



On the Record for Refugees

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From the AP Editorial Desk

This publication has been made available in printed form to participants at this session of EXCOM, but they are not our primary audience. *On the Record* aims to inform, and support, those who campaign for humanitarian principles and human rights. Theirs is often a lonely and dangerous fight. They face harassment and intimidation. But without them, there can be no resolution of the problems discussed at this meeting. They are extraordinarily resilient.

With this in mind, we commend the following statement, which will be read at 6:30 this afternoon (Friday) at a public demonstration in Belgrade's Republic Square by Women in Black. This remarkable organization has been consistent in its opposition to the wars in Croatia, Bosnia and now Kosovo. Theirs has been a voice of reason in the madness, and they have done more than anyone to salvage Serbia's terrible reputation in the eyes of the world. For this, they have received no thanks from their own government. Serbia is now turning inwards – trying to intimidate the press and stifle dissent. If the governments here have any interest in putting a halt to the cycle of hatred and tension in the Balkans, they must not let this happen.

I CONFESS to my longtime anti-war activity that I did not agree with the severe beating of people of other ethnicities and nationalities, faiths, race, sexual orientation; that I was not present at the ceremonial act of throwing flowers on the tanks headed for Vukovar, 1991 and Pristina, 1998; that I fed women and children in refugee camps, schools, churches, mosques; that I sent packages for women and men in the basements of occupied Sarajevo in 1993, 1994, 1995; that

for the entire war I crossed the walls of Balkan ethno-states, because solidarity is the politics which interests me; that I understood democracy as support to anti-war activists/friends/sisters – Albanian women, Croat women, Roma women, stateless women; that I first challenged the murderers from the state where I live and then those from other states, because I consider this to be responsible political behavior of a citizen; that throughout all the seasons of the year I insisted that there be an end to the slaughter, destruction, ethnic cleansing, forced evacuation of people, rape; that I took care of others while the patriots took care of themselves. We are all women in black! (awcasv@eunet.yu)

UNHCR's Protection Chief Blasts "Regrettable" EXCOM Drafting Process

The director of UNHCR's Protection Division has criticized the way in which EXCOM develops conclusions on protection, and urged governments to review the process.

Speaking on Thursday, Dennis McNamara expressed regret that this year's EXCOM has not produced sharper, shorter conclusions. While acknowledging that the debate was less "acrimonious" than last year, he still expressed doubt about the usefulness of the conclusions.

"We need to sit with EXCOM members and see how we can infuse these conclusions with greater protection relevance. Changing the procedure may help, but we believe that the approach to substance also needs to be carefully reviewed."

The protection conclusions have traditionally served as one of EXCOM's more important products, because they direct UNHCR's protection work over the year that follows. This year's conclusions were adopted late on Wednesday night, after several revisions and a long debate.

At one stage there was concern that there would be no consensus at all. The concern now is whether the final conclusions are sharp enough to provide governments with clear guidance, and UNHCR with the mandate it needs to prod governments on complex and controversial issues. These range from the detention of asylum issues to identifying the refugee component in "composite flows." McNamara termed this "UNHCR's ability to carry out its central and obligatory mandate function."

Although efforts were made this year to streamline and reduce the conclusions, they still managed to expand in the drafting. There are, for example, voluminous references to this being the 50th anniversary of the Universal Declaration of Human Rights, and next year being the UN's year of Older Persons. "Some governments remain reluctant to tackle current issues other than in very guarded and general language," said McNamara.

On substance, a comparison with an earlier draft shows, for example, that the text on family unity has more than doubled in length while being weakened in at least one critical respect. Many governments are applying an increasingly restrictive definition of the "family" in determining who might qualify for refugee status. In the view of advocates and UNHCR, this is one of the many ways in which they are restricting access to status determination procedures. The earlier draft conclusions called on states to use "broad criteria" in identifying family

members, and even urged governments to seek them out through tracing. Both have been dropped in the final version.

On the other hand, the provisions on the detention of asylum-seekers appear to have been toughened. Instead of noting that arbitrary detention "may not be consistent" with international standards, the conclusions now state this bluntly as a fact. They also use stronger language in "deploring" the detention of minors, and the detention of asylum seekers with common criminals.

One notable conclusion, much expanded from the earlier version, "deeply deplores" the use of force against rejected asylum-seekers, and states that they should be returned in a "humane manner." The change is thought due to the recent death of a young Nigerian woman who was smothered by police while being deported at Brussels.

Advocates will also be reassured by a strong statement to the effect that asylum should not be conditioned to burden-sharing (the theme of this year's EXCOM). This confirms that while burden-sharing is essentially a pragmatic response to refugee movements, the conclusions note that access to asylum is a legal obligation.

McNamara's reservations on the drafting process drew statements of support from many states, and may well lead to a fundamental review. This would mark a significant development over last year's EXCOM, which was marred by a vitriolic debate over UNHCR's protection role in the Great Lakes of Africa. Much of the improvement is put down to the efforts by the Protection Division to reach out to governments. Twenty have been visited so far.

At the same time, a stronger protection mandate would clearly help UNHCR in most regions of the world. Several key governments in Asia have not ratified the 1951 Convention, and this deprives UNHCR of a firm legal authority for intervening on behalf of vulnerable groups like the Burmese refugees in Thailand and Bangladesh.

Many of the most damaging protection trends are extremely complex. At the heart of the controversy over detention, for example, is a fundamental difference of perception. Governments view asylum-seekers who enter their territory without a visa as "illegals." But nongovernmental organizations (NGOs) feel that asylum-seekers are forced to resort to subterfuge because of the obstacles that are placed in their way, and urge that they should be given the benefit of the doubt. Disagreements like this require clear thinking and guidance, not a fudged political consensus.

