



Unsafe havens, unworkable solutions

Refugee Council position paper on the UK proposals for transit processing centres for refugees and regional management of asylum

1. Introduction

- 1.1 This paper sets out the Refugee Council's position on the UK government's proposals for the regional management of asylum through safe havens ('regional protection areas') and 'transit processing centres'. It builds on the Refugee Council's existing policies, including its responses to Jack Straw's 'Lisbon agenda'¹ and to the recent Home Office consultation on the implementation of juxtaposed controls.²
- 1.2 The proposals are part of a range of long-term plans for handling migration being developed by the Government. This position paper responds specifically to an outline published by the Home Office on 27 March 2003.³ However, we also draw on a range of discussions that have been held with stakeholders in the refugee sector, and make reference to earlier versions of the proposals.

2. The proposal

- 2.1 The stated aim of the proposal is "better management of the asylum process globally, reducing unfounded applications and providing more equitable protection for genuine refugees" in response to perceived problems in the global system. Issues highlighted include the following:
 - Support for refugees is inequitable with far greater support given to refugees reaching Europe than to those in their regions of origin.
 - 50-75% of people claiming asylum in Europe are not recognised as refugees.
 - People fleeing persecution are required to enter the West illegally, often relying on criminal organisations to help them do so.
 - Individual countries experience rapidly fluctuating and unmanaged intakes of asylum seekers and refugees.
- 2.2 The Home Office document outlines a 'new' international approach to asylum processing and protection. It provides little detail, particularly with regard to cost or practicality. The core of the proposals, however, clearly is the desire to process asylum claims abroad and reduce the number of asylum seekers arriving spontaneously in the UK. The document proposes that these core objectives can be realised by improving protection in refugees' regions of origin and, in the shorter-term, by transferring asylum seekers from the UK to a place outside Europe where their claims would be processed.

¹ Refugee Council (January 2001). *Response to 'UK Home Secretary's Lisbon Proposals on Asylum: a Discussion Paper.'*

² Refugee Council (January 2003). *Response to the Home Office Consultation on Juxtaposed Controls Implementation, Dover-Calais.*

³ Home Office (March 2003). *New International Approaches to Asylum Processing and Protection.* (www.homeoffice.gov.uk)

- 2.3 The Government's short or medium-term plan is to transfer spontaneous asylum seekers to a transit processing centre (TPC) just outside the EU. The paper suggests that the International Organization for Migration (IOM) could manage the TPCs, with a screening system approved by the UNHCR. Unsuccessful asylum seekers would be returned to their country or region of origin. Those with successful claims would be eligible for resettlement within the EU on a 'burden-sharing' basis.
- 2.4 The Government proposals suggest that asylum seekers who are not recognised as refugees but cannot be returned to their country of origin may be given temporary status in the EU, until the situation improves in their country of origin. However, the paper also suggests that temporary protection may, in the long run, be provided in the region of origin.
- 2.5 The Government's long-term plan is to improve protection in refugee-producing regions, in particular by establishing 'Regional Protection Areas' (RPAs). The paper suggests that asylum seekers reaching the EU may be removed to an RPA for their claim to be processed. It is unclear whether removals would be from a European member state or from a TPC.
- 2.6 Managed resettlement schemes are portrayed as being central to the 'new international approach' and vital to combating people smugglers and traffickers. It is proposed that spontaneous arrivals are reduced and EU member states accept a quota of recognised refugees for resettlement from the RPAs and TPCs.

3. Summary of the Refugee Council position

- 3.1 The Government's paper sets out its concerns about the international protection regime. The proposals fail to address the problems identified, are unworkable and will only serve to throw the system into chaos, further endangering the lives of people fleeing persecution. The proposals are
- **unprincipled** as they threaten to unravel the global safety net provided by the 1951 Refugee Convention;
 - **legally problematic** as they will lead to a raft of expensive and lengthy judicial challenges in the UK and elsewhere;
 - **unworkable** as they will create 'super-Sangattes'; systems will become overwhelmed with the rapid growth in resident populations, numbers swelling as migrants are attracted from the surrounding region, asylum seekers returned from the UK/EU for processing, and targets for returns to countries of origin are missed; and
 - **expensive** as the cost of establishing TPCs, improving protection in regions of origin, and deporting tens of thousands of people to overseas processing centres will be prohibitively high.
- 3.2 We remain unconvinced of the need for major 'new' international approaches to overcome challenges to the global protection system. The main problem is the inconsistent and mean-spirited application by states of the 1951 Refugee Convention. The Refugee Convention is the cornerstone of the international protection regime responsible for saving millions of lives since it was drafted in the aftermath of the Second World War. In December 2001, following extensive global consultations, the UK and other signatory states reaffirmed their commitment to the Convention. That commitment needs to be reflected in practice.
- 3.3 The proposals reflect the Government's failure to keep debates about the global protection regime in perspective. It should be noted that
- the world refugee population fell by 9% in 2001;
 - the number of asylum seekers arriving in the EU fell by almost a half between 1992 and 2001, only rising slightly since then;

