

**STUDY OF THE U.S.
EXPEDITED REMOVAL PROCESS**

Report to the U.S. Department of Homeland Security

**UNITED NATIONS
HIGH COMMISSIONER FOR REFUGEES**

**WASHINGTON REGIONAL OFFICE
FOR THE U.S. AND THE CARIBBEAN**



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Attachment A: Letter from Guenet Guebre-Christos, Regional Representative, UNHCR Regional Office for the United States and the Caribbean, to Joseph Greene, Acting Deputy Executive Associate Commissioner, Enforcement, Field Operations, Immigration and Naturalization Service (Aug. 28, 2001).

Attachment B: Letter from Hebrew Immigrant Aid Society to Edward McElroy, INS District Director, New York District, and copied to UNHCR (Feb. 27, 2003).

I. EXECUTIVE SUMMARY

The Office of the United Nations High Commissioner for Refugees (UNHCR) is mandated by the United Nations General Assembly to ensure international protection for refugees and to assist governments in identifying and implementing durable solutions on their behalf. UNHCR believes that accelerated entry procedures can be a useful case management tool within the asylum procedure if the types of claims which can be categorized as manifestly unfounded or clearly abusive are clearly defined, if appropriate safeguards are in place, and if other eligibility criteria (such as bars to asylum) are not applied at this early stage.¹

The expedited removal process represents a fundamental reshaping of US immigration law. Pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), immigration officials at US ports-of-entry are authorized to order the removal of certain non-citizens whom they deem to be inadmissible to the US, unless they express an intention to apply for asylum or a fear of return to their country of origin. Previously, all inadmissible persons, unless their applications for admission were withdrawn, were automatically placed in proceedings before an Immigration Judge, where they could apply for asylum and pursue administrative and federal court appeals.

Proponents of expedited removal have emphasized its efficacy as a border control mechanism, as well as a means of both preserving the integrity of the asylum system and better utilizing government resources by quickly screening out those cases that clearly have no merit under existing US asylum law. Critics have raised questions about the impact of expedited procedures on vulnerable groups, particularly asylum-seekers, noting that decision-making at ports-of-entry lacks such procedural safeguards as legal representation, decisions by trained adjudicators, professional interpretation, and judicial review.

In 1997, UNHCR submitted comments to the Immigration and Naturalization Service (INS)² about its proposed and interim regulations implementing the expedited removal provisions of IIRIRA.³ In these comments, UNHCR noted some of the relevant international standards for expedited asylum procedures and made recommendations to the INS proposed procedures on this basis.⁴ Since the expedited removal process went into effect in April 1997,

¹ Global Consultations on International Protection, Second Meeting, *Asylum Processes: Fair and Efficient Asylum Procedures*, EC/GC/01/12 (May 31, 2001), para. 26 [hereinafter *Asylum Processes: Fair and Efficient Asylum Procedures*].

² It should be noted that, while the functions of the INS are now incorporated into the Department of Homeland Security (DHS), this study and the bulk of this report took place while the INS was still in existence. Therefore, references to INS, rather than to DHS, remain, although recommendations are made to the appropriate DHS bureaus.

³ UNHCR Comments on Proposed Rules on Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; and Asylum Procedures (Feb. 3, 1997); UNHCR Comments on Interim Rule on Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; and Asylum Procedures (July 7, 1997).

⁴ For example, in its comments, UNHCR recommended that: (1) the credible fear standard be modified; (2) asylum-seekers not be subject to mandatory detention; (3) at-risk groups not be placed in expedited procedures; (4) meaningful review procedures for expedited removal orders be established; (5) immigration officials receive appropriate training; (6) asylum-seekers be provided information about the expedited removal process; and, (7) asylum-seekers have meaningful access to counsel and interpreters.

UNHCR has raised concerns with the INS about its implementation, based on its periodic visits to US ports-of-entry, as well as information received from asylum-seekers and refugee advocates.⁵

In this study, UNHCR has sought to impartially and qualitatively assess whether the expedited removal process affects access to asylum and whether its procedures are consistent with international standards. This study is not quantitative. In order to provide an independent evaluation of the expedited removal process, UNHCR has drawn upon first-hand observations of the process over a six-month period of time, has conducted numerous interviews with INS officials and asylum-seekers, has reviewed numerous files, and has consulted with various asylum advocates.

This study focuses on three core aspects of the expedited removal process as they affect asylum-seekers:

1. access, that is, whether the expedited procedures are sufficient to ensure that asylum-seekers are not returned to a country of feared persecution without an opportunity to adequately pursue their claims for protection;
2. the secondary effects of expedited processing on access to asylum, such as the accuracy of the record created during expedited removal and its potential impact on later proceedings;
3. the treatment of asylum-seekers in expedited removal, including how this treatment affects their willingness and ability to pursue asylum in the US.

UNHCR visited five major ports-of-entry in the course of this study, between January and June 2002. Of these, UNHCR spent six to eight weeks at three airports—John F. Kennedy International Airport (JFK), Miami International Airport, and Los Angeles International Airport (LAX). UNHCR also briefly visited Newark International Airport and the San Ysidro border crossing, spending three to five days at each to gain a comparative perspective.

In general, UNHCR found that most inspection personnel at the ports properly identified potential asylum-seekers and referred them for a credible fear interview. The asylum advisal and fear-related questions on INS Form I-867 (Jurat and Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act) were generally presented, and many individuals were referred on the basis of non-verbal expressions of fear.

⁵ See, e.g., UNHCR reports to INS regarding missions to Dallas Fort Worth International Airport (submitted June 21, 2002), Chicago O'Hare International Airport (submitted Feb. 15, 2002), and Detroit Airport (Nov. 25, 1998). See also, Letter from Guenet Guebre-Christos, Regional Representative, UNHCR Regional Office for the United States and the Caribbean to Joseph Greene, Acting Deputy Executive Associate Commissioner, Enforcement, Field Operations, Immigration and Naturalization Service (Aug. 28, 2001) (regarding visit to Chicago O'Hare International Airport) (Included in this report as Attachment A). In these reports, UNHCR has commented on the adequacy of interpretation in secondary inspection, the scope of secondary inspection interviews, the training of Inspections Officers and supervisory personnel, and the treatment of asylum-seekers by Inspections Officers.

UNHCR also observed positive practices at each port-of-entry visited. For example, Inspectors at Miami International Airport generally maintained a strong customer service ethic in an overwhelming work environment and took care to provide basic information to asylum-seekers in their custody. At JFK, Inspectors routinely asked the I-867 fear-related questions to applicants under the Visa Waiver Program (VWP) even though not required to do so by law. Inspectors at LAX made significant efforts to care for the basic needs of individuals in their custody, providing a comfortable, yet secure, waiting area. Many of the procedures at these ports-of-entry can serve as innovative models for others.

This report also identifies specific concerns about the inspection process in each of the three areas of focus listed above. Regarding access, Inspectors at all ports-of-entry generally upheld their responsibility to ask the asylum-related questions on the I-867 form and to refer qualifying applicants for credible fear interviews. However, UNHCR found that on a few occasions, contrary to Department of Homeland Security (DHS) guidelines, Inspectors did not make credible fear referrals despite a fear having been expressed by the asylum-seeker. In addition, Inspectors often engaged in questioning that was based on misunderstandings of basic US asylum law and excessive, given the limited goal of determining if the applicant had a fear of return to his/her country of origin. Interpretation during the secondary inspection process was consistently poor in quality. Some Inspectors treated asylum-seekers in an intimidating or derisive manner. This treatment appeared to stem, at least in part, from negative attitudes that these Inspectors held about asylum-seekers in general. This report also raises certain concerns regarding the extent of supervisory review of Inspectors, the availability and breadth of asylum-related training, and the coordination and oversight at the INS Headquarters level of expedited removal procedures.

With regard to port-specific areas of concern, UNHCR observed that Inspectors at JFK used restraints with more regularity than did other ports and that Miami Inspectors used holding cells more frequently, in part to coerce cooperation. LAX officials frequently gave more information to consulates about asylum-seekers apprehended at the port-of-entry than appeared to be required by treaty and sent this information to the consulate from the port-of-entry. Both practices risked *de facto* notification that the individuals were asylum-seekers.

While there were key differences in the operation of the expedited removal process at each of the ports-of-entry, ports are discussed separately in this report only to the extent that relevant and useful distinctions existed. Instead, operations at the various ports-of-entry are addressed within each issue-oriented section of the report.

With respect to Asylum Division practices, UNHCR found that the Division has implemented the credible fear component of expedited removal quite successfully, with efficiency and sensitivity toward refugee protection concerns. UNHCR does have some concerns regarding inconsistent decision-making and the accuracy and use of the I-870. With regard to the legal standard applied at the credible fear stage, UNHCR found that, consistent with international standards, the Asylum Division has generally implemented the credible fear standard as a limited screening mechanism and that most cases were referred for full asylum consideration. UNHCR identified a few cases, however, in which the Asylum Division found no credible fear of

persecution, yet in UNHCR's opinion, the cases would have satisfied the international "manifestly unfounded" standard.

Using international standards as the legal parameters of this study, UNHCR has sought to offer pragmatic observations and recommendations. While UNHCR views all of the recommendations included in this report to be important, there are some recommendations that are overarching and/or are deserving of particular attention. For example, in the area of Inspections, UNHCR observed many instances in which Inspections Officers acted contrary to DHS guidance on the implementation of the expedited removal process. (See, e.g., Sections IV(A)(1)(a) and IV(A)(1)(b) (when to refer for a credible fear interview); (IV)(7)(b) (reviewing I-867 with applicant); (IV)(B)(2)(a) (use of restraints)). UNHCR considers greater centralized oversight of the process and increased training to be critical. In addition, UNHCR is quite concerned about the consistently poor quality of interpretation during secondary inspection interviews and recommends that Customs and Border Protection (CBP) use professional interpreters such as those used by the Asylum Division. An overarching positive finding was the benefits of using the I-867 fear-related questions and the asylum advisal, which UNHCR recommends be used in other cases at the port-of-entry.

With regard to treatment of asylum-seekers, the overuse of restraints, such as at JFK, and the frequency of negative, and at times hostile, attitudes towards asylum-seekers is of significant concern. Both of these issues again raise the need for further training.

In the area of credible fear decision-making, while UNHCR did not study the Immigration Court process through direct observation, it is concerned about inaccuracies and omissions in the written record developed at both the Inspection and the credible fear interview stages and their possible impact on later court proceedings. Given the limited screening purpose of the interviews, UNHCR believes that these interview statements should not be used for impeachment purposes in later proceedings. Should they be introduced, increased efforts should be made to ensure their accuracy and appropriate use.

Section II of this report provides an introduction to the study which discusses background on the establishment of the expedited removal process, international standards regarding accelerated refugee status determination procedures, and the methodology used to complete this study. Section III of this report provides a summary of UNHCR's findings and recommendations, and Section IV, the body of the report, discusses the findings in more depth.

II. INTRODUCTION

Expedited removal is the US procedure by which certain non-citizens deemed to be inadmissible may be removed from the country without a hearing before an Immigration Judge. It represents a fundamental restructuring of US immigration law. Created by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), expedited removal has been one of the most controversial aspects of this reform bill. It has been the focus of two General Accounting Office audits, NGO investigative reports, academic studies, and high levels of internal monitoring by the INS.

Much of the concern, particularly from the advocacy community, has rested on the adequacy of safeguards to prevent the *refoulement* of refugees. Concerns have been raised because of the procedural safeguards at ports-of-entry that were eliminated under IIRIRA. Previously, arriving aliens who wished to apply for asylum were guaranteed full consideration of their claims before an Immigration Judge, including the right to legal representation; a full opportunity to present evidence on their behalf; professional interpretation; and judicial review.

The resulting political debate has been polarized and static for two reasons. First, the issue became ensnared in a “fairness vs. efficiency” dichotomy. The political actors who produced the expedited removal law tended to favor stringent controls in order to efficiently curtail perceived abuse of the asylum process. Opponents argued for high protection standards, but expressed little concern for efficiency. Fairness and efficiency thus became viewed as contrary political objectives.

Second, even as the INS took steps toward ensuring refugee protection through the rulemaking process, it provided little public access to the operation of its expedited removal system. As NGOs working on behalf of asylum-seekers failed to obtain access to secondary inspection, where expedited removal orders are issued, their concerns—justified or not—mounted.⁶

The Office of the United Nations High Commissioner for Refugees (UNHCR) is mandated by the United Nations General Assembly to ensure international protection for refugees and to assist governments in identifying and implementing durable solutions on their behalf. With this mandate, UNHCR undertook this independent evaluation to impartially and qualitatively assess the impact of the expedited removal process on individuals’ access to asylum. This study has included observations of the inspection and credible fear process and

⁶ The Office of the United Nations High Commissioner for Refugees has had access to secondary inspection throughout the implementation of the expedited removal process, pursuant to Article II of the 1967 Protocol relating to the Status of Refugees. INS Memorandum from Michael Pearson, Executive Associate Commissioner, Office of Field Operations, “Secondary Inspection Monitoring Guidelines at Ports-of-Entry” (Feb. 24, 2000). Non-governmental organizations, the media, and other interested representatives have been allowed more limited access to observe inspection procedures since February 2001. INS Memorandum from Michael Pearson, Executive Associate Commissioner, Office of Field Operations, “Secondary Inspection Access Guidelines for Visits by Non-Governmental Organizations” (Jan. 22, 2001). See also INS Memorandum from Michael Pearson, Executive Associate Commissioner, Office of Field Operations, “Supplement to NGO Secondary Inspection Access Guidelines” (March 20, 2001).

interviews with the participants in such a way as to close a gap left unfilled from previous studies of expedited removal.⁷

The US is a signatory and State party to the 1967 United Nations Protocol relating to the Status of Refugees (1967 Protocol). As such, the US has undertaken to cooperate with UNHCR in the exercise of UNHCR's functions and to facilitate UNHCR's duty of supervising the application of the provisions of the 1967 Protocol.⁸ From January 2002 through June 2002, UNHCR was allowed access to all aspects of expedited removal processing at five major ports-of-entry. UNHCR appreciates the access granted for purposes of conducting the necessary field research for this study, and we are pleased to present our findings in this report. INS also provided to UNHCR copies of relevant training and guidance materials and access to key personnel at INS Headquarters.

This introduction describes the US' obligations under the 1967 Protocol and UNHCR's position on standards for accelerated refugee status determination procedures, provides a brief overview of the legislative and regulatory history of expedited removal, and summarizes the methodology of this study.

A. International Standards and UNHCR Policy

The touchstone for UNHCR's consideration of any issue affecting refugees is the 1951 Convention relating to the Status of Refugees (1951 Convention). In acceding to the 1967 Protocol, the US agreed to abide by the substantive provisions of the 1951 Convention. Two 1951 Convention provisions are directly relevant to expedited removal. Specifically, Article 33 of the 1951 Convention articulates the well-known principle of *non-refoulement*, stating that "[n]o Contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened. . . ." Article 33's norm of *non-refoulement*, including non-rejection at the frontier, has been repeatedly recognized by the world community as a fundamental principle of refugee protection.

The drafters of the 1951 Convention also explicitly recognized the special difficulties of asylum-seekers forced by circumstances beyond their control to enter or reside unlawfully in the country of refuge. Specifically, Article 31 of the 1951 Convention provides that "[t]he Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who . . . enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

The 1951 Convention does not specifically address standards of treatment for asylum-seekers at the border, nor does it discuss procedures for determining refugee status. To assess international standards in these areas, UNHCR relies upon, most significantly, the Conclusions of the Executive Committee of the UNHCR Program, a group currently composed of sixty-one

⁷ Most notably, the previous studies lacked significant personal observation of the secondary inspection process and interviews with the government officials carrying out expedited removal.

⁸ 1967 Protocol Relating to the Status of Refugees, Oct. 4, 1967, 606 U.N.T.S. 267, art. II.

countries, including the US, which advises UNHCR in the exercise of its protection mandate. Executive Committee Conclusions are arrived at by consensus among the sixty-one Member States and serve under international law as evidence of evolving State practice with respect to refugee protection.⁹

The UNHCR Executive Committee has established minimum standards for States to follow in implementing expedited procedures. These standards, set forth in Executive Committee Conclusion No. 30, are intended to ensure that the expedited processing of asylum applications accurately identifies abusive cases while continuing to ensure access to regular procedures for all others. The Conclusion recommends that the standard of “manifestly unfounded,” or “clearly abusive” be used to determine which individual asylum-seekers do not merit access to full asylum procedures. It defines the standard as those applications “which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees, nor to any other criteria justifying the granting of asylum.”¹⁰ In a document leading to the adoption of Conclusion No. 30, it was emphasized that “the criteria for making such a determination should be defined in such a way that no application will be treated as manifestly unfounded or abusive unless its fraudulent character or its lack of any connection with the relevant criteria is truly free from doubt.”¹¹

The Executive Committee has noted, however, “that the spurious character of many wholly groundless applications of refugee status is not immediately obvious. Many unfounded, and even fraudulent and abusive, applications are not manifestly so, and can only be rejected after careful examination of all the facts of the case and an assessment of the credibility of the applicant.”¹² Among the complex issues that UNHCR believes are best afforded full procedural consideration are those connected to the application of the exclusion clauses under Article I(F) of the 1951 Convention and the internal flight/relocation principle.¹³

As for procedural safeguards that should be in place when processing manifestly unfounded cases in an accelerated manner, the UNHCR Executive Committee “recognized . . . the grave consequences of an erroneous determination for the applicant and the resulting need for such a decision to be accompanied by appropriate procedural guarantees.”¹⁴ The Committee therefore recommended the following minimum requirements:

⁹ For more information about the work of the Executive Committee, see UNHCR’s website at <http://www.unhcr.ch>.

¹⁰ UNHCR Executive Committee, *Conclusions on the International Protection of Refugees*, No. 30, para. (d) (1983) [hereinafter *Executive Committee Conclusions*].

¹¹ The Executive Committee of the UNHCR Programme, Sub-Committee of the Whole on International Protection, *Follow-up on Earlier Conclusions of the Sub-Committee on the Determination of Refugee Status with Regard to the Problem of Manifestly Unfounded or Abusive Applications*, Thirty-fourth Session, EC/SCP/29 at para. 19 (Aug. 26 1983) [hereinafter *Follow-up on Earlier Conclusions Regarding Manifestly Unfounded or Abusive Applications*].

¹² *Id.* at para. 23. See also, UNHCR, *Note on International Protection*, A/AC.96/898, Section (III)(C)(16)(e) (May 25, 1998) (“claims that . . . require an in-depth consideration of objective and subjective factors (such as the evaluation of credibility of the application or the concept of the internal flight alternative)” should not be channeled through manifestly unfounded accelerated procedures).

¹³ *Asylum Processes: Fair and Efficient Asylum Procedures*, *supra* note 1, at para. 29; UNHCR, *Note on International Protection*, *supra* note 12, at Section (III)(C).

¹⁴ *Executive Committee Conclusions*, *supra* note 10, No. 30, para. (e).