UNHCR "Not Protecting" Burmese Refugees in Thailand, Says Human Rights Watch

Key Asian governments urged to ratify the 1951 Convention

In a new report, Human Rights Watch has criticized UNHCR and the government of Thailand for failing to provide adequate protection for 100,000 Burmese refugees on the border between Thailand and Burma.

The new report, which was launched here on Thursday, accuses Thailand of "repeatedly violating" the principle of non-refoulement with regard to Burmese. It warns that the current economic crisis increases the risk that asylum-seekers will be sent home, as Thailand seeks to expel all undocumented migrants.

The Human Rights Watch report went to print as UNHCR was negotiating with the Thais for a formal role at the border. But, says the report, indications were that the agreement would do little more than allow UNHCR a "limited protection role." The primary aim of the agreement, said the report, was to "facilitate eventual repatriation" to Burma.

A September 22 memorandum between the Thais and UNHCR states that the camps will be relocated to a safer distance from the border. New arrivals will be admitted if they are fleeing fighting or "the effect of the same." Admissions will be determined by the Thais "in consultation with UNHCR."

UNHCR would establish a "minimal structure" of three field offices, to be based in the three border provinces, but not at the actual border. UNHCR would expect "regular access" to the border population. The agreement states unequivocally that UNHCR's role will include "facilitating the return of the refugees when the conditions are conducive" to return. This was reinforced by the head of the Thai National Security Council, during his statement to EXCOM.

Meanwhile, the Geneva-based Burma Peace Foundation took advantage of EXCOM to release extracts from a recent report by the International Labour Organisation, alleging widespread forced labor inside Burma. In addition to the Burmese on the Thai border, NGOs have also expressed concern on behalf of some 25,000 Burmese Muslims, or Rohingas, who are in Bangladesh. These are all that remain of over 200,000 Rohingas who have returned to Burma in the past six years, and NGOs are concerned that UNHCR will bow to pressure from Bangladesh and Burma and send the remainder back.

These concerns on Burma were expressed forcefully to UNHCR officials by the NGOs in their pre-EXCOM session, and they symbolize a general feeling that refugees are increasingly vulnerable throughout the entire Asian region. Four major governments – India, Pakistan, Bangladesh, and Thailand have yet to ratify the 1951 Refugee Convention. This deprives UNHCR of legal backing in its efforts on behalf of refugees.

The Burmese refugees, however, have become something of a litmus test of UNHCR's fortitude in this difficult region. It is ten years since the violent suppression of the pro-democracy movement in Burma, and the military government shows few signs of relenting. A recent report from Amnesty International gave the names of 30 detainees that are known to have died in prison in the last decade.

NGOs have been criticizing UNHCR for years over its role in the repatriation of the Rohingas from Bangladesh – both for not insisting on safeguards in the camps, and for downplaying the gravity of conditions inside Burma itself.

UNHCR's reply is that it has done what it can in the face of deepening economic pressures, and intransigent governments. Speaking to NGOs before EXCOM, Francois Fouinat, chief of UNHCR's Asian Bureau, insisted that there would be no premature repatriation to Burma from Thailand until a number of conditions have been met. These would include "international monitoring on both sides of the border" and "far more peaceful conditions" in Burma itself. There was, he said, no immediate prospect of repatriation taking place in safety and dignity.

But, he said, 7,000 out of the 21,000 Rohingas in Bangladesh in camps had expressed a desire to return home, and UNHCR has "no doubt that this is genuinely motivated and voluntary." UNHCR would be there to "make sure there are no returns against their will."

All this is much too weak for many NGOs, who feel that UNHCR must develop clear benchmarks for repatriation, and establish basic minimum standards that must be met before repatriation can go forward.

UNHCR's own PARinAC contact in Australia urged UNHCR to establish a sub-office at the border and "actively engage in status determination procedures and the screening of new arrivals." The statement also asked whether there were plans for Burmese who might refuse to be relocated and asked UNHCR to monitor any spontaneous returns that might take place. This would appear to envisage a more proactive role than UNHCR's agreement with the Thais.

- "Unwanted and Unprotected: Burmese Refugees in Thailand." Human Rights Watch, New York.

Ethiopia and Eritrea Squabble Condemned by Namibia

Namibia has rebuked Eritrea and Ethiopia for bringing their dispute into the "humanitarian" forum of EXCOM, and urged both sides to seek a peaceful solution under the auspices of the Organisation of African Unity (OAU).

The Namibian comments came after an angry exchange here at EXCOM between the two former allies that started when the Ethiopians accused Eritrea of starting the recent conflict and displacing over 200,000 Ethiopians.

In reply, the Eritrean delegation accused Ethiopia of "dumping" 23,000 ethnic Eritreans at remote areas near the frontier. Another 5,000 are "languishing in detention," they said.

The venomous nature of this exchange was a further reminder of the potential for full-scale war in the Horn. Several repatriation programs have been put on hold, and a major eruption of fighting would undoubtedly lead to further outflows.

World Should Work with the Taliban, Say Afghan Refugee Relief Agencies

If the world is serious about helping Afghan refugees, it should reopen links with the Taliban government in Afghanistan, according to five prominent Afghan relief groups who spoke in Geneva Thursday.

Almost 20 years after the first massive exodus of Afghans following the Soviet invasion, 40% of the entire Afghan population are refugees, and their impact on Afghanistan's neighbors is as acute as ever. During this meeting of EXCOM, the governments of Iran and Pakistan have appealed for more international help and hinted that they may be forced into tougher measures if it is not forthcoming.

Many feel that the crisis has worsened following the emergence of the Taliban in Afghanistan itself. The Taliban have waged a fierce war in their efforts to win power, and their strict policies towards women have forced all the major relief agencies – including UNHCR – to withdraw in protest. UNHCR's absence has put a halt to formal repatriation.