- the UK hosts less than 2% of the world's refugees; and
- that the UK ranks only 32nd in the world in terms of its share of the refugee 'burden', in relation to its national population, surface area and wealth.⁴

3.4 Developing countries support seven out of ten of the world's refugees, many of whom live in poor camp conditions. There is overwhelming evidence that many refugee camps are simply not safe. Refugees in camps are attacked with alarming frequency, armed militias infiltrate refugee communities and threaten them and forcibly recruit children. Most host countries in regions of origin are poor, many are themselves in a state of conflict and most lack adequate systems for safeguarding human rights. It is unprincipled of the Government to be shifting responsibility for refugee protection to poorer countries.

3.5 The number of refugees arriving in the UK has increased in recent years, but it is wrong to attribute this to abuse of the UK's asylum system. Almost half of the UK's asylum applications in 2002 came from just five countries, namely Iraq, Afghanistan, Zimbabwe, Somalia and China. About half of asylum claims in the UK prove to be well founded. Many applicants who fail to satisfy the narrowly drawn legal criteria that would entitle them to protection, nevertheless come from countries with oppressive regimes or in turmoil.

3.6 The number of asylum seekers entering the EU remains far lower than numbers peaked in 1992. The recent increase in the number of asylum applications in the UK is partly explained by its historical ties with countries currently producing large numbers of refugees. It may also be a result of increased freedom of movement within Europe and the absence of a fair and workable system for sharing responsibility between EU member states. The rise in UK applications also corresponds with a reduction in flow to other EU countries, such as Germany and the Netherlands.

3.7 A European solution is needed for a Europe-wide challenge. We agree that asylum could be managed better, but the Government has a responsibility to work with its European partners. The Government should not attempt to bypass the process of harmonisation that aims to create a level playing field in asylum policy across the EU. These proposals raise a complex set of legal and practical questions, not least around their relationship with the common European asylum system in the future. We have seen four major pieces of UK legislation in just ten years, as well as a raft of additional measures that have eroded the rights of people seeking asylum. The UK would inevitably frustrate progress towards a single European asylum system by introducing yet another set of restrictive and unworkable policies, either unilaterally or with a small group of European partners.

3.8 The Government must now

- adhere to the spirit as well as the letter of the Refugee Convention;
- invest resources in our domestic asylum system;
- work with our European neighbours towards a common European asylum system consistent with international human rights standards; and
- restore public confidence in asylum policies and processes by providing moral leadership and ensuring that public statements aim to cool rather than inflame the debate.

4. General concerns

4.1 The broad outline of the Government's proposals causes many concerns. The three areas are:

- issues of principle;
- legal constraints; and
- practical difficulties.

⁴ UNHCR figures.

4.2 Issues specific to the TPCs and to the RPAs are dealt with separately in sections 5 and 6.

4.3 Issues of principle

The Government's proposals attempt to shift responsibility for asylum seekers onto already over-stretched developing countries and circumvent the UK's international obligations. This will undermine the 1951 Refugee Convention and jeopardise the whole international protection system.

4.3.1 Responsibility-shifting

The concept of responsibility-sharing and international solidarity underpins the 1951 Convention and the international protection regime. The core proposal specifically seeks to shift responsibility for some of the world's most vulnerable people away from the UK. Yet the UK is one of the world's richest countries. Even when its physical size and national population are taken into account, the UK comes just 32nd in the share it contributes to the global system, well below top-ranked Iran, Burundi and Guinea⁵. Inevitably, moving the responsibility for asylum seekers away from the UK and out of Europe will shift it on to poorer countries that have less capacity to provide them with adequate protection.

4.3.2 Dumping the UK's rejected cases problem elsewhere

It seems that the Government is also seeking to shift onto other countries responsibility for returning people not granted asylum. Even if the UK undertakes to support asylum seekers and guarantee protection in RPAs and TPAs, countries hosting the safe havens would remain responsible under international law for ensuring that people were not sent back to a country where they faced persecution. This would necessitate a second asylum determination procedure prior to removal under the host country's domestic legislation.

There is absolutely no indication that countries hosting TPCs or RPAs would find it any easier than the UK does to ensure that failed asylum seekers return to their country of origin. Scant attention is given in the proposals to voluntary, rather than forced return. Yet the experience in the UK is that return is more humane, durable and sustainable when it is voluntary, not forced. As we saw with Kosovo, many people choose to go home once it is safe to do so. The principle of informed consent must remain at the heart of any voluntary return programme, but it can be facilitated and enhanced by imaginative programmes including exploratory visits and financial and other support to returnees and receiving communities.

