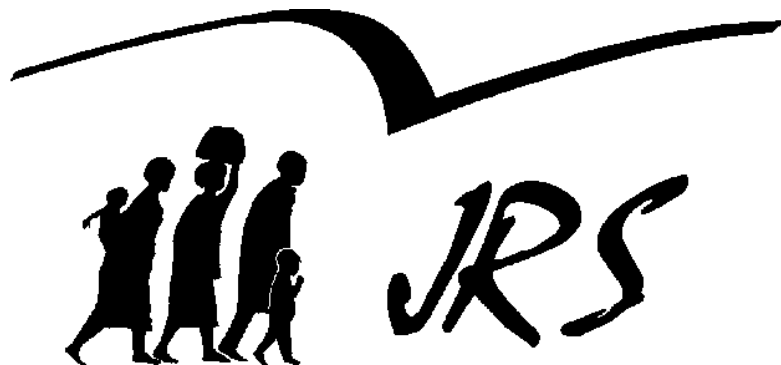


Jesuit Refugee Service UK
Response to

*Secure Borders, Safe Haven:
Integration with Diversity in Modern Britain*



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Jesuit Refugee Service Mission Statement

The Jesuit Refugee Service is an international Catholic non-governmental organisation, at work in over 50 countries, with a mission to accompany, serve and defend the rights of refugees and forcibly displaced people.

The purpose of JRS UK is to accompany, to serve and to advocate on behalf of all asylum seekers from their first arrival until they are satisfactorily settled. This work is carried out in collaboration with other JRS offices round the world, other Church and secular organisations, voluntary and governmental, which are active in the same field.

Introduction

Jesuit Refugee Service welcomes the opportunity to respond to the White Paper *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*. There are elements of the paper, which we welcome and see as positive:

- The more positive use of language when speaking of the benefits of migration
- The abolition of the voucher system and its replacement with a cash based system for destitute asylum seekers
- The confirmation that asylum seekers will no longer be detained in prisons and the closure of Campsfield House
- The Government's commitment to integration.

There are also elements with which we do not agree and see as negative:

- The proposal to remove the support only option in the cash based system for destitute asylum seekers
- Support levels remaining at 30% below income support levels
- A lack of flexibility in the asylum application process
- The increased detention estate and the increased detention of families
- The repeal of Part III of the Immigration and Asylum Act 1999
- The lack of any significant new step to encourage the integration of refugees
- The increased border control measures, which will only serve to throw desperate people into the arms of smugglers and traffickers, as being the only way for some to access the asylum process in the UK.

Jesuit Refugee Service Response to White Paper Proposals

1. Citizenship & Nationality

Jesuit Refugee Service welcomes the recognition in Chapter 2 of the White Paper that British “society is multi-cultural, and is shaped by its diverse peoples”¹. We also welcome the proposals to speed up the process to acquire British citizenship and we broadly welcome the measures of orientation surrounding this.

However, we would like to point out that the requirement for citizenship applicants to pass an English language test is presently unrealistic. Although facility with the English language no doubt helps immensely with the integration of the individual into British society, it is an unfortunate reality that there are insufficient ESOL classes around the country and that as often as not the standard of teaching in these classes is not good. It is a source of great frustration for many refugees and asylum seekers that they have no local access to ESOL classes, either due to lack of provision or over-subscription. It has also come to our notice² that it is equally frustrating for members of the local community who manage to secure temporary funding from governmental or non-governmental sources to run ESOL classes, which then have to be cancelled due to lack of follow-up funding. Often these small community projects are targeted at particularly vulnerable members of the immigrant or asylum-seeking community (e.g. women) who might otherwise for cultural reasons not have access to ESOL classes. These community projects have the added advantage of bringing members of the local community in touch with immigrants, refugees and asylum-seekers. Due to this increased contact, perceptions towards refugees, asylum-seekers and immigrants can be positively influenced.

2. Working in the UK

The White Paper contains a number of proposals “to ensure that... people who come here from abroad play a full and productive part in the UK labour market and help to resolve the problems of recruitment difficulties and illegal working”³. These include:

- The Highly Skilled Migrant Programme
- Reforms to the Working Holiday Maker and Ministers of Religion schemes
- Proposed measures to meet the demand for short term casual labour
- The introduction of fees for work permit applications

Jesuit Refugee Service is disappointed that very little is mentioned in Chapter 3 about the access of refugees and asylum-seekers to the labour market. Employment is one of the key ways to ensure a person’s integration into society. Many of the asylum-seekers and refugees currently resident in the

¹ Paragraph 2.2

² For example, at the annual Howard Lecture in the university of Sussex at Falmer, 2002

³ Chapter 3, paragraph 3.2

UK have skills or professional qualifications in the fields in which there are shortages.

In our opinion, asylum-seekers should be allowed to work from the moment the asylum procedure starts. If the asylum procedure is fair and effective there will be little scope for abuse. In addition, access to work from the start will aid in the long-term integration of an individual or family.

Jesuit Refugee Service would also welcome renewed and further governmental efforts to assist those asylum-seekers and refugees already in the UK into employment. We would also hope that fees for the issuing of work permits are not extended to those in the asylum procedure as this would place an undue burden on those who if destitute have to live on 70% of income support levels.

Finally we have some reservations over the Highly Skilled Migrants Programme. Jesuit Refugee Service is concerned that the programme may result in a “brain drain” from countries of the South of those who have the skills and education needed to further their own countries’ development. It should be remembered that, although we have a shortage of doctors, nurses and teachers, for example, there are some parts of the world where that shortage is even more acute. To actively recruit from these areas would be a form of “asset stripping” which could seriously impact on the development of rural communities around the world in particular.

3. Asylum

It is with regret that Jesuit Refugee Service notes the more negative tone and language used in Chapter 4 of the White Paper, dealing with the asylum process. It is unfortunate that the Government is assuming that particularly those who engage in secondary movements within the EU are using the asylum process for economic migration purposes⁴. While a small minority of asylum-seekers do abuse the system, the vast majority of those seeking asylum in the UK do so for protection purposes and this includes those who have made a secondary movement within the EU. The reality is that until a true harmonisation of asylum takes place within the EU, secondary movement will take place – by those who, for example are persecuted by non-State actors, and find that they have entered the EU via Germany or France (both of which do not recognise refugees persecuted by non-State actors), or whose asylum claims are not dealt with timeously, e.g. in Italy. Other reasons for secondary movement might include families who have been separated and who have ended up in different countries. It is not unreasonable to expect family members to wish to have their asylum claims dealt with in the same country so that they can be together.

While Jesuit Refugee Service is concerned at the general tone taken in this Chapter, and particularly regarding secondary movements within the EU, we are pleased to see mention made of the steps being taken at EU level to

⁴ paragraphs 4.2 and 4.3

harmonise the asylum process. We believe that a true harmonisation of legislation and practice in the EU is essential to provide an effective and fair asylum process. Jesuit Refugee Service has, in concert with the other European Christian NGOs, made responses to various draft directives and communications issued at EU level regarding asylum. These statements have been disseminated at EU and at national (including UK government) levels. These are appended for your information⁵.

In paragraph 4.15 the Government outlines its specific proposals to provide “a humanitarian asylum process which honours our obligations to those genuinely fleeing persecution while deterring those who have no right to asylum from travelling here.”

These are:

- Resettlement programme
- “A managed system of induction, accommodation, reporting and removal centres to secure a seamless asylum process”
- Application Registration Card
- Abolition of vouchers
- Better assisting Unaccompanied Asylum Seeking Children
- Streamlining the appeals system
- Increasing the number of removals
- Refugee Integration Programme

*Resettlement*⁶

Jesuit Refugee Service has previously commented on proposals for a resettlement programme⁷. Our concerns over such a programme remain the same.

We welcome the statement that any resettlement programme would be in addition to the asylum process for spontaneous arrivals. However, as seen in the cases of the USA and Australia in particular, there exists a real danger that spontaneous arrivals are perceived in governmental and public opinion as being non-genuine cases.

Paragraph 4.16 states: “The Government accepts that it is often very difficult for those who do have a well-founded fear of persecution to arrive in the UK legally to seek our help. The absence of such provision provides succour to the traffickers and exposes the most vulnerable people to unacceptable risks.” Jesuit Refugee Service rather believes that traffickers prosper in a situation where border controls are so strict as to prevent those in need of protection from getting to the UK. A resettlement programme, while providing a legitimate means of access for refugees to the UK, will do nothing to stop those desperately in need of protection from trying to get to the UK by any means they can find, especially in the face of enhanced border controls as detailed in Chapter 6 of the White Paper. The resettlement programme will

⁵ See Annex 1

⁶ Paragraphs 4.16-4.19 and Annex E

⁷ See our response to the Home Secretary’s Lisbon Proposals, appended in Annex 2

also fail to protect those who fall out with the UK's contracted annual quota with UNHCR. These people may still try to access protection in the UK, which will mean them having to enter the country either legally or illegally. Any resettlement programme should therefore not be used as an excuse to further enhance the border controls into the UK.

Induction Centres⁸

Jesuit Refugee Service welcomes the proposals to give asylum-seekers some sort of induction. We do have some reservations to the idea of induction centres, however.

The White Paper sets a target of 1-7 days for the induction process to be completed. We feel that 7 days is an acceptable length of time for asylum-seekers to be accommodated in the induction centres but also given the past record of NASS we feel that many asylum-seekers may be accommodated in such centres for much longer than the target time indicated. It should be ensured that the accommodation provided is adequate to an increased length of stay if necessary.

Jesuit Refugee Service also welcomes the Government's recognition that special needs and health screening should take place at this stage. We note, however, with sadness and disappointment that the pilot induction centre opened in Dover in January 2002, commenced operation without these screening services in place. We cannot emphasise enough the essential nature of health and special needs screening at as early a stage as possible as this will have a bearing on where the asylum-seeker and their family should be accommodated pending the outcome of their asylum case. It is particularly important for those with special health needs, such as victims of torture, are accommodated as close as possible to specialist agencies and specialist health professionals.

The aim to book all substantive asylum interviews and issue the necessary travel warrants during the stay in the induction centre is also welcomed. However, Jesuit Refugee Service is concerned, however, that asylum-seekers at the induction centre are not assigned a solicitor or a caseworker. We feel that this is especially important given that asylum-seekers must sign a declaration that they have understood the procedure and that they will leave the UK if their asylum application is unsuccessful. The nature of this declaration is unclear and it is also unclear as to how such a declaration might be used at the removal stage. It would be impossible for us to support the signing of such a declaration without legal representation having been secured.

Application Registration Cards⁹ and the Audit of Existing Asylum-seekers¹⁰

Jesuit Refugee Service acknowledges that the issuing of Application Registration Cards instead of the Standard Acknowledgement Letter is probably necessary to provide a more robust form of identification for access

⁸ paragraphs 4.20-4.24

⁹ paragraphs 4.25-4.27

¹⁰ paragraphs 4.50-4.51

to cash. We would, however, question whether it is necessary to have all of the personal data suggested in the White Paper and listed in answers to Parliamentary Questions¹¹. Very little detail is given as to how the information on the card will be read: e.g. whether certain card readers will read only certain pieces of information, whether a card reader will be needed to see if a work permit has been awarded, etc. It would be inappropriate and possibly an invasion of privacy for agencies or bodies which do not need access to all of the information potentially stored on the card to have that access. Our other main concern in this regard is that it has come to our attention via contacts in local government regional faith forums that very little financial resources have been given to local authorities and others to purchase the necessary card readers. If the Application Registration Card is to provide a cornerstone of identification in the asylum procedure, then some more thought may have to be given to budgetary implications. Also from the limited information in the White Paper and in answers to Parliamentary Questions, little thought seems to have been given to weaving in a measure of flexibility to the possession and use of the cards: there will inevitably be cases where the card is mislaid or lost, where errors are made in updating information on the card and when the card may have to be sent away to have information electronically updated. Alternative procedures for accessing cash at the Post Office, recording data at reporting centres, etc. will have to be allowed for.

Finally Jesuit Refugee Service is concerned that the Application Registration Card is not used to prove entitlement to access education, health care and other vital services. Extending the card to this purpose would to our mind be unacceptable.

The proposed audit of existing asylum-seekers is a huge undertaking and should be undertaken with care and after a wide consultation with as many local authorities and other relevant agencies and bodies as possible.