- (i) the applicant should be given a complete personal interview by a fully qualified official and whenever possible, by an official of the authority competent to determine refugee status;¹⁵
- (ii) the manifestly unfounded or abusive character of an application should be established by the authority normally competent to determine refugee status;¹⁶
- (iii) an unsuccessful applicant should be enabled to have a negative decision reviewed before rejection at the frontier or forcible removal from the territory... This review possibility can be more simplified than that available in the case of rejected applications which are not considered manifestly unfounded or abusive.¹⁷

In recent years, UNHCR has sought to clarify and expand upon the minimum procedural guarantees laid out in the above Executive Committee Conclusion. To this end, UNHCR launched a Global Consultations process with governments, NGOs, and experts in the field, seeking to address issues of concern that are either not directly dealt with in the 1951 Convention or about which there is little consensus internationally. The Global Consultations addressed the issue of fair and efficient asylum procedures in an accelerated process, notably by accumulating the best practices of Member States. The following recommendations were made in a resulting document in 2001, based on best practices observed:

- “All asylum-seekers, in whatever manner they arrive within the jurisdiction of a State, should have access to procedures to adjudicate their claim which are fair, non-discriminatory and appropriate to the nature of the claim.”¹⁸
- “Accelerated procedures when employed to resolve manifestly well-founded cases can be a useful case-management tool to enhance prompt decision-making. They may also be useful where abuse or unfoundedness is manifest. The parameters for these latter cases need to be clearly defined so that decisions involving complex substantive issues are not included.”¹⁹

¹⁵ *Id.* at para. (e)(i). The rationale for this recommendation was contained in a paper which was before the Executive Committee when it drafted Conclusion No. 30: “The chairman of one refugee status determination body observed that in some cases applicants whose requests appear at first sight to be unfounded, in that they make no reference to any grounds for fear of persecution, are subsequently determined actually to be refugees. He confirmed the view of experienced participants in determination procedures that even those applicants whose applications initially appear to be unrelated to the relevant criteria must be carefully interviewed to ensure that they have stated their actual grounds for seeking asylum. Given the complexity of the matter and the necessity in most cases of evaluating the applicant’s personal credibility, it would be desirable for the interview to be conducted whenever possible by a representative of the authority charged with the determination of refugee status.” EC/SCP/29 (1983).

¹⁶ *Executive Committee Conclusions*, *supra* note 10, No. 30, para. (e)(ii).

¹⁷ *Id.* at para. (e)(iii).

¹⁸ *Asylum Processes: Fair and Efficient Asylum Procedures*, *supra* note 1, at para. 50(a).

¹⁹ *Id.* at para. 50(d).

- “At all stages of the procedure, including at the admissibility stage, asylum-seekers should receive guidance and advice on the procedure and have access to legal counsel. Where free legal aid is available, asylum-seekers should have access to it in case of need.”²⁰
- At all stages of the procedure, including at the admissibility stage, asylum-seekers “should also have access to qualified and impartial interpreters where necessary.”²¹
- At all stages of the procedure, asylum-seekers “should have the right to contact UNHCR and recognized NGOs working in cooperation with UNHCR.”²²
- Decision-makers, including border officials, “should be trained in appropriate, cross-cultural interviewing skills, be familiar with the use of interpreters, and have requisite knowledge of refugee and asylum matters.”²³
- “The asylum-seeker has a responsibility to cooperate with the authorities in the country of asylum. The burden of proof is shared between the individual and the State in acknowledgement of the vulnerable situation of the asylum-seeker. The procedures should reflect both of these factors.”²⁴ Border officials should thus receive training in “awareness and sensitivity” regarding the reasons why some asylum-seekers may not cooperate with border officials.²⁵
- “A lack of appropriate documentation or the use of false documents should not in itself render a claim abusive or fraudulent. Where the asylum-seeker has willfully destroyed identity documents and refuses to cooperate with the authorities, this can undermine the credibility of his/her claim and lead to the channeling of the claim into an appropriate expedited procedure.”²⁶
- The asylum procedure should at all stages respect the confidentiality of all aspects of an asylum claim, including the fact that the asylum-seeker has made such a request. No information on the asylum application should be shared with the country of origin.”²⁷
- “There should be special procedures and training to enable the sensitive and flexible handling of claims involving asylum-seekers with special needs, including victims of torture or sexual violence.”²⁸ Others in this category include: “women under certain circumstances, unaccompanied or separated children, the elderly, psychologically disturbed persons, and stateless persons.”²⁹

²⁰ *Id.* at para. 50(g).

²¹ *Id.*

²² *Id.*

²³ *Id.* at para. 50(j).

²⁴ *Id.* at para. 50(k).

²⁵ *Id.* at para. 35-37.

²⁶ *Id.* at para. 50(l).

²⁷ *Id.* at para. 50(m).

²⁸ *Id.* at para. 50(n).

²⁹ *Id.* at para. 44.

B. Legislative and Regulatory History of Expedited Removal

The statutory provisions covering expedited removal in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) left a significant amount of discretion with the administrative agencies charged with implementing the law. The INS used its regulatory discretion to implement a variety of refugee protection safeguards, first through its interim rule in 1997,³⁰ and later in the final rule promulgated in 2000.³¹ For example, under the regulations, every person subject to expedited removal must be told about US protection for refugees,³² and must be asked four questions designed to elicit information about the person's fear of return.³³ Inspection officials must take a sworn statement from all persons in expedited removal that includes their answers to the fear-related questions.³⁴ The provision of interpreters is mandatory at both the inspection and credible fear stages if the applicant and adjudicating officer do not both speak the same language. At the credible fear stage, the interpreter may not be a representative or employee of the applicant's country of nationality.³⁵

Individuals who express a fear must be given information about the credible fear interview process before they are detained and the interview takes place.³⁶ There is a 48-hour waiting period before conducting the credible fear interview to allow time to consult with family or a legal representative.³⁷ Consultants are allowed to be present during the interview,³⁸ and the interviews must be conducted in a non-adversarial manner.³⁹ The final rule, promulgated in December 2000, clarified that Asylum Officers and Immigration Judges should consider at the credible fear stage whether the applicant's claim presents novel grounds for asylum that merit consideration in a full hearing.⁴⁰ The final rule also provided that the statutory bars to asylum

³⁰ 62 Fed. Reg. 10312 (Mar. 6, 1997). The most significant rules pertaining to expedited removal are in 8 CFR § 208 and 8 CFR § 235.

³¹ 65 Fed. Reg. 76121 (Dec. 6, 2000).

³² 8 CFR § 235.3(b)(2). In all cases subject to expedited removal, Inspectors must use the form I-867A and I-867B, Record and Jurat of Sworn Statement in Proceedings, under Section 235 of the Immigration and Nationality Act.

³³ 8 CFR § 235.3(b)(2). The questions included on the I-867 form include: (1) "Why did you leave your home country or country of last residence?"; (2) "Do you have any fear or concern about being returned to your home country or being removed from the United States?"; (3) "Would you be harmed if you are returned to your home country or country of last residence?"; and (4) "Do you have any questions or is there anything else you would like to add?"

³⁴ 8 CFR § 235.3(b)(2).

³⁵ 8 CFR § 235.3(b)(2)(i) (2001) provides that "[i]nterpretative assistance shall be used if necessary," during the inspection process. 8 CFR § 208.30(d)(5) makes it mandatory for Asylum Officers to arrange for interpretation assistance in the credible fear interview context and provides parameters for who is a permissible interpreter. See also Immigration and Naturalization Service, Inspector's Field Manual, Chapter 17.15(b)(1) and (3) [hereinafter "Inspector's Field Manual"] (interpreter shall be used if necessary to review I-860, "Notice and Order of Expedited Removal").

³⁶ 8 CFR § 235.3(b)(4)(i).

³⁷ 8 CFR § 235.3(b)(4)(i); Form M-444.

³⁸ 8 CFR § 208.30(d)(4).

³⁹ 8 CFR § 208.30(d).

⁴⁰ 8 CFR § 208.30(e)(2).

would not be applied at the credible fear stage, allowing these complex issues of fact and law full consideration.⁴¹

INS training and operational materials further refined the agency's approach to processing asylum-seekers under the expedited removal procedure. The Inspector's Field Manual instructs Inspectors to not go into detail about the nature of an applicant's fear, to refer all questionable cases to the Asylum Division, to acknowledge that even fears of a personal nature may be grounds for asylum, and to explore any statement or indications, verbal or non-verbal, that the alien may have a fear of persecution.⁴² With regard to particularly vulnerable populations, unaccompanied minors are generally exempt from expedited removal procedures,⁴³ but individuals with mental health issues are not.⁴⁴

The Asylum Officer training materials indicate that the credible fear standard is a "low-threshold test designed to screen all persons who could qualify for asylum into the hearing process," and the Asylum Officer is to accord the "benefit of the doubt" to the applicant and "draw all reasonable inferences in favor of the asylum-seeker."⁴⁵ Asylum Officers are instructed that "[i]t may be helpful to think of the standard as a net that will capture all potential refugees and individuals who would be subject to torture if returned to their country of feared persecution or harm. Such a protective net may also capture non-refugees and individuals that may not be subject to torture."⁴⁶ Officers are told that "where no nexus to one of the five protected grounds is immediately apparent, the Asylum Officer should ask questions related to all five grounds to ensure that no nexus issues are missed."⁴⁷ When assessing credibility, Asylum Officers are reminded that certain factors, like trauma, cultural issues, detention, or the passage of time, can inhibit an applicant's ability to recall detail.⁴⁸ They are also instructed that to be implausible, an applicant's statement must be directly contradicted by two or more country conditions sources and that, before an applicant's statements are deemed inconsistent, the applicant must be given an opportunity to explain apparent inconsistencies.⁴⁹

⁴¹ 8 CFR § 208.30(e)(3).

⁴² Inspector's Field Manual, *supra* note 35, at Chapters 17.15(b)(2), 17.15(d).

⁴³ *See id.* at Chapter 17.15(f). According to this Chapter, there are some exceptional cases when unaccompanied minors may be placed in expedited removal including: (1) if the minor commits an aggravated felony in the immigration officer's presence; (b) if the minor has been convicted of or adjudicated delinquent of an aggravated felony in the United States or other country; or (c) if the minor has previously been formally removed, excluded, or deported from the United States.

⁴⁴ At the credible fear interview stage, the Asylum Division has issued guidance that those who due to mental incompetence are unable to testify on their own behalf should be placed in full removal proceedings, which gives them the opportunity to apply for asylum in front of an Immigration Judge. *See* INS, Credible Fear Procedures Manual, 20, para. 10 (DRAFT April 2002) (UNHCR understands that this manual, although in draft form, was the manual used for training Asylum Officers as of April 2002 and represents Asylum Division policy at that time) [hereinafter Credible Fear Procedures Manual]; Memorandum from Joseph E. Langlois, INS Asylum Division, to Asylum Office Directors, Deputy Directors, Supervisory Asylum Officers, QA/Trainers and Asylum Officers, *Mentally Incompetent Aliens in the Credible Fear Process* (Sept. 20, 2001).

⁴⁵ *See* INS, Immigration Officer Academy, Asylum Officer Basic Training Course: Credible Fear, 10-11 (Nov. 30, 2001) [hereinafter "Asylum Officer Basic Training Course"].

⁴⁶ *Id.* at 10.

⁴⁷ *Id.* at 15.

⁴⁸ *Id.* at 22-23.

⁴⁹ *Id.* at 30.

C. Methodology of Study

Over the course of the fall of 2001, representatives from UNHCR interviewed officials in charge of the Operations, Inspection, Asylum, and Detention and Removal Divisions in order to learn about the operation of the expedited removal process.⁵⁰ During this time, UNHCR also reviewed INS regulations, internal policy memoranda, and operational and training materials such as the relevant portions of the Inspector's Field Manual and the Credible Fear Lesson Plan taught to Asylum Officers at the Immigration Officer Academy. In addition, UNHCR reviewed previous evaluations of the expedited removal process by the General Accounting Office,⁵¹ the University of California, Hastings and Santa Clara University,⁵² and the Lawyers Committee for Human Rights.⁵³ These reviews were supplemented by meetings with NGO representatives and immigration attorneys representing asylum-seekers who had been in expedited removal proceedings.

As discussed in the Executive Summary, UNHCR's primary research method consisted of personal observations and interviews in the field at five major ports-of-entry from January through June 2002. The ports-of-entry were selected because, collectively, they accounted for the majority of the credible fear interviews nationwide.

UNHCR sought to track individual asylum-seekers as they progressed through the expedited removal process, from their experiences at secondary inspection through their credible fear interviews with Asylum Officers, to, when possible, reviews of negative credible fear determinations by Immigration Judges. In each city, the UNHCR representative divided her time between the airport, where she observed the secondary inspection process, and the detention centers where applicants were detained and where credible fear interviews took place.

During the course of the field work for this study, UNHCR observed the Inspection interview, observed the credible fear interview and/or conducted a personal interview in 120 cases.⁵⁴ All of these 120 individuals were either asylum-seekers or, due to their demeanor or

⁵⁰ Interviews with (b)(6), (b)(7)c Director of Operations; (b)(6), (b)(7)c Inspection Division; (b)(6), (b)(7)c Asylum Division; and with (b)(6), (b)(7)c Detention and Removal Division.

⁵¹ US General Accounting Office, *Illegal Aliens: Opportunities Exist to Improve the Expedited Removal Process*, GAO/GGD-00-176 (Sept. 2000); US General Accounting Office, *Illegal Aliens: Changes in the Process of Denying Aliens Entry into the United States* (1998).

⁵² Karen Musalo, et. al., *Expedited Removal Study: Report on the First Year of the Implementation of Expedited Removal*, (May 1998); Karen Musalo, et. al., *Expedited Removal Study: Report on the Second Year of Implementation of Expedited Removal*, (May 1999); *The Expedited Removal Study: Report on the First Three Years of Implementation of Expedited Removal*, 15 N.D. J.L. Ethics & Public Policy 1 (2001).

⁵³ Lawyers Committee for Human Rights, *Is This America?: The Denial of Due Process to Asylum-seekers in the United States* (Oct. 2000).

⁵⁴ These include 17 asylum-seekers in New York, 62 in Miami, 37 in Los Angeles, and 4 in Newark. In the majority of these cases, a UNHCR representative was able to observe the asylum-seeker at both the secondary inspection phase and the credible fear interview and to interview the individual privately at either the port-of-entry or the area detention facility. Due to logistical difficulties, however, observations and interviews at both stages was not always possible. The majority of the asylum-seekers observed and/or interviewed were either referred to an Asylum Officer

their responses given to Inspectors' questions, potential asylum-seekers. UNHCR reviewed 364 expedited removal case files.⁵⁵ A number of these files overlapped with the 120 individuals observed or interviewed. UNHCR also reviewed 40 files of cases from the years 2001 to 2002, where the Asylum Division found that the applicant did not have a credible fear of persecution. UNHCR observed many other persons in informal secondary questioning or in formal expedited removal interviews who were not asylum-seekers and, therefore, not persons of concern to UNHCR. The observations of interactions between Inspection personnel and these persons was nevertheless useful to the UNHCR representative in providing her with background and information on the Inspection process.

Due to time constraints, UNHCR was not able to follow individuals beyond the expedited removal/credible fear proceedings. As a result, UNHCR does not have information on the results of individual hearings before the Immigration Court for those found to have a credible fear of persecution. Due to these limitations, no findings have been made in these areas, although concerns about the impact of certain aspects of the expedited removal process on later court proceedings are noted. The major focus of the study remains on the secondary inspection and credible fear process.

In addition, UNHCR formally interviewed more than 30 INS management or supervisory officials in the field and engaged in dozens more informal discussions with the GS-9 and GS-11 level Inspectors and their first and second level Supervisors, as well as Asylum Officers. In each new location, UNHCR arranged introductory meetings with the Managers or Supervisors of the appropriate INS divisions in order to learn about the policies and procedures in each port or district.⁵⁶

for a credible fear interview or to an Immigration Judge for an asylum-only hearing (in the case of Visa Waiver Program cases). Some potential asylum-seekers, as detailed in this report, were removed from the US from the port-of-entry. UNHCR also observed two Immigration Judge reviews of negative credible fear determinations by Asylum Officers.

⁵⁵ These include 158 case files from JFK, 162 from Miami Airport, 40 from LAX, and 4 from Newark International Airport. The expedited removal files from JFK included a higher percentage of non-credible fear cases than at other ports-of-entry due to the relatively low numbers of credible fear cases there during UNHCR's six-week mission. These lower numbers were likely due to the general decrease in travel, in particular into JFK, after September 11, 2001. Given the relatively low number of credible fear cases, UNHCR reviewed copies of expedited removal files where no credible fear referral was made to better assess the questions asked and decisions made by JFK Inspectors in these cases.

⁵⁶ Our formal meetings included:

New York: (b)(6), (b)(7)c District Director; (b)(6), (b)(7)c Deputy Area Port Director; (b)(6), (b)(7)c Assistant Area Port Director; (b)(6), (b)(7)c Assistant Area Port Director; (b)(6), (b)(7)c Supervisory Inspector; (b)(6), (b)(7)c Director of the New York Asylum Office; (b)(6), (b)(7)c Supervisory Asylum Pre-Screening Officer; (b)(6), (b)(7)c Officer in Charge of the Wackenhut Detention Facility;

Newark: (b)(6), (b)(7)c Acting Port Director; (b)(6), (b)(7)c Assistant Area Port Director; (b)(6), (b)(7)c Director, Newark Asylum Office;

Miami: (b)(6), (b)(7)c Port Director; (b)(6), (b)(7)c Supervisory Immigration Inspector; (b)(6), (b)(7)c Supervisory Asylum Pre-Screening Officer; (b)(6), (b)(7)c Officer in Charge, Krome Service Processing Center; (b)(6), (b)(7)c Supervisory Deportation Officer;

Los Angeles: (b)(6), (b)(7)c Port Director; (b)(6), (b)(7)c Supervisory Inspector; (b)(6), (b)(7)c Training Officer; (b)(6), (b)(7)c Director, Los Angeles Asylum Office; (b)(6), (b)(7)c Deputy Director, Los Angeles Asylum Office; (b)(6), (b)(7)c Supervisory Asylum Pre-Screening Officer; (b)(6), (b)(7)c Officer in Charge, San Pedro

UNHCR wishes to thank in particular our main points of contact in each location: (b)(6)

(b)(6)

(b)(6) and (b)(6) These meetings, along with our more informal discussions with a range of Inspectors, Asylum Officers, INS District Counsels, Deportation Officers, and an Immigration Judge provided us with a broad cross-section of government perspectives.

This study is qualitative. UNHCR sought perspectives from all participants, including INS officials at all levels, asylum-seekers, and attorneys or NGOs representing individuals in the process. This was done in order to gain a better understanding not just of outcomes, but of the factors that contribute to particular outcomes as well. Because UNHCR's observations do not represent a statistically significant sampling of expedited removal cases, little effort has been made to draw quantitative conclusions. Instead, UNHCR hopes that its extensive questioning and observations have helped to identify larger problems and successes in the implementation of the expedited removal process, and to highlight contributing factors.

The UNHCR representative also had the opportunity to spend a day at the Immigration Officer Basic Training Academy in Glynco, Georgia, where she observed classes on immigration law, operations training, and inspection field training. She met with Director (b)(6), (b)(7)c Assistant Director (b)(6), (b)(7)c and Supervisory Immigration Officer (b)(6), (b)(7)c These meetings provided UNHCR with important insight into INS' training activities.

Service Processing Center; (b)(6), (b)(7)c Assistant Officer in Charge; (b)(6), (b)(7)c Supervisory Deportation Officer; (b)(6), (b)(7)c Officer in Charge, Mira Loma Detention Facility, Lancaster;
San Ysidro: (b)(6), (b)(7)c Assistant Area Port Director; (b)(6), (b)(7)c PET Team Inspector.

III. SUMMARY OF FINDINGS AND RECOMMENDATIONS

A. Inspections: Questioning and Decision-Making

1. Referrals When Fear Expressed

Summary

In general, Inspectors at all ports-of-entry upheld their responsibility to ask the asylum-related questions on the I-867 form and to refer qualifying applicants for credible fear interviews. This included instances in which Inspectors made referrals based on non-verbal expressions of fear and referrals based on equivocal or contradictory answers. However, on other occasions, Inspectors did not make credible fear referrals despite a fear having been clearly expressed by the asylum-seeker, either before or during the I-867 interview. One of the asylum-seekers who expressed a fear but was not referred also appeared to suffer from mental health issues. Refugee claims by persons suffering from mental illness are best considered under full asylum procedures, not accelerated procedures.