4.3.3 Protection in countries already failing to meet their international obligations

The countries that the Government is known to be considering as possible locations for TPCs and RPAs include Albania, Croatia, Ukraine, Iraq and Somalia. They have insufficient capacity to support asylum seekers. Many have a poor record on human rights and lack the infrastructure necessary to guarantee protection in the camps or protection areas.

Ukraine, for example, is a signatory to the 1951 Refugee Convention and has its own national laws on refugees. Nevertheless, access to asylum procedures is difficult and for 14 months, following the 2001 asylum legislation, no new asylum cases were processed at all. Lack of status leaves people exposed to police harassment, detention and threats of deportation.⁶

4.3.4 Penalising refugees for illegal entry

The proposals seek to limit entry so that "the vast majority of refugees who come to Europe do so through legal channels." TPCs are intended specifically to "deter those who enter the EU illegally". Yet the 1951 Convention specifically protects the right of refugees not to be penalised for entering a country of asylum illegally, in recognition of the difficulties faced by people being persecuted in obtaining travel documents.⁷ The proposal to process (and possibly detain) asylum seekers in a

⁵ 'Selected Indicators Measuring Capacity and Contributions of Host Countries', UNHCR April 2002.

⁶ For this and further examples see *Statement of the European Council on Refugees and Exiles on the European Council Meeting, 21/22 March 2003*.

⁷ Article 31 of the 1951 Refugee Convention stipulates that states shall not impose penalties on refugees on account of their illegal entry or presence.

distant country with which they have no connection would effectively penalise them for illegal entry and thereby strike at the heart of the Refugee Convention.

4.3.5 Undermining the spirit of the 1951 Convention

The Home Office document states that there is no obligation under the 1951 Convention to process asylum claims in the country where they are made. However, neither does it require refugees to seek asylum in the country neighbouring their own: if the drafters of the Convention had intended all refugees to be protected in neighbouring countries, they would have drafted the Convention accordingly.

4.3.6 Threatening the global safety net

These proposals send a dangerous signal to the rest of the world about the UK's commitment to its international, European and domestic legal obligations. Many countries would be keen to use the UK's precedent as an excuse to renege on their own obligations. In October 2001, for example, Pakistan's President Musharraf cited Australia's restrictive asylum policies as justification for closing Pakistan's land border to thousands of refugees fleeing armed conflict in Afghanistan.⁸ The UK risks triggering the collapse of the international protection regime, which would severely undermine its own interests in maintaining a reputation for commitment to human rights and in fostering an orderly world governed by the rule of law.

4.4 Legal concerns

The proposals will end a 50-year history of in-country asylum procedures. Experience has taught us that costly legal wrangles are the inevitable outcome of ill thought-out processes and legislation. The administrative chaos that will ensue if these proposals are implemented will not be in the interests of the public or the Government, let alone people fleeing persecution.

4.4.1 Use of detention

It is highly unlikely that people in RPAs or TPCs will be free to come and go, if the centres are to function as currently envisaged by the Government no matter where they are located. The government's desire to create a deterrent, the risk of people absconding to avoid removal to their country of origin and pressure from countries hosting the centres all point to the likelihood that the TPCs would be 'closed', such as detention centres. Yet it is quite simply wrong to detain people who have committed no crime and whose sole objective is to flee from repressive regimes. Detention for little more than administrative convenience is morally abhorrent and likely to violate international human rights law⁹, including the European Convention on Human Rights (ECHR)¹⁰. It would also ignore UNHCR guidelines on detention which state that '[as] a general principle asylum seekers should not be detained'.¹¹

4.4.2 Level of protection

The intention is to provide a 'level of protection' in TPCs, and in the longer term, in regions of origin, such that domestic courts would be satisfied that the rights of people removed from Europe for processing were being met. The published proposal gives little indication as to what that would entail, but the Government seems to limit the notion of 'effective protection' to not returning people with a well-founded fear of persecution (*non refoulement*), and to ensuring that decisions do not expose applicants to inhuman or degrading treatment (simple compliance with Article 3 of the ECHR). Yet, a recent UNHCR expert seminar on 'effective protection' recognised the need to give effect to all the rights enshrined in the 1951 Convention, as well as other human rights instruments. The seminar conclusions noted that the protection of the family as the natural and fundamental group unit of society is a widely recognised principle of human rights.¹²

⁸ Human Rights Watch (September 2002) "*Not for Export*": Why the international community should reject Australia's refugee policies.

⁹ The International Covenant on Civil and Political Rights recognises that the right to liberty is linked to freedom from arbitrary detention.

¹⁰ In particular Article 5 ECHR – the right to liberty and security.

¹¹ UNHCR (February 1999) *Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers*.

¹² Lisbon Expert Roundtable, 9-10 December 2002.