*Accommodation Centres*¹²

Jesuit Refugee Service has some serious misgivings over the proposals for the pilot scheme of accommodation centres.

The size of the centres at a proposed 750 bed spaces is in our opinion far too large. Particular problems will be faced in accommodating vulnerable groups, e.g. children, in such a large centre. The size will contribute to the institutionalisation of those accommodated in such centres. We are firmly of the opinion that stays in the accommodation centres should not last more than 6 months and ideally should last much less time than that.

It is disappointing that accommodation centres are being thought of as a viable option for asylum-seekers in the UK. Experience on the continent has shown that accommodation centres for asylum-seekers can be used as a focus for racial harassment and racially motivated violence. In addition the being accommodated in such centres separates asylum-seekers from the rest

¹¹ See Hansard for the House of Commons of 6 Feb 2002, Column 977W

¹² paragraphs 4.28-4.41

of British society, leading to misunderstandings and stereotypical views about refugees and asylum-seekers by the public. It is our experience that when members of a local community meet a refugee or an asylum seeker their (often very racist) views about refugees change radically. Despite the subtitle of the White Paper, *Integration with Diversity in Modern Britain*, it is our view that accommodation centres could be a great divisive influence in British society. In addition, living in an accommodation centre, can only hamper the eventual integration of a refugee, as they will have gathered little experience of such everyday tasks as shopping, using public transport, and they will have less interaction with British people.

We welcome the news that accommodation centres will be open, allowing those resident to come and go. There has been some speculation about reporting requirements in the accommodation centres. If the requirement is to report daily it will be impossible for residents to visit members of their family in other parts of the country; and a large part of each day may be taken up with queuing to report, limiting the activity that can be done outside the centre. Other limiting factors to leaving the centres will include access to public transport (including access to cash to use public transport) and the location of the centres.

Jesuit Refugee Service is opposed to the proposal to provide education for children in the accommodation centres. It is vital for refugee children to join the mainstream educational system in order to make friends, to interact socially and to assist their integration into British society.

Jesuit Refugee Service welcomes the fact that health services and educational facilities and classes will be provided on site for adults.

We are also heartened by the stated commitment by the Government “to ensuring access to quality legal advice... for all asylum seekers whether or not they are in an Accommodation Centre”.¹³

*Reporting*¹⁴

While it is reasonable to expect asylum-seekers to maintain contact with the authorities, Jesuit Refugee Service hopes that reporting requirements will not be burdensome. In our opinion it would be unnecessary to expect an asylum-seeker to report more than once a week. It is also our fervent hope that the increase in the use of reporting will mean that fewer asylum-seekers will be detained in future during the initial stages of their case.

We welcome the acknowledgement that travelling to report could be burdensome. The creation of mobile reporting teams will help to alleviate that burden. However, asylum-seekers should not be expected to bear the cost of travel to reporting centres or to mobile reporting teams. All fares should be paid for by the Immigration and Nationality Directorate.

¹³ paragraph 4.36

¹⁴ paragraphs 4.42-4.49

A certain amount of flexibility should also be built into the reporting system to allow for travel delays, strikes by transport workers, ill-health, etc., especially as failure to report will incur a loss of cash support and the possibility of being taken as an automatic withdrawal of an asylum claim.

Jesuit Refugee Service is also concerned that asylum-seekers may be detained when they report. This causes unnecessary fear.

Very little mention is made of dispersal in the White Paper, and mostly then under a sub-heading of “Regionalisation” in the paragraphs covering reporting requirements. Jesuit Refugee Service finds this very disheartening given the problems with the NASS system and with dispersal currently and especially as the vast majority of asylum-seekers will go through the dispersal system. Although we feel that the regionalisation of NASS will lead to some improvement, we are of the opinion that if NASS does not co-ordinate its activities better with local authorities and with local relevant agencies and other bodies there will not be sufficient improvement.

Phasing out Voucher Support¹⁵

Jesuit Refugee Service welcomes the news that vouchers will be abolished by the end of April 2002 and will be replaced by a cash based system. However, we are disappointed that support levels for destitute asylum-seekers will remain at a risible 70% of income support (and much less than 70% of disability allowance or the state pension), that a cash only option of support will not be offered and that the cash-based system will not offer a passport to benefits such as milk vouchers for babies and young children, particularly important for families with a nursing mother who is HIV positive.

Unaccompanied Asylum Seeking Children¹⁶

Jesuit Refugee Service does not have many clients who are unaccompanied minors. However, we share the concerns of other agencies with whom we work over the proposal to interview unaccompanied children as part of the asylum process. The same safeguards should be used in this case as are applied in domestic legal proceedings affecting children.

Asylum Appeals¹⁷

Jesuit Refugee Service welcomes the end of the process of certifying so-called “manifestly unfounded” asylum applications. All cases should be looked at on their merits and should be dealt with as part of a normal procedure, which offers a good-quality decision-making process. Competent legal representation should also always have been secured.

While recognising that the appeals process currently can take a long time and that this is frustrating for the asylum-seeker, Jesuit Refugee Service is of the firm belief that any proposals to reform the asylum appeals process should be

¹⁵ paragraphs 4.52-4.53

¹⁶ paragraphs 4.54-4.60

¹⁷ paragraphs 4.61-4.68

looked at very carefully indeed. Not all initial decisions are correct or fair and the appeals process provides a set of very important safeguards.

Although our area of expertise is not in legal matters, we do have serious concerns about the proposals to streamline and curtail rights of appeal. It is essential, if these proposals go ahead, that all asylum-seekers are given competent legal representation.

Jesuit Refugee Service is firmly of the opinion that these measures are being proposed to facilitate the removal of asylum-seekers from the UK. Little heed is being taken of legitimate protection rights in the face of the precedence being accorded to removal targets. This is shown most starkly by the Home Office's move to deliver appeal decisions in person to asylum-seekers, affording them the opportunity to detain the asylum-seekers almost immediately in a Removal Centre.

*Oakington Reception Centre*¹⁸

The White Paper makes it clear that Oakington remains "a central plank of asylum policy".¹⁹

Jesuit Refugee Service has long had difficulties with the designation of Oakington as a reception centre given that residents are detained. We believe that detention should never be justified just to process an asylum application.

It is our opinion that maintaining targets of decisions on cases in 7-10 days leads to many bad decisions being made. We recently heard from Refugee Legal Centre that around 45% of appeals they take from Oakington in cases relating to Zimbabweans are successful. The emphasis should be not on maintaining targets but on getting decisions right and making them in a fair and informed way.

*Removals*²⁰

Jesuit Refugee Service in the UK works mainly with detainees and with those released from detention. We have long campaigned against the detention of asylum-seekers and particularly of detention within the prison estate. We therefore wholeheartedly welcome the withdrawal of detained asylum-seekers from the prison estate. However, we deplore the increase in the detention centre estate.

Detention is administrative and open-ended. Detention has historically been used in the UK as a deterrent measure. It is probably the most iniquitous aspect of our asylum process and is unbelievably cruel. Jesuit Refugee Service abhors and opposes the use of detention and we are especially dismayed by the opportunity within the new detention centres to detain families including children. We also deplore the proposed repeal of Part III of the Immigration and Asylum Act 1999. Although it has never been

¹⁸ paragraphs 4.69-4.72

¹⁹ paragraph 4.69

²⁰ paragraphs 4.73-4.89

implemented, its implementation would have mitigated against the worst effects of detention by allowing for automatic bail hearings. Rather than repealing Part III, we call on the Government to implement it as soon as possible and certainly no later than the end of 2002.

We also believe that the re-designation of detention centres as removal centres is another example of the true emphasis of the Government's proposals regarding asylum in the White Paper: that is the new removal targets of 2,500 failed asylum-seekers a month. The new name of removal centres also carries the connotation that those detained in them are at the end of the asylum procedure and are failed asylum-seekers, who are due to be removed. As we and other individuals and agencies who work with detainees know, this is far from being the case. Many detainees are held for lengthy periods of time from early on in - if not at the beginning - of their asylum claim, while their claims are still being processed. Jesuit Refugee Service would be pleased to hear that the new name will bring with it a new policy on detention (only for a brief period of time before an individual is removed from the UK). Unfortunately, we have no confidence that this will be the case.

Jesuit Refugee Service recognises that asylum-seekers whose applications are unsuccessful will have to be removed from the country if there are no other compelling humanitarian reasons for allowing them to stay in the UK, if the decision-making process has been fair.

*Refugee Integration*²¹

Jesuit Refugee Service welcomes the Government's commitment to refugee integration. However, there is very little detail given in the White Paper about how integration of refugees will be achieved. We have stated previously that some aspects of the White Paper proposals will mitigate against integration of refugees (including the accommodation centres).

It is, in our opinion, very disappointing that more detail about work in progress rather than discussions held in the sub-groups of the Integration Commission was not given in the White Paper. Integration of refugees and asylum-seekers is vital to their own well-being and to that of British society. It cannot be emphasised enough how important plans for integration are. To this end Jesuit Refugee Service is of the opinion that asylum-seekers should be allowed to work as soon as they enter the country and make an asylum application and to this end the procedure to apply for a National Insurance Number should be simplified. At the moment the procedure is far from simple and is often delayed.

Integration is also impossible until the necessary paperwork detailing the relevant status gained is received from the Immigration and Nationality Directorate. A number of our clients have received refugee status on appeal while detained. In such cases they are released almost immediately, and then it takes months (often six months or more) for the necessary documentation to be received confirming their status and with which they can

²¹ paragraphs 4.90-4.105

access accommodation and income support. It is impossible to integrate into society without this documentation. Practical measures should be taken to ensure that all such documents are sent out within two weeks.

4. Tackling Fraud – People Trafficking, Illegal Entry and Illegal Working

The Government sets out how it intends to tackle organised immigration crime in Chapter 5 of the White Paper.

Jesuit Refugee Service has conducted research on migrants with an irregular immigration status in 3 countries in Europe: the UK, Germany and Spain. The results of the three pieces of research were the basis of a series of recommendations on how migrants with an irregular immigration status should be treated. There are many reasons why a person may fall into having an irregular immigration status. These recommendations are appended for your information in Annex 3.

Jesuit Refugee Service is pleased to note that the White Paper distinguishes between trafficking (where people are brought into the UK with the aim to exploit them) and smuggling (where people more or less give their consent and their entry is facilitated). Jesuit Refugee Service condemns the activities of traffickers. However, it should be noted that traffickers and smugglers thrive partly because of the desperation of people who are trying to enter the UK in the face of ever more rigorous border controls.

Jesuit Refugee Service is a signatory to ECPAT UK's recommendations on the treatment of victims of trafficking. Victims of trafficking need to be protected from the traffickers if they are willing to give evidence against them in criminal proceedings. Allowing them to stay in the UK only for the duration of the trial or only for as long as they are willing to give evidence offers no incentive to such victims to assist in criminal investigations. Returning them to their country of origin is often no more than returning them to the hands of the traffickers or the organised crime syndicates, which operate the trafficking. Effective protection should be given to the victims.

ECPAT UK's recommendations are appended in Annex 4.

5. Border Controls

Jesuit Refugee Service believes that Chapter 6 of the White Paper is often in direct contradiction with other parts of the White Paper:

- Trafficking and smuggling are problems because people are desperate to find some way to enter the UK in the face of the very strict border controls in place²²

²² paragraph 4.16 states: “The Government accepts that it is often very difficult for those who do have a well-founded fear of persecution to arrive in the UK legally to seek our help. The absence of such provision provides succour to the traffickers and exposes the most vulnerable people to unacceptable risks.”

- Resettlement is offered as a way to provide a “legitimate gateway”²³ for refugees to get to the UK, implicitly acknowledging that our border controls deny access to the UK to some people in need of protection

Jesuit Refugee Service is of the opinion that the Government has sacrificed the right to protection in favour of enhanced border controls. The right to protection should surely take precedence. However, the whole tone of the White Paper as far as asylum policy goes is set by the Paper’s Title: *Secure Borders, Safe Haven*. To say that we are disappointed by this is an understatement.