But this reaction was criticized by the Afghan representatives at their briefing as counterproductive and misinformed. "Amidst enormous confusion around the Taliban rule, the world community has lost vision of the Afghan people's wishes, aspirations and expectations," said Rafaat Ludin, director of the Afghan Agency for Rehabilitation and Energy-conservation in Afghanistan (AREA). "It has slowly, but gradually, fallen deeper and deeper into the trap of confusing the people of Afghanistan with the Taliban authorities."

The decline in international aid is having the reverse effect of that intended, said the representatives. It increases the chance of human rights violations, and the Afghan people suffer from malnutrition and a lack of health care facilities.

Meanwhile, the reduction in international aid to the refugees has forced Pakistan to close six teaching centers in the refugee camps. As several speakers have noted throughout this EXCOM, such teaching centers are particularly important since the Taliban does not allow the education of girls within Afghanistan.

Even in Afghanistan itself, there are ways for aid agencies to circumvent the prohibition against women working – one of the main problems for the international community. AREA, which works within the country, has convinced the Taliban to allow women to work for the organization, and employs about 150 women in Taliban-ruled areas.

One way to lessen the severity of Taliban law and work towards peace, said the NGOs, is through the "Afghan way." Instead of insisting on immediate change – which only causes hostility and frustration to result on both sides – donors should practice dialogue and patience.

An example of the "Afghan way" is the way that girls' education started 70 years ago. At first, only daughters and wives of ambassadors were educated, since it was agreed that they should make a good impression when posted abroad. Later, the daughters and wives of ministers were allowed to go to school. Eventually, after 20 years, education was available to all girls – although not now under Taliban rule.

The "Afghan way" takes time. It relies greatly on building trust and using personal connections. It was through such means that the Taliban was convinced to allow a German TV team to film in Afghanistan despite laws to the contrary.

The NGOs also insisted that trying to force Afghans to do things will not work, and that Afghans are in a better position to effect change by employing the "Afghan way" than international NGOs and governments. Said Ludin: "You can persuade an Afghan to go with you to hell, but you can't force him to go with you to heaven."

For many observers, UNHCR's policy on the Afghan refugees underlines the importance of developing an "exit strategy" for withdrawing from humanitarian emergencies which become impossible. Withdrawing from Afghanistan, for example, should not mean reducing aid to all Afghans, or result in UNHCR adopting a lower profile in Iran and Pakistan. Quite the reverse: UNHCR should be more vigorous in drawing attention to the global needs of the needs. The tougher issue remains Afghanistan itself: should UNHCR withdraw if by so doing it worsens the humanitarian crisis?

Worldaid '98 Links Private Sector and Aid Agencies

Three hundred and fifty aid agencies and commercial enterprises advanced the dialogue between the private sector and humanitarian community at Worldaid '98, which finished in Geneva on Thursday.

Both sides had a chance to display their wares in the giant PALEXPO exhibition hall: on the one hand transport, pharmaceutical, communications, tents, water, food services, and energy sources: on the other, relief and development services. Straddling the two were information giants, like Reuters. One hundred NGOs and UN agencies and two hundred and fifty commercial enterprises from over forty-five countries, took part.

In addition to technical innovation, Nick Cater, program director for WorldAid '98, said that NGOs have a lot to learn from private sector accountability and performance evaluation. It could even help to start developing humanitarian indicators. There were certainly important (if unintended) echoes between this and the meeting of EXCOM that has also taken place in Geneva this week: UNHCR's auditors have pressed UNHCR to adapt more rigorous accounting procedures and account better for the way it spends money in the field.

Worldaid '98 laid on a full schedule of meetings and a distinguished list of speakers, who discussed contemporary humanitarian dilemmas and initiatives. These included a draft code of conduct for humanitarian agencies that is being reviewed by the UN system.

But most agree that work still needs to be done in bridging the gap between the "non-profits" and the private sector, and that major philosophical differences remain. Private companies are kept accountable by their profit margin and their shareholders as much as by a sense of social responsibility – and often the two do not always coincide.

In addition to exhibition stands, Worldaid '98 offered debates on humanitarian issues, ranging from preparedness to rehabilitation, as well as the more technical aspects of aid, like procurement. The sessions were led and attended by exhibitors, external consultants and visitors. One firm that deals in alternative energy sources – 'Total - Energie' – said solar energy could be used as a substitute for electricity or diesel generators in remote areas. Like some other companies present, the firm lowers its prices when dealing with humanitarian clients.

Such demonstrations proved invaluable for procurement officers. One, from World Vision, was able to meet simultaneously with a radio supplier and the network installer. This meant he could put in an order for the entire radio system to be set up in the field. Offered the chance to shop around, some NGOs were able to find competitive prices. NGOs were able to attend and exhibit at no charge.

'Secouriste Sans Frontieres,' with 70 volunteers, decided to attend Worldaid in 1998 after attending Worldaid '96 as a visitor. This showed how Worldaid '98 was able to give small NGOs an opportunity to network, get new ideas on latest technological improvements and competitive prices.

Worldaid '98 took place at a time when aid budgets are falling, and there is much talk of "engaging the private sector" in the humanitarian challenge. But the question has always been whether both sides can move past technical issues to the more substantial issues that divide as well as unite them.

There is, to some NGOs, something intrinsically immoral out of making money from humanitarian disasters and no shortage of infamous examples, like the South African firm Executive Outcomes (which has deployed mercenaries in several war-torn African nations), or the contribution made by private companies in developing land mines and other types of weaponry. Many would say that mining companies have played an unhelpful role in the recent disastrous history of the Congo.