4.4.3 Poor record of protection in large refugee camps

Experience shows that large-scale refugee camps, wherever they are located, simply do not work. The refugee camps set up in the Great Lakes region following the Rwanda genocide became notorious as targets for armed attack as well as recruiting grounds for violent factions. In 2001, reports emerged of extensive sexual exploitation and other forms of abuse by UNHCR staff in West African refugee camps.¹³ The insecurity and widespread violence prevalent in UNHCR-run camps in Northern Kenya is well documented. Sexual abuse is widespread, refugees have been forcibly recruited into militias and government agents from the countries of origin are alleged to be present within the 'protection areas'.¹⁴

It is not surprising that the Government has abandoned the term 'safe haven', given its connotations of tragic failures of protection, most notably in Srebrenica, where the might of NATO failed to prevent a massacre by Serb forces. Similarly, UNMIK failed to stop reverse ethnic cleansing of Serbs and other minorities by ethnic Albanians after the conflict in Kosovo.

Given their current capacity and resources, it is doubtful that UNHCR or any other non-state body will be able to provide protection to an appropriate standard. We are concerned about the proposed involvement of the International Organization for Migration (IOM), in light of its lack of a protection mandate and documented criticisms of its role in running Australia's notorious processing centres.¹⁵

The evidence is that many refugee situations become protracted, as the examples of the Vietnamese, the Palestinians, and the Great Lakes show. It is highly likely that people would remain in UK-sponsored safe havens for long periods.

4.4.4 Removal of vital legal safeguards

We have grave concerns that processing claims outside the UK and EU will effectively circumvent the UK's international obligations. In the UK, about two thirds of successful asylum seekers are found to be in need of protection under the European Convention for Human Rights (ECHR) grounds. The proposals do not state which country's legal systems would apply to processing in TPCs or RPAs. TPCs are likely to be located in states that have signed the ECHR. Yet compliance with ECHR standards in the 43 signatory states varies enormously, as do the practical chances of an asylum seeker in each country taking a case to the European Court for Human Rights. Most likely locations for RPAs are not even signatories to the ECHR. So, if the countries hosting safe havens, whether RPAs or TPCs, are to have jurisdiction over any part of the process, asylum seekers may well have a greatly reduced chance of finding protection.

We do not believe it is possible to declare any country (let alone a camp or area) safe for every individual for all time. References to challenges in domestic courts implicitly acknowledge that there would have to be some form of appeal in the UK. Domestic courts would have to be satisfied that physical conditions in the TPCs, camps or protection areas were 'safe', but it is unclear the extent to which they would have to be satisfied by the quality of decisions made in the TPCs and RPAs.

It is essential that asylum seekers have access to legal advice, representation and appeal processes. The removal of these vital safeguards would be an affront to natural justice.

4.4.5 Complex processes

It appears inevitable that there would be at least three sets of legal processes and appeals:

- One in the UK prior to removal to a TPC or RPA
- An asylum determination procedure in the TPC or protection area

¹³ UNHCR EXCOM September 2002.

¹⁴ G Loescher and J Milner (2003) 'New Safety or Old Danger? UN 'Protection Areas' for Refugees.'

¹⁵ IOM's role as administrators of Australian processing centres has led to concerns that it has become too closely involved in detaining asylum seekers and refugees on behalf of the Australian Government. See Amnesty International (August 2002). *Australia-Pacific: Offending human dignity – the "Pacific Solution"*.

- A further procedure for unsuccessful applicants prior to removal to their country of origin, which would ensure that the country hosting the TPC or RPA was not violating the principle of *'non-refoulement'*.

Furthermore, it is suggested that some unsuccessful applicants who could not be returned to their country of origin would be flown back into the EU where they would be given 'temporary status'. Presumably, when that status expired, their cases would be re-examined, either in the UK, or back in the TPC. It is difficult to imagine such a system being faster, fairer or more efficient than the current one.

Notably, the proposal does not address the position of people who have been in the UK for some time when the situation in their country of origin changes. For example, following the Tiananmen Square massacre in China, many students resident in the UK applied for asylum. It would seem unreasonable for such people to be sent to a TPC.

The proposal acknowledges that "certain categories of people, such as disabled persons or minors, [...] would never be sent to a transit centre". This calls to mind the UK system, where separated children and other people with special needs are exempt from the National Asylum Support Service (NASS), remaining the responsibility of local authorities. This has resulted in protracted disputes between the NASS and local authorities over asylum seekers' age or vulnerability, as each tries to avoid taking responsibility. These sorts of issues cannot be resolved instantaneously. It may not be immediately obvious, for example, that someone has severe mental health problems. Determination of vulnerability and age would require some kind of process. It is unclear how and when that would take place and whether there would be an appeal process.

At an international level, the legal and practical difficulties thrown up by the proposals bear strong similarities to the Dublin Convention, which is a mechanism designed to allocate asylum seekers to a particular country for asylum determination. Less than 2% of EU's asylum applications were transferred under the slow, bureaucratic and costly Dublin system, which is widely acknowledged to have failed.