UNHCR Recommendations:

A-1 (1) UNHCR recommends that CBP adopt procedures to ensure that *any* indications of fear of return expressed before or after the secondary inspection interview is duly recorded and considered by Inspections Officers. Any indication of fear should result in referral for a credible fear interview.

A-1 (2) Consistent with current CBP policy exempting unaccompanied minors from expedited removal procedures (except in certain circumstances), UNHCR recommends that individuals who appear to be mentally ill also not be placed in these procedures. If placed in expedited removal proceedings, UNHCR recommends that they automatically be referred to an Asylum Officer for a credible fear interview.

2. Withdrawals of Application for Admission

Summary

Expedited removal procedures give Inspections Officers the discretion to allow an individual to withdraw his/her application for admission to the US, in order to avoid strict penalties attached to a removal. The inherent risk of withdrawals at a port-of-entry, however, is that a refugee may decide not to seek asylum in the US for the wrong reasons. Most notably, asylum-seekers offered the opportunity to withdraw their applications for admission, or simply told that their cases will be processed in that manner, may not realize that they have the option of pursuing an asylum claim or may be too afraid to do so.

In an effort to ensure that asylum-seekers are properly identified under the expedited removal process, certain procedural safeguards were established that should, in principle, minimize the possibility of uninformed withdrawals by asylum-seekers. For instance, it is DHS

policy that if an Inspections Officer decides to allow an individual to withdraw, who would otherwise be subject to expedited removal, the Officer should take a sworn statement using Form I-867A&B, which contains the asylum advisal and the four fear-related questions. Unfortunately, this policy does not appear to be mandatory in nature, and with the exception of JFK, ports-of-entry did not institute these safeguards in their withdrawal procedures.

Another area of concern involves the processing of a withdrawal after an individual has expressed a fear of return. Before allowing such a withdrawal, it is imperative that applicants be fully advised of their right to seek asylum and of the consequences of withdrawing their request for admission. This would best be done by a government official, such as an Asylum Officer, who is trained in asylum matters and who is divorced from enforcement functions at the port-of-entry. While DHS has guidance that is consistent with this approach, it is not included in the Inspector's Field Manual, and it is unclear whether it is mandatory or discretionary.

UNHCR is also concerned that some Inspectors, perhaps with the best of intentions, may informally advise individuals before the secondary inspection interview begins not to pursue their asylum claims. UNHCR is aware of two cases in which this appeared to occur. On both occasions, the Inspections Officer told the asylum-seekers that they had little chance to win their case, would be detained, and would be better off not pursuing asylum. These incidents, even if isolated, are extremely troubling, given the risks of returning someone to a country of possible persecution. It is not the responsibility of INS Inspections Officers, untrained in refugee and asylum law, to assess the validity or strength of an asylum-seeker's claim.

UNHCR Recommendations:

A-2 (1) UNHCR recommends that CBP make mandatory the procedures included in the Inspector's Field Manual that, when processing the withdrawal of a person otherwise subject to expedited removal, Inspectors take sworn statements using the Form I-867A&B, with its asylum advisal and fear-related questions.

A-2 (2) UNHCR recommends that CBP make mandatory the procedures outlined in the 1998 Supplemental Training Materials for Credible Fear Referrals for individuals who have expressed a fear of return and who then request to withdraw their application for admission while at the port-of-entry. These procedures should be included in the Inspector's Field Manual.

A-2 (3) UNHCR also recommends that CBP provide additional training to Inspectors on how to process cases of persons who express a fear before the formal secondary inspection interview. Most importantly, Inspectors should refrain from giving advice or providing their opinions about individual asylum claims and ensure that all substantive discussions about the person's claim are included as part of the formal record of the secondary inspection interview process.

3. Transit Without Visa (TWOV) Cases

It is UNHCR's understanding that, under US law, persons transiting the US without visas (TWOVs) are considered "arriving aliens" subject to expedited removal if they are inadmissible under INA Section 212(a)(6)(C) or (7). As a result, such individuals would be processed using the I-867A&B, with its asylum advisal and fear-related questions. Under DHS guidance, however, Inspectors may either place TWOVs in expedited removal proceedings or return them to the carrier for removal. The guidance does not discuss further when to use these options, although it does direct that TWOV passengers who affirmatively request asylum are to be placed in expedited removal proceedings.

UNHCR learned that in the past, INS adopted a policy of placing in expedited removal proceedings individuals of Colombian nationality who were transiting the US under the TWOV program rather than automatically returning them to the carrier that brought them to the US. However, UNHCR also learned that in some past cases, if a person was refused as a TWOV, Inspectors did not use the I-867 form and simply required the airline to transport the person back.

It is quite possible that some TWOVs will be asylum-seekers. By using the I-867 form, with its advisal about the US asylum process and its fear-related questions, Inspectors are better able to identify asylum-seekers and avoid removing an individual to a country of feared persecution.

UNHCR Recommendations:

A-3 (1) UNHCR recommends that individuals who are transiting the US under the TWOV program and who are determined to be inadmissible be read the I-867 asylum advisal and fear-related questions. If the person indicates a fear of return, they should be allowed to pursue their asylum claims in the US.

4. Quality and Scope of Questioning

Summary

In the expedited removal process, the role of the Inspector at secondary inspection, for purposes of refugee protection, is to determine whether an individual is seeking asylum in the US or has a fear of return to his/her country of origin. It is not, in UNHCR's opinion, to assess the basis or strength of the claim, or to establish a record that can later be used to assess the applicant's consistency and credibility. In this regard, any indication that a person has a fear of return should be sufficient to end questioning about the person's claim and to refer the person for a credible fear interview.

UNHCR recognizes, however, that Inspectors are often called upon to shape additional fear-related questions during the expedited removal interview, for example when applicants do not understand the initial I-867 fear-related questions or answer them equivocally or unclearly. The type of follow-up questioning that UNHCR observed, however, is of concern. Inspectors often asked questions that were based on mistaken assumptions of US asylum law, resulting in

overly restrictive and/or inappropriate questions. At other times, they asked extremely detailed questions, akin to a courtroom cross-examination, about the basis of the applicant's asylum claim, going well beyond what was necessary to determine whether a requisite fear of return existed. While UNHCR recognizes, and shares, DHS' interest in preventing individuals from "gaming the system" by presenting one set of facts to an Inspections Officer and another to an Asylum Officer, UNHCR does not believe the benefits of using such a record outweigh the risks that accompany it.

Extensive questioning by Inspectors based on misunderstandings of asylum law risks possible removal of applicants from a port-of-entry due to their failure to respond "appropriately" to questions posed, creation of an inaccurate record due to unnecessarily narrow questioning, and/or anxiety for applicants who fear removal should they fail to satisfy the Inspector's expectations regarding their asylum claims.

UNHCR Recommendations:

A-4 (1) UNHCR recommends that CBP clarify in its guidance to Inspections Officers that if an asylum-seeker clearly indicates a fear of return or intention to apply for asylum, all further questioning related to that fear should stop. If initial responses are ambiguous, then limited, well-informed follow-up questions should be asked in order to determine whether the individual possesses a fear of return. If there is any doubt in the officer's mind about whether the person has expressed a fear, UNHCR recommends that the officer either refer the case for a credible fear interview or contact an Asylum Supervisor to discuss the case.

A-4 (2) Before undertaking secondary inspection responsibilities, it is essential that Inspectors receive sufficient training in basic asylum law in order to assist them in properly framing any additional questions that may be warranted, and in determining when an applicant has indicated a fear of return. UNHCR recommends that CBP review its training materials on this topic and ensure that all Secondary Inspectors and Supervisors receive such training.

5. Attitudes of Inspectors

Summary

Based on conversations with Inspectors and observations of their interactions with asylum-seekers, it appeared that many Inspectors hold negative assumptions about asylum-seekers in general, seeing many of them as falsely claiming a fear so as to gain entry into the US. These assumptions seemed to derive, in part, from the conflicting missions Inspectors must perform, insufficient training on working with refugees and the causes of refugee flows, and the failure of some Supervisors to maintain an environment in the inspection area that was respectful of asylum-seekers. This negative environment appeared to result in instances of intimidating or derisive treatment of asylum-seekers. Such treatment can re-traumatize asylum-seekers, discourage them from choosing to pursue their asylum claims and affect their willingness to provide information about their fear of persecution.

UNHCR Recommendations:

A-5 (1) UNHCR is concerned about instances of improper treatment of asylum-seekers. UNHCR recommends that Inspectors be trained to utilize neutral interviewing styles, to refrain from prosecutorial questioning about an applicant's fear, and to abstain from revealing or suggesting personal opinions about the quality or credibility of an applicant's asylum claim. Training should include guidance on the creation and maintenance of a respectful atmosphere in inspection and on appropriate interviewing techniques.

A-5 (2) To the extent that it is not currently available, Inspectors and supervisory staff should also receive training on cultural sensitivity, identifying and working with persons who may have suffered trauma, and factors causing displacement and refugee flight, including human rights abuses.

6. Interpretation

Summary

The use of professionally-trained and certified interpreters at ports-of-entry is critical to the integrity of the expedited removal process. Professional interpretation ensures that the Inspector and applicant clearly understand each other, facilitates the sharing of sensitive or traumatic information, and helps ensure the accuracy of any statement recorded on the I-867 form. Unfortunately, UNHCR observed that Inspectors rarely used professional, certified interpreters when speaking with asylum-seekers, relying instead on other interpreter resources available to them. Basic interpreter protocol and demeanor were frequently breached by interpreters who took on a primary questioning role, made disparaging comments, failed to translate statements accurately (often engaging in long, untranslated conversations), assumed the primary questioning role, and had potential conflicts of interest. In addition, the use of interpreters with potential conflicts of interest, such as airline employees, was common at some ports-of-entry. Inspectors and supervisory personnel appeared to have little training in working with interpreters or interpreter standards.

UNHCR Recommendations:

A-6 (1) UNHCR is concerned about the extent and pervasiveness of problems regarding interpretation during secondary inspection. UNHCR recommends that CBP use only professionally-trained and certified interpreters in all substantive interactions with potential asylum-seekers, similar to the Asylum Division's policy with regard to credible fear interviews.

A-6 (2) UNHCR recommends that CBP increase both basic and on-going training for Inspectors and for supervisory and management personnel regarding the use of interpreters. Supervisors should closely monitor Inspectors' proper use of interpreters.

7. The Accuracy of the I-867 Form

Summary

Inspectors generally made good faith efforts to record on the I-867 the essence of what applicants stated during the secondary inspection interview. However, UNHCR encountered frequent discrepancies between the oral interview and the written record. Sometimes, the discrepancies were material, with the potential to affect whether the person would be referred for a credible fear interview or the outcome of the asylum claim in later proceedings. The I-867 is part of the later court record and is often used by District Counsels in attempting to impeach an asylum applicant's credibility. The regulations require that Inspectors verify with applicants the accuracy of their I-867 statements and allow corrections to be made prior to obtaining their signature on the form. However, at most ports-of-entry, applicants routinely signed sworn statements, at the request of inspection personnel, that they had not read and did not understand.

UNHCR Recommendations:

A-7 (1) UNHCR recommends that increased emphasis be placed on adherence to the regulatory requirement that Inspectors re-read the I-867 statement to applicants in every case, with an interpreter if necessary, providing asylum-seekers with an opportunity to correct errors and omissions before signing.

A-7 (2) Given the inherent danger of the I-867 containing inaccuracies and the limited focus of the expedited removal inquiry, UNHCR recommends that the I-867 be excluded from the record of the Immigration Court. This could be accomplished, in part, by the adoption of an Immigration and Customs Enforcement (ICE) policy that District Counsels not introduce the I-867 as evidence in Immigration Courts to impeach an asylum applicant. At a minimum, UNHCR recommends that language be inserted prominently on the I-867 form indicating that the information recorded by the Inspections Officer does not constitute a verbatim record of the applicant's statements, that some aspects or details of the claim may not have been explored with the applicant or written on the form, and that appropriate weight should be placed on the contents of the form. Trial attorneys should be instructed on the appropriate use of the I-867.

8. Visa Waiver Program (VWP) Refusals

Summary

Under current law, persons arriving under the Visa Waiver Program (VWP) are not subject to expedited removal procedures if determined to be inadmissible. They are not required to process these cases using the I-867 form, with its asylum advisal and fear-related questions. Only if the VWP applicant affirmatively requests asylum at the port-of-entry will s/he be referred to an Immigration Judge for an asylum-only hearing. Otherwise, the applicant will be ordered removed, unless withdrawal of the application for admission is allowed.

It is not uncommon for asylum-seekers who are not nationals of VWP countries to attempt to enter the US on false VWP passports. If determined to be inadmissible, they risk

deportation back to their country of feared persecution. Their protection needs, however, are the same as those who seek to enter on other false documents or who seek to enter with no documents at all. UNHCR considers the I-867's asylum advisal and fear-related questions to be useful tools in identifying asylum-seekers at ports-of-entry. It appears that CBP is not precluded by statutory or case law from applying the I-867's refugee protection safeguards to VWP cases. Indeed, one port-of-entry, JFK, routinely used the I-867 fear-related questions to identify asylum-seekers in VWP cases.

In addition, VWP asylum-seekers at some ports were provided with inaccurate or misleading information about their particular situation because of their VWP status. For instance, at Miami Airport, they were often told that they would be returned immediately to their country of origin or that they had waived their appeal rights. Such information can frighten asylum-seekers and lead them to abandon their asylum claims or be less forthcoming with information crucial to their claims.

UNHCR Recommendations:

A-8 (1) UNHCR recommends that all individuals subject to VWP procedures be read the I-867 asylum advisal and fear-related questions to ensure that asylum-seekers are easily identified as persons in need of protection and to prevent *refoulement*.

A-8 (2) UNHCR also recommends that care be taken to avoid the provision of inaccurate or misleading information to asylum-seekers travelling on VWP passports regarding their legal rights and the procedure in which they will be placed.

9. Confidentiality/Consular Notification Issues

Summary

There are currently some 56 countries, including several refugee-producing states, with which the US has consular notification treaty obligations. Under these treaties, the US must notify the foreign consulate of the detention of its nationals, with or without the consent of the applicant. According to DHS, absent prolonged detention, the Department of State does not consider foreign nationals held at ports-of-entry to be "detained" for purposes of consular notification obligations. Communication with a foreign government about detention at a port, therefore, should only be required in the event of prolonged detention.

Nevertheless, Inspections Officers at LAX frequently notified consulates of an asylum-seeker's detention directly from an airport, despite the fact that they were not subject to prolonged detention there. Most individuals who remain in detention after being found inadmissible at an airport are asylum-seekers. UNHCR is concerned, therefore, that this practice may constitute *de facto*, though unintended, disclosure that the individual is an asylum-seeker.

Confidentiality is vital in the asylum context because the disclosure of the *fact* of an asylum application could increase the likelihood of retaliatory or punitive measures by the national authorities in the event that the individuals are removed. Notification from a port-of-

entry could also lead to the creation of refugee claims *sur place*, where no claim may have existed previously, if the consulate believes the individual is an asylum-seeker. As a result, it may also endanger the security of family members who still reside in the country of origin.

The practices at LAX also raised a concern regarding the type of information about asylum-seekers that is often conveyed to consulates. Under State Department guidance, only the following information need be provided: name, place and date of birth, date of detention, certain passport information, and who to contact to arrange for consular access. However, in cases involving Chinese asylum-seekers, LAX routinely provided additional information, such as the date and place of entry and the fact that the individual was in expedited removal proceedings. Such information could enable consular officials to deduce that an individual is an asylum-seeker.

In addition, many Inspections Officers told asylum applicants, before the fear-related questions were asked and without further explanation, that the US was required to inform the applicants' consulates about their detention. This practice frightened many asylum-seekers and could discourage applicants from being forthcoming in describing their fear of return.

UNHCR Recommendations:

A-9 (1) Consistent with US Department of State guidance regarding what constitutes "detention" for purposes of consular notification obligations, UNHCR recommends that CBP officials refrain from notifying consulates of the detention of an asylum-seeker at a port-of-entry absent a situation of prolonged detention. UNHCR also recommends that, in cases of prolonged detention, contact with consular authorities not occur from the port-of-entry.

A-9 (2) UNHCR recommends that, when consular communication is necessary due to either prolonged detention at a port-of-entry or placement in a detention facility, the information disclosed consist only of the name and the fact and date of detention and not include any more information than is strictly required by treaty. Information that should *not* be transmitted includes:

- ✓ **the fact that the individual has been placed in expedited removal proceedings;**
- ✓ **the fact that the individual intends to apply for asylum or has expressed any fears related to return to that country;**
- ✓ **the date and place of entry into the US;**
- ✓ **any prior residence in a refugee camp.**

A-9 (3) When consular notification is deemed necessary due to prolonged detention at a port-of-entry, UNHCR recommends that CBP officials inform asylum-seekers of the required notification in a manner that minimizes anxiety and does not discourage them from pursuing a claim for asylum claim in the US. In particular, CBP officials should emphasize that only the name and the fact and date of detention are revealed. Appropriate training on advising applicants about consular notification obligations should be provided.

B. Inspections: Conditions at Secondary/Treatment of Asylum-Seekers

1. General Environment in Secondary

Summary

The process of encouraging applicants to answer questions, submit to fingerprints, and otherwise comply with procedures often proceeded smoothly and efficiently at all ports observed. However, some officials viewed applicants as being uncooperative if they displayed any resistance to the process or asked questions. The conduct of many asylum-seekers was influenced by their concerns about being returned to their country of origin, the government learning of their asylum request, being detained in the US, and/or inaccurate information that they had received about the US immigration system prior to their arrival.

Inspections Officers responded to an applicant's "uncooperativeness" in a variety of ways. These included, at times, the use of verbal confrontation, threats, or placement in holding cells. These approaches increase the possibility that asylum-seekers are less forthcoming with accurate information, which could affect decision-making about their referral for a credible fear interview as well as their credibility in later proceedings. They also increase the possibility of asylum-seekers deciding to seek to withdraw or dissolve their claims, despite fear of persecution in their home countries, or of harming themselves or an officer. Many Inspectors, realizing that harsh tactics often failed to be effective in obtaining information or cooperation, made efforts to calmly question applicants, respond to concerns, and acknowledge asylum-seekers' fears as the path of least resistance in accomplishing their enforcement responsibilities.

UNHCR Recommendations:

B-1 (1) UNHCR recommends that Inspectors be trained to be aware of common causes for asylum-seekers' unwillingness or inability to cooperate with Inspectors and to learn to apply strategies for encouraging cooperation that are appropriate for asylum-seekers. In particular, the range of responses that Inspectors should be prepared to use should include: (a) providing basic information about US asylum procedures when it appears that individuals may be afraid of return to their country of origin; (b) giving assurances that information which asylum-seekers provide, including fingerprints and photographs, will not be revealed to their government (except as required under consular notification treaties; see discussion, *infra*); and (c) confirming that asylum-seekers understand what is being asked of them, including the signing of any forms.

2. Use of Restraints and Holding Cells

Summary

UNHCR recognizes that the discretionary use of restraints in secondary may be necessary and appropriate in particular situations, such as when there are genuine risks of flight or harm to officers. The Inspector's Field Manual instructs that the decision to employ restraints be made on an individualized assessment in each case.

Many ports-of-entry were able to maintain security through various measures, with rare use of restraints inside the secondary inspection area. A notable exception to this practice was at JFK, where nearly all inadmissible applicants, including asylum-seekers, were considered flight risks and placed in leg restraints within the waiting area, sometimes during the secondary inspection interview as well. In addition, while most ports transported individuals in handcuffs, JFK commonly used belly chains.

