with State representatives, highlights the vulnerability of refugees in the hands of unaccountable private agents.

Time restrictions

The lack of adequate resources and time at the point of interception means that airlines employ practices that further threaten access to protection. Our research found that security and airline staff were frequently unable to communicate with intercepted passengers and where no interpreter was available, they would rely on 'gut feeling' and 'body language' in order to make a decision about the risk posed by a passenger. Our respondents informed us that most irregular passengers are identified in transit, but that this is also where time is most restricted and there is pressure on gate staff to complete boarding as quickly as possible. The fines received by one of the major international airlines have all been from transit passengers, as staff are not able to be as thorough with such pressure on them.

The Refugee Council is concerned that, under pressure to save time and avoid fines incurred as a result of errors made at this key pressure point, airline staff are more likely to err on the side of caution and refuse embarkation. Rather than alerting UNHCR or a UK immigration liaison officer, who may not be present in the port, our research suggests they will turn the passenger around and put him or her on the plane back to the point of embarkation. This may involve returning a refugee back to the country of origin and persecution or to a country which will, in turn, *refoule* the refugee. Where airline staff intercept within the country of origin, they deny refugees the right to leave their own country in order to seek protection and further expose vulnerable people to persecution, human rights abuse and inhumane and degrading treatment. Private carriers can not be held accountable for these violations but, as Guy Goodwin-Gill has explained in this report, the State retains responsibility for any acts which result in the *refoulement* of a refugee, even when those acts are outsourced to a private carrier.

Interception: a success?

Our research found that the government has succeeded in assisting private carriers to comply with UKBA's migration management programme. One airline explained that in the past two years only one person has succeeded in evading their immigration control mechanisms in place at Istanbul airport, while another airline reported a 98 per cent success rate. Unfortunately these figures fail to show the number of refugees caught within this net. Carriers do not publish statistics on the number of inadequately documented passengers they refuse to transport, and it is impossible to know the number of refugees who have been affected.[98] Given that many people fleeing persecution have to resort to using a false passport and visa, or to entering clandestinely, hidden within lorries or trains, refugees are likely to be among those who have been denied boarding. Based on the nationalities intercepted by the airlines involved in our research, we can assume that refugees are being prevented from accessing safety within the UK. In 2007, the Istanbul office of one of our airline respondents refused 141 improperly documented passengers. Most of these were Turkish nationals, although they also reported intercepting Iraqis and Somalis. Another airline also reported intercepting passengers from refugee-producing countries such as Afghanistan, Iraq and Iran.

Asylum seekers appear to be a primary target of the UK's carriers liability legislation. The government has measured the success of carriers' liability legislation, and the use of detection technology to avoid incurring a fine, in terms of a reduction in asylum numbers in the UK:

"The deployment of UK detection technology in continental Europe has been a key measure in reducing asylum applications from 8,770 in October 2002 to 3,610 in June 2003."[99]

The carrier viewpoint

Airlines, and their representatives, have repeatedly opposed efforts to encourage airline staff to take on the role of immigration officers, particularly with regard to access to protection. Both IATA and the International Transport Workers Federation (ITF),[100] a global federation of transport unions, have expressed their objection to the responsibilities that have been placed on their members.

"IATA indicates that its members see immigration control as a matter that ought to be left in the hands of States, which have the expertise and jurisdiction

to examine the credibility of asylum claims and the obligation to protect refugees." (Brouwer and Kumin, 2004: 10)

A number of national airlines have objected to the suggestion that their staff should engage in assessing which passengers have valid claims for asylum, arguing that such an assessment should take time and careful investigation which is not possible at check-in (Sianni, 2003). British Airways has described the challenge faced by airlines caught between an awareness of the potential protection needs of its passengers and the constraints of carriers' liability.

"Since 1987, British Airways has carried no less than 400 passengers to the UK when we should not have done and these passengers have been granted refugee status. Not a temporary leave to remain or whatever, but a refugee status. Now there is a good reason for granting passengers that status in the UK. That 400 we carried, how many have we denied boarding that would have received refugee status had they gone through our checks? We do not know."[101]

Summary

The Refugee Council objects to the use of carrier sanctions as a method of immigration control, particularly one that appears to target asylum seekers. Private carriers should not be responsible for making life and death decisions about whether to allow an individual to leave one country and enter another for the purpose of claiming asylum. The airlines involved in our research did not show an awareness of refugee protection, had no systems in place to respond to the interception of a refugee, provided no training on international refugee and asylum law or procedures, had no contact with UNHCR and no direct support from UK immigration authorities in assisting a passenger seeking to flee persecution. Furthermore, our research revealed that airline employees, keen to avoid financial penalty, may act in a discriminatory way, singling out 'suspicious' persons on criteria such as race or gender, and denying them boarding. Airlines indicated that profiling is a key feature of their immigration control activities and that the attempted identification of asylum seekers is already taking place, further increasing the risk of *refoulement*.

By shifting responsibility for immigration control functions onto private actors, the UK appears to be seeking to overcome the constraints imposed by international rules concerning human rights

protection and to distance itself, both geographically and legally, from immigration control. The airlines involved in our research all appealed for the increased involvement of ALOs at the point of interception. The Refugee Council supports the argument that UKBA should take full responsibility for interception activities undertaken by a group or person acting on the instructions, or under the direction, of the UK Government. As we have already established in Chapter Five ('A note on State Responsibility'), the 1951 Refugee Convention prohibits refoulement 'in any matter whatsoever', including as a result of functions delegated or outsourced to private actors. The actions of airline staff, in response to advice given or pressure applied by UK immigration liaison officials, is sufficient to establish the responsibility of the UK Government. While UKBA continues to be directly involved in interception within airports it must provide adequate support, particularly in transit zones, to assist airlines with assessments of documentation and to take responsibility for decisions regarding the embarkation of people with inadequate documentation who may wish to claim asylum. While most ALOs do enjoy unrestricted access in the airports within which they have been posted, some have been denied airside access or are posted outside the country altogether, as in the case of Turkey. While this remains the case, the use of airline staff in the place of UK immigration officials must not absolve the UK government of responsibility for guaranteeing access to protection, and measures must be put in place to ensure democratic oversight, accountability and judicial remedy for the activities of non-State agents.

Recommendations

Records should be kept and made public as to the number and characteristics (age, gender, nationality, vulnerability) of persons who are intercepted, including whether any expressed protection concerns.

Carriers should be encouraged by UKBA to seek guidance when they come across an individual who may have protection needs.

UKBA should consider how to support carriers who come across passenger who may have protection needs, including waiving fines.

UKBA training for carriers should cover their

obligations under international refugee and human rights legislation.

Private carriers should be fully aware of procedures for the local system of referral to UNHCR, independent legal advisors and NGOs. Where private carriers contract out interception functions to private security firms, they must adhere to protection safeguards.

Where an individual is to be returned, a mandatory return interview should be conducted to afford individuals the opportunity to express protection concerns and to access independent legal advice.

UKBA should encourage host countries and carriers to allow time for access to UNHCR, NGOs and independent legal advisors.

88 A case at the Court of Appeal – International Transport Roth GNbH v Secretary of State for the Home Department [2002] EWCA 158, [2002] 3 WLR 344 – held that the nature of the Scheme was incompatible with the carrier's right to a fair trail under Article 6 ECHR and their right to the peaceful enjoyment of property.

89 JBOC is the joint border operations centre; the multi-agency operational hub for the e-Borders programme. JBOC is evolving into eBOC, the e-Borders operations centre mentioned in Chapter three on page 30.

90 Hansard, 2005. Identity cards and passports (forgery). 4 February 2005: Column 1150W. [Online] Available at: www.publications.parliament.uk/pa/cm200405/cmhansrd/vo0 50204/text/50204w07.htm#50204w07.html_spnew0 [accessed 14 August 2008].

91 Home Office press release, 2007. British and French immigration ministers pledge close cooperation on secure border controls. [Online] 8 November. Available at: http://press.homeoffice.gov.uk/press-releases/secure-border-controls [accessed 14 August 2008].

92 Dave Roberts, Deputy Director, Immigration Service, Home Office speaking at the Round Table on Carriers' Liability Related to Illegal Immigration. Brussels, Belgium, 30 November 2001. Available online at: www.iru.org/index/cms-filesystem-action?file=en_events_2001/Illegal2001.pdf [accessed 29 October 2008].

93 For more information see Home Office, 2002b.

94 4NI.co.uk, 2003. Ferries face £2,000 fine for carrying 'illegal immigrants, [Online] 6 October. Available at: www.4ni.co.uk/nationalnews.asp?id=20774 [accessed 30 October 2008].

95 Cameroon Airlines and Kyrgyzstan Airlines have been refused permits to land at UK airports because of non-payment of carriers liability fines for transporting inadequately documented passengers. Hansard, 2004. Written Answers: British Airspace. [Online] 8 January 2004: Column 430W. Available at: www.publications.parliament.uk/pa/cm200304/cmhansrd/vo0 40108/text/40108w02.htm#40108w02.html_spnew8 [accessed 14 August 2008].

96 Quote from a meeting with airline security staff in Turkey in May 2008.

97 One of the national airlines involved in the research based their monitoring and interviewing of passengers for UK flights on guidance produced by the Transport Security Administration, a US agency that conducts security operations across the country's transportation systems. For more information see: Transport Security Administration. Welcome to who we are. [Online] Available at: www.tsa.gov/who_we_are/index.shtm [accessed 30 October 2008].

98 Since 2005 one of our airline respondents has been composing a monthly list of refused passengers including the name of the passenger, destination, nationality and reason for refusal. This list is then sent to the UK ALO based in Greece but it is not made publicly available.

99 Hansard, 2003. Written Answers: Illegal immigration. [Online] 21 October 2003: Column 555W. Available at: www.publications.parliament.uk/pa/cm200203/cmhansrd/vo0 31021/text/31021w21.htm#31021w21.html_sbhd0 [accessed 31 October 2008].

100 In 1992, the ITF Civil Aviation Section passed a resolution that called for the repeal of all carriers' liability laws and condemned "*government policies and airline practices [which] are improperly pushing aviation employees into the role of policing immigration. Aviation employees are not trained for such duties, nor should aviation employees be involved in any measures which jeopardise the international rights of asylum seekers.*" International Transport Workers Federation, 1992. ITF statement on air transport workers refusing role as police auxiliaries against migrants. [Online] Available at: www.itfglobal.org/files/extranet/-1/738/Statement%20on%20aviation%20workers%20and%2 0deportees.pdf [accessed 31 October 2008].

101 James Forster, Manager, Facilitation, Government and Industry Affairs, British Airways speaking at the Round Table on Carriers' Liability Related to Illegal Immigration. Brussels, Belgium, 30 November 2001. Available online at: www.iru.org/index/cms-filesystem-action?file=en_events_2001/Illegal2001.pdf [accessed 29 October 2008].

A note on State Responsibility

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When do activities carried out by immigration liaison officers incur a State legal responsibility under international refugee and human rights law?[102] Since ILOs take on a number of different functions, it may as a starting point be useful to distinguish between two different situations: those where migration officers exercise direct authority vis-à-vis an asylum seeker or refugee, and those where migration officers advise, direct or control either non-State entities, such as carriers, or national authorities of another State.

As regards the first instance, States must, as a general proposition, respect instruments like the European Convention on Human Rights, the Convention Against Torture and core provisions of the 1951 Refugee Convention, most notably the principle of *non-refoulement*, wherever a State exercises jurisdiction. The reach of a State's jurisdiction is not limited to its national territory but extends to all areas and individuals over which the State exercises effective control. One could, therefore, consider the juxtaposed controls scheme operated by Britain at Calais, Dunkerque and Boulogne to constitute a sufficient degree of exclusive and effective control over a specific geographic area, to entail British jurisdiction and thus human rights responsibilities.