²³ paragraph 4.16

Annex 1: Christian NGO Statements on EU Communications and Draft Directives

a. Common Asylum Procedure Communication of the Commission

Caritas Europa, 4, Rue de Pascale, B-1040 Bruxelles

CCME – Churches' Commission for Migrants in Europe 174, Rue Joseph II, B-1000 Bruxelles

COMECE – Commission of the Bishops' Conferences of the European Community - Working group on Migration - 42, Rue Stévin, B-1000 Bruxelles

Conference of European Justice and Peace Commissions Boltzmanngasse 14, A-1090 Wien

ICMC – International Catholic Migration Commission 4, Rue De Pascale, B-1040 Bruxelles

JRS-Europe – Jesuit Refugee Service Europe 8 Haachtsesteenweg, 1210 Brussel

QCEA – Quaker Council for European Affairs 50, Square Ambiorix, B-1000 Bruxelles

“For I was a stranger and you welcomed me” (Mt 25:35)

Comments on the Communication by the Commission

Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum (Com (2000) 755 final)

The above-named organisations represent Christian churches throughout Europe, Roman Catholic, Orthodox, Protestant and Anglican, as well as church agencies particularly concerned with migrants and refugees.

As Christian organisations, it is part of our tradition to care for the oppressed and to uphold the dignity of the human individual. We therefore welcome this opportunity, at the invitation of the European Commission, to comment on its Communication on asylum, and to take part in this vital debate on the future of asylum in Europe.

General remarks

As regards the general tenor of the Communication, we very much welcome the Commission's analysis of the situation. We believe that this Communication is an important step towards harmonisation of asylum policy. It is vital to have an overarching vision of a European asylum system in order to address all the relevant aspects in a

coherent manner, including: the entry of asylum seekers onto the territory, reception conditions, the asylum procedure itself and the interpretation of the refugee definition, the content of refugee status, temporary protection in situations of mass influx, complementary and humanitarian protection, and solidarity mechanisms. It is crucial that all future measures reflect current best practice. We believe that the Commission is entirely correct to treat asylum and migration as separate although related issues; our comments on the Commission's Communication on a Community Immigration Policy COM (2000) 757 are available separately. This is a valuable opportunity to address some of the main flaws in the current national asylum systems, in particular: the problem of access to the territory, reception conditions that amount to a *de facto* barrier to seeking asylum in some Member States, and national discrepancies in recognition rates and statuses granted, which raise serious concerns about protection gaps.

The European Council has already underlined its commitment to the "full and inclusive" interpretation of the Geneva Convention on the Status of Refugees 1951²⁴; besides this fundamental obligation to protect refugees, EU states also have relevant commitments under other human rights instruments including the European Convention on Human Rights and Fundamental Freedoms, the EU Charter on Fundamental Rights, the UN Convention against Torture, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

Finally, we are increasingly concerned at some of the terms used about refugees and asylum seekers in the media and in public debate, and about the way in which refugees and asylum seekers are often unjustly labelled, with a consequent negative effect on public opinion. Certain sectors of the media have shown an over-readiness to link refugees and asylum-seekers to criminality, to use headlines that can mislead by exaggerating the number of refugees and asylum seekers, and to present the issue entirely from a negative perspective. We believe that it is important to encourage the media to draw up some principles of best practice in this area. We also urge politicians and all involved in public discourse to make a resolute commitment to give leadership in and to promote the use of accurate and sensitive terminology in the debate on asylum. All of us, but especially the Member States of the European Union and their leaders, have a responsibility to increase public awareness on the issue, emphasising that refugees are fleeing human rights abuses and are entitled to protection.

Commentary on the text

(Note: The numbering of each point matches the numbering of the corresponding point in the Commission Communication e.g. Section 1.1 of our paper should be read as a commentary on Section 1.1 of the Communication. As we have not commented on every point, there are occasional "jumps" in our text, as for example where Section 4.1 is followed by 5.3).

- 1.1. We welcome the Commission's recognition that certain national policies have had the serious consequence of "deter[ing] certain refugees from seeking asylum". It is unacceptable that refugees be hindered in seeking protection because they cannot get access to the territory in order to claim asylum, because they are deterred by fear of detention or the denial of basic social benefits, or because their claim is rejected as a result of flawed decision-making procedures²⁵. An asylum system should be based not on deterrence, but on prompt and fair decision-making.

²⁴ Presidency Conclusions of the Tampere European Council, October 1999, paragraph 13.

²⁵ "A range of factors, including distrust of state asylum determination procedures, reluctance to be detained, and fears about return, lead some refugees to choose life as a migrant with irregular

We have particular concerns about admissibility procedures at airports and borders. It is our experience that during such procedures individuals have been deprived of their liberty without adequate legal basis, and are often held in very unsatisfactory conditions. The circumstances in which these procedures take place, especially the lack of time and of outside scrutiny, and the difficulties in getting access to independent legal advice in a language the individual understands, increase the risk of *refoulement*.²⁶

- 1.2. We are encouraged by the Commission's recognition of the need for "absolute respect for the specificity of humanitarian admission against the legitimate objectives of preventing and combating illegal immigration". An asylum system is only of value if those in need of protection can have access to it. This point is discussed in more detail in 2.3 below.

Much secondary migration by asylum-seekers within the EU is undoubtedly compelled by the need to find an adequate degree of protection, not least because Member States have varying interpretations of the 1951 Convention. Rather than returning asylum-seekers to the country of first entry, a more logical way of tackling the issue is to ensure that an equal and satisfactory degree of protection is available across the EU. While the Commission indicates in section 2.5. that an alternative system of State responsibility for asylum claims based on where the claim was made can be envisaged once the common procedure and uniform status is in place, we believe it is even more imperative to operate such a system now, while the common procedure and uniform status are still lacking. Otherwise, asylum-seekers face a protection lottery.

We support the Communication's call for rapid high-quality decision-making. We feel that current flaws in the procedures are a significant factor why persons in need of protection fail to get recognition. In particular:

- Decision-makers must be fully trained and competent to deal sympathetically with asylum-seekers of different educational, cultural and social backgrounds, and able to understand the psychological complexities that may be involved, for example in dealing with traumatized persons.
- Decision-makers must have adequate time and resources to make good decisions, in particular access to high quality and up-to-date country of origin information. There is a need for transparency as regards the information on which asylum decisions are made; asylum-seekers and their representatives must have access to this data. UNHCR and non-government organisations have a role to play in gathering and evaluating this information. We

status. The numbers of those in this position are, moreover, probably boosted by the way that restrictive measures force legitimate refugees into illegal activities to enter the state in the first place, dragging them into an underworld that has its own entanglements and fetters". Gibney, *Outside the Protection of the Law: The Situation of Irregular Migrants in Europe*, RSC Working Paper No.6, study commissioned by the Jesuit Refugee Service Europe, December 2000, p.42

²⁶ "At all airports visited, access to asylum procedure is guaranteed [...] although in certain cases, the so-called "fast" or "accelerated" procedure makes it *to a large extent illusory*. This is particularly dangerous when appeal has no suspensive effect like at the airport in Stockholm." Gross, *Arrival of Asylum Seekers at European Airports*, Report by the Council of Europe Committee on Migration, Refugees and Demography, Doc 8671, 8th June 2000. Emphasis added.

recommend the establishment of a centralized EU independent documentation centre for this purpose.

- Asylum-seekers whose claims are rejected must have access to an independent appellate body, with authority to review both factual and legal findings and the authority to hold a full re-hearing.
 - Proper interpretation services are vital, as is access to high-quality state-funded legal counselling and representation; in order to safeguard the rule of law, governments are obliged to enable persons under their jurisdiction to enjoy their rights.
 - The EU must mainstream gender into asylum policies at all levels and recognise the specific forms of gender persecution as legitimate grounds for granting asylum in all Member States. Women asylum-seekers should have access to female interviewers, interpreters and counsellors.
- 1.3. We agree that it is not appropriate to “organise the recognition of Geneva-Convention refugee status or subsidiary protection by means of individual positive or negative decisions taken by a Community body”. However, harmonization requires effective judicial control by the European Court of Justice; this seems an appropriate time to review the restrictions in Article 68 (*ex Article 73p*) of the EC Treaty with regard to access to preliminary rulings on the interpretation of EC acts based on Title IV. In our view, the general jurisdiction of the Court of Justice to give preliminary rulings laid down in Article 234 (*ex Article 177*) should apply: lower tribunals should have a discretion to submit an issue to the Court of Justice, whereas courts and tribunals of final appeal should be obliged to bring relevant matters before the Court of Justice. Otherwise, “[t]he fact that judicial control at the EC level is [...] contingent upon discretionary decisions at the level of national courts is likely to weaken the effective implementation of harmonization measures under Title IV”.²⁷
- 2.1. We agree that the goal of harmonisation necessitates restricting the flexibility given to Member States. However it is vital that no state will be obliged to lower its current standards in order to align itself with the harmonised standards; for instance, those states that do not impose time limits for lodging an asylum application should not be required to impose such a restriction on the basis that other states follow this practice. Indeed, states should be positively encouraged to operate higher standards than the harmonised minimum; otherwise, common minimum standards quickly become common maximum ones.

We support the option presented by the Commission of abandoning safe country of origin policies. We believe that failing to examine asylum applications on their merits leads to a very real risk that persons in need of protection are not identified. It is unrealistic to expect asylum seekers to rebut the presumption that they are safe in their home countries, particularly where they are expected to do so in a very short time frame, perhaps while being detained (see below 4.1).

Safe third country policies must be exercised with great caution, if at all. No-one must be sent back to a third country without the opportunity to refute the assumption of safety, and without official guarantees that he/she will be admitted to an adequate refugee determination procedure and adequate reception conditions; asylum-seekers must be guaranteed that they do not face the risk of chain deportations ending in *refoulement*.

²⁷ Alston, “The EU and Human Rights” (1999), OUP p. 373.

2.2 We support the creation of a single procedure for the determination of protection needs. Such a system is already in place in several member States and, as stated above, harmonisation must be directed at best practice. We strongly agree with the position of UNHCR:

“The circumstances that force people to flee their country are complex and, often, of a composite nature. Many times, those fleeing a country affected by war or conflict can also validly claim to fear persecution on 1951 Convention grounds. The identification of the person's protection needs cannot, therefore, be made in a compartmentalised fashion. **The case must be examined in its totality, and this can be better achieved if the claim is considered in a single procedure. Furthermore, UNHCR believes that a single asylum procedure will help to increase speed and reduce the costs of decision-making in asylum matters.**”²⁸

Under such a system the application should first be examined in accordance with the 1951 Convention; should these criteria not be met any other protection grounds fall to be considered, followed by any other humanitarian reasons. We envisage this as a hierarchical system; any applicant refused a particular status is entitled to appeal this refusal without losing any lesser status already granted. We believe that it would be more efficient to consider within this procedure all relevant elements including other obstacles to the removal from the territory.

2.3 It is essential that people seeking protection have access to the territory in order to apply for asylum. As noted above in 1.2, we very much welcome the Commission's recognition that measures to combat irregular migration should take into account protection needs. This is a particular concern in relation to visa policies and anti-trafficking/smuggling measures, which must be framed in such a way as to be sensitive to the question of access. One aspect of this is that all measures taken to prevent irregular migration should contain a “savings clause”, specifying that nothing in the measure shall affect the protection of refugees and asylum-seekers under international law.

Visa requirements should not be introduced for nationalities normally exempt on the basis of a mass influx of asylum-seekers of that origin; on the contrary, such a situation would tend to indicate that there are real protection needs in that country, and if anything access should be facilitated rather than inhibited.

Carrier sanctions, which effectively prevent individuals having access to the territory regardless of the merits of their potential asylum claim, should be abandoned.

We believe that ultimately the most effective way to counteract human trafficking and smuggling is to reduce the demand by creating legal possibilities for access to member States' territory. We welcome the signal sent by the European Union in signing the protocols to the UN Convention on trans-national organised crime, including the principle of non-penalisation of victims. We particularly urge that those who facilitate unauthorised entry and/or residence out of humanitarian motives should be exempted from punishment.

2.3.2 We welcome the Commission's suggestion of expanding resettlement programmes. As by far the majority of refugees remain outside the EU, in some of the world's poorest regions, it is an important act of solidarity and responsibility sharing to offer the possibility of resettlement. As the Commission itself underlines, however,

²⁸ UNHCR preliminary observations, January 2001. Emphasis included.

this option must not in any way prejudice the proper treatment of individual requests by spontaneously-arriving asylum-seekers.