Many asylum-seekers found the use of restraints humiliating and confusing. UNHCR is concerned that the use of restraints may cause unnecessary trauma or cause asylum-seekers to seek to withdraw their applications for admission to the US

Most ports generally used holding cells for applicants who had criminal backgrounds, who were disruptive, or who were otherwise deemed safety risks. However, holding cells were also occasionally used to encourage or coerce cooperation, and some ports used them without an individualized assessment of danger or flight risk. For instance, at San Ysidro, all inadmissible applicants were placed in cells. For some asylum-seekers, such restraints or confinement can be intimidating, invoke past trauma, or inhibit their ability to communicate a fear of return.

UNHCR Recommendations:

B-2 (1) UNHCR recommends that DHS develop further guidance on the use of restraints and holding cells on asylum-seekers, emphasizing that they be used only after an individualized assessment has been made that the asylum-seeker poses a security or flight risk, that they not be used to encourage or coerce an asylum-seeker's cooperation, and that they not be used to restrain individuals who are sitting inside a secure waiting or holding area. UNHCR further recommends that DHS develop specific guidance that the use of "belly chains" during transport be avoided unless absolutely necessary based on risks posed by the asylum-seeker.

B-2 (2) Whenever officers deem the use of restraints or holding cells to be warranted, UNHCR recommends that they explain to the asylum-seeker at the outset the reason for their use and the approximate duration of their use. Such a policy would minimize the anxieties and fears of asylum-seekers and the likelihood of them becoming uncooperative or possible security risks.

B-2 (3) Officers and supervisory staff should receive training to recognize signs of trauma and to acknowledge and ease typical fears that asylum-seekers may have upon being placed in restraints or holding cells.

3. Privacy

Summary

In most ports-of-entry, secondary inspection interviews took place in private or semi-private offices or cubicles. At JFK, however, most formal statements were taken at the secondary inspection counter. Private offices were used only if a telephonic interpreter was

needed or if an applicant requested more privacy. Although Inspectors at JFK asked applicants if they wished to give their statement in a private location, UNHCR did not observe any individuals make such a request, raising the question of whether they felt comfortable doing so.

Confidentiality can aid asylum-seekers in revealing their fears and often traumatic experiences. In addition, the opportunity to sit down in a quiet, private room appears to help applicants understand and process the information being provided by Inspectors.

UNHCR Recommendations:

B-3 (1) UNHCR recommends that private interviewing rooms be used for all secondary inspection interviews and that logistical obstacles to this end be resolved to the extent possible.

4. Provision of Basic Information on the Expedited Removal Process

Summary

UNHCR believes that Form M-444 (Information About Credible Fear Interview) contains a great deal of information which can aid asylum-seekers in understanding the credible fear interview process. The initial version of the M-444, issued in 1997, was translated into 13 languages and corresponding video tapes were produced. A revised version, issued in March 1999, has been translated into only five languages, and no accompanying video tapes have been produced. Because the process tends to be confusing to many asylum-seekers, UNHCR found that many individuals particularly benefited when inspection personnel provided an oral summary of the form's contents and/or provided them with an opportunity to ask basic questions with an interpreter present.

UNHCR found that Inspectors can play an important role in providing asylum-seekers with basic information about those aspects of the process that tended to be of the greatest immediate concern to them. These included where they will spend the night, how long they will be mandatorily detained, when they will be able to see an Asylum Officer, and when their detention status will be reviewed. In UNHCR's observations, the information that asylum-seekers received at the port-of-entry was often the only official asylum-related information they received for days.

The amount of information provided verbally by inspection personnel varied widely from port to port. At Miami Airport, Inspectors provided an interpreted orientation in simple language at the conclusion of the I-867 interview, as well as an opportunity to ask questions. In the New York District, Inspectors simply provided the applicant with a copy of the M-444, usually in English, but provided translation on the phone if necessary, and did not provide any additional information on the expedited removal process. UNHCR found that many asylum-seekers processed through JFK arrived in detention not knowing what was happening or whether they were being removed. At LAX, Inspectors were unable to provide basic information on the expedited removal process in many cases because the interpreter, when used, was generally dismissed prior to the time the M-444 was provided.

UNHCR Recommendations:

B-4 (1) UNHCR recommends that the current version of the M-444 be promptly translated into a wide variety of languages and that a companion videotape also be produced. All applicants should be provided a copy of the M-444 in their native language. If the form is unavailable in the applicant's language, or if the applicant is illiterate, then it should be translated for the applicant at the port-of-entry and an English version of the form provided.

B-4 (2) In addition to providing a copy of the M-444 form, UNHCR recommends that Inspectors be required to provide basic information to asylum-seekers about the credible fear process, with an opportunity to ask questions, at the conclusion of the secondary inspection interview. Information should include, at a minimum, that the individual: (a) is not being sent home immediately and will be safe while in the US; (b) will be interviewed by an Asylum Officer to determine if s/he has a credible fear of persecution; (c) will be detained throughout the credible fear process; and, (d) will have an opportunity to contact family and an attorney from the detention center prior to the credible fear interview.

B-4 (3) UNHCR recommends that the informational videotapes on the credible fear process be played, if possible, both at the port-of-entry and at the detention center.

5. Care of Basic Needs

Summary

Many asylum-seekers remain in the custody of immigration inspection officials for significant periods of time, sometimes for up to 24 hours in the inspection area, before being transported to a detention facility. During this time, they are dependent on the Inspections Officers for such basic needs as food, water, bathroom use, or medical attention. UNHCR observed that Inspectors at the various ports-of-entry focused differing degrees of attention on the provision of basic needs. How each port assigned responsibility for the care of detained individuals affected the degree of attention received. At Miami Airport, for example, local policy made Inspectors personally responsible for promptly meeting the basic needs of the applicants that they had interviewed. At JFK, by contrast, there was no such clear assignment of responsibility and, as a result, care was not consistently provided.

UNHCR Recommendations:

B-5 (1) UNHCR encourages CBP to instruct all ports-of-entry to adopt an approach that ensures the prompt and efficient provision of basic needs to asylum-seekers, such as food, bathroom use, and blankets. We encourage DHS to replicate the Miami Airport model at all ports-of-entry and make Inspectors personally responsible for ensuring that these needs are met.

C. Inspections: Administrative Oversight/Management

This report describes certain deficiencies in the identification and treatment of asylum-seekers in the inspection process. These include, for example, the failure, in a few cases, to refer individuals for a credible fear interview despite them expressing a fear of return; uneven quality of questioning; the existence of a negative and, at times, hostile atmosphere toward asylum-seekers in secondary inspection; and poor interpretation during secondary inspection interviews. It appears that many of these problems could be addressed by adopting certain measures such as regular staff training, increased supervisory attention, expansion of quality control measures, and centralized direction and oversight.

1. Centralization of Policy

Summary

Each port-of-entry that UNHCR visited had particular management policies or administrative oversight measures that port management deemed to be particularly effective in achieving the goals of the Inspection Division. Increased coordination from Headquarters might allow for these successful programs to be replicated nationally. More centralized direction would also improve accountability at the local level.

UNHCR Recommendations::

C-1 (1) UNHCR recommends that CBP give heightened attention to the central coordination of policy development and oversight regarding the expedited removal process. In undertaking such centralization efforts, UNHCR recommends that successful innovations at specific ports be shared and replicated.

2. Training

Summary

Although UNHCR had limited time to observe training at the Federal Law Enforcement Training Academy (FLETC), it appeared that training in the expedited removal process was a small portion of the FLETC curriculum. The major goal of the training appeared to be to prepare new recruits for primary rather than secondary inspection duties. There is no uniform mandatory training program for Secondary Inspectors or Supervisory Inspectors besides the FLETC program. Any subsequent training on the expedited removal process is at the discretion of the Port Directors. Some ports, such as JFK and Newark, made efforts to provide systematic training on the expedited removal process for new Secondary Inspectors. At other ports-of-entry, however, training was more *ad hoc*. Some Inspectors expressed concerns regarding the lack of opportunity for regular and relevant on-going training and indicated that attendance at some sessions was discouraged by supervisory staff.

In general, the expedited removal training that did occur did not address broader refugee issues, such as factors causing displacement and refugee flight and the impact of trauma. In

addition, UNHCR is not aware of any training at FLETC or in other training courses on the use of interpreters when interviewing asylum-seekers.

UNHCR understands that shortly after the expedited removal process was instituted, INS provided systematic training on expedited removal processing at various ports. UNHCR has reviewed some of the materials used in these trainings and found much of their content to be consistent with the recommendations in this report. This training effort was discontinued after all ports received it, and, since that time, it appears that there has not been any systematic training in expedited removal of Secondary Inspectors.

Given UNHCR's observation that practices at some ports were at variance with the principles contained in INS training materials reviewed by UNHCR, continued systematic training beyond FLETC on the expedited removal process and the treatment of asylum-seekers is critical. This is particularly true under the new DHS structure, with legacy Customs and Agriculture Officers assuming greater immigration responsibilities at ports-of-entry. It is not clear to UNHCR whether all officers with inspection responsibilities will be trained in basic asylum concepts and the expedited removal process or how the FLETC curriculum on asylum might change with this re-organization.

UNHCR Recommendations:

C-2 (1) To address the concerns noted in this report, UNHCR recommends that DHS review its training programs for Secondary Inspectors, including Supervisors, and ensure that the programs provide specific training regarding the expedited removal process. This is particularly important as DHS restructures inspections responsibilities and re-examines its training programs. UNHCR recommends that DHS develop a mandatory training program beyond the FLETC course for all current and new officers with secondary inspection responsibilities that specifically focuses on the expedited removal process and the issues listed in C-2 (2).

C-2 (2) UNHCR recommends that training on the expedited removal process include when to refer for a credible fear interview; appropriate questioning; basic asylum law principles, with a focus on the principle of *non-refoulement*; cross-cultural interviewing skills; cultural sensitivity; factors causing displacement and refugee flight; recognizing signs of trauma; and the use of interpreters.

C-2 (3) In order to ensure the consistent and thorough understanding of any significant policy or procedural guidelines impacting the expedited removal process, UNHCR recommends that DHS institute periodic mandatory trainings for all officers with secondary inspection responsibilities.

3. Supervisory Review and Quality Control Measures

Summary

With regard to supervisory review, a primary role of the Supervisor is to prevent *refoulement*. To this end, attentive and meaningful supervisory review is critical, particularly given the shortage of relevant training opportunities for Inspectors. UNHCR found that, in general, Supervisors at all ports-of-entry conducted the required reviews of expedited removal decisions at the appropriate level. However, there were instances in which the quality of the review was called into question. For example, there were instances in which the applicants' statements should have been sufficient to warrant referral for a credible fear interview, yet the Supervisor allowed the Inspector to order the applicant removed. There were also instances in which further questioning of the applicant was warranted, but the Supervisor failed to require it.

With regard to quality control measures, an Expedited Removal Working Group was created at the Headquarters level soon after expedited removal procedures went into effect. The Working Group met weekly to review a random sampling of cases in an effort to monitor decision-making quality, a practice which UNHCR commends. It is UNHCR's understanding that the Working Group recently stopped meeting on a regular basis.

Some ports utilized specialized expedited removal units in an effort to foster greater experience among staff and promote consistency in application of the law with regard to asylum-seekers. UNHCR believes that, in principle, the use of specialized units to decide expedited removal cases could enhance the ability of Secondary Inspectors to correctly identify asylum-seekers and improve the treatment of asylum-seekers. However, in practice, UNHCR did not observe that Inspectors in specialized units, such as the Port Enforcement Team (PET) at LAX, handled their expedited removal responsibilities, including the identification and referral of asylum-seekers, any more or less proficiently than other Secondary Inspectors. This may have been due to the fact that PET team members did not sufficiently distinguish between the Inspectors' investigatory and decision-making roles. Also, there does not appear to have been a focus on increased training on the expedited removal process and on refugee related issues for Inspectors in the specialized expedited removal teams.

UNHCR Recommendations:

C-3 (1) UNHCR recommends that DHS develop better systems to ensure that Supervisors substantively review Inspectors' expedited removal decisions. In particular, UNHCR recommends that more emphasis be placed on requiring Supervisory Inspectors to direct further inquiry of the applicant regarding his/her fear of return when warranted, and when there is any doubt about whether to refer the person for a credible fear interview, to refer the case or consult with the Asylum Division.

C-3 (2) UNHCR recommends that DHS continue the meetings of the Expedited Removal Working Group on a regular basis, especially given the structural changes occurring during the transition of INS and other agencies with border enforcement functions to DHS.

C-3 (3) UNHCR encourages CBP to develop a pilot program of specialized expedited removal units in one or two ports. UNHCR recommends that officers in the pilot program and their Supervisors be given longer-than-normal rotations and receive extensive, on-going training of the type discussed elsewhere in this report. UNHCR recommends that the division of Inspector responsibilities used at certain ports-of-entry (e.g., San Ysidro, LAX and Miami Airport) be replicated. UNHCR also recommends that the program be evaluated after a period of time to determine its success in eliminating or reducing the concerns highlighted in this report and whether expansion to other ports would be warranted.

D. Dissolution of Asylum Claims

Summary

INS stated policy favors release of asylum-seekers from detention during the pendency of their hearings, except for those asylum-seekers arriving by sea. However, parole decision-making varies dramatically from district to district. Officials with the New York and New Jersey Districts told UNHCR that they have very strict parole policies. UNHCR has conveyed to INS officials in the past its concern regarding the prolonged detention of asylum-seekers in these two districts. In the Miami District, on the other hand, the policy at the time of the study was generally to parole asylum-seekers if they passed their credible fear interview and submitted the address and phone number of a sponsor within the US. In addition, in the Los Angeles District, those asylum-seekers who had identity documents were generally released on bond.

Based on its observations of asylum-seekers dissolving their cases, UNHCR is concerned that the treatment individuals experience in the first few days after their arrival in the US, and/or the realization that they will likely be detained for months or years, may lead them to decide to abandon their asylum claims. UNHCR witnessed seven of 17 asylum-seekers (41%) in New York who, at the time of their credible fear orientation with the Asylum Officer, sought the dissolution of their asylum claims. While UNHCR does not draw any statistical conclusions from these observations, we note that the dissolve rates in the New York and New Jersey Districts for FY 2002, 24% and 23% respectively, were significantly higher than the national average and the majority of the other regional offices.

The Asylum Division completes a form for each asylum claim that is dissolved at the credible interview stage. That form asks the reason for dissolution in each case. UNHCR has been informed that the stated reasons are not categorized and quantified. Such information could be valuable to CBP and ICE in determining whether treatment and detention policies may contribute to asylum-seekers' decisions to dissolve their claims and whether these policies should be modified accordingly, especially given that detention could be a deterrent to pursuing asylum claims.

UNHCR Recommendations:

D-2 (1) UNHCR recommends that BTS and BCIS explore the reasons for the significantly higher dissolution rates in certain districts and modify or adopt policies to address this issue and ensure that detention is not being used as a deterrent to pursuing asylum claims. To facilitate this, UNHCR also recommends that the Asylum Division compile the reasons why individuals choose to dissolve their asylum claims at the credible fear stage and to share this information with CBP and ICE.

D-2 (2) UNHCR has previously noted its concerns regarding widely-varying parole policies among the districts and again recommends that a uniform policy regarding parole of asylum-seekers be adopted that is consistent with international standards.

E. Asylum Division: Credible Fear Process

1. Overview

Summary

The credible fear standard as defined by statute is stricter than the international "manifestly unfounded" or "clearly abusive" standard. The Asylum Division's policy and guidance materials, however, properly indicate that the credible fear standard is a low threshold test designed to refer on all persons who could qualify for asylum, and direct Asylum Officers to draw all reasonable inferences in favor of the asylum-seeker. The Asylum Division guidance materials also indicate that Asylum Officers should not apply statutory bars to asylum at the credible fear stage. DHS has stated, however, that it plans to propose in October 2003 a regulatory amendment that would allow Asylum Officers to apply mandatory bars relating to criminal convictions and national security at the credible fear stage. Such a policy would be inconsistent with international standards, which provide that such complex matters should not be considered in accelerated procedures.

As a general matter, the credible fear interview process is well designed, with multiple layers of supervisory review. The Asylum Division maintains a "Quality Assurance Unit" at Headquarters which reviews all negative credible fear determinations, as well as cases involving evolving bases for protection, like domestic violence and claims to protection under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Applicants may have a consultant of their choosing at the credible fear interview who can play an appropriate advocacy role. With the exception of the Los Angeles Asylum Office, Asylum Officers generally respected the role of the consultant.

UNHCR Recommendations:

E-1 (1) UNHCR recommends that decisions regarding whether applicants may be barred from asylum, for example on criminal or security grounds, continue to be excluded from the credible fear process.

E-2 (2) UNHCR recommends that, consistent with its policy guidelines, the Asylum Division ensure that all Asylum Offices are aware of the role consultants may play in the credible fear interview process.

2. Questioning and Analysis by Asylum Officers

Summary

Most credible fear questioning and decision-making was appropriate. In general, Asylum Officers appeared to sufficiently explore aspects of claims to properly determine whether the credible fear standard was satisfied. However, UNHCR had two areas of concern.

First, UNHCR's representative observed some inconsistencies in Asylum Officer analysis in cases that presented similar fact patterns. In particular, UNHCR observed such inconsistencies in the context of Colombian asylum claims based on the refusal to pay extortion demands of the Revolutionary Armed Forces of Colombia (FARC) or the National Liberation Army (ELN). The integrity of any formal adjudicatory process relies in part on the consistency of the decisions rendered. As noted above, the Asylum Division has certain mechanisms in place to promote quality decision-making, such as the Quality Assurance Unit's review of all credible fear denials. It is not clear, however, whether this unit specifically track inconsistencies in decision-making for similarly-based claims. UNHCR also understands that the Quality Assurance Unit does not always share its legal analyses with all Asylum Officers, which could help promote consistency in decision-making.

Second, while Asylum Division guidance appears to interpret the "significant possibility" standard in a manner similar to the international standard, UNHCR found several cases (14) in which UNHCR disagreed with the Asylum Division's conclusion that the applicant had not established a credible fear of persecution. (Most of the cases were referred to an Immigration Judge based on a credible fear of torture.) These cases included 3 cases out of 40 random credible fear denial files and 11 Colombian extortion cases that UNHCR observed. The Colombian cases are of particular concern given that Colombian nationals comprise the third largest group of asylum-seekers in removal proceedings. A primary difference in legal analysis in these cases involved the issue of whether the applicant's fear had a nexus to one of the five protected grounds. The other area of difference involved the use of country condition information. Accelerated procedures should only be used to screen out those cases in which it is absolutely clear that the person has no refugee claim, and the adjudicator is truly free of doubt. While UNHCR observed that the majority of asylum-seekers were properly referred for full asylum hearings, given the risk of *refoulement*, these 14 cases are of concern.

UNHCR also observed that contrary to Asylum Division guidance, Asylum Officers often asked overly legalistic or compound questions. Such questions can be confusing to asylum-seekers and lead to misunderstandings or inaccuracies in the credible fear interview record.

UNHCR Recommendations:

E-2 (1) UNHCR recommends that the Asylum Division adopt mechanisms to identify inconsistent decision-making in similarly based claims and to address any such inconsistencies promptly through national guidance. The Asylum Division may wish to share with all Asylum Officers those Headquarters' explanations of reversals of credible fear decisions that would help ensure consistent, quality decision-making. If not currently done, UNHCR also encourages the Asylum Division to analyze Immigration Judge reversals of credible fear denials. Such analysis could help identify aspects of Asylum Officer decision-making in need of improvement.

E-2 (2) UNHCR recommends that the Asylum Division include in its guidance and training for all Asylum Officers that the standard for deciding whether an applicant has established a credible fear should be interpreted in the same manner as the "manifestly unfounded" standard.