Often however, migration officers do not exercise direct authority, but rather act to advise or instruct either national migration authorities or private actors, such as airport security staff in enacting migration control. Despite the claims occasionally forwarded to the contrary, it is important to emphasise that a State cannot rid itself of human rights obligations by outsourcing or delegating functions such as migration control. This is supported by the formulation chosen by the drafters of the 1951 Refugee Convention, prohibiting *refoulement* "*in any matter whatsoever*" (Art. 33). Secondly, the law of State responsibility clearly dictates that the conduct of individuals or groups is attributable to a State if that group or person "*is in fact acting on the instructions of, or under the direction or control of that State in carrying out its conduct*" or "*exercising elements of governmental authority*".[103] One may of course ask whether migration officers merely advising private carrier staff is enough to engage State responsibility. Combined with the operation of carrier sanctions, imposing hefty fines on any airline company bringing in unauthorised foreigners, there is a strong case that actions of migration officers in relation to individual cases may suffice to establish such responsibility.

In the case of migration officers liaising with the national authorities of another State, the test is somewhat different. Unlike in the case of private actors, the authorities of the host State will be directly bound by international refugee and human rights obligations, regardless of the role played by foreign migration officers. The State posting migration officers may, however, also incur a responsibility in case rejection of onwards travel amounts to *refoulement* or other human rights violations. Again, the law on State responsibility stipulates that a State "*which aids or assists another in the commission of an international wrongful act by the latter is internationally responsible for doing so*" if that State has knowledge hereof and the act would be equally wrongful if committed directly by that State.[104] This sets a broad principle by which migration officers must pay full respect to international refugee and human rights obligations when acting to aid or assist authorities of another State.

102 International Law Commission, 2001. Articles on the
     Responsibility of States for Internationally Wrongful Acts,
     UNGA resolution 56/83, 12 December 2001, Art. 8 and 5.
     See further the commentary by James Crawford, The
     International Law Commission' "Articles on State
     Responsibility: Introduction, Text and Commentaries",
     Cambridge: CUP, 2002.

103 Ibid., Art. 16.

Chapter Six – Displacement onto dangerous routes and methods

Border controls are succeeding in reducing the number of irregular arrivals, including asylum seekers, to the UK. However, global asylum numbers are climbing. It would appear that border controls are simply making the routes used by irregular migrants more complicated and more dangerous, while empowering new and unaccountable actors in the form of smugglers and traffickers. This section will explore some of the secondary effects of border controls and the consequences for individual refugees forced to risk their lives to seek protection in the UK.

"It's not a matter of choice of going which country you go but actually it's a matter of survival, most of them, yes probably maybe there's 1 or 2 number of people… want to come here, because they've got their connections and they've got their families living here and they would prefer to come to here but actually the majority and actually the main aim of them actually is getting somewhere safe where they can live." (DF, RCO representative, London)

"When people they come this country, they ready to die." (AB, refugee, London)

Displacement onto dangerous routes and methods:
Smugglers

As border controls have become more sophisticated and more widespread, legal and safe routes to protection in Europe have been cut off. Routes have become more dangerous, more circuitous and more crowded as refugees are driven to more desperate means to reach safety in another country.

"it can be stated that increased border control has […] an impact on migration routes, but less on the total numbers, as (potential) migrants tend to shift the routes, rather than deciding to stay at home... higher physical risks for smugglers not only affect the prices of smuggling services, but also negatively impacts the treatment of the migrant by the smuggler." (ICMPD, 2007: 33)

No longer able to flee quickly or easily, refugees have increasingly turned to certain members of their community – experts in acquiring false documents, crossing borders clandestinely or bribing immigration officials – to assist them in finding a safe passage to a country in which they can apply for asylum.

Our respondents relied heavily on what they called 'agents' to arrange false documents and plan or lead the route to safety. These 'agents', or 'smugglers' often offer the only route to safety for people experiencing persecution in their country of origin. While refugees have very limited access to information on the international protection regime, smugglers dominate both as advisors and facilitators. Some smugglers will be no more than local traders or nomads motivated by humanitarian principles, while others will be members of extended criminal networks. The latter may have no interest in assisting a refugee to safety and may advise a long and costly journey to Europe instead of asylum in a neighbouring country, in order to maximise their profits. Established agents are often well connected both with colleagues in other countries and with transportation employees and immigration officials within the country of origin.

"The agencies might have sometimes some connection in the airport and things like that, they bring people to the airport and they say, ok they have friend who probably let them in, people who actually ease the access." (DF, RCO representative, London)

Smuggling is a growing industry. Research in countries of transit has found a thriving industry of smugglers and traffickers specialising in assisting refugees to organise their departure.[104] Our RCO

respondents told us that where previously Afghan refugees had to travel to Pakistan to locate an agent, for the past two years they have been able to find them in cities along the border, within their own country. The continuation of conflicts and persecution in refugee-producing countries and the location of border controls closer to these very countries create a demand that feeds the smuggling industry, and inflates the prices charged by unscrupulous smugglers.

"It's a big organisation, taking money, sometimes hiding the newcomers, the new people… they put them in one house to wait for the trip and then to take those people from Istanbul to Izmir, to the border, or to Edirne. They have to be in cooperation with the people who know the borders, who know the way to go, who know exactly the security work." (SS, NGO representative, Turkey)

In an effort to maximise their profits, smugglers often subject the refugees they are assisting to crowded, unsanitary and dangerous transportation.

"When I personally left Turkey to Greek it was 78 people in the back of the lorry. I was with 77 people, it was 78 people all together." (AA, refugee and RCO representative, Leeds)

"there is…, 20, 30, 50 people to one lorry... He is businessman, he is saving. If kill, if die, it's not his problem…. I know too many is been killed or been died, you know, somebody is put in freezer, you know, some lorry's freezer… somebody is died in lorry and somebody is died in sea." (AD, refugee, Leeds)

Our respondents described being threatened and beaten by smugglers attempting to extract more money from them during the journey. One Iranian woman was threatened with a knife on her way to Turkey.

"I was very scared at that time, I was crying and I couldn't do anything." (MA, refugee, Turkey)

"When you are going to an agent and they taking you from Pakistan, from Afghanistan to another country always they asking "give me money, I need some money to take you from here to there", if you not then they will say "ok, you stay here, when I got money I will take you."" (SR, RCO representative, Leeds)

If they succeed in making it to a safe country, many

refugees then find themselves trapped within poorly paid employment in order to pay back the debt to their smuggler. Our research uncovered teenage children within the UK who are working long hours to pay back agents who brought them here.

"Mainly they do [work on the black market]. Ten hours, twenty more hours on the black market. We have large number of them coming to the class half asleep. As they are working until 2am in the Fried Chicken shop." (AFM, RCO representative, London)

The threat of capture by coastguards further motivates smugglers to mistreat, abandon or even kill the migrants they are transporting.

"I think it was two years ago, a few years ago it was in a Baltic sea, between Poland and Lithuania, I think before the Swedish guard arrived to their ship to check, they got all them container dropped into the water and a large number of Afghans has been killed. And just is inhuman, and they just to avoid any fine or any... they drop, deliberately." (AFM, RCO representative, London)

"there is no normal way you can go from Somalia to get to Yemen that's why there is a lot of […] people smugglers who actually do not care the human life or anything, they wanted to take the money and […] they put them in the boats and sometimes when they are about 20kms away from the shore they chuck them away to the sea because they don't want to be caught by the coast guards of Yemen. A lot of people actually are lost their lives, women and children, elderly people, all people." (DF, RCO representative, London)

As border controls make detection more likely, smugglers simply take more risks to get their human cargo to the destination.

"Europe spend a lot of money to give to coast guards and the training in the sea to actually stop those people to coming there. That's why I think they take more risks because these people-smugglers they don't care how they get there, how many people die. […] what they actually worry about is to get the money from these people… in any which way they want to." (DF, RCO representative, London)

Dangerous land and sea routes
The danger involved in travelling irregularly to Europe was a recurring theme of our interviews with refugee respondents in the UK and Turkey. Unable

to fly due to the expense involved or the risk of encountering border controls, most of our respondents travelled by land and by sea. These routes were cheaper and easier to organise and, more often than not, the only option provided by the smugglers. Unfortunately, they are also the most dangerous routes to Europe.

"we've got many people, even now are risking their lives to go to, with a makeshift boat they go to Yemen and actually many of them, majority of them [...] drown and die in the sea. A lot of people actually go and walk in the barren deserts from Ethiopia or somewhere where they go to Libya and they're risking their lives… to come to Europe. And many of them actually perish in the sea." (DF, RCO representative, London)

Our respondents in Turkey described their journey across the mountains from Iran on horse, truck or foot. They attempted to avoid the landmines and the scanning lights of the Turkish and Iranian watchtowers and described being shot at by Iranian and Turkish border guards. One Iranian refugee described his experience:

"I was very scared really because when I was crossing the border I saw the towers, I saw those towers with big lights and I knew that there was a very big risk… We stopped three or four times on the way, the men who were accompanying us said, hide your head or lie on the ground. We did this and I felt this danger." (SV, refugee, Turkey)

The border zones are often lawless areas, conflict zones or disputed territories. Our research indicated that there is a very high risk of kidnapping or physical attack by gangs in Sudan, Eritrea, Saudi Arabia and South Africa.

"Since the introduction of the visa restrictions we have not only seen a surge in agents providing services but also gangs preying on refugees along Zimbabwean borders. They know that they are carrying valuables." (SH, RCO representative, London)

The land routes through East Africa involve long and hazardous desert crossings in overcrowded vehicles, travelling at night to avoid border guards. Many refugees do not survive the journey.

"The most dangerous route is between Sudan and Libya because there is no water, there is no food station there is no… just nothing. So what they do is

pack, say forty to fifty people on the back of this four wheel drive, and they tell them not to pick up many things so that they can put more people on that, and if there is any problem with the car, because it's sandy – and if it's sandy they sometimes lose their way – they miss their way, they don't know, so they just drive around and they run out of fuel. So they say to them, ok we'll come back… and they never come back. And people die in groups – forty people at a time who die." (AW, RCO representative, London)

Our respondents told us stories of refugees killed while hidden beneath lorries or suffocated within the air-tight refrigeration trucks.

"'Cos sometimes they put you, I don't know how you exactly to describe it but they put them under the truck. They hid them somewhere there and this lorry's driving maybe sixty, seventy mile an hour. And they're just there. It is dangerous." (AA, refugee and RCO representative, Leeds)

The journey by truck or car is often followed by an equally dangerous sea crossing to Malta, Italy, Greece or Yemen.

"Yes, when I was in the boat, because it was Sunday night I took that boat, Monday, Tuesday, Wednesday, Thursday, no water, no drink, no food, no nothing… we were four Somalian and another six or seven Kurdish or Iraqi." (SA, refugee, London)

Encountering border guards

Refugees who survive the journey in barely seaworthy boats or overcrowded cars encounter a further danger in the form of border guards from neighbouring countries, strategically posted at land or sea entry points along the route to the UK. The risk of being beaten, shot at or killed by border guards was a recurring feature of our respondents' journeys to the UK.

"he give me two names of guys they die because they lost way and they went another way… in the Sahara, they would go to Egyptian way, and Egyptian police when they saw, they shoot them." (SA, refugee, London)

"They say they came from Turkey to Bulgaria and they said Bulgaria police beat us a lot, a lot and they wanted to kill us and they took all our money and they said they broken our ribs." (SR, RCO representative, Leeds)

We interviewed a number of Afghan and Iranian refugees who had taken the land route from Iran to Turkey. The border is a vast and mountainous terrain, and is patrolled by Iranian border guards, the Turkish military and the Jandarma – the Turkish rural police. The Turkish army is comprised of young men fulfilling their military service and turnover is high. The border is extremely militarised due to ongoing conflict with the PKK, a proscribed Kurdish political party, and conditions are hostile. Our respondents would not consider approaching a Turkish border guard for assistance along the route or at the border point for fear of being shot.

"maybe four or five years ago.... a group of people were trying to cross the border, the Greek border and then the Jandarma arrested them. They stay in the Jandarma barrack for almost two weeks and day and night they were beaten." (SS, NGO representative, Turkey)

Some respondents encountered corrupt border guards who demanded bribes or stole money or documents leaving refugees stranded and vulnerable.