- 2.4 We support the Commission's proposal that all applicants for protection would benefit from the same reception standards. Harmonisation of living conditions must reflect current best practice in member States. The rights enjoyed by asylum-seekers should be clearly defined and reception conditions must not be left to the discretion of officials. Asylum-seekers must not be deprived of their original rights as they progress through the different stages of the asylum procedure. We note that the right to work is an important step towards integration.
- 2.5 We believe that an asylum application should be examined in a country where the application is lodged. As the Commission itself has noted, the Dublin Convention is not an efficient mechanism for allocating responsibility²⁹. Examining the asylum claim where it is made is the most appropriate solution with regard to the objective of shortening the duration of asylum procedures. We believe that this will reduce administrative procedures and will thus be less expensive. It also provides for the various reasons a refugee is seeking refuge in a specific country. This system should be extended to enable other Member States than the one where the application was lodged to "opt in" for reasons of existing family strings or cultural relations on the basis of the double voluntariness principle.
- 2.6 We note that voluntary return for both refugees and rejected asylum-seekers is more likely to succeed when the individual has had access to training and work experience during the time spent in the host country.

We believe that a useful means of promoting voluntary return for refugees is to encourage "go and see" visits and to offer reintegration assistance above and beyond financial aid.

- 3.1 With regard to the common interpretation of refugee status, we share UNHCR's position that "persecution" in Article 1 of the 1951 Convention does not exclude persecution by non-state actors, an interpretation also shared by the vast majority of member States. We believe that this is an indispensable part of the "full and inclusive interpretation" of the 1951 Convention to which all member States committed themselves in Tampere.
- 3.2 We believe that a single status for Convention refugees and other persons under protection is both easier to administer and fairer for those concerned. If, however, it is decided to have several statuses with varying rights, it is vital that each status confers sufficient rights to enable a dignified existence.
- 3.3 We welcome the rights set out in this section as basic components of a single protected status or of each status where there is more than one. It should be noted that where a single status is created, the rights granted must not be less than those specified for refugees in the 1951 Convention. In addition, it is important that the anti-discrimination package be implemented in such a way as to avoid any discrimination on the basis of nationality.
- 3.4 We agree with the Commission's general approach to integration as expressed in this article. We recommend that the EU adhere to the guidelines on integration set down by UNHCR. We would also stress that integration should begin before a final determination is reached. This is particularly important where procedures are

²⁹ Commission Staff Working Paper, "Revisiting the Dublin Convention" SEC (2000) 522

of long duration. Once granted protection, individuals should have simplified and accelerated access to citizenship.

Having regard to the necessity of “taking advantage of the talents that refugees have to offer, including their professional skills”, we urge the creation of a coherent system for the swift recognition of refugees’ professional qualifications, accompanied by any assistance necessary to top up an individual’s skills to be ready for the labour market. As noted above in 2.6, this approach is also likely to make a later return to the country of origin more viable, as the individual is able to return with more skills and hence should be better able to provide for himself/herself and in many cases perhaps also provide a valuable contribution to a recovering society.

- 4.1 In relation to the proposed Council decisions identifying the groups or situations where there are or are no special risks, we emphasize that no-one should be rejected without having had a full examination of the individual circumstances of his or her case. In this context, we are extremely concerned about certain proposals to categorize all countries as high, medium and low risk, and make asylum decisions accordingly. We believe that this crude categorisation takes little or no account of very complex national or regional situations, and the speed at which those situations can change. As noted in 2.1 above, we believe that asylum claims should be examined individually and on their merits. We support the proposal for a database and translation facility for exchanging relevant information and we stress the need for the independence and transparency of this resource (see 1.2 above).
- 5.3 We very much welcome the involvement of civil society as “actors and vectors of asylum values in Europe”. We are ready to take part in the preparatory work necessary for the creation of a harmonised European asylum system, such as the various studies set out in this Communication, and to play an active role in the future system itself. We encourage the Commission to establish a formal mechanism for consultation with civil society in the development of future legislation. Many non-government organisations and faith communities have substantial experience on the ground with asylum-seekers and refugees, and can offer a valuable perspective on the debate.

Brussels, May 2001

b. Community Immigration Policy Communication by the Commission

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"For I was a stranger and you welcomed me" (Mt 25:35)

**Contribution to the debate on the
Communication by the Commission on a
Community Immigration Policy, (COM (2000) 757 final)**

The above-named organisations represent Christian churches throughout Europe, Roman Catholic, Orthodox, Protestant and Anglican, as well as church agencies particularly concerned with migrants and refugees.

From our biblical and Church traditions, migration and welcoming of strangers are not new phenomena. As Christian organisations, we are deeply committed to the dignity of the human individual. We therefore welcome the opportunity to comment on the EU Commission's Communication on a Community Immigration Policy, COM (2000) 757 final.

This paper focuses on (1) the need for a policy shift and a welcoming society, as well as (2) additional considerations regarding effective cooperation with countries of origin, the context of enlargement and irregular migration. Specific comments (3) are made on the immigration policy framework, on the common approach regarding admission, equal rights and free movement, on enhanced integration policy and the need for information and monitoring. A last chapter (4) draws conclusions containing practical proposals.

1. A necessary policy shift: from preventing migration to active immigration

We sincerely welcome the Communication's new approach, which constitutes in fact a policy shift towards a pro-active immigration policy. The Communication clearly recognises the need for a change in the overall conception of migration. Migratory movements have become a permanent global phenomenon. They are closely related to the EU's relationship to the countries of origin, for example to development co-operation, world trade policy, arms exports and military policy where the Union bears a strong responsibility.

In comparison to previous attempts to launch a similar discussion, both the political scene and public opinion have become more open to the subject. The concept of zero immigration, as an underlying principle of policies existing during the last decades, has been misleading. Moreover, the adaptation of other policy areas to the logic of this underlying principle has produced lamentable effects in areas such as irregular immigration, trafficking and smuggling in human beings etc. In our view, a thorough review of all related policy areas seems necessary.

Global migration will continue to be a reality which no Member State can face alone. The reasons are manifold. Oppression, war and internal conflicts force people to leave their homes; poverty and drought, environmental disasters cause people to seek a secure place; a lack of trade and job opportunities lead many to look for a better place to make their living. In some ways, global migration is an expression of inequality which ought to be addressed also in view of establishing just relationships.

We wish to reiterate the Churches' recognition of migration as a twofold right, to leave one's country and to look for better conditions of life in another country. We are aware that an "open door policy" is not conceivable and, certainly, migration (policy) will not solve the challenges of global imbalance. The exercise of such a right needs to be seen in the context of the global common good and justice. In this context, however, it is important to prevent unilateral decisions that are harmful to the weakest.

A Welcoming Society

The Communication rightly emphasises a welcoming society as an essential element of a pro-active immigration policy. By being able to welcome – and integrate – foreign cultures and traditions, Europe can show that it is faithful to its history of permanent exchange between people of different origin. In a world which is coming closer together, a European continent which would not be able to welcome migrants from outside its own continent would entirely deny its own history.

We wish to recall that European colonialism – as an important part of its history – can be seen as a root cause of still existing economic, political and cultural domination in various areas throughout the world. For centuries, Europeans have migrated to all parts of the globe, often without any ambition to integrate into existing societies. We recall this history, because it is against this background that many people from other regions in the world meet Europeans. It is important to be aware of this history also when we talk about integration of foreigners into our European societies.

At the same time we notice that people in European societies are concerned about their security. As one of the consequences, xenophobia and racism have been rising throughout Europe. This can certainly be dangerous to the societies, but we are also convinced that comprehensive social and integration policies are able to counter these

phenomena. In this context, media play an important role. They bear a responsibility to avoid distorted images and to provide comprehensive information on migration³⁰.

However, as the Commission rightly states, the governments of Member States need to work openly and actively on these measures. If third country nationals are accorded equal rights and enabled to participate also in policy development, particularly on local level, joint efforts of European and immigrant persons will be far easier. Integration is not a one-way road: it is a task of citizens as well as migrants.

We would like to recall that important work in these fields has already been accomplished on various international levels which ought to be taken into account like the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights, ratified by all EU Member States. More recently these rights have been integrated and consolidated into the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

The following more detailed remarks may contain several repetitions, which underline the complexity and the inter-relatedness of the different aspects of migration.

2. Additional considerations towards a comprehensive immigration policy

2.1. Effective co-operation

In the context of a partnership with the countries of origin, which we strongly welcome as a principle, several questions arise in relation to the current practice of these partnerships.

Within a comprehensive approach to the phenomenon of migration, the development of the local situation in the countries of origin is of particular importance. The contribution of migrants' remittances to the development of their country of origin should not be underestimated, as the examples of the Philippines and Mexico have shown during the last decades³¹. This economic contribution of migrants is, however, not complemented by legal guarantees for their rights and social standards by the host or by the countries of origin.

Joint debates and action by both the Councils of Justice and Home Affairs and of Development Co-operation Ministers as started in the year 2000 would therefore be an essential element of this future policy. Within these debates, it should be taken into account that both policy areas have until now been guided by entirely different approaches: global development is a middle or long term perspective while the protection of borders and public order (Home Affairs) can be seen as a rather short term policy. Development policy considers the needs in other countries, while home affairs naturally focus on domestic concerns.

Another aspect is to regard migrants and migrants' organisations as actors of immigration and also as a link to their country of origin. The choice whether they regard their life in an EU country as permanent or short-term should be left open to migrants themselves. This determination requires that third country nationals be granted rights accordingly to facilitate such a decision.

³⁰ See also our Comments on the Commission's Communication Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, p. 2. A clear distinction between migration and asylum is of particular importance.

³¹ Data on the importance of remittances as export earning factor for these countries are regularly available in the annual Global Development Finance, Vol. II of the World Bank, Washington.

Currently migrants often hesitate to travel back and forth between their country of origin and residence, because such travels might endanger their residence status. Another aspect is the lack of recognition of already acquired pension rights in other countries.

It would be of great value for future integration, if comprehensive information as well as preparations for the country of destination, language courses etc., were already offered in the countries of origin.

The EU Council's High Level Working Group on Asylum and Migration has touched on some of these issues in its analysis of some countries of origin. However, the implementation of measures in co-operation with the countries of origin is not yet living up to the expectations.

Of particular concern is the elaboration of repatriation clauses, currently a condition to all bilateral EU treaties. Although we recognise that repatriation would remain one of the elements of a comprehensive immigration and asylum policy, we recall that any repatriation policy should be based preferentially on the concept of voluntary return. In any case, the human dignity of the person who needs to be returned must always be respected and preserved. Special attention needs to be given to victims of trafficking, especially in the case of sexual or workforce exploitation (slavery). Priority must be given to their protection needs before and when repatriation is considered.

2.2. *Enlargement*

It is surprising that in the context of a Community Immigration Policy for the coming years, thus a middle term view, the issue of “internal” migration (between present EU Member States and candidate countries who will be part of the Union) has not been addressed in a more comprehensive way. Taking into account the current debate on restrictions to free movement for citizens of new Member States, we believe the EU should apply the same principles as for previous enlargements. Access to the labour market and the free movement of persons are among the fundamental freedoms of the EC treaty. They should be facilitated as early as possible. For public opinion in the candidate countries, this is an extremely important aspect of integration in the European Union. In the current political debate the possible East-West migration within the enlarged Union is often exaggerated. Perspectives for economical development as well as potential gains are not sufficiently taken into account. People's fears should be taken seriously. A transparent information strategy should be put in place. Scientific studies like the Final Report “The Impact of Eastern Enlargement on Employment and Wages in the EU Member States”, carried out on behalf of the European Commission³², may not have been adequately communicated or are not yet recognised sufficiently.

Another aspect is the dramatic demographic decline in most Central and Eastern European countries³³. While demography is a central element of the immigration debate in the present EU Member States, there is no sufficient recognition of these developments in the enlarged Union.

Whenever the future immigration policy gets into effect, many countries of Central and Eastern Europe will be members of the Union. Presently, these countries are supposed

³² Final Report of the European Integration Consortium (DIW, CEPR, FIEF, IAS, IGIER), “The Impact of Eastern Enlargement on Employment and Wages in the EU Member States”, carried out on behalf of the Employment and Social Affairs Directorate General of the European Commission, Berlin and Milano, 2000.