Some private companies, for their part, feel that NGOs and UN agencies are also profiting from emergencies in their own way, and that they should be more accountable in their use of public funds.

Can the private sector be co-opted into the large and messy world of complex emergencies? Some would like to start talking to the global decision-makers like Coca-Cola, British Petroleum and IBM, and see whether they could use their influence to help prevent emergencies. Events like Worldaid '98 could make a start in developing the dialogue.

Focus on First Asylum in Africa

Refugee camps should mean safety. But the crisis in the Great Lakes of Africa showed that camps can also threaten the security of refugees when they are placed too close to a dangerous frontier, or when fighters and war criminals are not separated from the refugee population.

Camps of Insecurity by Nancy Beaudouin and Iain Guest

UNHCR was heavily criticized on both scores in the Great Lakes. The proximity of the camps in Zaire to the frontier with Rwanda meant that they were controlled by Rwandan rebels and killers. This exposed them to attack by the Rwandan army. UNHCR was criticized for failing to remove the killers, but replied that this could only be done by governments, particularly the host government. UNHCR repeatedly appealed for help, but without success. In the end, UNHCR was forced to use Zairian soldiers to ensure security.

But the very notion of "separation" threw up another protection dilemma – that of ensuring that any "separation" of war criminals or fighters would take place in accordance with law. At that stage none of the genocidaires had been formally charged by the international criminal tribunal in Arusha. UNHCR is struggling to prevent the same from happening to nearly 500,000 refugees from Sierra Leone.

At the heart of the current refugee crisis in West Africa is a vicious 7-year war in Sierra Leone that has been marked by horrifying acts of savagery against civilians, including mutilations. Some of the worst incidents occurred after ECOMOG forcibly intervened earlier this year to reinstall the elected government. Rebels fled to the Northeast and started a bush-war against civilians which included severing hands, arms, ears, and other body parts in an effort to terrorize civilians. Two hundred and sixty-seven thousand people fled to neighboring Guinea and Liberia, to join the old caseload of two hundred and twenty-two thousand.

In Liberia, 95,000 refugees are receiving UNHCR assistance, as are 350,000 in Guinea. The practical difficulties are immense, particularly in the rainy season. It is impossible to reach Vahun, Liberia, where there may be as many as 15,000 to 30,000 refugees. (Road conditions have already caused several accidents.) Added to this, the money is not coming in. UNHCR has received only \$4 million of the \$7 million it has requested for Sierra Leone. As Guinea's delegation told EXCOM on Wednesday: peace comes at a price. Africa finds it hard to pay.

"African refugees are basically forgotten," said a senior UN official "There's lots of rhetoric, but very little action."

Protecting the refugees in Liberia and Guinea is complex and difficult because the camps are so close to the border with Sierra Leone, and because rebels and killers left Sierra Leone with the refugees.

Separation

There is, say UNHCR officials, an important difference between "separation" and "exclusion." They point out that separation occurs when combatants are identified, disarmed and removed – something that UNHCR cannot possibly do. Only when combatants have been disarmed can UNHCR even attempt to screen the refugee population and "exclude" militia from genuine refugees.

Most of the refugees who fled to Liberia did so before the rebels were overthrown by ECOMOG forces in Sierra Leone, after which the war turned particularly ugly. As a result, the 95,000 refugees in Liberia are not thought to contain many perpetrators of atrocities, although Human Rights Watch reports that rebel fighters in Vahun pose a "clear security risk" to the refugees. There are also reports that rebels from Sierra Leone are making incursions into the camp to recruit refugees into their ranks.

There are more killers – and victims – among the refugees in Guinea. Since February, 210,000 have arrived. Combatants or known killers are identified and arrested by Guinean soldiers at the border and taken to Conakry, to be returned to Sierra Leone. Several have already gone on trial.

Has this "separation" been done in accordance with the law and with human rights? However unsavory they may be, they are still refugees and innocent until proven guilty of a crime or "screened out." As Dennis McNamara, chief of UNHCR protection, said Thursday at EXCOM: "How to identify and exclude such cases and deal with the consequences of such exclusion, particularly in mass influxesÉremain(s) a major challenge."

UNHCR has not been able to monitor the treatment of fighters at the border. It thinks that roughly 1,000 may have been arrested, and sent to Conakry. But UNHCR has been denied access to them. According to International Committee for the Red Cross (ICRC) officials, the ICRC has not yet managed to gain access to visiting the Sierra Leoneans in Guinea, but its delegates are visiting 1005 Sierra Leoneans in Freetown who included deported rebels. Trials in Freetown are being observed by the ICRC and UN human rights monitors, and generally found to be fair. UNHCR is considering screening with the Liberian Eligibility Commission for Refugees.

UNHCR's lack of access at the Guinean border certainly makes it hard to monitor the fairness of the procedure. Guinean forces are reportedly basing their "separation" on lists, but the origins are unknown. There is also some concern that refugees may be denouncing rivals or settling personal scores. Human Rights Watch has urged that UNHCR be present at the Guinea border. But this is ruled out for the moment by the lack of security and recent rebel incursions.

Proximity of the Camps

As in the Great Lakes, the Sierra Leonean refugees are exposed by the proximity of the camps to the border, in Liberia and Guinea.

According to Zainoul Abidine Sanoussi, Guinea's Minister of Interior, who addressed EXCOM on Thursday, rebels from Sierra Leone attacked the camps of Frokonia and Toumandou in Guinea this summer, killing several refugees and destroying several huts. These camps are less than 5 km from the border.