"They paying money, sometimes police taking all their money and they send them back not to Afghanistan, to somewhere in the countryside and they will come back." (SR, RCO representative, Leeds)

During our research, we identified particular problems with the lack of an adequate screening procedure at the Turkish border to identify refugees, and the absence of accommodation for intercepted migrants while their status is determined. There are no interpreters at the border to determine the needs or requirements of those who the border guards intercept, and border guards' knowledge of refugee law and procedures is limited. As a result, border officials either engage in a repetitive transfer of migrants back and forth over the borders with neighbouring countries or they *refoule* migrants, directly and indirectly, back to their country of origin (see 'Non-Refoulement', on page 70).

"That guy, more than ten times he try to come here. Two times he went to Iran... they took him back to Afghanistan two times. Then he came to Turkey, from Turkey he went to Greece and from Greece they deported back to Afghanistan because Greece police arrested him in the water and they took him back to Turkey, Turkey to Iran to Afghanistan." (SR, RCO representative, Leeds)

Border controls as a deterrent

The Home Office is aware of the risks posed to migrants who seek ways to evade UK border controls. Border controls have become not only a mechanism for preventing entry, but the secondary effects they cause, including the threat of exploitation, physical danger and interception, are now used to communicate a deterrent message and to prevent irregular migration in all its forms, including economic and protection-related.

In 2006-07, the joint Home Office/FCO Migration Fund[105] spent £1.8million on overseas projects, including a number of campaigns directed at influencing migrants at the earliest possible point in their journey to the UK: the point at which they make the decision to leave their country of origin. In early 2007, the British High Commission ran a publicity campaign on illegal migration in Pakistan. Its aim was to warn Afghan and Pakistani men and women about the risks involved in irregular migration, particularly the use of agents; to raise awareness of UK enforcement activity; to encourage the use of legal migration channels; and, ultimately, to reduce irregular migration to the UK. The campaign used TV, radio and newspaper adverts in Urdu and Pashto, and 20,000 posters were distributed to schools, colleges, universities, railway stations, bookshops and travel agencies throughout the country. Similar campaigns have been financed by the UK and run in the Punjab in India, and with the involvement of IOM in both Vietnam and northern France.

These marketing campaigns aim to build on the highly visible nature of UK border controls in order to act as a deterrent to any prospective irregular migrants (Cabinet Office, 2007). They also aim to address some of the perceived 'pull factors'[106] such as the availability of work or benefits and the possibility of regularisation.[107] Home Office evaluation suggests that these campaigns have been effective in raising awareness amongst their target group, but there was no evidence of any direct impact on the decision-making of migrants or on the numbers of irregular arrivals to the UK (Foreign and Commonwealth Office, 2008). In terms of this research, these information campaigns are particularly significant as they reveal an underlying assumption of the UK Government that all irregular migrants are moving for economic reasons, and a failure to recognise the real motivations of refugees moving irregularly.

Our research challenged the notion of 'pull factors' and confirmed Home Office findings on the motivations of asylum seekers (Robinson and Seagrott, 2002) by revealing that the decision to leave the country of origin was primarily driven by the need to escape persecution and the desire to reach a place of safety.

"most of us when we leave our countries, we don't – I'm especially talking about Iraq and Iraqis – they don't leave their country because they want money or something. They'll leave their country because maybe persecution." (AA, refugee and RCO representative, Leeds)

Some of our respondents described their perception of the UK as a safe and tolerant country that is more likely to recognise their status as a refugee and guarantee their protection. Others chose to come to the UK, either to join friends or relatives, or because they were familiar with the language and culture due to a historical link between the UK and their country of origin. There is, for example, a long tradition of migration to the UK from Kenya and the northern part of Somalia, which were British colonial territories, and once these communities in the UK were established they served as a network for future arrivals (ICMPD, 2007).

For some respondents, networks of family and friends provided assistance both before and during the journey. This assistance usually took the form of financial support but there was also a considerable amount of information flowing back from relatives in Europe, to the country of origin. However, the reliability of information provided to asylum seekers by their social networks has been questioned (Koser and Pinkerton, 2002) and our research suggested that refugees can be misled by some of the information they had about the UK prior to their arrival.

"They get surprised, because the idea, the knowledge they had before about the UK, and then they come here and see things, it's completely different." (AW, RCO representative, London)

Many of our respondents fled their homes in a hurry, with little time to plan their route or consider their options. Our research found that refugees had little awareness of UK border controls and many knew nothing of the extent of the risks involved in irregular migration. Most of our respondents placed their trust, and large sums of money, in the possession of

agents and relied on them to make the decisions about their route and their destination. This was particularly the case for our female respondents, who had very little control over their journey to the UK:

"Of course, he just keep telling me have to do that way… I have to listen what he said, I have to follow… if I'm worried, he say me I have to respect and listen him, I don't have another option." (AB, refugee, London)

Respondents perceived the agents as having a better understanding of border controls, of the risks involved in particular routes and of opportunities for safe and uninterrupted passage. Agents appeared to usually make decisions about routes based on the existence of contacts in transit countries and on the nature of certain border controls. They frequently have links to corrupt officials in embassies, airports or border posts, who either provide the necessary documents or allow passage.

"The agencies might have sometimes some connection in the airport and things like that, they bring people to the airport and they say, ok they have friend who probably let them in, people who actually ease the access." (DF, RCO representative, London)

"Also there is police, also they making money. Agent have relationship with the police at the border. When I passed the border from Iran to Turkey there were a lot of police and they didn't tell us anything. When I asked the agent "why police didn't tell us anything" and they said "we are paying for police"." (SR, RCO representative, Leeds)

Some of our respondents were offered a choice of route, usually based on how much they were prepared to pay, and the level of safety was in direct proportion to the cost of the journey. A flight from Pakistan to Europe including false documents can cost up to US$20,000, so many choose the more economical, more dangerous route overland by lorry through Eastern Europe or the even cheaper and more risky boat from Turkey to Italy or Greece.

"So an agent... he will pass me to another agent to make some money to get some commission... The waterway... from Greek to Italy cost up to 2,500 US dollars. But the lorry way cost up to 5,000 US dollars." (AA, refugee and RCO representative, Leeds)

"Those who don't have connections come by sea, the traffickers get money from these people and their families back in Iran sell everything they have. The less connected have to find more dangerous routes." (PN, RCO representative, London)

The refugees we interviewed were very rarely given much information by the agent about the route, the dangers and the risk of interception before setting off, and the information they were given was often deliberately deceptive. Those that did have some idea about the dangers ahead were prepared to take that chance in order to reach safety.

"you see women, most of the people who drown in the sea, many of them are women, those women that are crossing the desert to Libya there are women and children in there. Some of them actually are heavily pregnant… a lot of people actually who came to Italy by this makeshift boat was included by a heavily pregnant woman who actually gave birth in there, in the boat during the journey. It's not something actually that's for this is women or children, or men or what, it's everyone doing it because like I say for them it's a matter of survival so they don't have nothing to lose. They're risking their lives and they know that many people actually died there in the sea, they know that and they say "Ok, yeah, I'll take my chance"." (DF, RCO representative, London)

"I think they know, they can imagine... but they still hope that that journey would be safer than staying in Afghanistan because they believe there are some institutions in these countries and the most it could get, they get sent to prison and they would explain why they are in this country, but not killed." (AFM, RCO representative, London)

Our respondents explained that refugees are not even deterred by their own experience of interception and, having paid their smuggler for a guaranteed journey to the UK, they simply try again and again.

"And the fourth or fifth time he tried again and he came here because he paid, he said, I told him "how much money have you spent", he said "no...one time I paid for my journey to that person who want to take me to England and he promised me, you will pay just one time, if you come back you don't need to pay me, ok"." (SR, RCO representative, Leeds)

Summary

By denying them a legal route to access protection in a safe country, refugees are effectively pushed into criminalisation, including having to pay bribes to visa officials, acquiring false documents or using human smugglers. Our research has shown how, through assimilation into the international criminal network, refugees become vulnerable to abuse and exploitation at the hands of smugglers.

We were told innumerable stories of physical danger and death as a result of the lack of safe routes to protection in Europe. There is no shortage of shocking data about the number of boats intercepted in the territorial waters of Member States or bodies found at sea or on beaches. Many irregular migrants, including refugees and people in need of protection, will take ever greater risks in the search for new routes to avoid UK and EU border controls. The NGO UNITED has documented almost 9,000 deaths of people attempting to enter the EU in recent years.[108] Some of these deaths were, no doubt, at the hands of smugglers, traffickers or border police, others will have drowned, suffocated or been crushed.

The Government's communication of these dangers for the purpose of deterring prospective irregular migrants indicates, yet again, that it does not recognise the mixed nature of migration flows. While this 'message' may succeed in preventing the arrival of economic migrants, it will have little impact on the decision-making process of refugees. Refugees flee their country of origin by compulsion, not by choice, and their destination is selected not for the economic or social benefits it offers, but because agents have determined where the refugee will be taken or because refugees are trying to reunite with family and community members. While no alternative exists, refugees will continue to entrust their lives to smugglers in the hope of finding protection in the UK. Our research suggests that unless the government provides legal and safe routes for individuals seeking international protection, border controls will simply expose refugees to further exploitation, danger and death.

Recommendations

All Interior Ministry and border control staff, in countries where the UK seeks to influence the operation of national border control operations, should receive training and awareness-raising on refugee issues and on identifying victims of trafficking.

Attention should be paid by outposted immigration officials and carriers to the needs of vulnerable groups, including vulnerability based on age, gender and sexuality.

104 Moret, Joelle, Simone Baglioni and Denise Efionayi-Mader, 2006. The Path of Somali Refugees into Exile. A Comparative Analysis of Secondary Movements and Policy Responses. Swiss Forum for Migration and Population Studies No. 46, Neuchatel: Swiss Forum for Migration and Population Studies, cited in ICMPD, 2007.

105 In 2005 the Home Office and Foreign and Commonwealth Office established the Migration Funds totalling £8 million. For more information see Foreign and Commonwealth Office, 2008. Global Opportunities Fund, Annual Report 2006-2007, February 2008.

106 For the purpose of this report, 'pull factor' refers to the characteristic of a particular country which may make it attractive to individual asylum seekers. This could include the levels of acceptance of asylum seekers and the ways in which countries support refugees (Robinson and Seagroatt, 2002).

107 OM press release, 2007. Launch of new information campaign. [Online] 23 January. Available at: www.iom.int/jahia/Jahia/pbnEU/cache/offonce?entryId=12803 [accessed 31 October 2008].

108 UNITED webpage, 2007. List of 8855 refugee deaths through Fortress Europe. [Online] 14 March. Available at: www.united.non-profit.nl/pdfs/actual_listofdeath.pdf [accessed 27 August 2008].

Chapter Seven – Refugees in permanent transition: evidence from the case of Turkey

The vast majority of the world's refugees do not come to Europe or to the UK. Many are hosted within neighbouring countries or, if they have tried to move on further, may be trapped within transit countries such as Turkey, on the external border of the European Union. For the UK government, transit countries are a key target in its efforts to tackle irregular migration, and considerable resources are expended in order to ensure that migrants are intercepted in these areas. The Refugee Council is concerned that migrants intercepted in transit countries may be forced to remain in countries that are not signatories to the 1951 Refugee Convention, that violate their rights and that deny them access to effective protection. This section examines the consequences of efforts to contain refugees within their regions of origin, and the significance of these measures in relation to the UK's obligations under the 1951 Refugee Convention and international human rights.