E-2 (3) UNHCR recommends that the Asylum Division reiterate its guidance to Asylum Officers that they not ask overly legalistic and compound questions of credible fear applicants.

3. Credible Fear Interview Record

Summary

The credible fear interview is designed to be a limited screening of the asylum claim. Asylum Officers record information gained from the credible fear interview on the I-870 form ("Record of Determination /Credible Fear Worksheet"). The UNHCR representative observed that in positive credible fear decisions, some Asylum Officers typed their notes of the interview in Q&A format, even though they were not required to do so. At times their notes, whether typed or handwritten, were recorded on the I-870 form and at other times on separate sheets of paper. It is UNHCR's understanding that only the information included on the I-870 form itself is considered part of the "formal" record and any information from the interview that is recorded on separate paper is considered "informal" notes.

Attorneys who regularly represent asylum-seekers have raised concerns regarding the use of Asylum Officer notes, whether formal or informal, by District Counsels and Immigration Judges to test an applicant's credibility in removal proceedings. These attorneys have told UNHCR that many judges read very carefully Asylum Officer notes, whether formal or informal, that the District Counsel introduces into evidence, particularly when the information is typed in a Q&A format. Judges often view information typed in Q&A format as a verbatim transcript, even though it is not, and use it to find inconsistencies or even omissions in an applicant's testimony. The practice of some Asylum Officers of using the first person when summarizing the applicant's claim added to the view that the Q&A notes were akin to transcripts.

The I-870 record will often be incomplete or may contain material errors, which could potentially damage an applicant's credibility. One of the critical quality control mechanisms to

address issues of inaccuracy and material omissions in the I-870 record is to allow the asylum applicant and his/her representative to review the formal I-870 record and to make any necessary changes. According to asylum regulations, an Asylum Officer should create a summary of the interview, review it with the applicant, and allow the applicant to make corrections. With the possible exception of the Los Angeles Asylum Office, UNHCR's representative did not observe any Asylum Officers following this regulation.

It is UNHCR's understanding that any notes not included on the I-870 form itself are not provided to the applicant. Some immigration attorneys complained to the UNHCR representative about this policy, which they stated makes it difficult for them to fully respond to any issues raised with respect to the information in the I-870 form.

UNHCR Recommendations:

E-3 (1) UNHCR recommends that Asylum Officers be required to read back to the applicant, through an interpreter if necessary, any notes contained on the I-870 form, considered part of the "formal" record, and to allow for corrections of any errors or omissions. If the applicant has a consultant, the consultant should have an opportunity to review these parts of the I-870 with the applicant prior to its completion.

E-3 (2) UNHCR recommends that DHS adopt a policy prohibiting the use of Asylum Officer informal notes against the applicant in Immigration Court. UNHCR also recommends that CIS prominently insert language on the I-870 form and/or on any informal notes indicating that the form and notes do not constitute a verbatim record of the interview, that the credible fear process is a low-threshold screening, that some aspects or details of the claim may not have been explored with the applicant, and that appropriate weight should be afforded to the information. UNHCR recommends that training be provided to ICE District Counsel with regard to appropriate use of the credible fear interview record at the asylum hearing stage.

IV. FINDINGS AND RECOMMENDATIONS

A. Inspections: Questioning and Decision-Making

Congress, through development of statutory safeguards, and INS, through regulations, training materials, and memoranda, have recognized the importance of identifying possible asylum-seekers who seek to enter the US through a port-of-entry and of protecting them from immediate removal. Indeed, as described above, the threshold for referral to a credible fear interview is low, requiring only that the person seeking admission indicate an intention to apply for asylum or express a fear of persecution, torture, or return. At this point, the Inspections Officer is required to "not proceed further with removal" of the applicant.⁵⁷

In general, inspection personnel at the ports-of-entry followed established procedures, using the proper forms and documents. Many acted with a high degree of professionalism and integrity. This is commendable, given the pressure that frequently exists in primary and secondary inspection in the major US airports.

However, UNHCR also witnessed, or received files regarding, several cases in which asylum-seekers and potential asylum-seekers were either refused admission and removed from the US, were in unnecessary danger of being removed, or were treated in a manner that might have led them to withdraw their applications for admission rather than apply for asylum. Also, some Inspectors treated and interviewed asylum-seekers in such a manner that the information they obtained may have been inaccurate or incomplete, possibly jeopardizing the person's asylum claim in later proceedings. Although these examples constitute a relative minority of the cases observed, they are of considerable concern, raising questions about the adequacy of the procedures in place and/or the training and supervision of the Inspectors who are implementing them.

One focus of UNHCR during the study was the degree to which INS Form I-867 (Record of Sworn Statement in Proceedings) was used, since it contains essential refugee protection safeguards.⁵⁸ The I-867 provides individuals with valuable information about the US asylum process and includes four fear-related questions that help Inspectors determine if a person is an asylum-seeker. This form, which documents the interview with applicants who are suspected of being inadmissible, is the basis of expedited removal decision-making.

INS regulations require Inspectors to read to all individuals subject to expedited removal the asylum advisal included on the I-867 and to record the individual's responses to its fear-related questions in every case subject to expedited removal.⁵⁹ INS Headquarters guidance underscores the importance of this form. "Since a removal order under this process is subject to very limited review, you must be absolutely certain that all required procedures have been

⁵⁷ 8 CFR § 235.3 (b)(4).

⁵⁸ In all cases subject to expedited removal, Inspectors must use the form I-867A and I-867B, Record and Jurat of Sworn Statement in Proceedings under Section 235 of the Immigration and Nationality Act.

⁵⁹ 8 CFR § 235.3 (b)(2)(i).

adhered to and that the alien has understood the proceedings against him or her."⁶⁰ This section of the report will assess to what extent these procedures were followed in practice and how they were implemented.

1. Referrals When Fear Expressed

a. Overview

The procedures laid out in the INS Inspector's Field Manual are clear on the responsibilities of an Inspector once an individual expresses a fear of return:

If the alien indicates in any fashion that he or she has a fear of persecution, or that he or she has suffered or might suffered [*sic*] torture, you are required to refer the alien to an Asylum Officer for a credible fear determination. One of the significant differences between expedited removal proceedings and regular removal proceedings is that the inspecting officer has a responsibility to ensure that anyone who indicates a fear of persecution is referred to an Asylum Officer for a credible fear determination.⁶¹

In addition, INS training and guidance materials stress the need for Inspectors to be aware of non-verbal cues of fear.

Any applicant who exhibits any non-verbal cues - such as crying, hysteria, trembling, unusual behavior, incoherent, or difficult speech patterns - that alert the Inspector to possible fear of harm should be referred for a credible fear interview.⁶²

In general, Inspectors at all ports-of-entry upheld their responsibility to ask the fear-related questions on the I-867 form and to refer asylum-seekers for credible fear interviews. UNHCR observed instances in which Inspectors made referrals based on non-verbal expressions of fear and instances in which applicants providing equivocal or contradictory answers were referred. A notable example of this occurred at JFK International Airport when a young female applicant, E.K., from Macedonia, at first responded to the I-867 questions by stating "I did nothing wrong. I didn't commit any crimes."⁶³ Later, the applicant again stated that she did not have a fear of return and would not be harmed but, sobbing, repeatedly told the Inspector: "I don't want to go back" and "Please don't send me back to my country." The Inspector remained

⁶⁰ Inspector's Field Manual, *supra* note 35, at Chapter 17.15(a).

⁶¹ *Id.* at Chapter 17.15(b)(2).

⁶² INS Memorandum from Office of Programs to Regional and District Expedited Removal "Experts," "Supplemental Training Materials on Credible Fear Referrals" (Feb. 6, 1998) at 2 [hereinafter "Supplemental Training Materials on Credible Fear Referrals"].

⁶³ It bears noting that this applicant's response to the question of whether she would be harmed if returned to her country of origin, inferring somehow that she had done something "wrong" or criminal, was not unique. In a case involving a Colombian asylum-seeker at Miami Airport, for example, the applicant first responded "no" to this question, but then changed his answer after the Spanish-speaking Inspector explained the question further. The Inspector later told UNHCR: "Even when talking in Spanish sometimes they don't understand. They think you mean problems with the justice system, as if they are criminals, because in some of these countries, the government is worse than the guerrillas or anyone else."

attuned to these signals, and told the applicant that she was going to be able to talk to an Asylum Officer.⁶⁴

UNHCR observed instances, however, when fears were very clearly expressed, either before or during the secondary inspection interview, yet no credible fear referral was made. These occurrences, even if relatively few in number, are quite troubling. Any indication of fear should be sufficient to trigger a credible fear referral, regardless of when in the primary or secondary inspection process that fear is expressed. Once a fear is expressed, or an intention to apply for asylum is indicated, the Inspections Officer should refer the person for a credible fear interview. This fundamental aspect of the expedited removal process must be scrupulously followed.

b. Fear Expressed *During* the I-867 Interview

UNHCR encountered a few instances in which applicants who expressed a fear *during* the secondary inspection interview were not referred to the credible fear process. In one such case at JFK, the file of which UNHCR reviewed, the applicant initially stated that he had no fear of returning to Germany, but then, after learning that he would not be able to enter the US on his visa, specifically asked for asylum and stated that his life had "ended in Germany." The Inspector's memo states: "The subject was refused admission. . . . (He) *stated* "no" fear in returning to his home country or country of last residence" (emphasis added). A supervisory officer reviewed the decision and the asylum-seeker was removed.

It is unclear why this asylum-seeker was not referred for a credible fear interview. A review of the individual's case file suggests that he may have had mental health issues,⁶⁵ which, if true, would have warranted a more thorough review of his case. Consideration of refugee claims made by persons with mental disabilities should, as a rule, "be more searching than in a 'normal' case and [...] call for a close examination of the applicant's past history and background, using whatever outside sources of information may be available."⁶⁶ This is generally not possible in expedited removal procedures, and certainly not at a port-of-entry. The fact that Germany is not a major refugee-producing country should not have affected the decision-making process. INS training materials emphasize that the particular country of origin of an asylum-seeker "should not affect the Inspector's decision to refer an applicant for credible fear" since "no country should be safe - or dangerous - for all residents."⁶⁷

⁶⁴ When the UNHCR representative asked this Inspector how she decides such cases in which the applicant clearly does not want to go back but says that she has no fear, the Inspector responded:

In some cases they say they don't want to go back, and like in this one, she can't articulate why. So maybe she is not able to tell me. She says she is the only one left in her country. I don't know the circumstances that made the rest of the family leave. But it is not my job to figure out why—I just send it to an Asylum Officer. We're not going to send someone kicking and screaming back onto the plane.

⁶⁵ During his secondary inspection interview, the individual stated in response to the fear-related questions that "they" thought he was crazy and tried to force him to take medications, that on the day he was born "there was a war situation inside because of bad smell from politicians sexuality," and that he "heard emotions from politicians that [he] can't get children."

⁶⁶ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, para. 212 (Jan. 1992) [hereinafter *UNHCR Handbook*].

⁶⁷ "Supplemental Training Materials on Credible Fear Referrals," *supra* note 62, at 3-4.

Another example, at LAX, involved a Guatemalan applicant, H.A.A.G. When asked whether he had a fear of returning to Guatemala, the applicant clearly stated "yes." However, when asked if he believed he would be harmed if returned, he said "no," and when asked why he left Guatemala, he stated "it is a poor country and I have to look out for better opportunities." The Inspector did not refer the applicant for a credible fear interview and ordered him removed.

While H.A.A.G.'s indications of fear were ambiguous, they should have resulted in a referral for a credible fear interview. Under INS guidelines, any individual who indicates a fear of return, even if coupled with a statement that s/he is looking for work in the US, should be referred for a credible fear interview.⁶⁸ In such circumstances, an Asylum Officer is better qualified than an Inspections Officer to determine whether an asylum claim exists.

Also at LAX, a Nigerian applicant expressed a very clear asylum-eligible fear during her secondary inspection interview based upon her relatives having been killed during the Muslim-Christian violence in Nigeria. She stated in response to the question regarding whether she had a fear of returning to her country, "Yes, I am afraid because of the elections coming up." She explained that she was afraid because Muslims were killing Christians in Nigeria and that her relatives had already been killed.⁶⁹ The Inspector was initially prepared to refer the applicant for a credible fear interview, but then spoke with another Inspector who had spoken with the applicant earlier. The second Inspector, who spoke the applicant's language, told the UNHCR representative that the applicant "had said that there is a lot of violence between Christians and Muslims, but she herself is not targeted." On this basis, the first Inspector re-did the credible fear questions on the I-867 form. He again asked the applicant if she had a fear of return. This time she replied "no." When asked if she feared being harmed, she said that she would prefer not to return because it was not safe and the Muslims thought they would go to heaven if they killed Christians. The Inspector was prepared not to refer the applicant for a credible fear interview.⁷⁰

c. Fear Expressed *Before* the I-867 Interview

Inspectors were generally prepared for straightforward cases where the applicant immediately and clearly articulated a fear of return or a desire to apply for asylum during the interview at secondary. Difficulties arose, however, when a fear was expressed *prior* to the expedited removal interview, but not clearly *during* the secondary inspection interview itself. Inspectors did not always fully consider this initial expression of fear when conducting the I-867 interview. In the examples discussed below, the asylum-seeker's initial indication of fear was noted somewhere in the applicant's file, but was either not seen, or was disregarded, by the Inspector conducting the secondary inspection interview. As a result, some asylum-seekers faced the risk of removal.

⁶⁸ *Id.* at 3.

⁶⁹ These statements are based on the UNHCR representative's direct observation of the exchange between the Inspector and the Applicant. These statements do not appear in the applicant's sworn statement because the Inspector only recorded the second conversation he had with the applicant. *See also* Section (IV)(A)(3)(c) for further discussion of this case.

⁷⁰ The applicant was ultimately admitted after being granted a waiver for a very minor visa issue.

For example, a Chinese applicant, upon arrival at LAX, indicated on an INS personal information form, which she had completed with the assistance of an airline interpreter, that she wanted “political asylum.” It appears, however, that the applicant did not request asylum or indicate a fear during the secondary inspection interview. Despite her earlier request for asylum, the Inspector processed her case as an ERR (Expedited Removal – Removed). She was not referred for a credible fear interview until she repeated her request for asylum while in detention.⁷¹

A similar incident occurred at Miami Airport, when K.S., a Guyanese applicant, immediately told the Inspectors in secondary that she wanted asylum, a fact which was noted in her file. The applicant again expressed a fear during her sworn statement, but also stated that she wanted to “go back home.”⁷² The Inspector did not raise with her the fact that she had initially requested asylum, nor was he prepared to refer the case for a credible fear interview based on her initial request for asylum and her expression of fear during the sworn statement. Only after the sworn statement was completed, when she again explicitly requested asylum, was she processed for a credible fear interview.⁷³

⁷¹ The UNHCR representative was present when this applicant first arrived at LAX and observed that the applicant was given a questionnaire to complete in order to establish her identity (which appears to be local practice at LAX). An airline representative from JAL assisted this applicant in completing the form, writing the applicant’s answers in English. On this form, in a line in which the applicant was asked to write anything else she wanted to tell the officer, she wrote “political asylum.” The UNHCR representative was not present for the interview this applicant had at the airport, but inquired about the case the following day. The Inspector handling the case informed UNHCR that the applicant had been processed for expedited removal, adding that “since she was going to be in detention until they could arrange travel documents, her story would probably change and she would probably later on ask for asylum.”

⁷² The applicant’s statements during the I-867 interview were as follows:

Q. Do you have any questions?

A.I want to go back home. I don’t want to be behind bars....

Q. Why did you leave your home country?

A. In Guyana things don’t work well. My husband used to work in like the Justice Party. They can shoot you... [NOTE: it is not clear that the Inspector heard this response because he did not write this down in the written I-867 statement.]

Q. So why did you leave?

A. I am scared.

Q. Do you have any fear or concern about being sent back home?

A. Well no. If you send me back I go back.

Q. Would you be harmed...?

A. Maybe yes, maybe no. I can’t tell you yes or I can’t tell you no. I never did anything to anybody.

Q. You have to give an answer yes or no.

A. I can’t answer to that.

⁷³ Once the applicant again requested asylum, the Inspector took another sworn statement.

UNHCR Recommendations:

A-1 (1) UNHCR recommends that CBP adopt procedures to ensure that *any* indications of fear of return expressed before or after the secondary inspection interview is duly recorded and considered by Inspections Officers. Any indication of fear should result in referral for a credible fear interview.

A-1 (2) Consistent with current CBP policy exempting unaccompanied minors from expedited removal procedures (except in certain circumstances), UNHCR recommends that individuals who appear to be mentally ill also not be placed in these procedures. If placed in expedited removal proceedings, UNHCR recommends that they automatically be referred to an Asylum Officer for a credible fear interview.

2. Withdrawals of Application for Admission

a. Overview

Expedited removal procedures give Inspections Officers the discretion to allow an individual to withdraw his/her application for admission to the US, even if inadmissible under INA Sections 212(a)(6)(C) or (7), if doing so would be in the "best interest of justice."⁷⁴ Withdrawals should normally not be allowed, however, where there is "obvious, deliberate fraud" on the part of the applicant. In such cases, expedited removal orders should normally be issued.⁷⁵ As a general matter, withdrawals should be "strictly voluntary and should not be coerced in any way."⁷⁶

The authority of Inspectors to allow withdrawals pre-dates expedited removal procedures in the US. The benefit of allowing individuals to withdraw their applications for admission is that it prevents them from being subject to the penalties of a removal order in those instances where inadmissibility was the result of harmless error or oversight. Under expedited removal, these penalties include a five year bar on return to the US. The inherent risk of withdrawals at a port-of-entry, however, which also pre-dates expedited removal, is that a refugee may decide not to seek asylum in the US for the wrong reasons. Most notably, asylum-seekers offered the opportunity to withdraw their applications for admission, or simply told that their cases will be processed in that manner, may not realize that they have the option of pursuing an asylum claim or may be too afraid to do so.

In an effort to ensure that asylum-seekers were properly identified under the expedited removal process, certain procedural safeguards were established that should, in principle, minimize the possibility of uninformed withdrawals by asylum-seekers. These safeguards are discussed below. UNHCR considers these safeguards to be extremely valuable in ensuring that refugees are appropriately identified and not improperly dissuaded from seeking protection in the

⁷⁴ See INA Section § 235(a)(4); 8 CFR Section § 235.4; Inspector's Field Manual, *supra* note 35, at Chapters 17.2(a) & 17.15(c).

⁷⁵ Inspector's Field Manual, *supra* note 35, at Chapter 17.2(a).

⁷⁶ *Id.* at Chapter 17.2(a). See also 8 CFR § 235.4 ("The alien's decision to withdraw his or her application for admission must be made voluntarily...").

US. Unfortunately, they do not appear to be mandatory in nature, which is of concern. UNHCR is also concerned that not all of the safeguard procedures are included in the Inspector's Field Manual, the main reference tool for Inspectors.

b. Withdrawal Before a Fear is Expressed

The first area of concern involves applicants for admission who are processed as withdrawals before having expressed a fear of return to their country of origin, but who are not asked any of the I-867A&B's fear-related questions as part of the withdrawal procedure. According to the Inspector's Field Manual, if an Inspections Officer decides to allow an individual to withdraw an application for admission, the officer is to prepare a Form I-275 ("Withdrawal of Application for Admission/Consular Notification") and attach a sworn statement.⁷⁷ For persons who would otherwise be subject to expedited removal, the sworn statement "should be taken using Form I-867A&B", which contains the asylum advisal and the four fear-related questions.⁷⁸ While the Inspector's Field Manual indicates that Inspectors "should" follow the above procedures, the INS 1998 training outline⁷⁹ on the expedited removal process indicates that they are discretionary and that the sworn statement and I-867A&B forms should be used in these circumstances "whenever possible." The discretionary nature of this procedure was confirmed by DHS HQ.