Observers describe the Liberian border area as a "chaotic and insecure free for all," in which Liberian forces are harassing and extorting from locals and refugees alike. Cleophas Pearson, from the Liberian delegation to EXCOM and head of the Liberian Refugee Repatriation and Resettlement Commission (LRRRC), told On the Record that he had personally witnessed a refugee being shot and wounded by a soldier because he refused to give him his food. He also

saw soldiers try to abduct and rape a young girl (The LRRRC intervened in time). But, he said, this is not surprising, given that these troops are not paid, fed, or trained. According to Pearson, hungry soldiers believe that since they provide security to refugees, the refugees should provide them food. It does not help that 85% of Liberia's infrastructure has been completely destroyed.

The standard way of avoiding attacks on camps is relocation away from the border. Indeed, the OAU has recommended that no camp should be closer than 50 km from a border.

In an effort to persuade the refugees to move further inland into Liberia, UNHCR has stopped general assistance programs at Vahun, on the border, and started assistance at Kalahun – some 70 km away. So far, according to UNHCR, 17,000 out of the 35,000 refugees have moved, although the LRRRC feels that the majority remain in Vahun. Many share family/ethnic ties with local families, and have started small-scale activities, such as agriculture.

The problem is that UNHCR's decision leaves a huge number of women and children in Vahun who are not receiving aid. UNHCR only delivered 96 tons of essentials to the most vulnerable last month. According to Human Rights Watch, most refugees only received a "two-week" ration between the time of their arrival in February/March, and June 1998. The issue is moot at the moment, because UNHCR cannot deliver supplies by road anyway, but insisting on relocation does certainly deprive many "genuine" refugees of aid.

UNHCR would like to consolidate all the camps in Guinea to Guekedou, but this clearly worries the Guinean government. Minister Sanoussi told EXCOM that 330,000 refugees are already living in 373 camps in Guekedou – far more than the local population of 213,900. This is causing deforestation, and taking a heavy toll on energy, land, food, employment, and roads. Animosity is growing against the refugees.

To UNHCR, it all adds up to a familiar challenge. Hopefully, the worst is over in Sierra Leone, but this does not make it suitable for repatriation. Until the time comes, the refugees in Guinea and Liberia have to be protected and assisted. As always, there are no easy answers.

Women at Risk

The vulnerability of women refugees has been well documented. UNHCR has responded by drafting guidelines, creating new staff posts, and making women a focus of its protection work. Is it enough? MARY DIAZ thinks not.

For UNHCR and all who work with refugees, (the) protection of women and children is a daunting task. Women and children are not only living on the margins because they are in exile. They are in double jeopardy, for within their communities they often have no voice, no standing, and little or no access to power.

This year, we have seen:

- Women and children in Sierra Leone among the primary targets of machete attacks, boys who are kidnapped for forced conscription, girls who are abducted to serve as servants.
- The Centre for Protection of Women and Children in Pristina reports that 63% of the internally displaced in Kosovo are children and 25% are women.
- Thousands of displaced children within Sudan who are starving to death, as a result of famine induced by war;
- Thousands of Ugandan boys kidnapped and forced to wage war and commit atrocities, and thousands of girls are kidnapped and forced to act as sex slaves and support the war effort as lackeys and fighters.

Though UNHCR has made progress on these issues in recent years, we continue to see inadequate or very late responses from UNHCR. Women and children remain targets of violence and abuse in war zones and in refugee camps. There is often no proactive, preventive action from field operations.

Sexual Violence. One of the most pervasive and terrible human rights abuses suffered by women and children is rape and gender-related violence. The physical protection of women and girls is a huge problem in refugee situations, and one that UNHCR and others have failed to address adequately. Even though we have seen mass rape used as a tool of war in former Yugoslavia and Rwanda, many aid workers still refuse to see it as a serious human rights abuse.

One recent example is from the Tanzania-Burundi border camps. The International Rescue Committee, Women's Commission and Human Rights Watch documented – in three separate reports – that rape and assault of refugee women and girls is a major problem. As many of us heard (at the pre-EXCOM), UNHCR field staff responded in a shocking manner, saying that it was a "problem of the Burundian culture" and there was nothing UNHCR could do. We heard the same response in the refugee camps in Guinea, when three small girls were raped by a schoolteacher. The community insisted the teacher be fired; UNHCR said it was not its concern.

In another example, Refugees International recently found that thousands of Somali women continue to be raped and assaulted on a daily basis in refugee camps in Dadaab, Kenya. The Women Victims of Violence program was created by UNHCR in 1993 when it was first discovered that rape was a problem in the Dadaab camps. But the program was cut back a few years ago, and the rapes began again. Refugees International reports that "in March alone there were 24 attacks on women in which they were not only sexually assaulted but shot, knifed, severely beaten and robbed. Two of the victims were only 10. The eldest was 50. Many were gang-raped."

There are now programs in place in both regions, with efforts to prevent rape and treat victims, but why does it require an advocacy campaign for UNHCR to respond to serious human rights violations in camps that it administers? And where are the preventive measures?

We have known for some time that many refugee women and girls are raped when they go in search of firewood, water, and other supplies. Given this, it seems logical that from the time a camp is set-up there should be consideration as to how women will get firewood, what kind of food will be provided (some beans take much longer to cook and require double or triple the amount of firewood), and what kind of security and legal redress the refugee community and local community might be able to provide.

In some places UNHCR and implementing partners have supported the provision of human rights training to police, security forces, village elders, and refugee men, women, and youth. A good response will be a comprehensive one, one that recognizes the role of all of the agencies and institutions involved. But UNHCR is the lead agency and coordinating body in many of these situations. We have an ongoing concern that children's and women's issues are not fully integrated into the regional offices and bureaus of UNHCR. However, we have also found – in assessment visits around the world – that governments and NGO implementing partners do not understand how to recognize or address human rights violations against women and children.