4.5 Practical issues

4.5.1 'Super-Sangattes'

The UK proposals will give rise to such an array of practical problems that they are unworkable. To take just one example, no limit is proposed on the number of asylum seekers arriving in the EU who would be transferred to TPCs. If all were to be transferred, every year up to 400,000 reluctant passengers would have to be loaded onto the equivalent of at least 1,000 jumbo jets¹⁶, a logistically difficult, inhumane and costly proposition. As it is not envisaged that asylum seekers remain long-term in TPCs or the countries where they are located, *all* would either have to be flown back into the EU or back to their country of origin. By way of perspective, the UK succeeded in removing just 10,000 applicants last year, well below the Home Office's target of 30,000.

Furthermore, the proposal leaves open the possibility of placing in the TPCs any illegal immigrants intercepted en route to Europe, further adding to the population of the centres. It is clearly envisaged that people would be free to enter RPAs, adding further to the difficulties of limiting numbers. Perhaps in recognition of the difficulty in preventing the population of TPCs growing uncontrollably, it is suggested that some of those who could not be returned to their country of origin would be flown back into the EU where they would be given 'temporary status'. When that status expired, would they then be flown back to the TPC to have their cases re-examined, adding to the numbers in the TPCs? Presumably, those who were unsuccessful in that review would also have to be flown to their country of origin.

The logistics of this vastly expensive human pinball are staggering. Inevitably, the number of people removed from the TPCs or RPAs will not keep pace with those being returned there from the EU.

¹⁶ 384,000 people claimed asylum in the EU in 2001.

Populations will swell rapidly, creating 'Super-Sangattes'. As at Sangatte, UK policies will be responsible for creating a rich market for human smugglers and pushing people into the hands of traffickers, eager to exploit them in the UK sex trade and sweat-shops.

4.5.2 A dramatic increase in the number of illegal immigrants entering the UK

People will be discouraged from claiming asylum, including those with well-founded claims, but will be likely continue to arrive illegally and simply be driven underground. Today's asylum seekers will be transformed into tomorrow's continental-style *sans papiers*. This will further sour the immigration debate, prevent refugees' proper integration into society, fuel social exclusion, hamper the Home Office's security objectives and initiatives on illegal working and human trafficking, deprive the Treasury of tax revenues and damage community relations. The number of people marginalised from mainstream services such as education and health care will rise. Rather than leave large numbers of people in limbo, the UK may well have to follow the example of countries like Belgium and France, which have found themselves forced to conduct controversial regularisation (or amnesty) programmes for *sans papiers*.

4.5.3 Finding willing hosts for the TPCs and RPAs

The UK government will encounter major difficulties in finding countries to host the TPCs and RPAs. Prospective host countries will fear that TPCs and RPAs will draw thousands of people towards the areas in which they are located, attracted by the prospect of resettlement or, if standards are consistent with international human rights law, the existence of living standards higher than the surrounding region. (The need to keep people out, as much as to keep people in, will require camps to be run as detention centres). Processing systems are likely to be overwhelmed and the large numbers of vulnerable people within the centres will attract organised criminals, people smugglers and traffickers. This will seriously compromise the provision of protection.

The introduction of an additional processing system for asylum seekers returned from the UK or EU may cause resentment among asylum seekers already waiting for their cases to be processed in those countries and among recognised refugees, including those waiting to be resettled to another region.

4.5.4 Cost

The proposals have not been costed and we think it unlikely that governments will be willing to provide the real resources required to make them work.

Substantial financial or other incentives will have to be offered if countries are to accept a 'super-Sangatte' on their territory. Yet, any use of aid as an incentive to potential host governments is likely to fall foul of the International Development Act 2002, which states that development assistance must be "likely to contribute to a reduction in poverty".¹⁷

Some of the logistical difficulties entailed in removing people to RPAs or TPCs have been discussed above. The costs will be enormous. Forced removals are highly resource-intensive. Recent removals of Afghans have been estimated to cost £5,700 per person¹⁸. Similar per-capita costs can be anticipated in removing people from the EU for processing, given that they will have no choice in the matter. Once again taking the total asylum applications for the EU in 2001, the total cost of removing people to TPCs or RPAs can be estimated at £2 billion. To that can be added the cost of transporting them back to Europe or to their countries of origin – say, another £1.5 billion (the cost of bringing people back to Europe will be less, as they will not have to be coerced).

Those are simply the basic transport costs. Accommodation will have to be constructed, staff will have to be paid, security guaranteed, food provided, educational and recreational facilities instituted and so on. The cost of accommodating asylum seekers in TPCs is likely to be comparable to the cost of detention centres in the UK – and when the opposition suggested detaining all asylum seekers, the Government dismissed the idea on cost grounds. It is unlikely that all asylum seekers would be

¹⁷ Art 1, International Development Act 2002.