UNHCR considers the Form I-867A&B to be a useful tool for Inspections Officers to identify asylum-seekers and to ensure that their claims are considered by trained government officials. For example, the local policy at JFK when processing a withdrawal was consistent with the IFM guidance, *i.e.*, the Inspector was to take a sworn statement and ask the fear-related questions from the I-867A&B. UNHCR observed one case where a young woman from Pakistan arrived with a once-valid visa that had been revoked by the State Department. The Inspector handling her case processed her case as a withdrawal, and asked her the fear-related questions accordingly. The woman expressed a fear of return, was processed as an expedited removal case using the I-867 form, and referred for a credible fear interview.

Other ports-of-entry did not institute these safeguards in their withdrawal procedures. At Miami Airport, UNHCR observed two Colombian nationals who also arrived with revoked visas and who were determined to be inadmissible under INA Section 212(a)(7)(B). For reasons unclear, the Supervisory Inspector instructed the Inspector to process the applicants as withdrawals of application for admission. He also told the Inspector *not* to take a sworn statement from either applicant, as provided in the Inspector's Field Manual, because, in the Supervisor's words, "there [was] nothing to establish." As a result, neither individual was asked if he had a fear of return, despite the fact that Colombia is a well-known refugee-producing country.

⁷⁷ Inspector's Field Manual, *supra* note 35, at Chapter 17.2(c).

⁷⁸ *Id.*

⁷⁹ *See*, INS, Expedited Removal Training Outline (1998). This Outline corresponds to the trainings given by the Inspections Division to Secondary Inspections Officers after the expedited removal process was first introduced.

The importance of the safeguard procedures in these cases is highlighted by the fact that the Inspectors at the Miami port-of-entry appeared to process the withdrawals on their own initiative, without the asylum applicant even requesting it. Absent the Inspectors specifically asking the applicants if they feared return to their country of origin, the applicants may not have realized that they could pursue asylum in the US. For this reason, in addition to asking the fear-related questions, it would be beneficial for the Inspectors to read the asylum advisal on the Form I-867A&B in such cases. UNHCR has found that this advisal puts asylum-seekers at ease and facilitates their cooperation in the secondary inspection process.

c. Withdrawal After a Fear is Expressed

The second area of concern involves the processing of a withdrawal after an individual has expressed a fear of return. Before allowing such a withdrawal, it is imperative that applicants be fully advised of their right to seek asylum and of the consequences of withdrawing their request for admission. This would best be done by a government official, such as an Asylum Officer, who is trained in asylum matters and who is divorced from enforcement functions at the port-of-entry.

In 1998, INS issued guidance outlining certain steps to be followed if a person requests a withdrawal after initially expressing a fear in the secondary inspection interview.⁸⁰ According to this guidance, the Inspector should: (1) review the initial sworn statement with the applicant to ensure that there is no misunderstanding; (2) if no misunderstanding, prepare a second Form I-867A&B, noting that the person has changed his/her mind; (3) consult with an Asylum Supervisor before executing the decision; and (4) if the Asylum Supervisor concurs that it is appropriate to allow a withdrawal at the port-of-entry without a credible fear interview, indicate as such in the applicant's A-file. UNHCR considers these procedures to be extremely valuable in ensuring that requests for withdrawals are made in a fully informed manner. Unfortunately, these procedures are not included in the Inspector's Field Manual's sections on withdrawal procedures and it is unclear whether they are mandatory or discretionary.⁸¹

The above guidance, however, presumes that an initial I-867A&B has been completed. UNHCR is also concerned that some Inspectors, perhaps with the best of intentions, may informally advise individuals before the secondary inspection interview begins not to pursue their asylum claims. This possibility was most vividly highlighted during a UNHCR mission to the Chicago O'Hare airport in August 2001, separate from this study. While at the airport, UNHCR observed INS, Customs and airline officials surrounding a young, female Colombian asylum-seeker, who was crying, in the secondary inspection area. UNHCR staff members overheard the INS Inspections Officer telling the woman that she would not "win asylum," that she would be detained in the US, and that it would be better for her to go back to her country. The INS Inspector later told UNHCR that his comments were based on his (incorrect) belief that the woman was not eligible for asylum because it was not the Colombian government that was threatening her.⁸²

⁸⁰ "Supplemental Training Materials on Credible Fear Referrals," *supra* note 62, at 5.

⁸¹ See Inspector's Field Manual, *supra* note 35, at Chapter 17.2(c), 17.15(c).

⁸² See Letter from Guenet Guebre-Christos, *supra* note 5, included as Attachment A.

In another case, an asylum-seeker from Colombia, L.L.P., related the following experience at the Miami port-of-entry. UNHCR did not observe this case.

When [the Inspector] found out that my true motive was to apply for asylum, his attitude changed completely. He tried to scare me and tell me things that were going to happen that did not happen. He told me I was going to go to jail, I would be mistreated or treated poorly, and I would remain that way in the United States for a long time until my application for asylum went through. He perturbed me a little bit because I just came from my country and I was already nervous, so it was difficult. Two others besides this one interviewed me. One made observations as far as how the political asylum process is. He was almost as rude as the other. He recommended me not to apply for asylum. Concretely he said that there were many Colombians asking for that type of help, maybe it would be something not offered to me, and not to waste my time.

These incidents, even if isolated, are extremely troubling, given the risks of returning someone to a country where s/he may be at risk of persecution. It is not the responsibility of INS Inspections Officers, untrained in refugee and asylum law, to assess the validity or strength of an asylum-seeker's claim. These cases should be processed according to established expedited removal procedures, using the Form I-867A&B with its asylum advisal and its fear-related questions. If an individual seeks to withdraw an application for asylum after these procedures are completed, without undue influence by Inspections Officers, the withdrawal procedures outlined earlier should be followed.

UNHCR Recommendations:

A-2 (1) UNHCR recommends that CBP make mandatory the procedures included in the Inspector's Field Manual that, when processing the withdrawal of a person otherwise subject to expedited removal, Inspectors take sworn statements using the Form I-867A&B, with its asylum advisal and fear-related questions.

A-2 (2) UNHCR recommends that CBP make mandatory the procedures outlined in the 1998 Supplemental Training Materials for Credible Fear Referrals for individuals who have expressed a fear of return and who then request to withdraw their application for admission while at the port-of-entry. These procedures should be included in the Inspector's Field Manual.

A-2(3) UNHCR also recommends that CBP provide additional training to Inspectors on how to process cases of persons who express a fear before the formal secondary inspection interview. Most importantly, Inspectors should refrain from giving advice or providing their opinions about individual asylum claims and ensure that all substantive discussions about the person's claim are included as part of the formal record of the secondary inspection interview process.

3. Transit Without Visa (TWOV) Cases

It is UNHCR's understanding that, under US law, persons transiting the US are considered "arriving aliens" subject to expedited removal if they are inadmissible under INA Section 212(a)(6)(C) or (7).⁸³ If there are questions regarding their eligibility to transit without a visa, or if they come forward to request asylum, therefore, such individuals would be processed using the I-867A & B, with its advisal on refugee protection in the US and its fear-related questions. According to the Inspector's Field Manual, however, inadmissible TWOVs "may be subject to expedited removal proceedings or may be returned to the carrier for removal."⁸⁴ No further guidance is provided on this, although the manual does state that TWOV passengers who affirmatively request asylum are to be placed in expedited removal proceedings.⁸⁵

As noted earlier, UNHCR considers the asylum advisal and the fear-related questions on the I-867A&B to be valuable tools in identifying asylum-seekers arriving in the US and affording them the necessary refugee protection. It is our understanding, for example, that before Colombia was removed from the list of countries eligible under the TWOV program, INS placed in expedited removal proceedings those inadmissible Colombians who were transiting the US under the TWOV program rather than automatically returning them to the carrier that brought them to the US.⁸⁶ This ensured that they were not removed without an opportunity to request asylum. In contrast, Inspectors at LAX told UNHCR that in the past individuals refused as TWOVs were regularly returned to their home countries simply by issuing an I-259 form to the airline that transported them. It is not clear what policy LAX currently maintains.

UNHCR Recommendations:

A-3 (1) UNHCR recommends that individuals who are transiting the US under the TWOV program and who are determined to be inadmissible be read the I-867 asylum advisal and fear-related questions. If the person indicates a fear of return, they should be allowed to pursue their asylum claims in the US.

⁸³ 8 CFR § 253.3(b)(i) ("[t]he expedited removal provisions shall apply to the following classes of aliens who are determined to be inadmissible under Section 212(a)(6)(C) or (7) of the Act... (i) arriving aliens, as defined in Section 1.1(q) of this chapter...") and 8 CFR § 1.1(q) ("[t]he term *arriving alien* means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry...").

⁸⁴ Inspector's Field Manual, *supra* note 35, at Chapter 17.8(p). For reasons unclear, this information is provided in the Inspector's Field Manual chapter entitled "Detention of Aliens at Ports-of-Entry", and is not included either in the chapter on expedited removal (Chapter 17.15) or the chapter specifically related to transit without visa admissions (Chapter 15.6). UNHCR understands that "rejected TWOVs", *i.e.*, individuals who transit the US but are not accepted by the country of destination and are then returned to the US, are not considered "arriving aliens" subject to expedited removal. This is based on the legal fiction that, because they were never accepted for admission by the country of destination, they never actually "left" the US.

⁸⁵ *Id.*

⁸⁶ Colombia was removed from the list of countries eligible for the TWOV program in 2001.

4. Quality and Scope of Questioning

a. Role of Inspector

UNHCR observed that, frequently, the I-867 fear-related questions were just a starting point for further questioning of an applicant by an INS Inspector. At times, applicants answered the initial questions simply “yes” or “no” (with no elaboration at all), answered equivocally (indicating that they had a fear but might not be harmed), or answered unclearly (not stating one way or the other whether a fear existed). In addition, there were times when applicants did not seem to understand the questions and asked the Inspector for elaboration.

UNHCR recognizes that asylum-seekers may not always understand the fear-related questions, or that their responses to them may be unclear or equivocal. As a result, it may be necessary to ask follow-up questions to determine whether or not the person fears return to the country of origin or wishes to apply for asylum. Yet, the circumstances under which referral for a credible fear interview is warranted, and the type of follow-up questioning that is appropriate, do not appear to be well-defined or understood in all cases.

INS regulations provide that if an applicant indicates an intention to apply for asylum, or expresses a fear of return, the Inspector “shall not proceed further with removal of the alien until the alien has been referred for a [credible fear] interview....”⁸⁷ With regard to the amount of information that the Inspector should obtain from the asylum-seeker, the regulations provide that the Inspector need only “record sufficient information in the sworn statement to establish and record that the alien has indicated such intention, fear or concern, and to establish the alien's inadmissibility.”⁸⁸

INS training materials provide similar, although more detailed, guidance. The training materials instruct that an affirmative answer to any of the fear-related questions on the I-867 form is sufficient to trigger referral to an Asylum Officer, “even if the applicant provides no additional information related to the fear of return”.⁸⁹ This is the case even if the person, in response to the question “Why did you leave your home country or country of last residence?”, states that s/he left to find work in the US.⁹⁰ These training materials further suggest that no follow-up questions are required once an individual has indicated an intention to apply for asylum or a fear of return. The only additional information that is identified as possibly helpful for the Asylum Officer conducting the credible fear interview includes the asylum-seeker's gender, language abilities, family members traveling with him/her, and any special needs or unusual behavior.⁹¹ Consistent with INS regulations, however, Inspectors are not required to obtain this information.

⁸⁷ 8 CFR § 235.3(b)(4).

⁸⁸ *Id.*

⁸⁹ “Supplemental Training Materials on Credible Fear Referral,” *supra* note 62, at 2 (“An applicant who answers affirmatively to *any* of the questions on the Form I-867B concerning whether he or she fears return to his or her country of origin . . . *must be referred* for a credible fear interview, even if the applicant provides no additional information related to the fear of return.”) (emphasis added).

⁹⁰ *Id.* at 3.

⁹¹ *Id.* at 3.

The instructions contained in the INS Inspector's Field Manual appear somewhat inconsistent with both the INS regulations and the above training materials. Like the INS training materials, the Inspector's Manual provides that "if the alien indicates *in any fashion* that he or she has a fear of persecution...[the Inspector is] required to refer the individual to an Asylum Officer for a credible fear determination."⁹² However, the Manual continues on to state that once the applicant has indicated a fear of return, the Inspector "should ask enough follow-up questions to ascertain the general nature of the fear or concern."⁹³ While advising that the Inspector neither go into any detail about the nature of the fear, nor evaluate the credibility of the applicant or the strength of the claim,⁹⁴ it does allow the Inspector the discretion *not* to refer an individual for a credible fear interview if the individual "asserts a fear or concern which is clearly unrelated to an intention to seek asylum or a fear of persecution."⁹⁵ This appears to go beyond what is contained in INS regulations.

UNHCR is concerned with the authority granted to Inspectors under the Inspector's Field Manual to determine whether an asserted fear is "clearly unrelated to a fear of persecution." This is dangerously close to determining whether a claim is "manifestly unfounded," *i.e.*, "clearly not related to the criteria for the granting of refugee status...nor to any other criteria justifying the granting of asylum."⁹⁶ Consistent with UNHCR Executive Committee Conclusions, such a determination should be made by a government authority "normally competent to determine refugee status"⁹⁷ (*i.e.*, the Asylum Division), not by border officials. In UNHCR's opinion, the role of the Inspector in the expedited removal process, for purposes of refugee protection, is simply to determine whether an individual is seeking asylum in the US or has a fear of return to his/her country of origin. It is not to assess the basis or strength of the claim. This is a judgment better left to trained Asylum Officers.

UNHCR observed many instances in which Inspectors asked excessive follow-up questions that were based on misunderstandings of basic asylum law or went into much more detail than was required to establish whether the person wished to request asylum or had a fear of returning to his/her country of origin. Unfortunately, many Inspectors told UNHCR that this was done to establish a record that could be used against applicants in the event they made inconsistent statements in later asylum proceedings.⁹⁸ Other Inspectors noted that they asked far more detailed, extensive fear questions if certain Supervisors were on duty, because, as one Inspector stated, "some Supervisors want you to."

In UNHCR's opinion, the primary purpose of the credible fear screening process is to efficiently screen out those cases that do not present a refugee protection issue, and is not to establish a record that can later be used against the applicant in his/her asylum case. While UNHCR recognizes, and shares, DHS' interest in preventing individuals from "gaming the

⁹² Inspector's Field Manual, *supra* note 35, at Chapter 17.15(b)(2) (emphasis added).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Executive Committee Conclusions, *supra* note 10, No. 30, para. (d).

⁹⁷ *Id.* at No. 30, para. (e)(ii).

⁹⁸ For example, some Inspectors commented: "The purpose of the sworn statement is to make or break the person's case," and "If he's lying you have proof of the discrepancies."

system" by presenting one set of facts to an Inspections Officer and another to an Asylum Officer, UNHCR does not believe the benefits of using such a record outweigh the risks that accompany it. Extensive questioning by Inspectors who lack training in asylum law and procedures may establish an inaccurate or prejudicial record of the person's claim. It may also result in the failure to refer asylum-seekers for a credible fear interview or may unduly traumatize asylum-seekers during the interview process.

b. Level of Detail in Fear-Related Inquiry

As noted earlier, it is often necessary, and appropriate, for Inspectors to ask basic, general follow-up questions when the applicant has not understood the question or when it is unclear whether a fear of return has been indicated. However, UNHCR observed many instances in which Inspectors, whether on their own initiative or at the direction of Supervisors, went into much more detail about an applicant's asylum claim than was necessary or warranted in determining whether such a fear existed. The tone of some of these interviews was also of concern, at times being reminiscent of a courtroom cross-examination.

For example, in one case involving a Colombian man, L.L.P., the Inspector asked multiple questions regarding the nature of his work, whether he had proof of the threats he had received, and why he hadn't moved to a safer area of the country.⁹⁹ Another Colombian asylum-seeker, W.U.G., was asked why he did not internally relocate within Colombia rather than flee,¹⁰⁰ why he had not expressed his fear to INS earlier,¹⁰¹ and why he had not left his country earlier given the timing of the threats that he had received.¹⁰² Inspectors were also observed asking whether threats were reported to the police, who else lived in the applicant's household and why family members did not travel with the applicant to the US. Sometimes, Inspectors appeared to believe that an applicant was lying based upon their own understanding of existing country

⁹⁹ The questioning, as recorded on the I-867 sworn statement, included the following:

- "In which area did you work, what type of work were you performing, and for what company were you working at that time [when death threats started]?"
- "Do you have any proof of these threats?"
- "Who were you working with at the time when you were receiving these threats?"
- "If you were receiving threats, why did you continue to go into these areas?"
- "Why didn't you go to another area, or stop doing that if your life was in danger?"
- "When was the last time you worked, and the last time you received these threats?"

The UNHCR representative later spoke with the applicant when she was in detention, and she indicated that the Inspector's questioning had upset her at the time.

¹⁰⁰ "If you are so afraid of getting killed, why didn't you take your family and move to another city or state in Colombia? Why did you leave your wife and children exposed to that danger?"

¹⁰¹ "When you first encountered a United States Immigration Inspector and presented your Colombian passport with the visa that does not belong to you, why didn't you tell the Inspector that you were running away from your country because you were receiving death threats in Colombia. Were you hoping that he didn't see the fraud?" and, again later, "When were you planning to ask for political asylum, because obviously you did not ask the Primary Inspector.... Were you waiting to get caught and then ask for asylum?"

¹⁰² "If the death threats started at the beginning of July 2001, why did you attempt to leave your country illegally during April 2001? What was the reason for attempting to leave your country last April?" [The applicant previously mentioned that he had tried to leave Colombia illegally in April 2001, but was arrested by Colombian police].

conditions.¹⁰³ Such detailed questions may cause unnecessary anxiety for asylum-seekers. They may fear that they will be deported if they do not adequately support their claim or justify their actions to the Inspections Officer.

Perhaps one of the most disturbing cases that has come to UNHCR's attention on this issue occurred after the completion of this study. In September 2002, UNHCR was informed of the case of a Liberian, L.B., who requested asylum upon arrival at JFK and was placed in expedited removal proceedings.¹⁰⁴ As with the other examples reported above, the Inspectors involved in his case asked many detailed questions about his claim, including questions regarding the specifics of his torture and the nature of his political activities. These questions were recorded on the asylum-seeker's I-867 sworn statement. Of great concern are indications that the Inspectors ordered the applicant to strip naked to determine whether he had body scars consistent with the torture that he described. It is also alleged that the asylum-seeker was racially and sexually ridiculed by Inspectors when he disrobed. UNHCR considers this type of interrogation to be completely inappropriate and far beyond the purview of Inspections Officers in their investigatory capacity. With regard to the alleged racial and sexual slurs made by the Inspections Officers, UNHCR hopes that CBP will fully investigate the allegations and take appropriate disciplinary measures if they are substantiated.

c. Misunderstanding of Basic Asylum Law

The questions that Inspectors often asked asylum-seekers also suggested that many of them misunderstood basic concepts of asylum law. While in most of the cases observed/reviewed the applicants were ultimately referred for a credible fear interview, these misunderstandings carried with them certain risks. These included possible removal of the applicant from the port-of-entry for failure to respond "appropriately" to the questions posed, creation of an inaccurate record due to unnecessarily narrow questioning, and/or anxiety for the applicant who fears removal should s/he fail to satisfy the Inspector's expectations regarding the asylum claim. Three misunderstood areas of asylum law bear mention: level of harm necessary to make out an asylum claim, persecution by non-state actors, and protected grounds for refugee status.