Putting policies into practice. We call on UNHCR, in partnership with NGOs, to make implementation of the Guidelines on the Protection of Refugee Women and Guidelines on the Protection and Care of Refugee Children the core of our work. Some donors now insist that UNHCR and its implementing agencies (incorporate) women and children's concerns in their field operations. Governments and UN agencies are obliged to meet the requirements of the Beijing Platform for Women and the Convention on the Elimination of All Forms of Discrimination Against Women as well as the Convention on the Rights of the Child.

Policies to protect refugee and displaced women will only be implemented if people are held accountable. We (hear) that this will be (done) through the (UNHCR) Career Management System later this year. A lack of human and financial resources may compound the problems of implementation, but over the long run promoting better protection and services for women and children will make programs more effective and efficient. We hope UNCHR staff in regional bureaus will assume more responsibility for safeguarding the rights of women and children. Directors of Regional Bureaus must be accountable and regional legal advisors must accept responsibility for all protection concerns in their areas, including concerns of women and children.

NGO staff should understand what human rights abuses women and children face and should know who to contact and how to address these violations. It is imperative that we build local capacity in refugee situations, so local leaders, including village elders and women, can assume roles as protectors and defenders of their communities. We should focus on restoring the strengths of refugees, not on concentrating on their vulnerabilities. The women at this meeting today – from NGOs in Bosnia, Rwanda, Afghanistan, Bhutan, and other local and national NGOs, can attest to this.

NGOs need to continue their work with governments to ensure that protection is part of an overall, coherent response, and that key mechanisms like the Convention on the Rights of the Child are refined and used. A good example of this the new International Coalition to Stop the

Use of Child Soldiers, an NGO-effort to raise the international minimum age for recruitment to 18 years by means of an optional protocol to the Convention on the Rights of the Child.

NGOs can make better use of the media to push for protection and convince states there are constituencies for human rights. We have seen how the media helped change attitudes toward rape as a weapon of war and forced many to take more seriously gender-related violence and persecution.

We must continue to work with UNHCR to determine whether the (UNHCR) guidelines on women and children are implemented in the field. We hope to hear soon the details of the restructuring plan and where the senior coordinators will sit. We hope to see a Regional Advisor for Women in West Africa, where the needs are great and sexual violence continues to be a serious problem.

UNHCR and NGOs should persevere in their work to defend the right to asylum. They need to work harder to promote better understanding and treatment of women who face gender-related persecution and children fleeing human rights abuses. No refugee agency can afford to ignore the rights and needs of the majority of its beneficiaries. The protection of women, children, and adolescents must be central to all of our thinking. We look forward to working with UNHCR to address these challenges.

Mary Diaz is from the Women's Commission for Refugee Women and Children. This piece was extracted from her comments at the pre-EXCOM meeting on protection. Diaz spoke on behalf of the International Working Group on Refugee Women and the Sub-group on Refugee Children and Children in Armed Conflict.

Milestones in UNHCR's Policy on Women

UNHCR has made the progress in promoting the protection concerns of women and children in the last 10 years. Among some of the major milestones are: the adoption of the Guidelines on the Protection of Refugee Women; the Guidelines on the Protection and Care of Refugee Children; the appointment of Senior Coordinators for both populations; and the appointment of a legal advisor who serves as a focal point for women and children. There are also regional advisors for women and children who are posted in refugee-affected regions around the world. UNHCR has a reproductive health program officer who works to coordinate the health efforts of UNHCR, NGOs, and other UN agencies, and who is helping to develop an Inter-Agency field manual on reproductive health in refugee settings.

Focus on Burden-Sharing

Over the past week, governments have been discussing "international solidarity and burden sharing" – the theme of this year's EXCOM. There has been a lot of talk, and some confusion. The debate has revealed widely differing views about the precise meaning of the term as applied to refugees, and even greater disagreement about how the "burden" should be shared. GREGOR NOLL reports.

The Politics of Dis-Harmonization

The idea of burden-sharing seems to make sense. Indisputably, the responsibility for refugee protection is not equally shared by states – neither between the states of the North and South, nor at a regional level. Globally, one could mention Iran, which has been at the top of reception statistics for seven years, sheltering nearly two million refugees. Regionally, Germany hosts 1.2 million refugees – more than all other Western European states taken together.

If the load was spread more equally, it might slow down the rush to restrict the interpretation of refugee law, and thus contribute to maintaining or even enlarging the capacity of the refugee protection regime. Against this backdrop, one might have expected that recipient countries, advocacy groups, and UNHCR would unite in promoting the launch of more tangible solidarity mechanisms.

But this is not the case. And for good reason.

At the outset, it should be recalled that burden-sharing is but a means to an end. The end is to make maximum use of the world's protection capacities. This presupposes a continued openness of states – both under and beyond international law – to receive those in need of protection. Openness, in turn, presupposes confidence that all other states will contribute. One way of building such confidence is through assistance to states which host relatively large numbers of refugees.

At the same time, it must be stressed that burden-sharing is no legal precondition for receiving refugees. States must comply with the prohibition of refoulement and other norms under international law even where other states do not share the costs arising from this compliance.

Beyond this, dissent is growing.

A question of paramount importance is how to define the burden. Does carrying the burden mean contributing funds to UNHCR? Or does it mean hosting people (with all those costs of reception and integration which are so hard to quantify)? As the Bangladesh representative notes, the contribution of refugee-hosting countries is not only economic, but also socio-political. Such countries are, in the view of the Indian government, "the large donors."