¹⁸ *Afghan deportees tied up and forced on to planes*, The Guardian, 30 April 2003.

removed to TPCs or RPAs, but the Government would have to continue to fund domestic asylum system for those who were not.

The US has tried a similar scheme and found it too expensive. In the summer of 1994, it established 'safe havens' or 'temporary holding centres' in Guantanamo Bay and Panama for Haitians and Cubans. By September, it became clear that large numbers of Cubans were unwilling to return to Cuba and the cost of the 'safe havens' - several million dollars a day - was prohibitive. The scheme was ended in May 1995.¹⁹

4.5.5 Short-term solutions?

The proposed system relies on asylum claims being processed speedily, followed by an effective durable solution. In the 1980s, regional processing centres were established in South East Asia as a short-term solution for Indo-Chinese refugees. While tens of thousands of people were successfully resettled under the Comprehensive Plan of Action, people remained in the camps for up to ten years. The longer refugees stayed in the camps, the more difficult their integration became in the countries to which they were resettled. Intimidation was a particular problem in the camps, along with forced marriages, addiction, bullying and organised crime.²⁰

The Government is having difficulty implementing timely procedures in the UK, let alone in a more complex overseas situation with multiple international stakeholders. The system envisaged may well result in refugees spending many months, if not years, in camps. They will become dependent and institutionalised, their mental and physical wellbeing will suffer and they will find it increasingly difficult to rebuild normal lives, whether in the UK if eventually successful in their asylum applications, or back in their country of origin.

4.5.6 Returning those not in need of protection

In order for TPCs and RPAs not to grow inexorably, tens of thousands of unsuccessful asylum seekers would have to be returned to their countries of origin. Yet, the difficulties involved in enforcing removals are well documented and acknowledged by the Home Office, which was unable to meet its original target of 30,000 removals in 2001/2002²¹. They include lack of travel documents, non-cooperation of countries of origin, lack of routes to countries of origin, difficulty of negotiating readmission agreements with countries, such as Somalia, where there is no effective government.

It is because of the difficulty of removing unfounded applicants that the Government has shifted its focus to measures to prevent asylum applicants from setting foot in the UK, such as juxtaposed controls and projects to intercept illegal immigrants in the Balkans and in the Mediterranean. Indeed, the difficulties encountered with removals may have prompted these latest proposals to reform the asylum system, yet there is little indication as to why the Home Office might believe it to be easier to effect removals from TPCs or RPAs than from the UK.

4.6 Further information required

4.6.1 The Home Office paper lacks crucial detail on some of the most fundamental and complex issues, including

- where the TPCs will be located;
- whether the TPCs and RPAs will function as detention centres;
- how the Government intends to achieve the removal of tens of thousands of failed claimants from the TPCs and who will implement it;
- which country's legal system will operate in the TPCs/RPAs;
- how the legal basis will relate to the EU asylum legislation currently under negotiation;

¹⁹ Reception in the Region of Origin, Draft follow-up to the 1994 Working Paper, Secretariat of the Inter-governmental Consultation on Asylum, Refugee and Migration Policies in Europe, North America and Australia, August 1995.

²⁰ Experience of Refugee Action.

²¹ Memorandum submitted by the Home Office to the Home Affairs select committee enquiry into Asylum and Immigration, September 2002.

- who will be responsible for refugee determination;
- how vulnerable people exempt from removal to processing centres, such as disabled persons or children, will be screened and how long that process will take (vulnerability is rarely immediately manifest);
- how the Government plans to carry out its declared intention to address the root causes of refugee flight;
- how the proposed regional protection areas will function differently from existing refugee camps; and
- which EU countries are prepared to join the UK's scheme.

4.6.2 The lack of detail in these key areas indicates a failure to consider logistical as well as policy and legal issues and points towards how unworkable the proposals are. The Refugee Council and other NGOs in the UK would welcome the opportunity to contribute their experience and invite the Government to set out its plans for consultations.

5. Specific concerns about the transit processing centres

5.1 The proposals provide very little information about TPCs, their location, who would be sent to them or how they would operate. However, the Government appears to be promoting the idea of processing centres close to the borders of Europe as a quick-fix solution, more easily achievable than protection in the regions.

5.2 Hosts' capacity to deliver protection

5.2.1 We do not believe that countries bordering the European Union have sufficient capacity to undertake additional protection responsibilities. Many are already grappling with increased migration challenges resulting from the break-up of the Soviet Union, alongside economic instability and hostile public opinion.