³³ Recent demographic developments in Europe, Council of Europe, Strasbourg, December 2000.

to adopt the EU *acquis*, suggesting a rather repressive approach to immigration, while the demographic situation may require increased immigration into these countries as well. At the same time, there is little experience with migration phenomena, which is especially delicate in countries which are in the process of reaffirming their national identity. These aspects make it urgent to include Central and Eastern Europe in the debate from the beginning. Our common immigration policy for the future should be discussed and decided by all present and future EU members. We consider such a broad debate as essential for public opinion in East and West.

2.3. *Irregular migration*

As many immigrants in search for a better life currently either have to enter the EU irregularly or to resort to the asylum channel, the first step to achieve a coherent and more pro-active immigration policy is the opening of legal channels for immigration. Due to the current lack of sufficient legal possibilities to immigrate, society is facing the increasing problem of irregular migration and critical employment situations. New forms of slavery can be observed. This does not only include the exploitation of women as prostitutes, but also of domestic workers or of workers on construction sites. Paradoxically, these appalling circumstances could logically be seen as the living proof that the clandestine labour market is actually able to absorb the influx of these migrants.³⁴

There are reasons to believe that with the opening of immigration possibilities less people would be forced to choose these ways as their last means to enter the EU. In this, unfortunately, they are exploited by and unwittingly supporting the work of traffickers. However, it should be remembered in this context that even refugees often have to resort to smugglers or traffickers to escape persecution and reach a safe place³⁵.

A comprehensive view of a Community Immigration Policy needs to take into consideration that thousands of migrants are living in irregular situations throughout the Union. The Communication recalls several Member States' efforts for regularisation. Still, many immigrants live among us without basic social rights or even without any rights at all. The recognition of the need for legal channels consequently implies to recognise the presence of migrants who already live on the territory and have arrived here without complying with legal entry obligations. Current policies show a broad variety of approaches, ranging from different regularisation procedures to (occasional) case-by-case considerations. Member States should be encouraged to give account and analysis of their respective situation. An exchange of best practice as well as consequences of these policies might help to find appropriate solutions.

Evidently, criminal organisations gaining from trafficking need to be fought. However, the protection of individual victims, and often also of their family in the country of origin, has to be considered carefully.

A person who exercises his or her right to search for better living conditions by legitimate means should not be considered as a criminal simply for doing so. Regardless of their legal status, their fundamental rights such as education and health-care need to be honoured, which they should be able to demand without fear of being penalised.

³⁴ We are aware that the complex challenges of the clandestine labour market require solutions beyond migration policy, involving inter alia social, labour and tax policies based on consultation with the social partners.

³⁵ See our Comments on the Commission's Communication Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, p 5, 2.3.

Current provisions in some Member States where every person can have access to legal proceedings regardless of the status should be regarded as best practice.

Organisations providing assistance in these fields to irregular migrants should not be penalised. We believe that it would be of great benefit to the immigration debate if the skills and qualifications also of irregular migrants were considered.

3. *Specific Comments*

Regarding several specific subjects addressed in the Communication, we would like to give the following comments.

3.1. *Framework for a EU immigration policy*

The Commission's Communication rightly re-emphasises the priorities of the Union's Migration policy as defined by the Tampere European Council in October 1999.

It is important to stress that all four main strands of a European migration policy underlined at Tampere are equally essential to a coherent immigration policy: (1) partnership with the countries of origin, (2) a common European asylum regime, (3) fair treatment and increased integration of nationals of third countries who reside legally on Union territory, and (4) better management of migratory flows. Instead of focusing solely on better protection against irregular immigration, this last point especially should now be interpreted in broader terms of a comprehensive immigration policy. Moreover, effective links between the different policy areas should be improved.

A future immigration policy of the European Union should take as a starting point Europe's heritage as an area of exchange and mutual enrichment, recalling the historical benefits of migrants in European societies. A European Union that promotes the freedom of movement and residence inside its borders as one of its guiding principles should not appear as a fortress to the outside world.

Any framework for an EU Immigration Policy must without any doubt include family reunification and the admission of refugees, asylum seekers, and others whose protection needs are recognised. We strongly support the European Commission's approach in this respect.

Family reunification and admission of persons in need of international protection should not be regarded as a burden, but a necessary consequence of the European Union's respect for human rights as well as Member States' international obligations.

We believe that the benefits particularly of family reunification have not yet been adequately assessed and communicated. Not only should family members get work permits as soon as possible, but their qualifications and skills – especially women's, as they usually have less opportunities – should be recognised and developed. Easier access to employment would also be beneficial to a large number of refugees.

3.2. *Common European Approach regarding admission criteria, recognition of equal rights and free movement*

It is obvious that an Area of Freedom, Security and Justice without internal borders needs a common definition for admission into its territory. We recognise that there are considerable differences concerning Member States' capabilities to deal with migrants and refugees. While these differences need to be taken into account in the context of a Common Policy, they should not justify different standards with regard to visa regulations and admission criteria.

Secondly, we think that a key element to effectively establish such an Area of Justice is certainly a commonly defined minimum set of migrants' rights. The guiding principles of such a policy should be based on the concepts of equal treatment and transparency for both migrants and the society.

It should include freedom of movement as well as establishing the principle of equal treatment also for long-term resident migrants. It should further include a set of rights as outlined in the United Nations' International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. Naturally, the European Social Charter as well as the Charter of Fundamental Rights of the European Union form the basis to define migrants' rights. A set of rights for long-term residents granted by one Member State should be recognised by the others without discrimination.

Administrative conditions should be as simple as possible. For example, we cannot see any reason why a long-term residence permit should not systematically be connected to a work permit. Furthermore, we advocate that all third country nationals who are granted a residence permit be entitled to a work permit to be able to make their living, so that they are not forced to live in dependence on social benefits³⁶, or are not pushed into criminal activities to meet their basic needs. We are convinced that this would be important to the migrants, as unemployment has severe psychological consequences on an individual, but also to the perception of immigrants by the society at large.

3.3. *Enhanced integration policy*

In order to maintain Europe's tradition as a welcoming society, the priority is to combat racism and xenophobia. In this context, already existing programs need strong support by public opinion. An underlying problem is the perception of migrant workers as temporary residents. As the Communication rightly states, the "*Gastarbeiter*" idea of migrants who leave the society after "they have done their job" has proved an illusion. Furthermore, it has been detrimental to integration. Public affirmation – by some politicians – that migrants will only stay for a certain period of time will not lead to the shift in public opinion which is bitterly needed. An immigration policy cannot be implemented without strong political determination and impetus. The political debate must make a resolute commitment in favour of promoting pluralist societies and fighting the root causes of racism and xenophobia. This implies the open commitment to a durable stay for migrants and, particularly when they have stayed already for five years or more, accepting them as long-term residents. Such a long-term permit should be open also to refugees after some years of residence in a safe country.

Secondly, an important aspect of an area of freedom, security and justice implies equal rights for all who live in it. An effective integration policy should not only start "as soon as possible after admission"³⁷, but ideally with the individual migrant's admission to the EU. Preparatory information and action in the country of origin (see above) will not only contribute to better partnership, but also constitute an element of enhanced integration efforts. Granting migrants a wide range of rights from the beginning of their stay should also give them the freedom of choice whether or not to enjoy these rights. On the one hand, this would strengthen their position as actors of migration. On the other hand, this can foster a sense of belonging on the part of the immigrants who would feel themselves

³⁶ We are aware that this applies only to some Member States, while it is an established principle in others.

³⁷ Communication on a Community Immigration Policy – COM (2000) 757 final – Point 3.5. p. 20.

not as an economic burden but as contributing members of the wider society whose presence is recognised and needed³⁸.

We support the idea of a “civic citizenship” as mentioned by the European Commission, as the enjoyment of the same range of rights would contribute to better integration into society. Such a newly defined concept of citizenship should be independent of the nationality and be based on the recognition of social, cultural and economic rights of each individual resident. It would facilitate participation for migrants and allow them to perceive the Europe they live in as a community of contributors³⁹, involving rights as well as obligations towards society. As developed above, this citizenship would include the right to free movement at the latest when the status of long term resident is acquired. Taking into consideration that free movement is not even exercised broadly by EU citizens, competition within the EU’s labour market might profit from increased flexibility.

As stated above, we hope that the interpretation of the non-discrimination legislation will cover third-country nationals as widely as possible.

Thirdly, we re-emphasise the importance of family links for integration. As we have expressed before⁴⁰, we share the European Commission’s view that family reunification is an extremely important aspect of integration policies. In providing for families to live together, solidarity among family members, thus within a basic element of society, is facilitated and trained. While this is important emotionally as well as socially, it is also beneficial economically. All these aspects are important facets of integration. We would also like to underline that family reunion is not only an integral part of a coherent immigration policy, but important to foster a coherent social policy throughout the European Union.

Last but not least, the Communication rightly states that integration is a two-way process involving adaptation on the part of both the immigrant and the host society. Mutual respect for each other's values and traditions is an important and necessary aspect of this process. Furthermore, tolerance and respect for diversity are part of the cultural, humanist and religious heritage of Europe. These fundamental values should therefore be upheld by all who live here. A measure of the effectiveness of intercultural dialogue is how migrants are welcomed by the receiving society and how well they become integrated into their new environment.

At the same time, we need to be aware that mobility and communication can facilitate two things, (1) the maintenance of migrants’ cultural identity and (2) the adoption of multiple identities by migrants and Europeans. With growing mobility and cultural exchange Europeans adopt attitudes, styles, philosophies or traditions from all over the world. It is only natural that cultural practices brought along by immigrants should be respected and accepted, as long as they do not contravene fundamental rights.

³⁸ Jan Niessen, The management and managers of immigration, Migration Policy Group, December 2000, p.25.

³⁹ The Council of Europe has recommended participation in local elections as a possibility to foster participation., European Convention on Participation of Foreigners in Local Public Life, Chapter C, art. 6. While this is not the immediate competence of the EU, we believe that the Council of Europe's Convention should be considered a basis by Member States when designing a common policy.

⁴⁰ See our Joint Position on the Amended EU Commission Proposal for a Council Directive on the right to family reunification [COM (2000) 624 final], Brussels, 22 November 2000.

In all matters, it is important to remember the principle that immigrants must always be treated with the respect due to the dignity of every human person. They should not be regarded as filling the needs of our continent, but as individuals with personal projects and choices. To prepare for the debate about a future policy of the European Union, it should be reiterated that the benefits of immigration are not limited to the economy. Europe is by nature a pluralist society, rich in its variety of cultural and social traditions, and this diversity has contributed to its success.

3.4. Information, research and monitoring

While we fully agree with the need for more information about migration flows as indicated by the Commission, we think that the information chapter should involve at least three different aspects:

- 3.4.1. We affirm the need of a concise evaluation of harmonised and comparable statistics concerning all existing forms of immigration. This should include estimations of clandestine immigrants and those who have had their situation regularised. The statistics should also reflect the qualifications of immigrants and refugees, which were rarely taken into account in the past. Such an evaluation could play an important role for public perception.
- 3.4.2. Statistical information is not enough. The creation of a welcoming society where integration should take place in two ways cannot be achieved without clear and transparent information about the challenges of migration. This information, together with a coherent communication strategy, is necessary in EU Member States as well as in the current candidates countries. It is needed in order to create a welcoming society, in which integration is a two-way process between immigrants and the local society. We would suggest that publicity on the history of migration from and to Europe is provided as a tool to change the negative images.
- 3.4.3. Information about immigration is not only needed in the European Union but also in the emigration countries. A European strategy might include information centres in the countries of origin. These centres should provide information about the possibilities of legal immigration and offer practical help – a “balance between risks and hopes”. Ideally, they could even offer orientation courses to provide a decent preparation for the future immigrant. Such an introduction to language, culture, and the social situation in the country of destination could be organised and funded in co-operation with potential employers. The involvement of trade unions in such activities would seem another important element.

4. Conclusions

- 4.1. It seems most urgent to provide the public in European societies with thorough **information about migration**, from the positive contributions of migrants to societies – not just to the labour market – their traditions and habits to statistics and reliable data. Policy makers bear responsibility to avoid distortion in media portrayal of migrants especially in the amalgamation between immigration and criminal activities. Transparency and information will help to counteract people’s fears, which are often fears of the unknown. The Churches commit themselves to engage fully in the debate, to the promotion of solidarity, of integration and mutual respect. In this context, a courageous political commitment is needed, which must be exercised with great care, starting from the language used.