Level of Harm Needed for Asylum Claim: One area of confusion for Inspectors appeared to be what level of feared harm was necessary to make out an asylum claim. At LAX, UNHCR encountered Inspectors who believed, mistakenly, that the harm feared had to be immediate, certain, and/or severe. For example, UNHCR observed Inspectors in two cases who did not accept the applicant's initial response to the questions about harm and pressed them to

¹⁰³ At Miami Airport, G.U., an Albanian asylum-seeker, stated that he was a Democrat and helped to organize demonstrations in Albania, and "they don't like that because they are Communists." The Inspector responded: "Right now there are no communists in Albania. Why are you talking about communists?" The Inspector mentioned that he had watched a news documentary that morning about Albania and that there were no Communists in Albania anymore.

¹⁰⁴ See Letter from Hebrew Immigrant Aid Society (HIAS) to INS District Director Edward McElroy, New York District, and copied to UNHCR (Feb. 27, 2003), included as Attachment B. A copy of the completed I-867 form in the case is attached to the letter.

demonstrate that the feared harm was imminent and/or severe. In one case mentioned earlier,¹⁰⁵ a Nigerian applicant stated that it was not safe to return to Nigeria because "the Muslims think they will go to heaven if they kill Christians." In response, the Inspector asked "[b]ut would anyone be waiting for you at the airport?," while another Inspector in the room drew his fingers across his throat. The applicant said "no." The Inspector was prepared not to refer the applicant for a credible fear interview. Fortunately, the Inspector later determined that she was admissible and therefore not subject to expedited removal.¹⁰⁶

Fear of Non-State Actors: Under established US and international refugee law, an asylum claim can rest on harm by either non-government or government agents. Accordingly, INS training materials instruct Inspectors that the identity of the persecutor of the asylum-seeker should not affect their decision to refer a person for a credible fear interview.¹⁰⁷ While most Inspectors followed these instructions, many appeared to believe that the feared persecutor must be a state actor. As a result, they asked many detailed, specific questions about the applicant's fear of, or past harm by, the government, to the exclusion of non-state actors.¹⁰⁸ The failure of the applicant to explain his/her fear of non-state actors, despite never being asked about it, could impugn his/her credibility in later proceedings.¹⁰⁹ One of the more disturbing examples regarding misunderstandings of agents of persecution involved the incident mentioned earlier that was observed by UNHCR during its visit to the Chicago O'Hare Airport in 2001, outside of the present study. During this visit, UNHCR observed an INS Inspector telling a young, female asylum-seeker from Colombia that she would not "win asylum" in the US because the harm she feared was not from a government authority and that she should not apply for asylum in the US.¹¹⁰ It is possible that the applicant would have sought to withdraw her application for admission, or have been ordered removed, based on this misinformation.

Grounds for Asylum: To obtain refugee status, a person must demonstrate a well-founded fear of persecution on account of one of five grounds: race, nationality, religion, political opinion, or membership in a particular social group. During this study, UNHCR observed some

¹⁰⁵ See Section IV(A)(1)(b) "Fear Expressed *During* the I-867 Interview," *supra*.

¹⁰⁶ In the other case, involving a Chinese applicant, M.Q.G., the Inspector appeared to believe that "harm" had to involve physical beatings or torture. The applicant's initial statement that she would be jailed upon return did not appear to be sufficient. The questioning included the following:

Q. Would [you] be harmed if [you were] returned to China?

A. Maybe they will go after [my] parents besides [me].

Q. But would they harm [you]?

A. [I am] working in China. They may put [me] in long term jail and not let [me] work again.

Q. I want to understand would [you] be harmed. Would they torture you?

A. [Unclear...] [I] have no idea because [I've] never been in jail.

Q. So [you don't] know if [you'll] be harmed or not.

A. [I have] never been in jail so [I don't] know what will happen to [me] there.

¹⁰⁷ "Supplemental Training Materials on Credible Fear Referral," *supra* note 62, at 3.

¹⁰⁸ For example, at LAX, a Filipino expressed a fear of return followed by a statement that he wanted to see his mother. The Inspector, in his follow-up question, specifically asked whether he had any fear of harm or persecution by government officials, suggesting that fear of harm by any other entity/person would be insufficient. A similar exchange occurred with a Senegalese asylum-seeker at JFK.

¹⁰⁹ See Section IV(7) "Accuracy of the Sworn Statement," *infra*, on concerns regarding use of inaccurate or incomplete statements in the expedited removal process in later asylum proceedings.

¹¹⁰ See Letter from Guenet Guebre-Christos, *supra* note 5, included as Attachment A.

Inspectors who appeared to believe that political opinion was the only ground for refugee status and who limited their interview questions to this ground. UNHCR observed cases where the only follow-up questions asked by the Inspector were “Are you involved in politics back in Indonesia that would make you a target?” or, in the case of a Sri Lankan who had clearly stated that he feared torture if returned, “Are you involved in any kind of political party in Sri Lanka?” and “Are you involved in anything political in Sri Lanka?” This practice raised the possibility that asylum-seekers would not be adequately identified if they feared persecution on one of the other four protected grounds.¹¹¹

UNHCR Recommendations:

A-4 (1) UNHCR recommends that CBP clarify in its guidance to Inspections Officers that if an asylum-seeker clearly indicates a fear of return or intention to apply for asylum, all further questioning related to that fear should stop. If initial responses are ambiguous, then limited, well-informed follow-up questions should be asked in order to determine whether the individual possesses a fear of return. If there is any doubt in the officer’s mind about whether the person has expressed a fear, UNHCR recommends that the officer either refer the case for a credible fear interview or contact an Asylum Supervisor to discuss the case.

A-4 (2) Before undertaking secondary inspection responsibilities, it is essential that Inspectors receive sufficient training in basic asylum law in order to assist them in properly framing any additional questions that may be warranted, and in determining when an applicant has indicated a fear of return. UNHCR recommends that CBP review its training materials on this topic and ensure that all Secondary Inspectors and Supervisors receive such training.¹¹²

5. Attitudes of Inspectors

a. Overview

Based on conversations with Inspectors and observations of their interactions with asylum-seekers, it appeared that many Inspectors held negative assumptions about asylum-seekers in general, seeing many of them as falsely claiming a fear so as to gain entry into the US. This was especially notable among Inspectors at JFK and LAX International airports. Certainly not all Inspectors shared these views about asylum-seekers. At each port-of-entry, for example, UNHCR representatives heard Inspectors express nuanced, balanced opinions about asylum-seekers. Inspectors also told UNHCR that, regardless of their personal views on asylum cases, individuals were still referred for credible fear interviews when appropriate.

¹¹¹ This focus on one single ground for asylum is also unfortunate because it does not allow for the identification of those with claims under the Convention Against Torture, which is also included, by law, in expedited removal screening. Claims can qualify under the Convention even in the absence of a nexus between the feared harm and any of the five grounds related to refugee status.

¹¹² For further discussion regarding training, see Section IV(C)(2) “Training,” *infra*.

The frequency of negative, if not hostile, attitudes, however, towards asylum-seekers among Inspectors is troubling. UNHCR's primary concern is not whether Inspectors necessarily believe the claims of asylum-seekers or sympathize with their situations. These negative attitudes are only relevant to the extent that they affect behavior, which unfortunately they appear to do, and the impact of that behavior on individuals seeking refugee protection in the US. UNHCR observed Inspectors often treating asylum-seekers in an intimidating or derisive manner. Such treatment risked re-traumatizing asylum-seekers and possibly discouraging them from choosing to pursue their claims. It also caused individuals to become less forthcoming, coherent, and truthful with information pertaining to their fear of return. This type of response by asylum-seekers, in turn, risked exacerbating the frustrations and hostility of Inspectors, resulting in a deteriorating cycle of communications.

b. Attitudes of Inspectors and Treatment of Asylum-Seekers

Many Inspectors interviewed or observed by the UNHCR representative expressed a range of negative attitudes toward asylum-seekers, from skepticism to disdain. UNHCR commonly heard Inspectors derisively refer to credible fear referrals as "incredible fear" cases and heard comments like: "I don't think there are any valid asylum claims anymore. Maybe Tibetans." Or, "These people hear the question, 'Do you have a fear...' and a light goes off. They think they can use this as a way to stay. Most of the credible fear cases we see—I would say 100%—are like this." Some Inspectors explained that they did not believe most asylum claims were genuine since the applicant did not tell the Inspector in primary about their fear. Many noted that applicants from certain countries tended to have very similar claims. Others noted that asylum-seekers often lacked documentary proof in support of their claims¹¹³ or expressed the belief that many refugees and asylees often return to their home countries to visit.¹¹⁴

Refugee and asylum adjudicators are trained to conduct non-adversarial interviews because they understand that neutral, non-judgmental questioning is the most effective way to obtain information from individuals who might be traumatized, experiencing "culture shock," or afraid to share information. Unfortunately, Inspectors, who appear to lack such training and orientation, often asked questions or made comments in an abusive or intimidating manner during the expedited removal process. At LAX for example, one Inspector, before the applicant had said a word, aggressively exclaimed:

I've been in this office over five years. I've done over 5,000 cases. Most of them are from the PRC so I've heard all the stories before. I also know the snakeheads give

¹¹³ At Miami Airport, for example, which processes over 100 credible fear cases per week, an experienced Special Operations Inspector stated: "Out of all the credible fear cases I've processed, so far I've only seen two who really had a fear." The asylum-seekers in these two cases had presented newspaper clippings and other documentation in support of their claims. Another Inspector wrote in her file memo about an asylum-seeker from Colombia (who was referred): "She also said that she was receiving threats in Colombia by an unknown person but she does not have any proof of this nor has she proof of her husband's death."

¹¹⁴ For example, an Inspector at JFK: "From what I see, most people who get credible fear go back in a few months. Everyone from Albania and Yugoslavia goes back to their countries for vacation. They go see their family and nothing happens to them. The majority are abusing it. I think 98% don't really have a fear."

each traveler a story based on their education level. That's why I asked you for your education.

Later, when this applicant revealed that she flew through England (but again before the applicant said anything about the nature of her fear), the Inspector loudly exclaimed: "You were at the airport! You had every opportunity! If you feared for your life that much, why didn't you ask for relief before? If you think my questions are hard, wait until the Asylum Officer gets you. I'm not even asking in depth."

UNHCR also observed Inspectors making derisive or sarcastic comments in the presence of asylum-seekers, making light of their claims or the possibility of removal. At JFK, after L.M., a young asylum-seeker from Kosovo stated: "I am afraid. I am just afraid," an Inspector who was serving as a witness in the interview room interrupted, stating, "I am too. I am afraid. I'm going to go there and apply for asylum." A Brazilian asylum-seeker, L.T., who described his own treatment in secondary inspection as "humiliating," observed Inspectors in the inspection area "waving bye-bye" and laughing at someone who was being deported.

c. Impact on Asylum-Seekers

This type of treatment can have a profound impact on asylum-seekers. Asylum-seekers often fear persons in authority, fear putting relatives still abroad in danger, fear the interview process itself, fear the consequences if their application is rejected, or fear discussing particularly sensitive issues, like sexual violence, which they believe may lower the respect of others toward them.¹¹⁵ Prosecutorial questioning and dismissive comments by Inspectors can easily exacerbate these fears, especially if the person is a victim of torture or trauma, sexual-based violence, long-term abuse, or other extreme forms of persecution.

The results of such treatment can be manifold. First, those who perceive that the US government does not believe their claim may be more likely to dissolve their asylum claim, particularly if they are facing long, indefinite periods of detention.¹¹⁶

Second, such treatment can affect the type and extent of information provided by the asylum-seeker. Due to the fears indicated above, asylum-seekers may provide limited or false information about themselves or their claims when interviewed at an airport. This is especially so if the claim involves very personal or sensitive issues, such as homosexuality¹¹⁷ or forced abortions.¹¹⁸ Intimidating questioning or comments increase the likelihood of an asylum-seeker

¹¹⁵ See *Asylum Processes: Fair and Efficient Asylum Procedures*, *supra* note 1, at para. 36 ("It may...be that an initial lack of cooperation results from communication difficulties, disorientation, distress, exhaustion, and/or fear.")

¹¹⁶ See Section (IV)(D), "Dissolution of Asylum Claims," *infra*, for further discussion of this issue.

¹¹⁷ One Colombian man who had endured harm on account of his homosexuality told the Inspector at LAX that he feared returning to Colombia because of the guerrillas. He later told the Asylum Officer during his credible fear interview that he did not feel comfortable revealing his homosexuality to the Inspector at the airport, as he thought the Inspector would not handle this information well. (The Asylum Officer told the UNHCR representative of this exchange. UNHCR did not observe it.)

¹¹⁸ A 19 year-old woman from China gave a very detailed account at her credible fear interview of a forced abortion and ongoing harassment from officials in her region because she was living unmarried with her boyfriend. She did

withholding or misrepresenting information. The asylum-seeker may not volunteer to an Inspections Officer sufficient information to warrant a referral for a credible fear interview, or may provide inaccurate information which can be used in later proceedings to deny the claim on credibility grounds.¹¹⁹ In a case at JFK, for example, the Inspector's prosecutorial style of questioning made L.M., an asylum-seeker from Kosovo, eventually shut down, revealing progressively less and less information. At her credible fear interview the applicant revealed considerably more information, but still had difficulty discussing the death of her brother and the threats against her family's home. Her failure to provide this information during the secondary inspection interview could be used against her during her asylum hearing.

Finally, dehumanizing or dismissive treatment risks re-traumatizing a refugee who has already suffered trauma or persecution in the past. It also increases the possibility of an asylum-seeker trying to injure himself or herself, something which Inspectors at all ports-of-entry noted has occurred in the past.¹²⁰

d. Sources of Inspectors' Attitudes

Some of the attitudes observed are merely expressions of personal or political opinions, to which every individual is entitled. As noted earlier, some Inspectors have stated that they hear "the same story" from many asylum-seekers, resulting in a certain degree of cynicism. While perhaps understandable, the conclusion that most, or all, asylum-seekers do not have valid claims is inaccurate. Similarity in claims can be attributed to many factors, most notably general patterns of persecution in the country of origin that many asylum-seekers have suffered. Also, some asylum-seekers may present false claims at the port-of-entry because they were instructed to do so by a third party, such as a smuggler. These individuals may very well have *bona fide* refugee claims that they will present only once they believe it is safe to do so (*i.e.*, when they are before an Asylum Officer or an Immigration Judge).

Negative Inspector attitudes also appear to derive from the conflicting missions Inspectors are asked to perform. For example, an Assistant Area Port Director (AAPD) in New York, acknowledging that "incredible fear" attitudes existed, stated: "It is a thin line. You want Inspectors to be skeptical, because you want to foster a good investigative sense." Another AAPD in Los Angeles noted: "On the one hand Inspectors, through the PAU [the inspection's intelligence unit], are trying very hard to identify these people overseas and prevent them from coming, but then if they do make it here, they get first class treatment. We're supposed to give them first class treatment. So Inspectors are confused. It's a contradiction, isn't it?"¹²¹

not reveal any of this at the airport. The applicant later told the UNHCR representative, "At the interview I did not dare say much because my reasons was about birth control, because I feared. I told them I wanted to go to school because I did not know the difference between American government and Chinese government. At that time I did not know, I was very scared."

¹¹⁹ See *Asylum Processes: Fair and Efficient Asylum Procedures*, *supra* note 1, at para. 36.

¹²⁰ See Section (IV)(B)(1)(c) "Impact on Asylum-Seekers," *infra*, for further discussion regarding attempted self-injury by asylum-seekers at ports-of-entry.

¹²¹ The PAU aims to identify likely smuggling routes and individuals with fraudulent documents before their arrival in the US. These Inspectors generally receive passenger lists from the airlines in advance, and identify those individuals that they hope to prevent from boarding the airplane to the US (by encouraging the airlines to question

Inspectors' attitudes may also result from inadequate training. It is UNHCR's understanding that the training agenda in Glynco, Georgia, does not discuss broader refugee issues, such as reasons for refugee flight and the impact of trauma on refugees, and on-going training appears to be insufficient. Training officers told UNHCR that incoming Inspectors are taught the I-867 fear-related questions and that this is all that they need to know.¹²² Training on broader refugee issues can be extremely helpful in both ensuring the cooperation of the asylum-seeker during the processing of their cases, and minimizing any additional trauma at the port-of-entry.¹²³

Many Inspectors also were not adequately familiar with the overall asylum process, information that would help to put their work in a larger perspective. In addition, many were not aware that a significant percentage of asylum-seekers are eventually granted asylum by Immigration Judges, which could help counter the impression that virtually all asylum-seekers present fraudulent claims.¹²⁴ As discussed further in this report, while it is not expected or desired that Inspectors try to be experts in asylum law or procedure, reinforced basic knowledge in these areas could help to avoid some of the negative attitudes and generalizations that seem to exist.

e. Supervisory Role

The role of Supervisors in ensuring the respectful and professional treatment of asylum-seekers in secondary inspection is critical. UNHCR observed the extent to which Supervisors on duty were able to set the tone in the inspection area. Overwhelmingly, Inspectors new to the secondary inspection area learn their new responsibilities through informal mentoring relationships and through interaction with the Supervisors on duty, rather than through formal training programs. As a result, many opinions are shaped by the informal dissemination of information, some of it apparently inaccurate or biased.

Some Supervisors interviewed by UNCHR were quite clear that negative attitudes should not affect whether a person is referred for a credible fear interview. One Assistant Area Port Director, for example, emphasized that "we try to foster...that even if you think this is the most ridiculous claim ever, they [asylum-seekers] still have to go through a process." Some Supervisors also sought to ensure that asylum-seekers were treated in a professional and

the individual more thoroughly, reviewing the documents, and referring questionable cases to the US consulate in that country), or place "look-outs" on certain individuals for Inspectors to catch on their arrival.

¹²² See Section (IV)(C)(2), "Training," *infra*, for further discussion of this issue.

¹²³ *Asylum Processes: Fair and Efficient Asylum Procedures*, *supra* note 1, at para. 37 ("Appropriate counseling of the asylum-seeker on the meaning and nature of the asylum procedure, on his/her rights and responsibilities, and on the consequences of not cooperating have proved helpful in promoting cooperation.").

¹²⁴ Based on EOIR statistics, located at: www.usdoj.gov/eoir/statspub1fy032syb.pdf, Immigration Judges granted approximately 37% of asylum claims in FY 2002 and 40% in FY 2001. These statistics represent all asylum cases before the Immigration Courts, including expedited removal cases, affirmative asylum applications that were referred to the Immigration Courts, and other "defensive" claims such as those detained after serving criminal sentences or as a result of immigration investigations.

respectful manner. One Assistant District Director, for example, stated: "To have 'incredible fear' talk in front of an applicant or interpreter is unacceptable."

However, the behavior which UNHCR observed during this study of many Inspectors suggests that more needs to be done in this area. For example, while acknowledging Inspector skepticism makes sense for operational purposes, one high level Inspections Officer interviewed during a separate UNHCR mission to the Dallas-Ft. Worth Airport, told UNHCR that he tells his Inspectors that they should take solace in the fact that at least the asylum-seekers will be going to jail. Such supervision and advice, while perhaps helping to ensure that cases are referred, does little to improve Inspectors' attitudes and may contribute to the poor treatment of asylum-seekers during the secondary inspection process

UNHCR Recommendations::

A-5 (1) UNHCR is concerned about instances of improper treatment of asylum-seekers. UNHCR recommends that Inspectors be trained to utilize neutral interviewing styles, to refrain from prosecutorial questioning about an applicant's fear, and to abstain from revealing or suggesting personal opinions about the quality or credibility of an applicant's asylum claim. Training should include guidance on the creation and maintenance of a respectful atmosphere in inspection and on appropriate interviewing techniques.¹²⁵

A-5 (2) To the extent that it is not currently available, Inspectors and supervisory staff should also receive training on cultural sensitivity, identifying and working with persons who may have suffered trauma, and factors causing displacement and refugee flight, including human rights abuses.