5.2.2 Amnesty International's 2002 report notes that "torture and ill-treatment by state agents, often against members of ethnic minorities or foreigners, continued to be rife in Europe", and that "torture and ill-treatment were documented in a large number of European countries" including Albania and Romania. Moreover, the report notes that "Police ill-treated Roma, and in some cases failed to protect them from abuse in Bulgaria, Czech Republic, Greece, Hungary, Slovakia and the Federal Republic of Yugoslavia."

5.2.3 In this light, how might Zimbabweans be expected to fare in Albania, for example? Given the record of xenophobia and racist attacks in Central and Eastern European countries and the ethnic tensions that have plagued South East Europe, it seems unwise to be establishing TPCs to house people from numerous ethnic and national backgrounds.

5.3 Risk of mixed populations in TPCs

5.3.1 The difficulties of managing centres housing a single nationality or group are obvious (people may have come from opposite sides of a conflict). But there are risks attached to mixed populations too and they may be more complex to manage. The safety of Sangatte residents, for example, was threatened on numerous occasions by violent clashes between Iraqi and Afghan residents.

5.4 Undermining integration

5.4.1 Local integration of host countries' own refugee caseload is likely to be undermined. A refugee in Ukraine, for example, may see greater benefit in qualifying for resettlement from the local TPC than in trying to start a new life in the Ukraine. Further, the long process of integration

into the host country for refugees selected for resettlement will be severely delayed and undermined if they are first removed from the EU to a TPC for processing.

5.5 Australian experience

- 5.5.1 In many ways the UK proposals to establish transit processing centres reflect the much-criticised Australian 'Pacific Solution', in particular the policy of expelling asylum seekers from Australian territory and sending them to camps in the Republic of Nauru and Papua New Guinea.²² Conditions in the camps are appalling. Arbitrary detention is used as a routine measure. International standards are disregarded. Human rights monitors are denied access to the camps and refugees' rights are routinely violated.²³ It is likely that any attempt to replicate such practices by a European country would fall foul of the ECHR. We urge the Government not to attempt to follow the Australian example of implementing policies and procedures that seriously undermine its obligations under international human rights and refugee law.

6. Specific concerns about the regional protection areas

- 6.1 The Refugee Council's position on improving protection in the regions of origin is set out in our response to the Lisbon Agenda²⁴. In that response, we welcomed the Government's commitment to increase assistance for regions of origin, but asserted that this must be "additional to, and not in place of, existing legal obligations to those who arrive spontaneously." We urge the Government to pursue holistic regional solutions and would welcome an honest commitment to regional protection.
- 6.2 The current proposal considers whether people could be removed from Europe to an RPA for processing, followed by temporary protection in the RPA, return to their country of origin, or resettlement within Europe. The Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC), a body which includes the UK, unequivocally rejected a very similar idea on moral (political and humanitarian) and legal grounds.
- 6.3 An IGC study in 1994 suggested that "internationally protected areas" (IPAs) could be established in the region of origin and that victims of a particular conflict could be automatically excluded from national asylum systems, allowing States to return asylum seekers to the IPA. The IPA would be the "exclusive location for protection". A follow-up report in 1995 rejected the idea:
- "Politically it is a controversial scheme that would possibly have a very negative impact on public opinion. Moreover, it contravenes a number of relevant provisions of International Law and also appears to be incompatible with Constitutions and internal systems in many participating states. On the practical side, it may encourage human trafficking on forged identities and nationalities. Careful examination of these impediments therefore leads to the conclusion that the "exclusive" option is not feasible and as such, does not deserve further elaboration."²⁵
- 6.4 The European Commission recently commissioned a study on processing asylum claims outside the EU. The study additionally notes that international law would require some form of appeal before someone was removed to an IPA. It also notes that "this would amount to a parallel

²² Asylum seekers' status in those camps is determined by UNCHR or by Australian officials acting outside the framework of Australian law. Resettlement is available for recognised refugees, although only those refugees with immediate family members in the country are resettled in Australia.

²³ Amnesty International (Aug 2002) *Australia-Pacific. Offending Human Dignity – the 'Pacific Solution'*. Human Rights Watch (September 2002) *'Not for Export': Why the International Community should Reject Australia's Refugee Policies*.

²⁴ January 2001 Refugee Council response to 'UK Home Secretary's Lisbon Proposals on Asylum: a Discussion Paper'.

²⁵ Reception in the Region of Origin, Draft follow-up to the 1994 Working Paper, Secretariat of the Inter-governmental Consultation on Asylum, Refugee and Migration Policies in Europe, North America and Australia, August 1995.

system, now dealing with the safety of return to regional processing centres rather than the protection claim proper."²⁶ The study concludes that "it appears inadvisable to pursue the exclusive approach further."

6.5 The Home Office's published paper suggests that durable solutions would generally be sought within regions of origin meaning that people would either integrate in the RPA or country hosting it, or return to their country of origin. We draw the Government's attention to the fact that developing countries, such as Iran and Pakistan have already indicated that they would reject the idea of local integration²⁷, seeing it as a clear shifting of responsibility from the UK.

