

JRS Position on Proposals to Create Transit Camps in North Africa for Migrants/Asylum-Seekers

Introduction

In March 2003, the United Kingdom announced proposals for the creation of regional protection zones to address the issue of refugee claims arising from conflicts within the region and of transit zones to process asylum claims outside of the European Union for those persons seeking to come to Europe. According to Home Secretary David Blunkett, the government drafted the proposals in response to the perceived asylum crisis in England. Specifically, the UK government stated that it was concerned over the disparity in funds provided for asylum adjudications in Europe (\$10,000 per applicant yearly) and monies provided for refugees in developing countries (\$50.00 per refugee yearly). Additionally, the UK government expressed concern that those seeking protection were often forced to pay smugglers to facilitate their entry and that a large number of those claiming asylum in Europe are not refugees. Finally, the UK government stated that as a result of these concerns public hostility towards asylum seekers was increasing in Europe. Despite aggressive advocacy in support of its positions, the UK ultimately was forced to drop these proposals after protest from several European governments, including Sweden, Germany and France who objected that such plans would violate international law.

Germany (despite its former opposition to the UK proposal) and Italy have recently revived the issue and proposed the creation of transit camps in North Africa primarily to stop irregular migration from the South. German Interior Minister Otto Schily, in promoting the proposal, noted his government's concern for the safety of thousands of forced migrants who cross the strait seeking entry into Europe. Germany and Italy propose that transit camps be placed in Libya, a weak state with a long history of human rights abuses and a bad record on forced migrant protection issues. Currently, African internees and migrants are detained in horrible conditions and Libya continues to deport Eritrean refugees to Eritrea where they face persecution and torture. Additionally, Libya is not a signatory to the 1951 Geneva Convention Relating to the Status of Refugees or its 1967 Protocol. Nor does it have its own national established asylum regime.

As happened with those of the UK, the German and Italian proposals have met strong opposition by several European countries, especially France and Spain which are fiercely opposed to the plan. Government officials from Libya and Tunisia have also noted their disagreement with the creation of transit camps in their territory, recognizing that the proposed transit camps pose problems of state sovereignty and legality, as well as management, logistics and organization.

These latest proposals for transit camps are focussed on Libya. But there have been recent suggestions of various sites for transit camps for migrants, not only in North African countries, but also in Eastern European countries such as Ukraine.

UNHCR and European Commission Response

Although the UNHCR expressed some support for processing asylum claims at centres within the European Union in response to the initial UK proposal, it has soundly rejected the notion of processing asylum claims properly within the

jurisdiction of EU member states outside the EU borders. In fact, during her presentation at the 2004 Executive Committee of the UNHCR, Erika Feller, Director of UNHCR Department of International Protection, stated that the UNHCR does not believe that the creation of "safe zones" or "protection areas" is the answer to irregular migration. Instead, she suggested that a more realistic solution is the creation of a better managed migration system based on multilateral cooperation and the equitable sharing of responsibilities. The European Commission, in responding to the UK proposal, noted that any measure to combat illegal migration must comply with principles and obligations derived from refugee and other human rights law. Both the UNHCR and the European Commission insist that any suggested changes to the asylum regime in the European Union must provide "effective protection." UN High Commissioner for Refugees, Ruud Lubbers has noted that for people who are intercepted on route to Europe the main goal should be to work towards a burden sharing rather than a burden shifting approach.

JRS Position

The Jesuit Refugee Service recognizes many of the concerns expressed by EU Member States in the proposals. We are concerned over the inadequacy of funding for support for refugees in poor countries. We also are concerned about the growing number of smugglers and traffickers involved in transporting human beings across borders and, more importantly, the danger faced by forced migrants in seeking refuge and security in Europe. However, JRS objects to this proposal as a matter of principle – EU countries should not evade their human rights commitments and shift the responsibility for dealing with refugee protection on to less developed countries that are not equipped to provide effective protection, and migrants and asylum-seekers should not be held in detention in "transit camps". Further, in practical terms JRS does not believe that this proposal would achieve its stated objectives - creating camps outside of the European Union will not stop the flow of irregular migration. Until the root causes of forced migration are sincerely and effectively addressed and until regular migration channels are established, such flows will continue. JRS is deeply concerned that the creation of such camps will actually result in less protection for asylum seekers and refugees. None of the proposals put forward answers or address the following questions:

- Which legal regime would apply in transit? It is suggested that the camps be located in Libya, a country which has not signed the 1951 Geneva Convention Relating to the Status of Refugees or its 1967 Protocol. Additionally, Libya has no national asylum regime.
- How would the human rights of forced migrants in the camps be guaranteed? These camps are outside EU territory and, therefore, not subject to the human rights protections under the European Convention of Human Rights. The proposals for transit camps represent an attempt by Member States to shift their responsibility under international law to countries with little resources to effectively provide protection to forced migrants. Detaining all forced migrants in camps in the way proposed would amount to arbitrary detention.
- How will camps be managed consistent with human rights guarantees given that refugee camps now experience a variety of problems, including lack of funding and support by donor countries, health, education and security problems? As Member States are well aware, refugee camps

throughout the world are underfunded. In refugee camps around the world JRS witnesses cuts in food aid which make living conditions impossible for refugees, and which often force them into returning to dangerous situations in their countries of origin. For example, cuts in food rations in 2004 to refugee camps in Namibia leave refugees with the choice of remaining in the camps without enough food, or of a "voluntary" repatriation to Angola - which cannot be described as voluntary in these circumstances. Similar situations have been faced by other refugee communities, such as Burundian refugees in Tanzania. If the international community cannot safeguard even the most basic right to food in these refugee camps, then it is academic to consider how people's right to "effective protection" would be safeguarded in transit camps. It is unlikely that "transit camps" would fare any better in terms of funding and resources than refugee camps.

- How will the security of people in these "transit camps" be guaranteed?

It is not uncommon that refugees fear Government agents from their country of origin, and they could be at great risk in these camps. How will girls' and women's security be guaranteed? What outside scrutiny of these camps would there be in order to ensure that people's rights under the European Asylum Procedures Directive are respected? What involvement of lawyers and civil society groups would there be?

- What impact would the creation and maintenance of such camps have on the local populations? On public perception of the European Union Member States? The creation of "transit camps" will be likely to result in a variety of criminal enterprises – not just smuggling and trafficking -- harmful to the local population. This will result in hostility towards and discrimination against forced migrants in the transit camps. Local populations may also resent the fact that they are being used as a dumping ground for the problems of the richer countries. The creation of such camps sends a clear message to "outsiders" that they may not be welcome inside the EU. It also sends a message to countries outside Europe that receive far more refugees than European countries receive, that it is acceptable for receiving countries to avoid their responsibilities towards asylum-seekers and not to attempt local integration. (According to the US Committee for Refugees 2004 World Survey Africa hosts 27% of the world's refugees while Europe hosts only 7%.)
- How would rejected asylum seekers and other forced migrants without permission to be in these third countries be returned to their countries of origin? The creation of transit camps may, in fact, result in an increase in trafficking and smuggling as "clients" and/or victims will be more easily identifiable and accessible. Transit camps will serve as a magnet for smugglers and traffickers throughout the region.
- What would the cost of adjudicating asylum claims in transit centres be? Member States should keep in mind that the costs for external processing may be much higher than processing claims in the Member States. For example, the decision by Australia to process asylum seekers on the Pacific island of Nauru resulted in costs for processing each asylum-seeker five times higher than the cost of adjudication in Australia.

Irregular migration will not be solved by attempting to restrict access of forced migrants to Europe through the creation of camps. Until the root causes of forced

migration, including alleviating ongoing poverty and resolving conflict situations, are seriously addressed, irregular migration flows will continue. Part of the solution necessarily must include the development of a labour migration scheme which takes into account EU demand for both a qualified and unqualified labour force. Finally, the European Union, consistent with its longstanding commitment to human rights, must comply with its obligations under the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol and not reject or return persons in need of international protection. To remove asylum seekers from EU territory before they can apply for protection is a violation of the principle of non-refoulement. Nothing can outweigh the value of human life. Therefore, the obligation on the part of the EU Member States to protect must not be compromised.

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