The reality of refugee population distribution

By definition, a refugee must have crossed an international border in order to qualify for this status. However, the vast majority of conflict-generated movement happens *within* the borders of the country of origin. The UNHCR estimates that there are some 26 million Internally Displaced Persons (IDPs) in the world, and at the end of 2007, its offices were providing assistance to 13.7 million of these, an increase of almost one million on 2006 figures (UNHCR, 2007b: 2). Those who do make it outside their country of origin rarely travel further than the neighbouring countries. At the end of 2007, approximately one third of all refugees were residing in countries in the Asia and Pacific region (3,825,000 refugees), mostly from Afghanistan, while the Middle East and North Africa region hosted a quarter of all refugees (2,721,600 refugees), primarily from Iraq. Europe hosts only a small proportion of the world's refugees; at the end of 2007 this figure stood at 14 per cent (approximately 1,580,000 refugees). The UK now hosts less than 300,000, representing 2.6 per cent of the world's refugees (ibid: 7). As these statistics show, most refugees do not make it to Europe but seek protection in neighbouring countries. What these figures do not show is the number of refugees who have not registered with UNHCR within neighbouring or transit countries, due to their intention to continue onwards to another country. These migrants are in the

minority and many of our respondents confirmed that many do not make it further than the transit countries in which they have stopped to rest, earn some money and investigate the onward route. In Chapter Six (Displacement onto dangerous routes and methods) we highlighted the significance of financial resources for refugees seeking to travel to Europe, and the desperate measures that people will go to in order to seek protection in a safe country. As this chapter will show, our research found that some refugees are prevented from further movement by a lack of money, by imprisonment or *refoulement* by third country authorities, and by the border control efforts of the UK and other Member States.

Durable solutions and permanent transition

The UNHCR has identified three 'durable solutions' for the management of the global refugee population: integration into the country of asylum, return to the country of origin or resettlement to another country (UNHCR, 2003b). For some refugees trapped within transit countries, none of these solutions is available and hence they are described as being in a situation of 'permanent transition'. This chapter will use evidence gained from our respondents in Turkey, both refugees and the NGOs that assist them, to portray the extent of this problem and to identify the various elements which, when combined, result in denying access to meaningful protection for some refugees in Turkey.

Turkey is not alone in experiencing the phenomenon of 'permanent transition' and it has been documented in a number of other refugee contexts where European border controls are active, including Ukraine, Tanzania, Kenya, Morocco and Libya, as we will show in this section.

Access to refugee protection in the region of origin

Before we can even start thinking about durable solutions, we must first address the fundamental issue of whether refugees can access effective protection in the countries within which the UK, and other EU Member States, operate border controls. In the absence of an internationally agreed definition of 'effective protection', UNHCR has identified the following critical factors for access to 'effective' or 'sufficient' protection in the context of secondary movers:

A. The State must be party to the 1951 Refugee Convention and/or its Protocol, offer access to fair and efficient procedures and present no risk of *refoulement*, both chain and direct;

B. Protection from torture, the right to life and freedom from arbitrary detention;

C. A genuine prospect of an accessible durable solution in or from the asylum country, within a reasonable timeframe;

D. Pending a durable solution, stay is permitted under conditions which protect against arbitrary expulsion and deprivation of liberty and which provide for adequate and dignified means of subsistence;

E. The unity and integrity of the family is ensured;

F. Specific protection needs of the affected persons, including those deriving from age and gender, are able to be identified and respected (UNHCR, 2003a).

A 2003 European Commission Communication built on this definition and articulated a more detailed concept of socio-economic well being that it viewed as being central to the provision of refugee protection:

"including, as a minimum, access to primary healthcare and primary education, as well as access to the labour market, or access to means of subsistence sufficient to maintain an adequate standard of living." (European Commission 2003a: 6)

These standards have been criticised for failing to go far enough to ensure adequate protection and livelihood for refugees (Human Rights Watch, 2003; Amnesty International, 2003). These commentators argue that for a State to be classed as offering effective protection it must respect the basic civil and political rights of refugees, such as the rights to freedom from arbitrary deprivation of liberty or property and guarantee legal status for the individual.

In this section we will explore whether any of the above conditions are met in some of the countries where the UK and other European Member States implement border controls, including Turkey, and the resulting impact on refugees and the countries of transit in which they are hosted.

Access to fair and efficient asylum procedures and protection against *refoulement*

The ability to enjoy any of the durable solutions is entirely dependent on access to a fair and efficient asylum procedure. Unfortunately, many of the transit countries within which the UK and other EU Member States implement border controls do not guarantee access to an asylum system, and have been criticised for their lack of respect for human rights and their treatment of non-nationals. The UK has ALOs based in Pakistan, United Arab Emirates, Bahrain, India, Bangladesh, Thailand, Malaysia, Sri Lanka and Jordan, none of which are signatories to the 1951 Refugee Convention. Despite this, the UK and other EU Member States continue to apply pressure on these and other transit countries to reinforce their border controls and better manage irregular migration through their territory. As a result, irregular migrants are caught within their borders, and may be denied access to protection. ABCDS, an NGO that assists irregular migrants in Morocco, has recorded the experiences of refugees living in the woods of Oujda, unable to move onwards into Europe and denied adequate protection within Morocco.[109] Likewise, migrants intercepted in Libya are routinely arrested and forcibly returned with no opportunity to express a claim for asylum. Furthermore, they are subjected to physical abuse, lengthy and arbitrary detention and, in some cases, death (Human Rights Watch, 2006).

Many of our NGO respondents in Turkey emphasised the difficulty refugees experience trying to access the asylum process within Turkey. When an irregular migrant is caught, s/he will often be detained, charged and held administratively in a

'foreigners' guesthouse' or detention centre. Testimony collected by the Helsinki Citizens' Assembly (hCa), a Turkish NGO which assists refugees, shows that it is extremely difficult to make a claim for asylum from detention. The lack of information on the asylum procedure in Turkey is a significant barrier preventing intercepted refugees from accessing protection. Asylum seekers are not counselled on the asylum procedure, they are not offered advice or information by the police and there is a lack of interpreters. Once they have entered the asylum process, interpreters are provided by UNHCR and a limited amount of free legal aid is available through a range of NGOs and the Turkish Bar Association.

Our evidence showed that the lack of interpreters and legal representation became most serious when refugees were apprehended at the border or while clandestinely travelling through Turkey. At these stages, where independent legal representation and interpretation is crucial, there seemed to be no system for referral either to lawyers, NGOs or to UNHCR. One respondent explained how the Turkish police often refuse to accept applications for asylum and provide false or misleading information about asylum procedures. According to a recent report by a Turkish NGO, 51 Afghan refugees were detained by the Turkish authorities on the Aegean Coast in the summer of 2007. Police refused to process their asylum applications and instead began preparations for deportation. When the detainees refused to comply, they were beaten (hCa, 2007). Our respondents informed us that the Ministry of Interior refuses to accept asylum applications from transit zones in airports as these zones are not considered Turkish territory. One respondent in particular had received a number of telephone calls from intercepted refugees in the transit zone at Istanbul Atatürk Airport. Despite our respondent's attempts to prevent deportation by making applications to the European Court of Human Rights, many of those who made contact were deported, or *refouled*, before their claim for asylum had been heard. In 2007, two Iranians and three Sri Lankans were deported from Istanbul Atatürk Airport without being allowed to apply for asylum (hCa, 2007). UNHCR in Turkey informed us that they become aware of attempts to claim asylum at the airport only once it is too late for them to intervene.

The threat of *refoulement* was the most common grievance reported to us by our refugee and NGO respondents in Turkey.

"It's not good there, because I told you, just you come to the police, you know, just touch you, he's taking you in prison and after put you border in Iraq." (AD, refugee, Leeds)

Refugees in Turkey incur a significant risk of *refoulement*, either in detention or at the point of interception at the border and on the territory. The Turkish rural police, the Jandarma, estimate that they intercept between 4-5,000 people every month at the border and within Turkey. Most of these will be returned to their country of origin or departure before they have had a chance to claim asylum. There is also evidence that Turkey has returned asylum seekers without any attempt to assess their requirement for protection.[110]

"I was scared in Turkey… because they said if police catch you they will send you back to Iran, they not gonna send you to Iran government and they will send you by Kurdish people and Kurdish people, a lot of Afghan people they killed, Afghan people they took them money and they took them eyes and they broken their hand and their legs and that was very dangerous, because I was very scared of Turkey police sell us back by Kurdish, Iran Kurdish people and they will kill us. That was very dangerous…. They will sell, they give to them and they will take some money from them." (NMS, refugee, Leeds)

There are also cases of refugees recognised by UNHCR being arrested, detained and repatriated by the Turkish police. A few cases received media attention immediately prior to our visit: in April 2008, UNHCR publically criticised the return by force of a group of Iranians, including five refugees, to Iraq. When denied entry to Iraq, the group was forced to swim across the river separating the two countries and four Iranians drowned, including at least one recognised refugee.[111] During 2007, a recognised Iranian refugee was deported while awaiting resettlement after being detained for failing to register with the Turkish police. In the same year, another Iranian refugee was deported from the Alien's Guesthouse in Ankara despite having an open file with UNHCR.[112]

These examples display a lack of guaranteed respect by the Turkish authorities for the cornerstone principle of refugee law, that of *non-refoulement*. The fear of return to the country of persecution can work as a strong push factor away from the first country of asylum, in this case from Turkey. Indeed, our refugee and refugee community

organisation (RCO) respondents in the UK explained that a refugee's perception of safety within a transit country is a key feature in their decision to continue on to another country.

"Turkey wouldn't give them asylum. Turkey would send them back straight away to Iraq and then if you've left the country because of political reason, because of any other reason then you would be really scared to go back. This is why a lot of people prefer to pay 800 US dollars to an agent in Iraq." (AA, refugee and RCO representative, Leeds)

"the links that were there between South Africa and Zimbabwe [...], it was like, if you seek asylum into the South African authority you are like handing your name back to the Zimbabweans. We knew all of that, we were advised, it's not safe." (KI, refugee, Leeds)

As we have already explained in this report, assertions by the UK and other EU Member States, that refugees come to the UK as a result of 'pull factors' are not grounded in any evidence base. Our research suggests that the urge to leave the first country of asylum and seek protection in another country is motivated by a lack of adequate protection within these allegedly 'safe' countries.

Access to refugees in transit, detention and border zones

Civil society oversight would provide some guarantee of access to protection within third countries. Unfortunately, many of the countries in which the UK operates border controls and pursues its migration management objectives, deny UNHCR and NGOs access to intercepted migrants, and border control activities are far removed from public scrutiny. In Turkey, UNHCR, local NGOs and legal representatives are not permitted access to airport transit zones or allowed airside and they have extremely limited or ad hoc access to detention facilities. Access to airside transit zones is essential as our research has shown that, in Turkey, while most irregular passengers are identified in transit rather than at check-in, there is no opportunity to claim asylum and *refoulement* is reported. UNHCR has been repeatedly refused access to the air and land borders in Turkey and there is no indication that independent humanitarian organisations are present within these zones. The Turkish land borders are heavily securitised due to high levels of smuggling and criminality, as well as ongoing conflict between the Turkish army and the Kurdistan Workers' Party (PKK). The Turkish authorities are

wary of allowing local and international NGOs or UNHCR access to the border due to the issue of state sovereignty. As a result, there is no civil society or humanitarian presence at the border. From 2006 to 2007, the government of the Netherlands funded a project to improve access to protection and reception conditions for people who were intercepted by the Jandarma in Turkey. The project intended to encourage the Jandarma to conduct screening for protection needs and to allow UNHCR to have access to intercepted migrants. Very few cases were referred by the police to UNHCR during the lifetime of the project. In total, 2,800 people were covered by the project but less than 50 people were referred to UNHCR.

Our research suggests that UNHCR and NGO access to airport transit zones, airside gate check points, land and sea borders and detention facilities is vital. A number of EU Member States have already participated in UNHCR coordinated border monitoring activities, involving the cooperation of local NGOs with national border guards.[113] Unfortunately, in many transit countries relations between NGOs and the national authorities are poor. In Turkey, for example, relationships between NGOs and local authorities are ad hoc and fragile in some circumstances. Despite this, by allowing local NGO staff, UNHCR representatives and legal practitioners access to the borders and to intercepted migrants, these projects have gone some way to ensuring transparency of border control activities and may contribute to guaranteeing protection-sensitive borders.

Protection from torture, the right to life and freedom from arbitrary detention

Evidence from our refugee respondents in Turkey and the UK suggests that some refugees do not enjoy physical protection in the first country of asylum.