Some predicted that this year's annual theme would simply provide an arena for a major conflict between North and South. As Peer Baneke of the European Council of Refugees and Exiles observed, burden-sharing had been put on the agenda in the 1970's by states in the South, who sought international rather than just regional solidarity. Today, however, the initiative seems to lie with the states in the North, who have expressed an outspoken preference for limited regional solutions. This is confirmed by the EXCOM statements of –amongst others – the Netherlands, Austria, Norway and the US.

Given the efforts of the North to deflect asylum seekers from their territories, it is understandable that sharing the burden "inside the fortress" may seem of less importance than sharing between

the North and the South. As the representative from Bangladesh puts it: "The increasing tendency to use restrictive asylum policies É adds to the complexity of the refugee crisis."

Beyond the North/South-divide, there are other questions: Should burden-sharing be regulated beforehand or would an ad-hoc arrangement, tailor-made for each specific crisis, yield a better result? Should solidarity measures be limited to situations of "mass inflow" or should it include individual arrivals? Is burden-sharing best used in a context of temporary protection or should it apply in other contexts as well? How should states share the burden: by sending money or reallocating people? What should be the distribution key for apportioning each state's contribution?

The European Union (EU) has attempted to formulate answers on three occasions.

In 1994, Germany presented a draft instrument on burden-sharing in situations of mass influx, proposing that each member's share should be based on each member state's percentage of the EU's population, territory, and GDP. The draft also envisaged the sharing of people, showing that large receivers would not be satisfied with fiscal burden-sharing alone. States would also be permitted to make deductions to their reception obligations, based on any military intervention in the crisis and the number of refugees already on their territory. However, the German draft failed to muster the necessary support. The fact that Germany would have been its first beneficiary at the expense of other member states may provide some explanation for this.

After a prolonged discussion and numerous compromise drafts, the EU Council adopted a resolution on burden-sharing in a context of temporary protection in 1995. This instrument is strikingly different from the 1994 draft, in that it lacks any predictable mechanism for allotting responsibilities. Basically, it says that states should sit down and talk about burden-sharing, whenever the situation so requires. Ironically, its preamble says that "situations of great urgency . . . require prompt action and the development beforehand of principles governing the admission of displaced persons."

However, these principles are developed ex post facto under the resolution. Consequently, it is very probable that a cautious state would rather block access for refugees than trust in the outcome of this ad-hoc exercise in the Council. If this text indeed has "consolidated the notion of burden-sharing in the EU context," as the Austrian representative to EXCOM put it, this consolidation is to be deplored.

Is there a middle ground between Scylla and Charybdis – between ad-hoc responses and predetermined percentages? Apparently, the European Commission thinks so. In 1997, the Commission presented a proposal on temporary protection which contained a rudimentary burden-sharing mechanism. The latter triggered so much debate that the Commission thought it wise to split up the single draft text (March 1997) into two separate drafts. One joint action would deal with a Union-wide "Temporary Protection Regime," containing a number of minimum rights and a mechanism for the common opening up and phasing out of such a regime. Another joint action would be entirely devoted to burden-sharing or (in the terminology of the Commission) "solidarity."

Primarily, member states would share the burden by a system of financial contributions. Under the first phase, a fixed emergency budget would be proposed for the first three months of a crisis. This would cover accommodation, subsistence and emergency medical assistance. The budgetary support for this item remains to be created. Secondly, reception projects could be financed from the existing EU budget. This longer-term measure would cover accommodation, social assistance and education.

While financial burden-sharing is the core of the instrument, a subsidiary provision in Article 5 of the Solidarity Proposal provides for the distribution of beneficiaries. A decision setting up a Temporary Protection regime "may also, as a secondary measure, define the rules allowing the beneficiaries of temporary protection to be distributed between member states, before or on arrival in the territory of member states." Clearly, this is merely a variation of the ad-hoc mechanism already put in place by the 1995 resolution. It would be like signing an insurance policy after an accident.

The core of this proposal is fiscal burden-sharing. But, as a Dutch NGO representative put it, why should the EU create a new mechanism for allocating funds when such a mechanism already exists? UNHCR could do the same job cheaper and, most probably, better. Which brings us back to the larger context. If states want a base for financial burden-sharing, they have one in UNHCR. Or, as the Austrian delegate, speaking on behalf of the EU, has put it: "If states want a base for financial burden-sharing, they have one in UNHCR. It is surely highly ironic that states are cutting back their financial support for UNHCR, while making burden-sharing the call of the day." UNHCR's budget crisis has had a particularly devastating effect on the South: in Africa, repatriation activities have stalled. The North/South divide in protection is becoming wider.

A final word from the lawyer's perspective. If the intention is indeed to maintain and enlarge protection capacities, they can be easily harmonized. The 1951 Refugee Convention certainly is a burden sharing-instrument in that it increases the predictability of refugee reception vis-[^]-vis both the individual and other states. In a burden-sharing context, it is all the more disturbing that some states undermine this basic instrument of harmonization by chiseling away at its definition. Salvation would lie in a rigorous implementation of existing standards and a speedy development of more specific norms. Last year's EXCOM does not bode well in this respect. Whether this year's will, is more than doubtful.

"The bottom line is: should developing countries ever be seen to show reluctance to welcome asylum seekers, it would be more out of compulsion than design. It would, therefore, be unfair to patronize the refugee hosting developing countries to carry on with the burden for the sake of human rights, while there are continuing incidences of refoulement, through summary expulsion of asylum seekers, occasionally en masse, and detention often under inhuman conditions in certain countries. The situation becomes even more bleak when we perceive a steep decline in financial contributions to humanitarian bodies and agencies, leading to a large-scale downsizing of humanitarian operations." Ismat Jehan, Counsellor, Permanent Mission to the United Nations Office of Geneva, Bangladesh.