- 4.2. In order to support the interdisciplinary approach as proposed by the European Commission, **radical coherence between the different policy areas** should be pursued. As a permanent and increasing phenomenon in our societies, the issue of migration needs to reconcile the long term approach which is needed for global development with the short term approach, which has predominated Justice and Home Affairs for too long. Europe's responsibility in the world calls for the development of countries rather than a brain drain, in order to achieve a fair share of benefits and burdens in a global economy. If Europe is now searching for the well-educated and trained persons from the South to meet its needs, as well as for migrants to do unskilled or low-skilled labour, the obligation to facilitate exchange with the countries of origin, including improved and cheaper channels for remittances are vital.
- 4.3. The **chances of migrants in the society they live in are at the same time chances for this society**. These chances depend on the rights that migrants enjoy and which are an essential element of their integration. We **call for a broad set of uniform rights**, as laid down in the United Nations' International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, which migrant workers and their families should enjoy in all Member States. This will broaden their perspectives as well as their readiness to integrate into the host society, which will more easily become one of their own. As the European Commission rightly stated, integration is a twofold process. This needs to be taken into account by both migrants and the welcoming society, which will be the constituting elements in the process of shaping a multicultural society.
- 4.4. Migration is a global challenge. It should not only be addressed jointly by the Member States of the European Union, but also at higher levels of international co-operation. As a first step to **more regional co-operation**, the EU activities should involve co-ordination and exchange with – as well as support for – the work the Council of Europe has already done in this area.

We would especially support the idea of **setting up a European Monitoring Centre for Migration**, as proposed by the Parliamentary Assembly of the Council of Europe⁴¹, competent for monitoring regular *and* irregular migration as well as advising on legal immigration and integration policies.

- 4.5. In the context of labour migration, we propose to **concentrate at a European level the competence to provide information on labour needs between Member States and to coordinate their Immigration Policy**. Under a potentially extended EURES network, information about labour market needs could be provided to Member States *and* to third countries. Furthermore, the responsibility for the co-ordination of national quota, the collection of information from national offices and the exploration of employment possibilities in the Member States could be added to this competence.

For many in the churches, practical and pastoral work with migrants is a daily, often challenging, experience. They always strive to respect and affirm the human dignity of every individual.

⁴¹ Council of Europe Parliamentary Assembly Recommendation 1449/2000, Clandestine migration from the South of the Mediterranean into Europe.

Christian churches and organisations will be closely monitoring developments in the debate on a Community Immigration Policy in a spirit of constructive dialogue. We are committed to participate fully in the elaboration of a humane, transparent and coherent immigration policy in keeping with the EU commitment to develop and maintain the Union as an area of freedom, security and justice.

Brussels, May 2001

c. Draft Directive on Reception Conditions

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COMECE – Commission of the Bishops' Conferences of the European Community - Working group on Migration - 42, Rue Stévin, B-1000 Bruxelles

Commission Justice et Paix 31, Rue Maurice Liétart, 1150 Bruxelles

ICMC – International Catholic Migration Commission 4, Rue de Pascale, B-1040 Bruxelles

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**Joint comments
on the Commission Proposal for a Council Directive
laying down minimum standards on the reception
of applicants for asylum in Member States
COM (2001) 181 final**

Executive summary

Reception conditions for asylum-seekers currently vary widely across Member-States⁴². From our experience as refugee-supporting agencies, the conditions in many cases are so inadequate that they amount to a very real stumbling block to the pursuit of an asylum claim. Some governments' misuse of reception conditions as a key method of deterrence had led organisations that assist refugees to fear that standards are being harmonised on the basis of the lowest common denominator. Although acknowledging the urgent need of harmonising reception conditions across the Union, our indicator for measuring any attempt towards harmonisation is whether in practice it results in “dignified” living

⁴² See UNHCR study: “Reception Standards for Asylum Seekers in the European Union”, July 2000 and Legal and Social Conditions for Asylum Seekers and Refugees in Western European Countries, May 2000.

conditions. We welcome the fact that the proposed directive clearly states its adherence to this crucial goal.

Certain aspects of this proposal are very much to be welcomed, in particular the fact that:

- asylum-seekers with specific needs receive special attention
- asylum applicants receive a document certifying their status (Art 6) and benefit from comprehensive information about their rights and duties (Art 5)
- it is recognised that the general attitude of public opinion towards applicants for asylum plays a major role in quality of life of applicants.

We are, however, concerned about certain provisions.

It is a matter of profound concern that material reception conditions may be reduced or withdrawn as punishment for “negative behaviour” as set out in Article 22. While we appreciate that Member States may need to sanction criminal behaviour, we strongly believe that the normal national law provisions provide the appropriate mechanism. We consider it highly disproportionate to impose destitution as a penalty. Nobody should be deprived of basic assistance. Member States should always act in consistence with their human rights obligations.

Although we appreciate the principle that asylum seekers shall be given opportunity to earn their living at the latest after a six-month waiting period, we are deeply concerned that Member States should have the opportunity to opt out of further assistance to asylum seekers three months later. Material reception conditions can be withdrawn or reduced when the asylum-seeker and accompanying family members have an income that will support a dignified life-style, not at the end of an arbitrary time period.

We are also very concerned that the proposal allows Member States to reduce or withdraw assistance where asylum applicants stay with relatives or friends. While such a reduction might be appropriate in some cases, it might also create severe hardship in others. We urge that any decision to reduce or withdraw the material aid on the grounds that the applicant is staying with friends or relatives be taken individually.

General remarks

We appreciate that the Commission undertook the challenging attempt to reformulate reception conditions from first principles, taking into consideration an assessment of experience of Member States and other Civil Society actors.

We take the opportunity to thank the European Commission that churches and non-governmental organisations were given the opportunity to provide constructive remarks in the process of consultation on the basis of a discussion paper prior to the finalisation of this proposal. While welcoming the process of consultation with civil society actors on the specific Directive, we would like to recommend developing a formal procedure of

consultations like those existing in some Member States and to use this procedure in the preparation of all proposals for legal instruments⁴³.

Embedding the discussion on reception conditions in a broader but related context, we would like to stress the importance of legal access to the territory for asylum-seekers, State-sponsored provision of legal counselling and representation, and an increase in the quality of asylum procedures.⁴⁴

The following comments are based on our conviction that all asylum seekers have the right to humane and dignified treatment. A large proportion of asylum seekers need protection; many are refugees according to the Geneva Convention; some need protection according to other human rights standards; and still others need protection because of humanitarian concerns. Therefore, for as long as there is no final decision on an asylum claim according to international obligations, the person concerned must be treated as a presumptive refugee and in a way that respects his/her dignity.

Comments on the Articles

CHAPTER I: SUBJECT MATTER DEFINITIONS AND SCOPE

Article 2: Definitions & Article 3: Scope

- Arts 2(b), 3(1) The limitation of the scope of this Directive to asylum applicants who are third country nationals is reasonable on the basis that EU nationals applying for asylum in Member States other than their own⁴⁵ are still entitled to benefit from their rights as EU citizens which would include equal treatment.
- Article 2 (d) (i) This provision defines as a family member the unmarried partner in a stable relationship only where the legislation of the relevant Member State treats unmarried couples in the same way as married couples. Since, however, equal treatment of married and unmarried couples is often based on jurisprudence or common practice rather than on legislation *per se* we recommend replacing the word “*legislation*” by “*legislation, jurisprudence or practice*”.
- Article 3 (1) We welcome the fact that this Directive applies to border procedures.

⁴³ This issue was recently taken up by the European Commission in its White Paper on European Governance (COM (2001) 428 of 25 July 2001).

⁴⁴ See Caritas Europa position paper “Fair treatment for asylum seekers”, February 2001 and this joint comments’ authors’ comments on the Communication by the Commission towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, May 2001

⁴⁵ Member states may opt out of the so-called Spanish protocol (Protocol No. 29 to the Treaty of Amsterdam), as Belgium has done.

Article 3 (1,2,3) The Directive invites Member States to apply these reception conditions to applicants for forms of protection other than the Geneva Convention. We urge the Commission to make this provision a mandatory rather than a discretionary one, on the basis that a two-tier reception system is more complicated to administer and is not logically justified. Given that some states apply a single procedure and status for all forms of protection, and that there is a genuine possibility that such a system could at a future date apply to the whole Union⁴⁶, it would be unreasonable to differentiate between the different forms of protection in this context. Furthermore granting different rights to applicants for various forms of protection might lead to pressure on the person seeking complementary protection to apply for asylum. We support the position of UNHCR that:

“The question of what basic rights and benefits asylum-seekers deserve in order to live in dignity while they are awaiting the determination of their protection claims should be based on their needs rather than on the grounds on which their claims are based.”⁴⁷

The goal of avoiding secondary movements within the Union is an argument against leaving the application of reception standards to Member States’ discretion. At the same time, we are aware that the Amsterdam Treaty only provides a weak legal basis for including applicants for complementary forms of protection into this Directive.

CHAPTER II: GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5: Information & Article 6: Documentation

Articles 5,6 We very much welcome the provisions on information and documentation.

Article 5 (2) This provision obliges Member States to inform each adult accompanying family member of the right to make a separate application for asylum. From our point of view there is no logical reason for this limitation as minors are also entitled to apply for asylum. From practical experience we know individual cases from regions such as Kosovo, Bosnia or Rwanda where the children within a family had the strongest or even the only protection needs under the Geneva Convention. We urge that this provision’s obligation to provide information be extended to include non-adult

⁴⁶ See discussion in Commission’s Communication on asylum, November 2000.

⁴⁷ UNHCR Comments on the European Commission Proposal for a Council Directive laying down Minimum Standards on the Reception of Applicants for Asylum in Member States, July 2001

members of the family who are old enough to understand the implications.

Article 7: Freedom of movement

Article 7 (1, 3, 4) The proposal in Art 7 (1) leaves it to Member States whether they grant applicants freedom of movement within the territory or in a specific area only. In the absence of compelling reasons to the contrary, their right to free movement within the State must not be curtailed. We strongly urge that asylum-seekers and their accompanying family members should have free movement throughout the territory of the Member State in which they apply for asylum. Member States are obliged to fully guarantee free movement within the host country under Art 12 International Covenant on Civil and Political Rights (ICCPR) and Art 2,3 of the Protocol 4 to the European Convention on Human Rights and Fundamental Freedoms (ECHR). Against this background we recommend the deletion of the words “or in a specific area of it under the conditions set out in this Article” from Art 7 (1) and the related paragraphs 3-5.

Article 7 (2) We believe as a general rule that asylum seekers should not be detained. Asylum applicants should only be detained as a last resort in exceptional cases when non-custodial measures have proven on individual grounds not to achieve the lawful and legitimate purpose.⁴⁸

Neither the proposed Directive on asylum procedures nor the proposed Directive on reception set out conditions of detention and the procedural guarantees applying in cases of detention. We support UNHCR’s view⁴⁹ that under Article 63 of the Amsterdam Treaty, it is most appropriate to incorporate these provisions in the Directive on reception conditions, and we urge that they be based on the UNHCR *Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*⁵⁰.

In particular, we urge that asylum seekers should not be held with convicted prisoners or those on remand.

Article 9: Families

Article 9 We welcome the recognition of the importance of family unity.

⁴⁸ For more details, see Caritas Europa Migration Commission comments on the proposal for a Directive on minimum standards on procedures in member States for granting and withdrawing refugee status; May 2001

⁴⁹ See footnote 5

⁵⁰ UNHCR Guidelines February 1999

Article 11: Medical screening

Article 11 Being aware that medical personnel must observe confidentiality on individuals' medical history, we consider that it would nevertheless be helpful if there was a provision added that expressively stated that the results of medical screening shall be confidential. To avoid misunderstandings, asylum-seekers and their accompanying family members should be informed that this rule of confidentiality applies, and that the results of screening will not prejudice their application for protection.