Continuing persecution

One of the reasons for the perceived and/or actual continuing persecution in Turkey by government and non-State agents from whom they fled is the proximity of the refugee to his or her country of origin. A number of our Iranian refugee respondents expressed their concern about the close relationship between the Turkish and Iranian governments. They suspect that there are Iranian spies within Turkey, some disguised as refugees, reporting back to Iran on the activities of high-profile political activists and dissidents. We were told about a similar situation in South Africa.

"Zimbabwe intelligence officials operate throughout the whole of the Southern African region. We have had cases were Zimbabwean officials have arrested individuals on South African soil and brought them back in the boot of a car." (SH, RCO representative, London)

One particular respondent was tracked down in South Africa by Zimbabwean government representatives and forced to flee to the UK in order to reach safety.

Violence within the transit country

Other respondents were afraid of physical attack by the police within the transit country. We heard many cases of refugees being beaten or robbed by the Turkish, Greek or Bulgarian police.

"the police officers now they are very very clever, not like before. Before openly they were against migrants and refugees… there was no protecting migrants and whatever. And now, I don't know, they are clever, they wouldn't arrest you on the street like this, or hassle you but then… like evening, when they make patrols… they get information on this person, what he's doing, he's working, has money or many people inside, then they go there, they make control whatever… person they get, they take. Now they start to go in these so-called telephone office, the place where you have the cheap cheap calls. So they go there, they target people, they see so many people, they make control. And the most they take foreigners people, they bring someone and they search them. If they find money, they take money and then they take them somewhere they free them." (SS, NGO representative, Turkey)

During 2007, cases of physical violence by Turkish police against refugees included cuffing, gagging and beating to enforce removal directions, robbery during police raids, and the abuse of refugee children.[114] We also heard evidence of corruption and violence at the hands of the South African police.

"The South African police are also very corrupt and often rip people's papers apart in order to receive bribes. If they are not sufficiently bribed they send them to Ndela (repatriation camp) […] I remember one case a women that had been gang raped by South African officials in Ndela and then tried to escape to the UK." (SH, RCO representative, London)

Female refugees in Turkey are particularly vulnerable to abuse and suffer domestic violence, social

exclusion and aggression from the local police. During 2007, around 65 asylum seekers and refugees who had registered with UNHCR reported suffering sexual and gender-based violence while in Turkey, but only 20 complained to authorities (USCRI, 2008). Our NGO respondents in Turkey informed us that when women complain to the police about domestic violence, they are instructed to return home and make peace with their husband. They also explained that police do not provide any protection for women who are hospitalised as a result of domestic violence. It is possible to move abused refugee women to another city, or speed up resettlement, but this depends on the goodwill of the local government. Although there are shelters for women in danger in Turkey, we were informed that the social services will not assist women with psychological problems or if they have been a sex worker. Many refugee women suffer from psychological problems as a result of persecution in the country of origin and the experience of displacement, and yet they can find themselves excluded from mainstream support services.[115]

Turkish society is still very conservative, and homosexuality is not tolerated in many of the satellite cities where refugees reside. Our NGO respondents told us that lesbians and gay men are frequently beaten and killed. The police can be dismissive about such attacks and rarely follow up reports of violence or abuse. One of our respondents described a situation when she was targeted by some local men because she is a lesbian. They presented themselves as policemen and came to her home requesting her ID card. They broke the door down and entered with guns. The police eventually arrived and arrested the men who were then sentenced to imprisonment. Our respondent was then threatened by their relatives and forced to retract her statement. Afraid that she would be killed, she told the judge that she had lied and the men were released.

Fear of attack by agents of persecution from the country of origin, by the host country police or by the general public, is an important reason for the secondary movement of refugees. If a transit country cannot guarantee the physical safety of the refugees it hosts then it cannot be considered a 'safe country' and it does not offer 'effective protection'.

Genuine prospect of an accessible durable solution within a reasonable timeframe

Refugees residing in key transit countries to the UK have a current and outstanding fear of persecution.

In Kenya, refugees from Somalia and southern Sudan, the vast majority of Kenya's refugee population, are recognised as refugees on a prima facie basis.[116] Refugee recognition rates in Turkey are relatively high.[117] While many of these refugees may long to return to their country of origin, it is extremely unlikely that this will be possible in some cases. Therefore the two remaining durable solutions, integration and resettlement, may offer the only real opportunity of a lasting outcome for many of the refugees residing in countries in the region of origin.

As mentioned earlier, Turkey is one of the original signatories of the 1951 Refugee Convention and the 1967 Protocol but it has retained the so-called 'geographical limitation' clause. This clause restricts its 1951 Refugee Convention obligations to individuals who become refugees "*as a result of events occurring in Europe*".[118] However, refugees in Turkey almost exclusively originate from a small number of non-European countries, principally Iraq, Iran, Afghanistan, Somalia, Eritrea and other African States. As a result, the vast majority of refugee status determination is carried out in Turkey by the UNHCR. Certain profiles are recognised as refugees on a prima facie basis, including individuals from Central and Southern Iraq; other profiles have near-100 per cent recognition rate such as Baha'is from Iran. Alongside the UNHCR procedure, non-European refugees must file a separate 'temporary asylum' application with the Turkish government. The purpose of this parallel procedure is to decide, independently of the UNHCR assessment, whether an individual has a legitimate need for 'temporary asylum' in Turkey. In the vast majority of cases, UNHCR and the Turkish authorities reach agreement on who is recognised as a refugee and who is not.

Our refugee and NGO respondents in Turkey were concerned about the long delays involved in decisions on applications for asylum, followed by long waits for resettlement – neither with any guarantee of a positive outcome. At the time of our research trip in May 2008, asylum seekers who submitted claims in Ankara and Istanbul had to wait a year for an initial asylum interview, while in Van the wait was approximately three months. According to evidence from refugees and NGOs in Turkey, a final decision on an asylum application takes from two to ten years in the most extreme cases.

"Another of my friends went three months ago to Finland with UNHCR and he stayed in Van for eight years." (SV, refugee, Turkey)

This process can be delayed by difficulties obtaining country of origin information, translations or further information from relatives. We heard evidence from one young woman who had been waiting eleven years for a decision on her asylum claim and allocation of a resettlement place. Respondents described how asylum cases could be delayed, closed and reopened numerous times, and seemed to be unclear as to the reasons for this. Some suggested that the Turkish office of UNHCR is struggling to manage the caseload with insufficient resources. The Office has a caseload of 14-15,000 people, including a large number of Iraqis whose cases were frozen while UNHCR carried out 'enhanced registration' to establish where they were from.

"I think most of problem about refugees is about UNHCR's procedures, because for example it done about me, about January 2008, most of people who came to Turkey when I came, I mean we were in same time and we thought that we will go to USA on same time, but all of them have been interviewed by the International Catholic Migration Commission except me and my brother. I went to UNHCR and asked them what happened to my file, what's the reason I'm not invited to interview. They said we sent your file to Ankara. I called Ankara, they said we didn't receive your file, it's in Van. I said where is this file, it's in the air. So, three months later I've been invited to interview." (SV, refugee, Turkey)

Some of our refugee respondents in Turkey expressed disillusionment with UNHCR's status determination. There was a lack of clarity about the decision-making process and refugees reported distrust and frustration due to unexplained refusals. Evidence submitted to the US Committee for Refugees and Immigrants (USCRI) suggests that only applicants with legal counsel from one particular NGO had access to UNHCR's detailed reasons for rejecting applicants. The rest received letters offering only general categories of reasons for denial.

Our research found that the consequence of this delay and uncertainty is the gradual wearing down of refugees' expectations and resolve. Disillusioned and with only limited funds remaining, some refugees choose to move on irregularly.

"Most of cases, people stay and get tired, and then they decide probably to go illegally. So many people. And then later on some cases are accepted but the people are not here, the people have left." (SS, NGO representative, Turkey)

Refugee Council report 2008

The Van office of UNHCR informed us that in the past year they knew of approximately 20 cases of refugees who had submitted a claim to UNHCR, but had continued on irregularly to Europe.

Amongst the top ten major refugee hosting countries, there are a number of States that have been repeatedly criticised for their treatment of non-nationals.[119] Aside from their poor human rights standards, these countries have insufficient capacity to host asylum seekers, they lack the infrastructure necessary to guarantee 'effective protection' and they conduct the forcible return of persons to places where they would face serious human rights abuses (Refugee Council, 2003b). Efforts to improve access to protection within regions experiencing protracted refugee situations including the Western Newly Independent States (Ukraine, Moldova, Belarus) and sub-Saharan Africa (Great Lakes/East Africa)[120] have been heavily criticised by NGOs for failing to ensure access to durable solutions. Critics have responded to Regional Protection Programmes[121], by accusing EU Member States of undermining the notion of international solidarity and placing the "*responsibility of refugee protection on countries where responsibility, enforceability and accountability for effective protection is likely to be diminished, weak or unclear*" (Amnesty International, 2005; 3). Ukraine has been criticised for lacking an effective system of adjudication, reception and resettlement for refugees and does not offer an effective programme of integration of refugees into Ukrainian society (ECRE, 2006). Similarly, Tanzania has been accused of denying adequate protection to refugees from the Great Lakes and reducing humanitarian assistance for Burundian refugees already present in the territory (Amnesty International, 2005).

On the subject of access to protection in the region of origin, UNHCR has concluded that:

"It is equally clear that a good proportion of the world's refugees will be unable to find an early solution to their plight within their region of origin, and that the onward movement of refugees and asylum seekers will continue to take place while standards of living and levels of human security differ so greatly from one part of the world to another." (UNHCR, 2006a: 60)

Integration

A significant proportion of our respondents, both

refugees and NGOs, claimed that refugees do not view Turkey as a country of asylum but as a transit country which offers the best possibility of being resettled elsewhere. This view is reflective of Turkey's legal position with regards to the 1951 Refugee Convention and the 'geographic limitation' clause. Turkey assumes only a limited responsibility for non-European refugees and offers them the status of 'temporary asylum seeker' while UNHCR undertakes status determination. Officially, 'temporary asylum seeker' status entitles refugees in Turkey to the same civil and political rights as foreign nationals, subject to possession of a valid resident's permit. In practice, refugees experience difficulties enjoying these rights, including seeking access to court, marrying or divorcing, accessing government services and education and freedom of movement.

Although refugees in Turkey are not confined to camps, they are required to reside in areas assigned by the Ministry of Interior. The Turkish authorities have implemented a system to disperse refugees outside Istanbul and Ankara and away from the coastal tourist areas. Refugees' access to healthcare and education is then reliant on their compliance with dispersal to one of 30 'satellite cities'. Once dispersed, refugees must report regularly – typically three times a week, or even daily – to the local police. Refugees who refuse to move and decide to remain 'illegally' within one of the major cities are denied access to government support, are subject to heavy fines and are more vulnerable to *refoulement*. One of our NGO respondents told us that the majority of Iraqi refugees in Turkey, particularly the Chaldean Christians, do not go to the satellite cities and instead live in Istanbul 'illegally' in order to be near the Christian church and their faith community, and to work.

Respondents outlined some of the negative impacts of being moved to satellite cities including racism, homophobia, a lack of personal security, poverty and distance from community links. Some satellite cities, such as Van, are small and remote and offer little in the way of legal employment. While NGOs and community support organisations do their best to provide assistance to dispersed refugees, they are often based in the major cities and can only rarely visit the areas of dispersal.

In effect, this evidence suggests that non-European refugees cannot integrate officially in Turkey. Since nearly all refugees in Turkey are non-European, they are forced to live on the margins of society with no

prospect of enjoying the rights and entitlements that refugee status should bring. As one respondent put it, refugees *"have obligations, they don't have rights"* (SS, NGO representative, Turkey). In light of this, resettlement emerges as the only real durable solution for them (see below).

The clause preventing refugee integration is an anomaly that is unique to only four signatories to the Convention: Turkey, Monaco, Congo and Madagascar.[122] However, a de facto lack of integration opportunities is seen in other countries where the geographic limitation does not apply. In a memorandum to the House of Lords, the Refugee Council outlined some of the hardships experienced by refugees in Kenya, one of the key transit countries in which the UK conducts border controls (Refugee Council, 2003a). In Kenya, refugees are considered a source of insecurity, environmental degradation and economic loss. They are frequently unable to obtain legal status and live under the threat of physical harassment, detention, *refoulement*, and sexual violence.