7. Ideas to be developed

7.1 Early drafts of the UK proposals included ambitious and positive ideas such as the need to promote universal human rights and provide protection for the many, not the few. These have been scaled down and no longer appear central to the Government's thinking. Nevertheless, there remain several positive long-term objectives within the latest version. We urge the Government to build on these elements, rather than pursue other aspects of the proposals that will be expensive, unworkable and may jeopardise the whole international protection system.

7.2 Attention to the international dimensions of refugee protection

7.2.1 Effective responses to refugee situations require an international approach and the government's attention to the international dimensions of refugee protection is welcome. We further support its commitment to work together with other states, the UNHCR and the European Commission. The challenges currently facing the international protection regime cannot be resolved without co-ordinated international action.

7.2.2 The proposal includes a suggestion that those granted refugee status in TPCs would be resettled in the EU "on a burden-sharing basis". This points to the heart of the matter. There is no system for sharing the responsibility for Europe's asylum seekers. The political pressure faced by the UK would be far less severe if it did not receive more asylum seekers than other EU countries. The Dublin system for allocating responsibility must be abandoned in favour of one that is fair to all EU member states and takes into account asylum seekers family ties and other links to a particular country.

7.3 Addressing the root causes of forced displacement

7.3.1 We are pleased that the Government proposes action to address the causes of refugee flight. Rather than waste resources on these costly, risky and unworkable proposals to divert flows of asylum seekers to countries with less capacity to support them, the Government should be working towards real solutions by preventing or stopping the civil wars, persecution of minorities and brutal dictatorships they are fleeing.

7.3.2 It is clear that more concerted and co-ordinated efforts are required to help countries with conflict reduction and prevention, the promotion of human rights and the development of strong civil societies. Sufficient resources must be made available for the long-term development that will, in the long-term, reduce the incidence of forced displacement. Governments should ensure that foreign policy, trade and development assistance is consistent with the domestic agenda, examining their arms trade and dismantling protectionist trade practices.

²⁶ Study on the feasibility of processing asylum claims outside the EU against the background of the Common European Asylum System Procedure, Danish Centre for Human Rights on behalf of the European Commission, 2002.

²⁷ Meeting of UNHCR Standing Committee, 7 March 2003.

7.3.3 The country that contributed most to last year's dramatic fall (42%) in the number of asylum seekers arriving from Sri Lanka was not the UK, which vainly attempted to prevent them from reaching its shores, by measures such as airline liaison officers at Colombo airport, but Norway, which brought the warring sides together and secured a peace deal.

7.4 Enhancing protection for displaced people within their regions of origin

7.4.1 We agree with the Government that the current global asylum system fails to provide adequate protection to all those who suffer forced displacement. The UK government should lead efforts to enhance levels of protection, supporting the efforts of UNHCR and other bodies in this regard. If people enjoy real protection in their region of origin they are less likely to choose to travel to the EU. It is more humane, more principled and more realistic to concentrate on raising standards of protection rather than on developing complex and draconian mechanisms for coercing people into seeking protection where it is inadequate.

7.5 Providing solutions to those for whom protection in the region of origin will not be appropriate

7.5.1 We welcome the Government's recognition that protection in the region of origin will never be appropriate for all refugees. Many refugees have legitimate, protection-related reasons for leaving their regions of origin. It is therefore encouraging that the proposals seek to provide persons in need of protection with opportunities to reach the EU in a safe and legal manner.

7.5.2 Refugee resettlement is a positive way of addressing some of the inequities of the current protection regime and we urge EU Member States to expand their resettlement programmes. However, refugee resettlement must never be seen as an alternative to other forms of protection. Many people have good reasons for failing to apply for protection through resettlement channels, including continuing threats to their protection in the region of origin making it dangerous to wait for a resettlement application to be processed.

7.6 A commitment to work within the framework of the 1951 Convention

7.6.1 We are delighted that the Government has restated its commitment to working within the framework of the Geneva Convention. The 1951 Convention has probably saved more lives than any other human rights Convention and is the cornerstone of the international protection regime. We support all efforts to strengthen its implementation and thus ensure a proper response to refugee flows.

8. Conclusion

The core proposal to remove asylum seekers to centres outside Europe fails to provide a workable solution to the current challenges faced by the UK, is legally complex and problematic, prohibitively expensive and may threaten the global safety net provided by the 1951 Refugee Convention. It is an 'out of sight, out of mind policy', aimed at reducing the visible number of asylum seekers in the UK. The Government is undermining the spirit of the 1951 Refugee Convention by shirking its own responsibilities and attempting to discourage people from seeking asylum.

Real solutions lie in better co-operation within the EU, a real commitment to improving protection in regions of origin and far greater efforts to address the fundamental reasons why people are forced to flee their countries.