Article 12: Schooling and education of minors

Article 12 (1) This provision specifies that minors shall be younger than the age of legal majority in the relevant Member State. We note that in article 2 (i) unaccompanied minors are defined as persons below the age of eighteen. There is a potential inconsistency between these two definitions. For the sake of consistency we recommend the same definition of the age of majority be used throughout the Directive.

Article 13: Employment

Articles 13 (1) We welcome the provision that Member States shall not forbid access to the labour market for more than six months. At the same time the proposal leaves it open to Member States to lay down the conditions for the access to the labour market. According to the Explanatory Memorandum this means that Member States "can decide the kind of work asylum applicants may apply for, the amount of time per month or per year they are allowed to work, the skills they should have, etc.". This interpretation in practice enables Member States to block access by asylum seekers to the labour market – and constitutes a hidden opt-out-clause. We would like to see a much stronger commitment to offering asylum seekers the opportunity to earn their own living and become self-sufficient.

Article 13 (3) This proposal allows Member-States to restrict access to the labour market as a penalty for "negative behaviour" by applicants. We have serious reservations about the appropriateness of this punishment; see below our comments on article 22.

Article 14: Vocational Training

Article 14 We welcome the proposal's provision that Member States may not forbid access to vocational training to asylum applicants and their accompanying family members for longer than six months.

Since language skills are crucial for succeeding in seeking for job opportunities, the Directive should invite Member States to offer language training as soon as possible after the procedure is started.

We urge the creation of a coherent system for the swift recognition of asylum-seekers' professional qualifications, accompanied by any assistance necessary to align an individual's skills to the needs of the EU labour market. This approach is also likely to make a later return to the country of origin more viable, as the individual is able to return with more skills and hence should be better able to provide for himself/herself and in many cases perhaps also provide a valuable contribution to a recovering society.⁵¹

Our comments in relation to Article 22 also apply to Article 14 (3).

CHAPTER III: MATERIAL RECEPTION CONDITIONS

Article 15: General Rules

Article 15 (1) We observe a lacuna in the provision of material aid: assistance may end upon the notification of a negative first instance decision (Article 15.1 (a)) and resume upon lodging of an appeal (Article 15.1 (b)): during these two stages several days or weeks may elapse, during which the asylum seeker is putting together the elements of his or her appeal. It is unacceptable to submit the asylum applicant and accompanying family members to the risk of destitution and homelessness during this process. We urge that material aid be provided after notification of any negative decision preceding the final determination until the deadline for lodging an appeal has elapsed.

Article 15.1 (b) apparently limits material reception conditions during the appeal procedures to situations where the appeal has suspensive effect. Where an appeal does not have a suspensive effect⁵² but the applicant has not been removed from the territory he/she should still be entitled to benefit from material reception conditions.

Article 15 (2) We welcome that the proposal obliges Member States to ensure that material reception conditions to be adequate for the health and the well being of applicants as well as the protection of their human rights. We recommend that this standard be defined according to objective criteria applicable to all Member States (see comments

⁵¹ See this joint comments' authors' comments on the Communication by the Commission towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, May 2001

⁵² Here we would like to reaffirm our insistence that it is essential for appeals in asylum cases to have suspensive effect.

on Article 17).

Article 15 (3) The Commission proposes that material reception conditions may be provided in kind, or in form of financial allowances or of vouchers. Experience has shown that providing material reception conditions in the form of **vouchers** or **assistance in kind** has not in fact created dignified living conditions for asylum seekers and their accompanying family members. A system that limits where asylum-seekers can shop and what they can buy, and that makes their status readily apparent to the public has been shown to stigmatise, impoverish and create substantial hardship for asylum-seekers. Therefore we are opposed to any voucher or non-cash system. Material reception conditions should always be provided in the form of financial allowances; there is no evidence to show that such a system creates a pull-effect.

Article 15 (4) The proposal allows Member States to reduce or withdraw material reception conditions three months after applicants have been allowed access to the labour market. The Commission intends to oblige Member States - as far as the applicants are not financially independent - only to grant a food allowance and access to basic health care. Since some of the Member States could decide to limit reception conditions to a very low level by applying this provision, we have serious concerns about this opt-out clause. Material reception conditions should be withdrawn or reduced when the asylum-seeker and accompanying family members are truly financially independent, not at the end of an arbitrary time period.

If this provision is retained, it is crucial that “basic social care” is defined in terms that ensure that the system does not create a real risk of hardship for those who are not financially independent after this time limit, a category likely to include the most vulnerable of refugees, including those who may be unable to work due to ill-health or the necessity of caring for family members.

Article 16: Housing

Article 16 We are concerned that asylum applicants in receipt of a “grant of a financial allowance or vouchers sufficient to enable applicants to find independent housing” under Article 16.1 (d) are apparently excluded from the guaranteed access to emergency health and psychological care and to health care that cannot be postponed under Article 16.2 (a). Given the general guarantee of health-care in Article 20, we do not believe that this lacuna was intended; however, for the sake of certainty, we would like to see an explicit statement that the guarantee of access to health-care under Article 16.2 (a) also applies to persons housed under the terms of Article

16.1 (d).

While welcoming the guarantees laid down in this section, we urge the inclusion of a guarantee of respect for the cultural and spiritual needs of applicants and their families.

We recommend that large-scale accommodation centres be avoided on the basis that they are more likely to institutionalise occupants and hamper integration.

We are deeply concerned about insensitive dispersal policies that distance asylum seekers from the support of their communities and from essential services, including expert legal advice. Furthermore, experience has shown that exposing asylum seekers to communities that are ill prepared for their arrival can lead to serious tensions.

We recommend the Directive require Member States to ensure asylum seekers are housed in a safe and supportive environment.

Article 17: Total amount of allowances or vouchers

Article 17

Although we welcome that the proposal makes the attempt of defining the level of material assistance by reference to the poverty line, we would be very much in favour of including a definition of poverty either into the provisions or at least in the Explanatory memorandum. We recall that as defined on the EUROSTAT equivalence scale, the threshold level below which one would be threatened by poverty lies at 60% of the average per capita income.

We are deeply concerned that the proposal allows Member States to reduce or withdraw assistance where asylum applicants stay with relatives or friends. While such a reduction might be appropriate in some cases, it might also create severe hardship in others. The relatives and friends of asylum applicants should not be penalised for offering hospitality to applicants. Such a measure is also likely to prove counterproductive in increasing the likelihood that asylum applicants will have recourse to places in reception centres. There may also be more absenteeism from reception centres, as asylum seekers nominally accommodated in such centres stay with the relatives and friends with whom they would otherwise have chosen to live. We believe that the possibility of staying with friends and relatives can be of benefit to individual applicants and to Member States, and it should not be hindered. We agree to the principle that as far as applicants are self-sufficient they do not need to receive any material support.

We urge that any decision to reduce or withdraw the material aid on the grounds that the applicant is staying with friends or relatives

be taken individually. In addition to establishing an independent office that can hear complaints, we urge that any decision in this regard shall be taken objectively, impartially and with reasons given, and that applicants should have the right to appeal such a decision, as set out in Articles 19 and 21.

CHAPTER IV: HEALTH AND PSYCHOLOGICAL CARE

Article 20: Health and psychological care during regular procedures &

Article 21: Health and psychological care during other procedures

Article 20 As noted above in our comments on Article 15 (1), we are concerned that there is a gap between loss of the care upon notification of a negative decision and resumption of the care upon lodging of an appeal: during these two stages several days or weeks may elapse, during which the asylum-seeker should not be deprived of health and psychological care. We urge that this entitlement should remain valid after notification of any negative decision preceding the final determination until the deadline for lodging an appeal has elapsed.

Arts 20(2), We feel it necessary to underline that this is not an exhaustive list of
21(2) persons who may have special needs. In particular, we are concerned about the omission of traumatised persons and persons who have experience torture and other forms of violence, which may not be gender-related.

CHAPTER V: REDUCTION OR WITHDRAWAL OF RECEPTION CONDITIONS

Article 22: Reduction or withdrawal of reception conditions following negative behaviour

Article 22 This article provides for a reduction or withdrawal of reception support in the case of applicants for asylum who manifest “negative behaviour.” We regard it as a serious breach of human rights to inflict destitution and homelessness on an asylum applicant and accompanying family members as a punitive measure. A Member State national who commits a criminal offence is not at risk of losing social assistance, a sanction which is hugely disproportionate to the alleged offences envisaged in the Article. An applicant who has concealed financial resources could be required to make financial restitution of the amount by which he is deemed to have unduly benefited; an applicant who has behaved

in a violent or threatening manner may be punishable under national criminal law; an applicant who prevents a minor from attending school may require the intervention of an appropriately-trained social worker. While we appreciate that Member States may need to sanction criminal behaviour, we strongly believe that the national criminal law provisions provide the appropriate mechanism.

It is important that asylum-seekers are informed as to what will be deemed to constitute “negative behaviour” and what the potential sanctions are.

CHAPTER VI: PROVISIONS FOR PERSONS WITH SPECIAL NEEDS

Article 23: General principle

Article 23 While we welcome the provision for people with special needs, we feel that there is potential for confusion, given that the category is defined differently in Articles 20 and 21. We recommend that the definition in Article 23 should be used throughout the Directive. It should be made clear that the list is not exhaustive; the principle of individual evaluation is an important one. Other individuals, such as those recently bereaved, may also have special needs.

Article 24: Minors & Article 25: Unaccompanied minors

Articles 24, 25 We welcome the provisions relating to minors and unaccompanied minors.

CHAPTER VII: ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

Article 29: Local communities

Article 29 We welcome the reference to measures to promote harmonious relationships with local communities. While this is very important for communities where accommodation centres are located, we recall that many asylum-seekers and refugees do not live in accommodation centres, and we urge Member States to take measures to promote harmonious relationships between local communities and asylum-seekers throughout their territory, wherever asylum-seekers may be located.

We are concerned at some of the terms used about refugees and asylum seekers in the media and in public debate, which has a negative effect on public opinion. We recommend that Member

States encourage the national media to draw up some principles of best practice in this area. We also urge Member States to make a resolute commitment to give leadership in and to promote the use of accurate and sensitive terminology in the debate on asylum.

As well as combating negative attitudes, we underline that asylum seekers and refugees can make a positive contribution to our societies, and this benefit should be reflected in public discourse.

Article 30: Guidance, monitoring and control system

Article 30 We welcome that Member States are required to provide for the guidance, monitoring and control of the level of reception conditions.

Concluding remarks

Echoing the position of UNHCR, we are convinced that:

*“An adequate standard of reception enables asylum-seekers to present their asylum claims properly and sufficiently, to co-operate with the asylum authorities throughout the procedure and, more generally, to build trust and confidence in the asylum process. In turn, fair and expeditious procedures that quickly and properly identify who is in need of international protection and who is not help reduce the financial costs attached to the implementation of reception schemes”.*⁵³

As organisations representing Christian churches throughout Europe, Roman Catholic, Orthodox, Protestant, Quaker and Anglican, as well as church agencies particularly concerned with migrants and refugees, it is part of our tradition to care for the oppressed and to uphold the dignity of the human individual. Against this background, and given that reception conditions are such a crucial part of the asylum system as a whole, we take this opportunity to contribute our comments.

Brussels, September 2001

⁵³ See footnote 5.

Annex 2: Jesuit Refugee Service Response to The UK Home Secretary's Proposals on Asylum: A Discussion Paper

1. Categorisation of countries of origin

UK Home Secretary's Proposal:

"That, in the context of the forthcoming common asylum system, Member States should abandon their differing national policies on safe countries of origin and instead agree an EU list consisting of three categories: high risk, intermediate and safe. This categorisation would form the basis of the way in which asylum applications from nationals of those countries were treated by Member States. It would need to cover ethnic, social and political groups as well as countries. For example:

"(a) High risk: countries and groups producing a large proportion of well-founded asylum claims. Spontaneous applications would be given prompt individual consideration by the responsible Member State. Applicants in this category would also benefit from the resettlement programme and might be able to lodge an asylum application from outside the EU (see 2 and 3 below).

"(b) Intermediate: countries and groups producing a small proportion of well-founded asylum claims. New applications would be considered within an agreed accelerated timescale and the great majority would be designated as manifestly unfounded.

"(c) Safe: countries and groups agreed by Member States to be manifestly safe, on the basis of pre-determined criteria relating to the rule of law and observance of international human rights law. New applications would be declared inadmissible to the substantive refugee determination process, subject to the provisions of the Protocol of the Treaty of Amsterdam on Asylum for Nationals of Member States of the European Union."