"It's horrific and horrible… in Nairobi, the Somalis the way they live there, it's horrific. The Somalis most of them times are proud people but when you see, a lot of them actually begging and things like that, in a foreign country. It is very dangerous… there is many people feel, actually they say there is nothing worse than staying there." (DF, RCO representative, London)

Most refugees in Kenya are forced to live in camps with no opportunity for self-sufficiency. According to UNHCR, the Dadaab and Kakuma camps in Kenya are plagued by security problems including banditry, rape and murder. Women and children, in particular, are vulnerable to abuse, exploitation and sexual assault, especially when they go to fetch firewood outside the camps.[123] USCRI has launched a campaign to end this practice of 'refugee warehousing' to enable refugees in countries such as Thailand and Tanzania to access sustainable integration opportunities.

Resettlement

The global resettlement system was understood by respondents to offer the only real possibility for refugees to enjoy a durable solution. Currently a number of States conduct selection missions to Turkey to offer resettlement, including USA, Australia, Canada and Finland. People with status are automatically put forward for resettlement, and they are then assessed by representatives from the resettlement country. States are under no legal obligation to resettle refugees and are entitled to apply their own selection criteria.[124] As a result, certain groups are more likely to be resettled and at a faster rate than others and no rights-based explanation is necessary. Often those whose personal security is not considered to be at immediate risk, or those suspected of being less able to integrate, are not selected for resettlement. NGO respondents in Turkey described situations where certain family members (in many cases the younger ones) were accepted for resettlement whilst other family members, such as parents or grandparents, were 'left behind' in Turkey. It is clear that in some circumstances, resettlement countries show little respect for the principle of family unity and undermine the validity of resettlement as a durable solution.

Resettlement is not a durable solution for all non-European refugees in Turkey. On the contrary, it is not an option for certain groups including Somalis from Yemen, Iranians ex-Iraq and Sri Lankans. Resettlement quotas are not large and allocations are rapidly filled.[125] There is only limited resettlement to Europe so many refugees, particularly Iraqis and Afghans with family in Sweden and the UK, choose to make their own way.[126]

For the UK government, resettlement is the preferred route for refugees to reach safety in Europe. Our research shows that it is presently an imperfect system, involving long delays, unhelpful selection criteria and expensive periods of economic inactivity. In any event, resettlement is not an alternative to allowing access to asylum in the UK.

Pending a durable solution, stay is permitted under conditions which provide for adequate and dignified means of subsistence

The long wait for asylum and resettlement decisions is critically combined with harsh living conditions for refugees in Turkey, including a near total absence of any means of livelihood. Refugee respondents in Turkey repeatedly communicated their difficulties relating to financial assistance, social services and healthcare. They have no realisable right to work and no State or UNHCR assistance to live on. Financial or in-kind support from NGOs is limited and rarely reaches beyond the major cities. For the extremely vulnerable, there may be access to State funds but these are dependent on the discretion of the provincial authority and the availability of local

Social Assistance and Solidarity Funds, which are normally reserved for Turkish citizens. Most local authorities do not allocate enough money for the purpose of supporting refugees as they do not monitor the numbers within their city. Hospital treatment is an expensive necessity for refugees, many of whom experience severe health problems as a result of persecution and flight. There is a long referral process for claiming back money for health services and refugees require evidence from the police that they are registered with the authorities. UNCHR contracted hospitals and pharmacies to provide a small number of recognised refugees with medical services on an emergency basis. In certain satellite cities the situation is not so bleak and some local authorities are working with UNHCR and local NGOs to improve living conditions for refugees. For example, UNHCR has run seminars, funded by the UK migration fund, to assist local authorities with the reception and integration of refugees.

Refugees are required by the Turkish authorities to pay residence fees of approximately US$300 per person, every six months. Since, at best, they can hope to earn no more than 200 to 300 New Turkish Lira (YTL) (approximately US$200) per month through irregular employment, this is an extremely high price to pay for the chance of acquiring status and resettlement. Refugees are subject to heavy fines if they move without authorisation or do not fulfil their obligation to report with the local police. Critically, refugees are barred from leaving Turkey, including for the purpose of resettlement, until full payment is made. A lot of families end up with fines totalling 5,000YTL and no income. The impossibility of paying these fees was cited by the majority of respondents as weighing heavily on refugees and even further delayed refugees' ability to take up resettlement places.

"we have severe economic problems because we should pay... to police or another organisation, we should pay something for being in Turkey, yearly I should pay $500... For those families that have more members, for example a family with 5 members it's very huge amount of money. There is a family in Van who have been accepted by US and his flight date passed, I mean he should fly to USA about one month ago but he couldn't go because he was owed to Turkish government, he was owed about $10,000, and how can find this money. He couldn't go but he is accepted by USA." (SV, refugee, Turkey)

With no income, no assistance, and no hope of

speedy resettlement, refugees are forced into irregular working, exploitation and destitution.

"there are many Iraq and Iranian refugees are working, they are working as a construction worker most of them... daily a Turk person daily earn 50YTL, but the employee of this construct job will pay to an Iranian person or Iraq person, 20YTL, less than half." (SV, refugee, Turkey)

"to survive here… you have to get work and once you don't have a resident's permit or working permit then you have to accept those kind of simple works, I say simple because small wage. And you have to accept any way they propose you… otherwise you cannot get some money for your rent, for your food, for whatever. And sometimes they working in terrible, dangerous situation in underground factories where, most of them they get accident. And there is no social security, there is nobody who can help." (SS, NGO representative, Turkey)

Respondents further identified a causal link between the lack of assistance and the costs of living, and the risk posed to vulnerable groups who often resorted to prostitution as a means of survival. Female-headed households as well as lesbian and gay refugees are particularly at risk of experiencing economic and social exclusion due to their position on the very margins of the refugee community.

"it is, kind of the fact that a woman has to be supported by a man sometimes. When she doesn't get… anything to do she cannot go to steal like a man, sometimes, can do. So she has to find support, support is always man who can use the situation that she is weak and then she fall into that trap, and she become forced girlfriend to someone just to get where to sleep, to get food." (SS, NGO representative, Turkey)

Prostitution amongst refugee women in Turkey is relatively common as they have no alternative means of supporting themselves and their families. This form of work leaves women extremely vulnerable to violence, they cannot access certain services, such as women's shelters, and it is very hard to find accommodation.

The long wait, coupled with the expense and difficulty of living unsupported and the uncertainty of the status determination process leaves many refugees feeling hopeless and desperate. One respondent described how she had given up on the

asylum system entirely, including the possibility of resettlement. Refugees are forced to find their own durable solution and are vulnerable to smugglers who offer them an alternative solution. For the equivalent value of two years residency in Turkey, refugees can pay a smuggler to take them directly to Europe. For many this is a far more appealing prospect than years of poverty, insecurity and hopelessness.

"one of my friends is about eleven years that he is in Van and he couldn't go any other country. About two months ago he said, I have been certificate as a refugee by UNHCR and was very happy and he couldn't believe this…. He said... if I hadn't this certification for six or five months later, if I couldn't catch this I would go to Europe illegally. I can't stay more, I am eigthteen years old and I was here from seven years old and up to now I am in Turkey and I am losing my life and I can't stay anymore. I will go to Europe near my relative in Sweden." (SV, refugee, Turkey)

Summary

As we have already highlighted, the UK government believes that refugees should seek asylum in the first safe country they reach, despite the fact that there is nothing in international law that obliges them to do so. Governments intent on restricting access to their territory promote two very contrasting images of the refugee with very different entitlements. Those who leave their region of origin to seek protection in Europe, known as 'onward movers', are less entitled and less deserving of protection than the impoverished masses of 'good refugees' who stay in camps and urban slums in developing countries. States assume that 'onward movers' have chosen to leave the first country of asylum for economic reasons, throwing into question their claim for protection.

Our research highlights the flaws of such an approach by revealing the lack of effective protection available in many of the countries within which the UK operates border controls, resulting in onward movement. They include countries that are not signatories to the 1951 Convention, that have poor human rights records, that have no established asylum procedures and that only tolerate the presence of refugees on a temporary basis (on the condition that UNHCR will resettle them). The consequence of border controls implemented close to regions of origin is to trap refugees in neighbouring countries that are already suffering under the burden of human displacement, poverty and environmental disaster.

Refugees and asylum seekers who cannot find effective protection, including not only physical safety, but some form of sustainable livelihood within the region of origin will move on, in an irregular manner if necessary, to other parts of the world, undermining any attempt to control or manage global migration. In summary, where protection only amounts to 'not being sent back' (where even that is sometimes in question), the Refugee Council holds that asylum cannot be considered fully enjoyed. Refugees who move in search of protection, particularly outside their region of origin, must not be penalised for or prevented from doing so.

Recommendations

The UK should use its influence to increase standards of refugee protection and respect for the principle of *non-refoulement* internationally.

Where the UK is involved in interception activities in the territory of a third country, it must ensure access to adequate asylum procedures and guarantees that refugees will not be refouled.

UNHCR and NGO access to individuals intercepted at air, land and sea border zones should be written into agreements the UK makes with countries in which it conducts extra-territorial immigration control. The presence of independent humanitarian organisations in detention facilities at the border and inland should also be considered.

109 No Borders. Abcds: Statement. [Online] Available at: http://noborders.wikidot.com/abcds [accessed 27 August 2008].

110 In 2007, Turkey forcibly repatriated as many as 75 and deported to third countries at least 123 asylum seekers that had been intercepted travelling irregularly through the country. The Turkish authorities made no attempt to assess their requirements for protection. For more information see US Committee for Refugees and Immigrants (USCRI), 2008. World Refugee Survey. [Online] Available at: www.refugees.org/article.aspx?id=2114&subm=179&area=About%20Refugees& [accessed 31 October 2008].

111 UNHCR press release, 2008. UNHCR deplores refugee expulsion by Turkey which resulted in four deaths. [Online] 25 April. Available at www.unhcr.se/en/news/press08/press_080425.html [accessed 30 October 2008].

112 For more information see Helsinki Citizens' Assembly, 2007.

113 Between December 2006 to November 2007, the Hungarian Helsinki Committee initiated a project entitled 'Monitoring access of asylum seekers to territory and procedure at European airports – exchange of experience and best practices'. The project involved cooperation between UNHCR, national border guards and local NGOs at six major airports in EU Member States. Between August 2006 to February 2007, UNHCR was involved in a tripartite arrangement between the Slovenian border police and General Police Administration and a regional representative, the Legal Information Centre for NGOs, to improve understanding of police practices at the border and to ensure the right of migrants to apply for protection.

114 For more information on physical protection in Turkey see Op Cit. USCRI, 2008.

115 This information was taken from meetings with NGO representatives in Turkey in May 2008.

116 Refugees recognised on a prima facie basis are recognised as a group and do not undergo individual status determination. For more information see UNHCR Strengthening Capacity Project, 2005. Analysis of refugee protection capacity, Kenya. [Online] Available at: www.unhcr.org/protect/PROTECTION/429b1d3e2.pdf [accessed 31 October 2008].

117 In 2007, UNHCR recognised 100 per cent of Iraqi asylum claims and 88 per cent of Iranian claims. Overall the recognition rate was 85 per cent. For more information see UNHCR, 2008. UNHCR Background note: protection of asylum seekers and refugees in Turkey, May 2008.

118 For an explanation of the legal context for the protection of refugees in Turkey, see Helsinki Citizens' Assembly, 2007.

119 According to UNHCR Global Trends 2007, Pakistan continues to be the asylum country with the single largest number of refugees (2 million), the Syrian Arab Republic was host to 1.5 million Iraqi refugees, making it the second largest refugee hosting country at the end of 2007, and the Islamic Republic of Iran hosted close to 964,000 refugees.