Sharing the Responsibility to Protect Refugees

NGO submission to the 49th session of the Executive Committee of the United Nations High Commissioner for Refugees Programme

This NGO statement has been drafted in consultation with International Coalition of Voluntary Agencies (ICVA) members, PARinAc regional focal points, and non-ICVA members. It has been cut to fit our forum. Contact ICVA to see in full.

International Solidarity According to Existing International Standards

1. The non-governmental organisations (NGOs) welcome the attention given to the theme of burden sharing and international solidarity at the 49th session of the Executive Committee (ExCom) of the UN High Commissioner for Refugees' programme. Effectively addressing the plight of refugees, asylum seekers, returnees, stateless and internally displaced persons requires the cooperation of States, international agencies, NGOs, and of course, the involvement of these vulnerable groups themselves.

2. We wish to note that the international refugee instruments, the ExCom Conclusions and the institution of UNHCR itself, already provide a framework for universal responsibility sharing. States must strengthen this framework rather than undermine it as has occurred in many parts of the world during the past year. The NGO community also wishes to note that the existence of responsibility sharing arrangements should not be a pre-condition for providing refugees with the full range of rights guaranteed to them under international human rights and refugee law.

Trend of Diminishing Responsibilities

3. We wish to express our concern at a new trend that has been observed by the NGOs. National legislation and radical regional proposals have been introduced that aim to protect States against refugees and asylum seekers, rather than providing protection for refugees and asylum seekers. Refugees are referred to as a 'burden' instead of a resource and are treated as commodities that can be shipped from country to country. The responsibility to protect and assist refugees and asylum seekers is shifted back to 'safe third countries' or to 'safe areas' changing the concept of responsibility sharing, into 'burden shifting'.

4. We are concerned that the new restrictive measures and policies are often defended on the basis that there is a need to combat the, sometimes unsubstantiated, levels of misuse of asylum procedures by asylum seekers. Summary determination procedures; visa restrictions; carrier sanctions, the prohibition to enter with invalid travel documents; and the use of detention measures are all measures obstructing access to procedures which are fundamental in enabling individuals to exercise their right to seek asylum.

International and Comprehensive Responsibility Sharing

5. We endorse a universal, comprehensive and collaborative sharing of responsibility for refugees and asylum seekers at all stages of the refugee experience. This includes to promote respect for human rights in countries of origin; to ensure that States fulfil their obligations to provide access to safe and secure asylum; and finally, to ensure that States share their collective

responsibility in the search for durable solutions, which conform to international human rights and refugee standards. This entails a continued respect for the voluntary nature of repatriation, the continued relevance of resettlement as a durable solution and as a tool for protection, and the continued need for local integration as a durable solution both in developing and developed countries.

Political Response and Protection

8. We believe that the lack of an early and decisive political response by the international political bodies and actors, including regional organisations, to a number of crisis situations has effectively led to a total delegation of responsibilities to humanitarian organisations, including HCR. In this respect, we endorse the conclusions of an experts' conference held in The Hague on 18 September and submitted in a letter to the Chairman of this Committee, where it was stated that in an increased number of situations UNHCR has taken on board a broadening range of activities which may have jeopardised its core mandate. We wish to note that in certain situations other international bodies and organisations may be better placed to carry out these activities, including the coordination of humanitarian assistance, the protection and assistance to internally displaced persons (IDPs), and the execution of reconstruction activities. We call on the Executive Committee to undertake the necessary measures - some of them have been outlined in the letter of the Dutch Working Group on International Refugee Policy - to reinforce UNHCR's protection mandate for refugees

9. Among others, the crises in Kosovo and Central Africa illustrate the urgent need for greater international collaboration and responsibility sharing in providing effective protection and assistance to internally displaced persons. We wish to note that internal displacement issues exceed the capacity of any one agency and the interventions on behalf of IDPs should be rights-based.

Refugees and Human Rights

10. We are encouraged to see this year's Note on International Protection rightly emphasizing the crucial importance of the relationship between refugee protection and international human rights standards. In particular, we are glad to see that the wider meaning given to non-refoulement by human rights instruments was recognized. We also welcome the resounding endorsement that the ExCom members have given to the Note.

11. We remain concerned however that the office of the UN High Commissioner for Human Rights (OHCHR) remains under-resourced and severely hampered in its operational capacity. We urge States to provide adequate resources to UNHCR and OHCHR in their complementary roles. This is essential to realising the commitment to promoting a comprehensive and rights-based response to refugee movements. We call on UNHCR and OHCHR to conclude memoranda of understanding not only for specific situations but also at an inter-agency level.

NGO participation

18. We are highly appreciative of the fact that since the beginning of this year the NGOs have been able to participate in the meetings of the Standing Committee. We welcome opportunities for open dialogue and consultation with UNHCR and members of the Executive Committee. While there are a number of areas in which NGOs can play a constructive and useful role, human rights refugee and humanitarian NGOs in particular look forward to contributing their expertise to the discussion on standards of return. We also appreciate the resounding endorsement of the June 1998 Standing Committee to give attention to this matter.

19. We commend UNHCR's efforts to set up a programme to enhance the effectiveness of national NGOs and to consider a re-launch of the PARinAc process. We note the mutual wish to review the structure of our pre-ExCom meetings so as to give more room to the different needs to discuss various issues. We appreciate UNHCR's announcement to consider the re-establishment of a 'friends for protection mechanism' in order to discuss NGO contributions to UNHCR's protection mandate

20. The NGOs participation in the Standing Committee, initially for a trial period of one year (1998), was endorsed following the June 1997 session of the Standing Committee wherein it was recognized that NGOs have the capacity to enrich discussions. We look forward to continuing our good collaboration with UNHCR and the members of the Executive Committee and hope that the Standing Committee will endorse a decision that implies our involvement in the ExCom process for an indefinite period.