JRS Response:

It is with dismay that we read of this proposal. We are particularly dismayed about the crude categorisation, which takes little or no account of very complex national or regional situations. We also have little confidence in the categorisation process: how is the decision to be made and based on what sort of information from which sources; how often would the categorisation be updated and how would any new information be incorporated into the decision. In the past the UK has operated a "white list" of safe countries, which produced a number of injustices, and we fail to see how this new system would do any better. So-called safe countries have been known to persecute individuals, for example lesbians in Lithuania and Romas in Poland..

What would happen to those people who have a fear of returning home because of persecution if their applications for asylum were declared "inadmissible" because their country of origin was on a list of safe countries? Is the UK government suggesting that there be another procedure other than the substantive refugee determination process under which their applications for a protected status might be considered? Or is it suggested that these people should be summarily removed from the UK without considering their applications for asylum? Surely this would breach the UK's obligations under the 1951 Convention relating to the Status of Refugees and under other international human rights treaties?

We would also raise questions as to how a country were judged to be safe, or intermediate or of high risk? What would be the procedure for moving a country to a new category? How quickly would this be done? Would an asylum seeker who entered the country and asked for asylum while his/her country were on the safe category have his/her case looked at again if it were moved to the intermediate or high risk categories? Surely the only way to give adequate protection to those seeking asylum is to look at the merits of the individual case rather than the country of origin.

We are asked if a super-fast track procedure could be agreed for dealing with applicants from safe countries? Our answer would be most decidedly not. Any procedure must allow for the merits of the case to be looked at fully and must allow for an in-country right of appeal against a negative decision. This is the only way to even attempt to ensure that mistakes are not made - particularly since the effects of not allowing a refugee or a protected status can be life-threatening.

We do not believe any categorisation system either based on countries or on other considerations as well, such as ethnicity, membership of a group, etc. would best serve the interests of those fleeing from persecution.

2. EU resettlement programme

UK Home Secretary's Proposal:

"That the EU should establish a humanitarian resettlement programme, based on an annual decision by the Commission and the Council to set a quota for accepting Convention refugees, allocated on the basis of solidarity between Member States. The total annual quota might be sub-divided into regional or continental quotas.

"The beneficiaries of this programme would be drawn exclusively or primarily from the high risk countries or groups identified in 1(a) above.

"Beneficiaries would be identified and pre-screened by UNHCR. Those requiring international protection within the terms of the Convention would be presented to the EU, or to individual Member States, for acceptance and the grant of asylum.

"Such a programme would operate entirely separately from the asylum determination process, which would continue to deal with spontaneous arrivals along the lines of 1 above. (The resettlement cases would come to Member States as refugees rather than to have their status considered.)"

JRS Response:

While welcoming the proposed EU resettlement programme as another tool for protecting those who are being persecuted, we do have some reservations about the programme. Primarily we are concerned about the impact this would have on asylum seekers making spontaneous claims. Some other countries which operate a resettlement programme, such as the USA, detain spontaneous arrivals as a matter of course. JRS believes that the administrative detention of asylum seekers is wrong, and we would be dismayed if this were the model the UK government might be considering. Other than our general objections on the immorality of detention for asylum seekers, we would consider any such programme of detention for spontaneous

arrivals to contravene the UK government's obligations under the Human Rights Act and under international human rights law.

There is also a danger in operating a resettlement programme, that programme refugees might be seen to be "good" or "genuine" refugees, whereas spontaneous arrivals are seen to be "bad" or "bogus". This will be particularly the case if the programme is only open to those from high or intermediate risk countries. If the UK government does decide to enter into an agreement with the UNHCR regarding a resettlement programme, it must invest significant resources in creating a climate of favourable public opinion towards all refugees. This would include the development of welcoming or orientation programmes for all spontaneous arrivals and programme refugees. It would be tragic if any new protection tool should create a "them and us culture" between members of the refugee community in the UK. After all no one refugee is more deserving of protection than any other.

We would recommend that the UNHCR does administer any proposed resettlement programme, despite the current funding difficulties it is facing. However the EU must agree to support the UNHCR and to fund the programme. The UNHCR has built up invaluable experience in such programmes. This should be recognised and supported.

We are heartened by the suggestion that humanitarian cases, which would not ordinarily fall within the scope of the 1951 Convention, might be given access to the resettlement programme. We welcome any suggestion which would increase the protection of individuals either from persecution or on humanitarian grounds. We hope that any quote would be revised upwards to take account of these extra categories of people.

Our final reservation would be regarding the quotas. What happens to those individuals fleeing persecution, with a well-founded case, who fall outwith the quota for their region/country of origin for that year. Are they to be granted protection in situ or are procedures going to be put in place to find them another host country where they will be safe?

3. Asylum applications lodged overseas

UK Home Secretary's Proposal:

"Practical arrangements should be made for individuals from high risk countries or groups to lodge an asylum application from outside EU territory by registering with UNHCR in a third country. The determination would be undertaken by UNHCR as in 2 above, and successful applicants would be referred for inclusion in the EU resettlement programme. Failed applicants would be subject to the migration policies of the third country, but would benefit from advice from the UNHCR."

JRS Response:

Again we have serious reservations about the categorisation system. Categorisation can never take into account the full circumstances of an individual or the full situation in a country. To leave such a tool of protection only open to those from high risk countries or groups is to risk sending those who have a real fear of persecution from

other countries into the hands of people-traffickers out of desperation or a belief that their asylum claim might not be dealt with sympathetically by the UK as they are not from a high risk country. We would also have to ask how often the lists of categories would be updated and how the new lists would be disseminated to those processing applications in the field? There will always be a risk of out of date category lists being used.

4. Action to encourage protection in regions of origin

UK Home Secretary's Proposal:

"That appropriate action is taken, both at EU level and in the wider international community, to ensure that countries of first asylum are able to provide appropriate support to displaced people, either temporarily or permanently."

JRS Response:

JRS welcomes the proposal that support be given to countries of first asylum within the region. We trust, however, that this is not being seen as a way of dissuading those fleeing persecution from leaving their region of origin if they do not feel safe there.

The vast majority of the world's refugees seek safety in neighbouring countries of the South. In the spirit of international responsibility sharing, it is entirely appropriate and indeed even right that richer countries of the North give support and grant aid to host countries in the region of origin. However, any aid or support given should not only be for the refugees but also for the local community, who are often as poor and sometimes poorer than the refugees. It can only create animosity between the refugee community and the host community if aid and support is only directed at the refugees or at refugee support programmes.

Annex 3: JRS Europe Recommendations regarding Migrants with an Irregular Immigration Status

OUTSIDE THE PROTECTION OF THE LAW: THE SITUATION OF IRREGULAR MIGRANTS IN EUROPE

Irregular Immigration in Europe New empirical studies by Jesuit Refugee Service Executive Summary

Research carried out by the Jesuit Refugee Service challenges many commonly held assumptions about irregular immigrants in Europe. It highlights key aspects of the lives of those living with an irregular immigration status within the European Community.

A Rightless Existence

Those who are irregular immigrants lead a rightless existence 'without the basic protection of criminal and civil law and with no legal avenues by which to assert an entitlement to just and humane treatment.' (Conclusions, p. 1)

Variety of reasons for irregular status

The study shows that people find themselves without legal status for a variety of reasons. It can happen through chance, when they find their legal status runs out or if their application for asylum is turned down. Many are, therefore, irregular residents rather than irregular entrants.

'These people have often drifted into this irregular situation, have law-abiding lives in their countries of residence, established deep community ties, and have resided in the host state for many years.' (Conclusions, p. 2)

Others have entered the EU with irregular documentation or, in some cases, without undergoing border control.

Diverse Motivations of irregular immigrants

The study shows that the motivations of irregular immigrants vary and can include flight from persecution or from torture, conditions which qualify people for asylum status. However, through fear that their legitimate claims will not be recognised or for other reasons, they do not apply for asylum. Others flee their countries because of a desire to escape grinding poverty.

Personal relations are also an important reason for irregular status. For example, the desire to maintain relationships built up during what was initially planned as a temporary stay or a desire to join family members already in the host country

and other reasons.

While the situation of irregular immigrants is variable, the research shows some common characteristics of the lives of those who are irregular immigrants. These include:

- low pay
- little or no access to health care
- limited educational opportunities
- a life lived in the shadows with employment in occupations which have a low profile.

These common characteristics were found in all three countries where the research was carried out despite the different historical and legal backgrounds as well as the diverse labour market structures of the countries.

Many irregular migrants owe money to traffickers and this increases their vulnerability to involvement in crime. The research does not support the perception that irregular immigrants are involved in serious crime. It indicates that most of the crime committed by people living without a regular migration status is the result 'of circumstance, not character. Irregular migrants themselves are probably more likely to be victims than perpetrators of crime.'

De facto refugees make up a substantial proportion of asylum seekers

Delays in processing asylum claims and fears about the process means that those who could seek asylum are more reluctant to do so and, instead, opt for irregular immigration.

JRS Field Studies into Irregular Migration - Page 3 of 4 'A range of factors, including distrust of state asylum determination procedures, reluctance to be detained, and fears about return, lead some refugees to choose life as a migrant with irregular status.

The numbers of those in this position are, moreover, probably boosted by the way that restrictive measures force legitimate refugees into illegal activities to enter the state in the first place, dragging them into an underworld that has its own entanglements and fetters.' (Conclusions, p. 2)

Government Policies

Restrictive entrance practices by EU members states, including tighter border controls, can play into the hands of criminal trafficking organisations and can hinder rather than help in finding a solution.

'As these practices grow increasingly restrictive, the organisations most prepared to bribe, forge and use violence are likely to grow stronger and more dominant...' (Conclusions, p. 2)

Trapped in Europe

Some feel themselves trapped in Europe and would return home if they could. 'Increasingly tight restrictions on entrance that make return migration difficult and the need to recoup unpaid earnings can prove strong barriers to return.'

Growing in number

In spite of attempts by Governments to clamp down on irregular entrance and despite the difficult conditions experienced by irregular immigrants, the number seems to be growing.

Observations

Based on the above, a number of observations can be made:

1. The distinction between regular and irregular migration is likely to remain a feature of State policy for some time.
2. The problem of irregular entrance and residence will remain for some years to come.
3. How irregular residents are treated is an important issue for states committed to upholding human rights. Governments cannot denounce human rights violations abroad if there are glaring violations at home.
4. Improving basic conditions for irregular residents may be seen by States as incompatible with their desire to limit immigration. However it is important not to exaggerate the so-called 'pull factor'.

Policy Recommendations

The research has implications for policy:

1. Governments should support comprehensive programmes to improve human rights and the economic situation of countries from which immigrants tend to come. This is because the 'push' factor is highly important.
2. More inclusive asylum policies are needed. Asylum categories need to be broad enough to capture the realities of the refugee experience.
3. Measures that currently deter people from seeking asylum should be relaxed. In this way, people fleeing for their safety will not choose to go the route of irregular migration - including the need to have recourse to traffickers - with its rightless existence.

4. Temporary worker migration programmes should be supported.
5. Offices need to be established to help those who wish to return home.
6. Special hardship cases should have their situation regularised and bodies need to be established with this as their purpose.
7. Basic human rights need to be guaranteed for people regardless of their migration status.

Annex 4: ECPAT UK's Recommendations regarding Trafficking

1. Make combating trafficking a priority and put the protection of the trafficked person at the centre of any anti-trafficking policy.
2. Sign and ratify the United Nations Protocol on Trafficking in Persons, Especially Women and Children (2000) and the UN Convention on the Rights of Migrant Workers (1990).
3. Introduce legislation which makes trafficking in human beings a criminal offence with punishments that are appropriate for the seriousness of the crimes committed.
4. Fund a specialised agency to provide support and assistance to victims of trafficking (including appropriate accommodation, medical, psychological and legal assistance and training or employment opportunities).
5. Ensure that all victims of trafficking who are at risk of being attacked or trafficked again can stay in the country to which they have been trafficked, irrespective of whether they co-operate in a prosecution.
6. Ensure that all anti-trafficking efforts are non-discriminatory and do not adversely affect other vulnerable groups such as refugees or migrants.