120 For more information on these efforts see European Commission, 2005.

121 RPPS are designed according to the specific needs of the host country, include a registration scheme for all persons of concern to UNHCR in the area, activities to improve reception conditions and assistance to the local community hosting the refugees.

122 UNHCR, 2007. States Parties to the 1951 Convention relating to the status of refugees and the 1967 Protocol.

[Online] 1 November. Available at: www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf [accessed 30 October 2008].

123 For more information see UNHCR Strengthening Protection Capacity Project, 2005. Analysis of Refugee Protection Capacity, Kenya. [Online] April 2003. Available online at: www.unhcr.org/protect/PROTECTION/429b1d3e2.pdf [accessed 30 October 2008].

124 For more information on resettlement see ICMC, 2007. Welcome to Europe! A guide to resettlement: a comparative review of resettlement in Europe. [Online] Available at: www.icmc.net/pdf/welcome_to_europe.pdf [accessed 31 October 2008].

125 In 2007, the US resettled 2,040 refugees while Canada received 364 and Australia took 145. UNHCR, 2008. Background note: protection of asylum seekers and refugees in Turkey, May 2008.

126 In the past 8 years, the UK has received, on average, only 10 refugees per year from Turkey.

Non-Refoulement

The principle of *non-refoulement,* the cornerstone of international refugee protection, is enshrined in Article 33(1) of the 1951 Refugee Convention:

"No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion."

Although this principle does not entail the right of the individual to be admitted and granted asylum, it does establish a basic requirement to grant individuals temporary access to the territory for the purpose of examining their application for protection. This protection applies not only to recognised refugees, but also to those who have not yet had their status formally declared, in particular to asylum seekers who should not be expelled from the country until their status has been finally determined. This fundamental and non-derogable rule is applicable to all forms of forcible removal, including non-admission at the border, as stipulated by Article 3(b) of the Schengen Borders Code (Weinzierl, 2007). It applies not only in respect of return to the country of origin or former habitual residence, but also to any other place where a person has reason to fear threats to his life or freedom.

The removal of a refugee from one country to another that will subsequently send the individual onward to the place of feared persecution constitutes 'indirect *refoulement*', for which several countries may bear joint responsibility. Obligations under the European Convention on Human Rights (ECHR) require that, prior to removing an individual, the state in question must first examine whether the receiving country will forward the person on to another state in which he or she would be exposed to human rights violations.

It has been disputed whether non-arrival policies breach the principle of *non-refoulement* and other obligations in international refugee and human rights law. Many States, including the US, have argued that they have no responsibility to guarantee the protection of refugees who have not yet reached their territory and that the provisions of the 1951 Refugee Convention do not apply extra-territorially (Gibney, 2005; Hathaway, 2006). Such an interpretation permits interception measures by taking advantage of a purported gap in protection that exists while an individual is in transit. UNHCR advises, on the contrary, that the prohibition on *refoulement* does not contain any explicit geographic limitation and applies wherever the State in question intercepts (and thereby assumes some degree of jurisdiction over) a person:

"UNHCR is of the view that the purpose, intent and meaning of Article 33(1) of the 1951 Convention are unambiguous and establish an obligation not to return a refugee or asylum-seeker to a country where he or she would be risk of persecution or other serious harm, which applies wherever a State exercises jurisdiction, including at the frontier, on the high seas or on the territory of another State." (UNHCR, 2007a: 12)

Interception measures implemented by one State on the territory of another, such as the posting of ALOs in a foreign airport or the use of visa restrictions and

carrier sanctions, would incur a corresponding duty by the intercepting state to fulfil their human rights obligations, as enshrined in international law (ECRE, 2004a). Whether these measures directly violate Article 33 or not, it is likely that they will increase the risk of direct *refoulement* and, as such, are fundamentally inconsistent with the humanitarian object and purpose of the 1951 Convention and its Protocol (Noll, 2002). Unfortunately, as we have seen in the case of intercepted and diverted boats in the high seas and territorial waters of third countries, there is little evidence of how this obligation translates into good operational practice.

Case studies

Case study one: NMS, Leeds

NMS is a 32-year-old Afghan refugee who arrived in the UK in April 2008. He escaped Afghanistan by hiding in the back of a car. When he reached Iran he was hidden in a cellar with others until it was safe to walk across the border to Turkey. During the night a group of Iranians came to the cellar with guns and stole all their money and documents. They were warned that if they complained, the smuggler would kill them.

"When they took money from our pocket and they also say to us "don't make any problems for that other agent which is car driver because… in the future that will be very dangerous for you and for other Afghan people […] we spoke with another agent and we say to him, they took all our money, and he said "don't make that complaint because from somewhere they deported you, you will come back to this agent that will make problem maybe kill you."

He continued the journey by lorry from Istanbul to the coast where he boarded a boat bound for Greece. The boat was small and massively overloaded and experienced problems reaching Greece in the bad weather. For five days he was trapped on the boat with 52 other people, as it was tossed about by the waves.

"Was small, 52 we've been together… everybody cried a lot and we were scared and 17 people they been in coma… the weather was very hot and we couldn't find any water to drink… the waves were very very high."

When he tried to seek rescue from the coastguard the smugglers threatened him with a knife.

"I spoke with the boat driver and I say to him "please come I can't speak English, speak with the police" and he switch off the telephone… and he said "oh, they gonna put me for twelve years in the jail, in two hours we will reach Greece", and for that we spent five days in the sea… a lot of time [Greek] police call to us and they ask us "where are you? We like to help you but we couldn't find you where are you", because we couldn't see everywhere, everywhere was water and for that they couldn't come and they couldn't find us."

He eventually made it to Greece, then travelled in a lorry across Europe to the UK. In total, the journey cost him US$23,000 and very nearly killed him.

"Everywhere was very dangerous and when I fighted in Afghanistan that was better than that journey which I came here. I was very scared and everywhere was very dangerous."

Case study two: SV, Turkey

SV is a 25-year-old Iranian Baha'i who arrived in Turkey in 2004 with his brother, with the intention of joining the rest of his family and claiming asylum at the UNHCR. The journey was long and dangerous; it took them 15 hours to cross the border by horse and on foot, running or crawling past Iranian and Turkish watchtowers.

"I knew that if I go near this towers I will shooted by them because these towers were exactly on the border, and they are working over there and their job is shooting every person."

Despite the risks involved in the journey, SV would

not approach a Turkish border guard for help for fear of being shot.

"It was very dangerous because we knew that we should hide ourselves from any Turkish soldiers before coming to Van… it's possible that these soldiers shoot us while crossing the border because we are doing illegally… we knew that this is dangerous to go to claim asylum to the soldiers."

SV knew many cases of people who had been intercepted crossing from Iran to Turkey and their experiences were a warning for anyone following the same route. One was beaten by Turkish guards and dragged along the ground behind a horse, until they thought he was dead. SV's cousin was intercepted by Iranian soldiers and imprisoned without food or water for two days.

Only two weeks previously, a friend of SV was intercepted by Turkish police trying to cross the border illegally from Iran. He was taken to court and told that he would be deported. Neither his family, friends nor UNHCR were able to access him in detention and, without a translator to assist him, he was unable to make a claim for asylum. He has been deported to Iran and his whereabouts are unknown.

Case study three: SA, London

SA is a 46-year-old Somali refugee who fled her home ten years ago due to the ongoing conflict. She wanted to come directly to the UK because her children were already here, and she did not want to take the risk of travelling irregularly across two continents.

"My mind it was here because my children they was here, yeah, I never ask somewhere else."

When her children left Somalia the journey was much easier and cheaper.

"that time it was easy, no, not like today. It was $100 I think, the journey, but now $2,000, $3,000… everywhere is increasing… Before they didn't look very well and, you know, and every country now has, yeah, border guards… it's harder now. My children when they come to here, I pay one man, I give him money, they took them from Somalia to here, nothing problem."

She applied for a visa to enter the UK while she was in Ethiopia but her application was repeatedly refused.

"In Ethiopia they told me you have to your child ask you… my son, he ask but they give negative... I don't know the reason, they give three times."

The only option she felt remained was to travel on to Sudan where she crossed the Sahara desert overnight into Libya.

"It was so difficult but that is the Sahara, is so big, you can't imagine what is the difficulties there, it's so dry… how many people died… during my journey not one died but on the way, you saw, on the way the people died on the floor, there are bones, there are these things."

From Libya she took a small boat to Italy with 15 other people, then travelled up through Europe to the Netherlands, where she was able to get a boat to the UK. She was returned to the Netherlands by the UK authorities but made another attempt to join her family, trapped in a lorry on a small, overcrowded boat. Bad weather made the crossing impossible and the boat was stuck in the dock for five days.

"it was Sunday night, they told me tomorrow morning you get to UK 8 o'clock but… because it was windy we stayed there. Sunday there, Monday, Tuesday… inside the lorry, we don't have water, we don't have nothing inside and we feel scared that when you go out you can't come inside the lorry. And Thursday night about 9 o'clock and is come UK about 1 o'clock like this. I was really sick […]. I go out, I say, no I can't stay inside any more."

It took SA two years and US$2,000 to reach safety – and her family – in the UK.

Annexe One – Interview Schedules

UK based refugees

1. Demographics and background information

2. Routes and methods used

   2.1 When you left your country of origin, did you know that you were coming to the UK?

   2.2 What route did you use to get to the UK?

   2.3 Did you choose the route?

   2.4 If you did not choose the route, who did?

   2.5 Can you tell me a bit about your journey?

   2.6 Did you come directly from your country of origin or through a transit country?

   2.7 (*If s/he come through a transit country*) How long did you spend there?

   2.8 Did you receive UNHCR refugee status overseas before coming to the UK (*not as part of a resettlement programme*)?

   2.9 Were you selected for resettlement?

   2.10 Did you feel that your life was in danger at any point during your journey to the UK?

   2.11 Did you arrive in the UK with any ID/travel papers?

   2.12 *If s/he did arrive with papers*:
   a. What sort of papers? (*passport/visa*)
   b. If it includes a visa: What sort of visa?
   c. Where did you get the visa?
   d. Did you have to submit any biometric information for the visa?
   e. Was it necessary to use false information to obtain it?
   f. Did you use your own passport? (*was it false/use someone else's*)

   2.13 *If s/he didn't arrive with papers*:
   a. Why didn't you have any papers when you arrived in the UK?

   2.14 If s/he had a passport but didn't arrive with a visa:
   a. Why didn't you have a visa?
   b. Were you refused a visa?
   c. Was there a delay in getting the visa?

   2.15 How did you feel about travelling to the UK without the authorised papers?

   2.16 Did you rely on a network of some sort to get to the UK?

   2.17 Are you aware of networks in the UK which assist the journey of family members/ co-nationals to the UK?

   2.18 How long did your journey to the UK take?

   2.19 How much did the journey cost?

   2.20 Was this your first attempt to get to the UK?

3. Experiences of border controls/interception

   3.1 Did you encounter any border control officers on your route to the UK?

   3.2 Did anyone in the airport check your documents or biometric data before you boarded a flight to the UK?

   3.3 How were you treated by airline staff?

   3.4 Were you ever refused boarding by an airline?

4. Refugee perspective on potential solutions

   4.1 What do you think the UK government could do to make their border controls more sensitive to the protection needs of individuals like yourself?

   4.2 If you could, what advice would you give to someone from your country who is about to

flee persecution and considering coming to the UK?

UK immigration officials based overseas

1. Background information
Informal discussion about ILO/ALO to gather some background information.

   1.1   What is your title/role?

   1.2   How long have/were you been based in the host country?

   1.3   Why were you posted there?

   1.4   Have you been based anywhere else – where?

   1.5   What is your professional background?

2. Details of the job and responsibilities

   2.1   What does your job involve – can you explain to me what you do on a day-to-day basis?

   2.2   How much contact do you have with migrants?

   2.3   How do you deal with migrants that are attempting to travel irregularly – how are border control measures implemented in practice?
   a. Is there access to legal advice, healthcare, translation, support agencies?

   2.4   Do you think that these measures have been successful?
   a. How do you measure success – what criteria do you apply?

   2.5   What is your perception of protection issues within this context?
   a. Have you received any training?
   b. What procedures are in place to deal with this?
   c. Have you ever encountered an asylum seeker?

   2.6   Are there any protected entry procedures in place so that refugees can be issued a humanitarian visa for entering the UK?

3. Relationship with other agencies

   3.1   How do you coordinate with other UK agencies such as the police?

   3.2   How do you coordinate with other international agencies, such as INTERPOL, FRONTEX?

   3.3   How do you coordinate with the representatives of other EU Member States in the host country and/or other countries?

   3.4   What sort of relationship do you have with the host country authorities?
   a. How much do you cooperate on border controls?

   3.5   How much coordination do you have with private carriers? What sort of relationship do you have?

   3.6   Are there any 'high risk' carriers?
   a. How do you decide who is 'high risk'?
   b. How do you deal with them?

4. Data gathering and sharing

   4.1   What sort of data do you collect on the irregular migrants that you intercept?

   4.2   Do you publish this data i.e annual reports?

   4.3   How do you share this data with other UK agencies and databases?

   4.4   How do you share this data with other international agencies and databases, such as EURODAC and other EU Member States?

   4.5   How do you share this data with host country authorities?

5. ILO/ALO perspective on potential solutions

   5.1   What do you think the UK government could do to make their border controls more sensitive to the protection needs of irregular migrants?

Turkey NGO

1. Details of NGO and client base

   1.1   Informal discussion about the NGO to get some background information.

   1.2   How many refugees are there in [   ]?

   1.3   Where are the refugees that you assist from?

   1.4   What is the gender ratio?

   1.5   Do you deal with any vulnerable refugees such as women-headed households, unaccompanied minors, victims of torture or trauma, people with disability/illness?

   1.6   Has the profile of the refugees you assist changed over time?

   1.7   Do you have any access to refugees in detention?

   1.8   Do you have access to refugees in transit?
   a. Do you ever get calls from the transit lounge? How would you respond – what is the process?

1.9 How much freedom do you have to conduct your refugee support activities?

2. Routes and methods used

2.1 Do your clients talk to you about the routes and methods they have used to flee their country of origin?

2.2 What geographic routes and methods do they use?

2.3 Do they have any control over this journey?
a. If yes, why do they choose this route/method?
b. If no, who makes the decision?

2.4 How do these routes/methods differ between clients?

2.5 How do refugees from northern Iraq enter Turkey and what happens to them on arrival?

2.6 Do your clients usually come directly from their country of origin or through a transit country?
a. If they come through a transit country, how long do they tend to spend there?
b. Why would they stay there for that period of time?
c. Do they claim asylum there?

2.7 Have these routes changed over recent years?

2.8 Do your clients travel alone or with the company or assistance of others?

2.9 Can you tell me anything about smuggling agents and networks within and beyond Turkey?

2.10 Can you estimate how many of your clients travel with ID/travel papers of some sort?
a. What papers do they have?
b. Did any of your clients use false papers to get here?
c. For the ones that don't have papers – why don't they have papers?

2.11 Can you estimate how many of your clients travel with a visa?
a. What sort of visa?
b. Where did they get the visa?

2.12 Can you estimate how many of your clients travel without a visa?
a. Why don't they have a visa?

2.13 How long is the average journey to Turkey for your clients?

2.14 How much would this journey cost?
a. How do they find the money for this?

2.15 Have the methods used to reach a safe country changed over recent years?

2.16 Do your clients talk about the dangers involved in their journey?

2.17 Are you aware of any particular difficulties experienced by vulnerable groups such as women, children or the elderly, during their journey?

2.18 What would happen to an individual who attempted to enter Turkey in an unauthorised manner?

3. Conditions in Turkey (questions apply to refugees with and without UNHCR status)

3.1 What is the RSD process like in Turkey?

3.2 How effective is the resettlement process?

3.3 How do your clients support themselves/their families while they are in Turkey?

3.4 What sort of support do they receive and from whom?

3.5 What rights do they have?

3.6 Do they experience any threats to their physical safety, either from Turkish or external agents?

3.7 How does the local population respond to the presence of refugees in satellite cities?

3.8 How does the local/regional government deal with the presence of large numbers of refugees in their area?

4. Future plans

4.1 Do your clients talk to you about their future plans i.e to stay in Turkey or to leave?

4.2 What do most of them intend to do?

4.3 Where do they intend to go?

4.4 What routes/methods do they tend to use to get out of Turkey? Can you give me some examples/anecdotes?
a. What are some of the risks involved?

4.5 How much would a journey like this cost and how do they fund it?

4.6 Other than UNHCR resettlement, are there any legal routes for refugees to leave Turkey?

4.7 Do any of your clients with UNHCR refugee or 'mandate' status choose to leave Turkey before they are resettled?

4.8 How long do your clients tend to stay in

Turkey before leaving?

4.9 Do your clients rely on a network of some sort during their journey?

4.10 What service does this network provide?

4.11 Have you encountered clients who have made multiple attempts to transit through Turkey on their way to the UK or another country?

4.12 The situation in Turkey and other transit countries has been described as a 'bottleneck' due to the number of irregular migrants forced to remain but with the intention of continuing on to Europe. How would you describe the situation?

5. Experiences of border controls/interception

5.1 Have your clients ever talked to you about their experiences of border controls during their journey?
a. How were they treated/what happened to them?
b. Do you know of any cases of *refoulement*?

5.2 What would happen to an individual who attempted to leave Turkey in an unauthorised manner?

5.3 Have any of your clients ever tried to claim asylum in an airport?

5.4 How were clients treated by airline staff?

5.5 Were any clients refused boarding by an airline?

6. Perspective on potential solutions

6.1 What do you think the UK government could do to make their border controls more sensitive to the protection needs of individuals like your clients?

Private carriers

1. How do you implement border control measures?
   a. What sort of border control measures?
   b. Who has overall responsibility for border control?
   c. Who implements border controls on the ground?
   d. Where does it take place?
   e. How do you respond when you encounter an irregular migrant?
   f. Do they have the opportunity to appeal/seek legal advice?
   g. What is your response if they wish to seek asylum?

h. Is there any discretion?

2. How have your border control responsibilities changed over time?
   a. Have you been receiving more pressure/demands from national border control authorities? How has this manifested itself?
   b. How have you responded to these demands?

3. What networks do you rely on to undertake immigration control?
   a. Airport Chaplains or other faith representatives?
   b. Airport staff?
   c. Immigration staff from UK and host country? (ALOs/ILOs)
   d. Civil society, NGOs, legal advisors?
   e. International aviation networks?

4. What is your relationship with national ALOs and ILOs?

5. Do you keep any records on irregular passengers intercepted by your staff?
   a. What sort of information do you record?
   b. How do you use/share this information?

6. Which routes are particularly risky for you with regard to irregular migration?
   a. Why? Who is using that route?
   b. What do you do to mitigate against this risk?

7. What are your main priorities/concerns with regard to border controls?

8. Do particular airports have different procedures?
   a. How does the airline cooperate with airport staff?
   b. Are certain airports less conscientious about border controls?
   c. Are certain airport/immigration staff more or less diligent? Is corruption a problem?

9. What impact has increased responsibility for border controls had on your ability to provide your services.

10. How do you feel about being responsible for immigration control activities?
    a. How have staff adjusted to the new expectations/role?
    b. What is the position/attitude of the industry union/association?

11. What is your experience of carriers' sanctions?
    a. From which State?
    b. How much did you pay?
    c. What were you required to do: return or

forward transport?

 d. Is there any remedy/relief from fine if the person enters the asylum system or gets status?

 e. What is required to become an 'authorised carrier' and is this realistic?

 f. How do you feel about obligations under Carriers' Liability legislation?

12. What is your awareness of protection issues within the context of border controls?

 a. What are your responsibilities towards refugees/asylum seekers? How do you meet these responsibilities? How this be improved?

 b. Are your staff trained on immigration and refugee law and policy? Can we see a training manual/schedule? Can we have a visit to see border control staff at work?

 c. How do your staff respond when they intercept someone that they suspect may be a refugee? Do they have discretion to allow embarkation?

 d. Who do/can you refer to for assistance in dealing with refugees?

13. What would you find helpful in dealing with irregular migrants and in meeting the obligations under carriers' legislation?

 a. What assistance from other agencies would be useful?

Glossary

Refugee

Article 1(2) of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol defines a refugee as a person who:

"[…]owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

For the purpose of this report, we use the term 'refugee' to describe any person who meets the criteria set out in the 1951 Refugee Convention, something which necessarily occurs before the s/he gains formal recognition as a refugee (Hamood, 2006).

Asylum seeker

An asylum seeker is someone who has left their country of origin and submitted an application to be recognised as a refugee but is still awaiting formal determination of their status. Article 14 of the Universal Declaration of Human Rights establishes the right to seek asylum.

Migrant

In this report, the term 'migrant' includes all persons who move temporarily or permanently to another country, including labour migrants and refugees, unless otherwise specified.

Irregular migration

In this report, we use the term 'irregular migration' rather than 'illegal migration' as it is less of a value-laden term and more accurately reflects the experiences of migrants who may, during one journey, move in and out of formal regularity and irregularity (de Haas, 2007). Most 'irregular migrants' enter destination countries legally, but become irregular by breaching the terms of their visa by overstaying or working illegally. At the same time, many migrants who enter a country illegally can acquire legal status through some form of regularisation (for example marriage or work). We will use a definition of irregular migration that focuses on the actual process of international movement: "*crossing borders without proper authority, or violating conditions for entering another country*" (Jordan & Düvell 2002 cited in de Haas, 2007: 4). As such, we will focus more on 'irregular entry', also known as 'clandestine entry', rather than 'irregular stay'.

Interception

Interception has been defined by UNHCR as "*encompassing all measures applied by a State outside its national territory in order to prevent, interrupt or stop the movement of persons without the required documentation crossing international borders by land, air or sea and making their way to the country of prospective destination*" (UNHCR, 2000b: 2). This term is used interchangeably with similar terms including 'interdiction', 'non-arrival' or 'non-entrée' measures and 'extra-territorial border controls'.

Carrier sanctions

Under the Immigration and Asylum Act 1999, the

UK introduced a system of civil penalties to impose on carriers that are found to have transported an insufficiently documented passenger (a passenger who does not have a proper passport or authorisation to enter that country). In addition to a fine of up to £2,000 per irregular passenger, carriers are also responsibile for accommodation, repatriation and other related costs. In order to avoid the fine, carriers must show that they have taken adequate steps to identify and intercept passengers attempting to travel without valid documents.

Airline Liaison Officer
UK Airline Liaison Officers (ALOs) are based in airports around the world, and work directly with airlines to reduce the number of inadequately documented arrivals in the UK. ALOs support carriers in discharging their responsibilities under the carrier sanctions regime, in order to avoid incurring a fine. They assist carriers by offering advice on the acceptability of documents presented for travel, and whether or not the airline is likely to be fined if they allow embarkation.

Refoulement is "*return in any manner whatsoever to a territory in which the refugee would be at risk of persecution*" (see 'The legal dimensions', page 22).

Trafficking and smuggling
There is a significant difference between 'human trafficking' and 'people-smuggling' and the terms should not be used interchangeably. Trafficking describes the irregular movement of people either within or across borders, for the purpose of financial gain. It is inherently coercive and exploitative, involving the threat or use of force and the abuse of power over individuals.[128] Smuggling also involves the illegal facilitation of border crossing but, in principle, it involves willing parties and does not imply the same level of abuse and exploitation as trafficking.[129] It is important to recognise that the distinction between the two experiences sometimes blurs: people who may have willingly sought the services of a smuggler in order to cross a border may become exposed to serious human rights violations along the way, and may even find themselves the victims of traffickers when they are trapped in exploitative labour in order to pay their transportation debt.

128 For a full definition see United Nations, 2000. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, UNGA Res. 55/25, 15 November 2000.

129 For a full definition see United Nations, 2000. *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*, UNGA Res. 55/25, 15 November 2000, [Smuggling Protocol], art. 3a.

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