6. Interpretation

a. Professional Interpretation and the Expedited Removal Process

The use of professionally trained and certified interpreters at ports-of-entry is critical to the integrity of the expedited removal process.¹²⁶ Professional interpretation ensures that the Inspector and applicant clearly understand each other, in a manner consistent with interpreter ethics and best practices. It can help to establish an applicant's trust in an Inspector, which, in turn, can facilitate the sharing of traumatic or sensitive information that may underlie the person's fear of return. Finally, quality interpretation helps to ensure the accuracy of any statements or facts that are recorded on the I-867 form, a document which follows asylum-seekers through the

¹²⁵ As discussed further in the discussion on training (*see* Section (IV)(C)(2)), some of these issues were addressed as part of the expedited removal trainings that were conducted after expedited removal was initially implemented. UNHCR recommends that the relevant portions of these training materials be reinforced and/or re-introduced.

¹²⁶ UNHCR uses the phrase "professional interpretation" to mean the use of interpreters who are subject to relevant industry standards, such as those articulated by the National Association of Judiciary Interpreters and Translators (NAJIT), and who are appropriately trained and certified for the setting in which they work.

asylum process. Inaccuracies in this document are almost impossible to correct later and can undermine a person's asylum claim in later proceedings.¹²⁷

The Executive Committee of the UNHCR Program has called for all asylum applicants to be "given the necessary facilities, including the services of a competent interpreter, for submitting [their] case[s] to the authorities concerned."¹²⁸ Professional interpretation can be especially important during expedited procedures. UNHCR has noted that the ability of an adjudicator to determine whether a claim is "manifestly unfounded" can be affected by the fact that "not all asylum-seekers have the capacity without assistance to articulate clearly and comprehensively why they left. [This is certainly the case] where there is an element of fear or distrust involved or where other factors are at play, including *the quality of the interpreters*."¹²⁹ The inability of an asylum-seeker to express his/her fear applies equally at the secondary inspection phase of the process as to the credible fear interview. The need for quality interpretation is present throughout.

There are certain core standards of professional responsibility that are recognized by UNHCR and widely accepted among interpreters working in a legal setting regarding such issues as confidentiality, accuracy, impartiality and neutrality, professional demeanor, and limitation of practice to interpreting.¹³⁰ UNHCR's training module on refugee status determination interviews includes the following directive to persons interviewing applicants for refugee status:

In all cases you should provide guidance as to the code of ethics expected of the interpreter. It is particularly important to insist on the *confidentiality* of all information that concerns the applicant. You should also ensure that the interpreter understands that he or she must *remain neutral and objective* during the interview process. Interpreters should understand that *everything the interviewer and applicant say must be interpreted*. It is not sufficient to summarize or embellish what is being said through filling in missing information. Nor should the interpreter try to improve on the words or phrases of the applicant in order to make him or her sound more coherent, credible, or educated. The interpreter should be trained to *take notes* during the interview in order to ensure the accuracy of what is being translated, and to record all the facts clearly. Any *names of persons or places must be spelled out* so they are clear. The interpreter should also be told that the interviewer or applicant may ask for clarification whenever necessary.¹³¹

¹²⁷ See Section (IV)(A)(7)(a), "The Accuracy of the Sworn Statement," *infra*, for further discussion of this issue.

¹²⁸ UNHCR Executive Committee, *Conclusions on the International Protection of Refugees*, No. 8, para. (e)(iv) (1977).

¹²⁹ *Asylum Processes: Fair and Efficient Asylum Procedures*, *supra* note 1, at para. 28 (emphasis added).

¹³⁰ These basic ethical norms have been drawn from UNHCR's training materials and from the codes of ethics that courts and professional associations require of interpreters. See, e.g., UNHCR, Training Module, *Interviewing Applicants for Refugee Status*, 6-7 (1995); National Association of Judiciary Interpreters and Translators, *Code of Ethics and Professional Responsibilities*, available at <http://najit.org/ethics.html>; William E. Hewitt, *Model Code of Professional Responsibility for Interpreters in the Judiciary, Court Interpretation: Model Guides for Policy and Practice in the State Courts*, Chapter. 9(1995).

¹³¹ UNHCR, *Interviewing Applicants for Refugee Status*, *supra* note 130, at 7 (emphasis added).

The Code of Ethics and Professional Responsibilities of the National Association of Judiciary Interpreters and Translators (NAJIT) contains similar standards.¹³² The preamble to that code states that the “function of court interpreters and translators is to remove the language barrier to the extent possible, so that such persons' access to justice is the same as that of similarly situated English speakers for whom no such barrier exists.”¹³³ The NAJIT code instructs its members to avoid “distortion of the original message through addition or omission, explanation or paraphrasing” and to “perform their duties as unobtrusively as possible.”¹³⁴ It also places the utmost importance on remaining impartial and neutral and abstaining from comment on cases in which they serve.¹³⁵

US law and policy does not require INS/DHS to use interpreters who are subject to such professional standards in the inspection process and, at the time of this study, provided little guidance on the use of interpreters in general. Immigration regulations simply require the use of interpretive assistance when necessary to communicate with the applicant and for reading to him or her the information on the I-867 form and statement prior to the applicant's signature.¹³⁶ The INS is prohibited, by statute, from using interpreters “with potential biases against individuals on the grounds of religion, race, nationality, membership in a particular social group, or political opinion.”¹³⁷ An INS report issued in October 2002 stated that INS officials at ports-of-entry were advised “to avoid the use of airline interpreters, *whenever possible*, for secondary inspection”¹³⁸ and that the INS was “in the final stages of incorporating anti-bias provisions in procedures for handling interpretation at all stages of the inspection process.”¹³⁹

¹³² National Association of Judiciary Interpreters and Translators, *supra* note 130.

¹³³ *Id.*

¹³⁴ *Id.* at Canons 1 and 5.

¹³⁵ *Id.*

¹³⁶ 8 CFR § 235.3(b)(2)(i). *See also*, Inspector's Field Manual, *supra* note 35, at Chapter 17.15(b)(1) (need to explain serious nature of expedited removal process in language that applicant can understand).

¹³⁷ International Religious Freedom Act of 1998, § 603 (a), 22 U.S.C. § 6473 (a).

¹³⁸ US Department of State, Bureau of Democracy, Human Rights and Labor, International Religious Freedom Report 2002, Appendix D, “INS and the International Religious Freedom Act (IRFA)” (October 2002). The Inspector's Field Manual does not include instructions to Inspectors on the use of interpreters during the secondary inspection interview. It does provide, however, that in reviewing the “Notice and Order of Expedited Removal” (Form I-860), presumably *after* the interview, “interpreters should not be used if they are employees of the government of the alien's home country, such as an employee of a government-owned airline, except for the most routine questioning. Never use an employee of a foreign government if there is any possibility of sensitive areas (e.g., persecution or torture) being discussed.” Inspector's Field Manual, *supra* note 35, at Chapter 17.15(b)(3).

¹³⁹ *Id.* In July 2003, after an initial draft of UNHCR's expedited removal report was shared with DHS, CBP issued guidance on the use of interpreters and interpreter services to be included in the Inspector's Field Manual. We do not comment on the substance of these guidelines here as they were issued close to the completion of this report.

b. INS Sources of Interpreters

The need for professional interpretation applies at all stages of the asylum process, including for any substantive communications at the ports-of-entry. Unfortunately, professional interpreters were rarely used by Inspectors, despite their availability. UNHCR observed Inspectors use interpreters from a variety of sources. These included Inspectors who served as interpreters, airline representatives, airport employees,¹⁴⁰ employees of airline contractors,¹⁴¹ the INS New York Interpreter Service,¹⁴² and the professional Cyacom service.¹⁴³ It is UNHCR's impression that Cyacom was the only source of professionally-trained interpreters available to Inspectors. However, at most ports-of-entry, with the notable exception of San Ysidro, it appeared that Inspectors used Cyacom as a last resort because of the expense involved. San Ysidro regularly used the Cyacom service for its non-Spanish speaking interviews.

The priority given to each of these sources was dramatically different at various ports-of-entry. Some variation can be explained by the diversity of populations served at each port. Miami Airport and San Ysidro, for example, worked overwhelmingly with Spanish-speaking populations, and were fortunate to have vast reserves of bilingual (Spanish/English) Inspectors to diminish the routine need for interpreters. Ports-of-entry receiving more diverse populations, like JFK or LAX, had a much heavier interpreter burden. All ports-of-entry, however, regularly worked with interpreters.

Decisions on which interpreters to draw upon were essentially local ones, both at the policy level (as articulated by Supervisors) and in practice (as implemented by Inspectors). With regard to practice, UNHCR observed at JFK that Inspectors generally used airline employees or airline contractors (like Swissport employees) for interpretation, even for formal sworn statements.¹⁴⁴ At Miami Airport, when interpreters were necessary for formal sworn statements, Inspectors virtually always used telephonic interpreters from the INS Language Bank in New

¹⁴⁰ At LAX, many interpreters were from the Los Angeles Department of Airports.

¹⁴¹ A common contractor at JFK was Swissport. Contractors provide ground services for airlines, including passenger service on the ground and interpretation. While contractors work for particular airlines, they are not paid directly by the airline and are not considered airline employees.

¹⁴² The New York INS Interpreters Service, or INS Language Bank, consists of full-time interpreters who, while based at the INS New York District Office at 26 Federal Plaza in New York, may provide telephonic interpretation assistance to Inspectors at any port-of-entry. Many of these interpreters are on call and available after hours. Inspectors at JFK and Miami Airport routinely used this service.

¹⁴³ Cyacom is a private company employing professional interpreters who are available for telephonic interpretation. It is UNHCR's understanding that INS Inspection has a contract to use this service when necessary.

¹⁴⁴ The stated policy at JFK, as articulated by its senior management, was to use airline representatives only for preliminary questioning, but not for formal sworn statements. JFK Inspectors were instructed not to use agents from a government-owned or operated airlines as interpreters. The policy preference at JFK was to locate INS Inspectors as interpreters, or to use telephonic interpreters from the New York INS Interpreter Service (INS Interpreters Bank) if no Inspectors were available. As noted above, however, as a matter of practice, Inspectors generally used airline employees or airline contractors as a first preference. Only if no airline representative could be located, did they call upon the INS Interpreters Bank. In one instance, UNHCR observed that an Inspector specifically asked for a representative from a largely government-owned airline, Pakistan Airlines, to interpret for the sworn statement of a Pakistani applicant. The Inspector retained the interpreter even when it became clear that the applicant was an asylum-seeker.

York.¹⁴⁵ At LAX, while a variety of interpreter sources were used, airline interpreters or interpreters from the Los Angeles Department of Airports appeared to be used most frequently.¹⁴⁶

c. Problem Areas of Interpretation

(i) Overview

During the inspection process, UNHCR observed clear and persistent violations of fundamental rules of interpreter conduct. Interpreters regularly distorted the statements of asylum-seekers by adding, omitting, explaining, or paraphrasing the applicant's words. They also often compromised their neutrality by giving advice to the applicant or to the Inspector, or assuming the primary questioning role. Standard interpreter protocol, such as assuming the grammatical voice of the speaker ("I", "you"), was also breached.

These types of problems were most common among non-professional interpreters, in particular, airline or airport interpreters who were used by the INS. Interpreters with the INS New York Interpreters Bank often violated interpreter standards and protocol. This was due, in part, to the fact that they often appeared to perceive themselves as part of the INS inspection team. One port-of-entry, JFK, sought to improve the caliber of the interpreter services used by requiring interpreters to agree to adhere to certain ethical norms when signing the interpreter certification on the I-867.¹⁴⁷ This is a positive step.

Financial constraints, whether real or perceived, appear to be the major impediment in the use of professional interpreter services. Many Inspectors, while attuned to the interpreter issue and preferring better quality, felt constrained by lack of resources. Inspectors at JFK and LAX routinely waited for airline or airport interpreters to become available instead of using either the New York Interpreter Service or professional telephonic services like Cyacom. Many Inspectors stated to UNHCR that the priority use of airline or airport interpreters was due to a desire to save money, as the professional telephonic services were very expensive. It is not clear why JFK and LAX Inspectors did not use the New York Interpreter Service more often given that it did not carry the same financial costs as did Cyacom.

¹⁴⁵ At Miami Airport, a large number of bilingual Spanish and Creole-speaking Inspectors worked in the Secondary area, making demand for interpreters less constant. When interpreters were needed for formal sworn statements, however, telephonic interpreters from the INS Language Bank in New York were almost always used. UNHCR observed that airline representatives were used regularly in sworn statements only for Brazilian cases.

¹⁴⁶ The priority order of interpreters at LAX, as articulated by senior management, was the following: 1) Inspector; 2) Airline; 3) Employees of the City of Los Angeles; 4) INS New York Interpreters Bank; 5) Cyacom. In UNHCR's observations, Inspectors regularly used all of these sources of interpreters except for the New York INS Interpreters Bank. Most commonly, they used airline interpreters or interpreters from the Los Angeles Department of Airports.

¹⁴⁷ JFK Assistant Area Port Director, (b)(6), (b)(7)c had begun to implement this requirement at the conclusion of the visit of UNHCR's representative. Under JFK's planned new procedure, interpreters will receive and read an "Interpreter Guidelines" information sheet, which includes basic standards of ethics and conduct. JFK Inspection prepared these guidelines in conjunction with the INS New York Interpreters Bank. By the conclusion of UNHCR's visit to JFK, these guidelines had been written and provided to the secondary inspection areas of the various terminals, although it was not yet clear to what extent Inspectors were distributing them. JFK Inspection next intended to include a note about receipt of the interpreter's guidelines in the certification that interpreters sign.

In addition to finances, however, many Inspectors simply appeared unaware of, or uninterested in, proper interpreter conduct during the interview process. The apparent lack of training for inspection personnel, including Supervisors, on the proper role of interpreters and how to properly work with them in the interview process contributed to interpretation problems.

(ii) Accuracy of Interpretation

Perhaps the most fundamental rule of interpretation is to faithfully translate everything that is said, and nothing else. Unfortunately, of all of the interpreter deficiencies noted in this report, interpreters at secondary inspection generally performed the worst in this regard. It was quite common for interpreters to have long, untranslated exchanges with asylum-seekers, to ask their own questions, and to paraphrase or summarize the exchange they just had, instead of simply interpreting exactly the words that were said by either the asylum-seeker or the Inspector.¹⁴⁸ UNHCR's representative virtually never saw an in-person airline or airport interpreter taking notes, even when the applicant's response to a question was quite lengthy. Many interpreters made their own assumptions about unfamiliar names or words, instead of flagging the ambiguity for the Inspector.¹⁴⁹

By behaving as active participants in the conversation, interpreters improperly tried to resolve ambiguities on their own rather than allowing asylum-seekers to speak for themselves. As a result of these types of exchanges, even if applicants were referred for a credible fear interview, the record may inaccurately reflect their testimony, which could adversely affect their perceived credibility by either the Asylum Officer or an Immigration Judge.

(iii) Grammatical Voice

Related to the issue of accuracy of interpretation is that of the grammatical voice used by interpreters. To ensure that they conduct themselves as unobtrusively as possible, and not assume a primary role in the conversation, professional interpreters are expected to use the same

¹⁴⁸ For example, in a case involving an Albanian asylum-seeker at Miami Airport, where the interpreter was from the INS New York Interpreters Bank, the questioning proceeded as follows:

Q. What is your purpose in entering the United States today?

A. [long exchange between interpreter and applicant. Inspector asks what the exchange was about. Interpreter responds: "He was trying to explain about problems with Serbs, and I tried to explain to him we don't want to know all that. Just why he came here today."] To apply for political asylum.

In another case, at LAX, an interpreter from the LA Department of Airports translated an exchange between an Inspector and a Chinese asylum-seeker, M.Q.G., as follows:

Q. Has she ever been arrested anywhere in the world?

A. [very long exchange between interpreter and applicant] No.

Q. Why did she leave her home country or country of last residence?

A. [long conversation between interpreter and applicant] She said that the bookstore belonged to her friend, but at the time her friend was not at the store. The police came in and put handcuffs on her. Then the police found out she didn't own the store so they let her go. This is why she is afraid.

¹⁴⁹ For example, an airline interpreter at LAX, in the case of Y.T., an Armenian asylum-seeker, was unfamiliar with the applicant's word "Fedayee," which refers to the former fighters during Armenia's war over Nagorno-Karabakh, but never asked the applicant for clarification or for spelling.

grammatical voice as the speaker.¹⁵⁰ As noted above, however, interpreters often become the central figure in inspection interviews. Inspectors often addressed questions directly to the interpreter, not to the applicant, using the grammatical third person (“Is he...?” “She said...”). The interpreter often related applicant responses to the Inspector in similar fashion. Aside from isolating the applicant being interviewed, these techniques created confusion, particularly when there really was a third person being discussed. In Newark, for example, an applicant responded, in Spanish, “She doesn’t know,” (referring to a third person), but the Inspector wrote in the sworn statement, “I don’t know.” At times it was difficult to distinguish when the interpreters were speaking on behalf of the applicant, and when they were speaking for themselves. This problem is easily avoided by the use of a professional interpreter.

(iv) Impartiality/Neutrality

Interpreters must remain neutral and impartial and avoid any conduct that favors, or appears to favor, one party or the other. Expressions of personal opinions or attitudes and the giving of advice interfere with an interpreter’s perceived or actual objectivity.

While most interpreters that UNHCR observed appeared to be impartial, some did not. In the most common situations involving bias, interpreters adopted the role of the Inspector, assuming a primary questioning role in order to obtain information from the applicant. This was especially a problem with interpreters from the New York Interpreters Bank, who frequently asked their own questions or provided advice to applicants.¹⁵¹ Bias became evident when interpreters used words like “I caught her;”¹⁵² “[t]his is a tough lady I’m talking to;”¹⁵³ or referred to the INS as “we”.¹⁵⁴

Interpreter bias was also evident when interpreters revealed, either to the Inspector or to the asylum-seeker, that they did not believe the asylum-seeker’s claim. For example, a Los Angeles Department of Airports interpreter added her own commentary after M.Q.G., a Chinese asylum-seeker, stated that she feared being sent to jail but did not know what would happen to

¹⁵⁰ National Association of Judiciary Interpreters and Translators, *supra* note 130, at Canon 5.

¹⁵¹ An INS Interpreters Bank interpreter, for example, told D.S., an Albanian asylum-seeker at Miami Airport, that he would go to jail if he refused to answer questions, later relating to the Inspector: “Because I do so many of these every day that Inspectors usually say they will lock him up if he doesn’t answer.”

¹⁵² A Los Angeles Department of Airport interpreter related the following to the Inspector, in the case of Q.L., a Chinese asylum-seeker: “You know the way I caught her, I asked her did he [the smuggler] come with her. She said ‘no.’ But then in Chinese language, she said ‘us.’ So then after that I asked are there two or three of you. I told her if you are honest, we will help you. She told me she came with the other girl, but the other girl said not to say anything.”

¹⁵³ For example, in the case of Y.L., a Chinese asylum-seeker at Miami Airport, an interpreter with the INS New York Interpreters Bank began speaking directly to the applicant, in what appeared to be an angry tone of voice. After a very long exchange with the applicant, which remained untranslated, the interpreter told the Inspector: “Officer, this is a tough lady I’m talking to. I’m trying to get information.” The Inspector then continued the questioning, until the interpreter again stepped in and told the Inspector: “This is a tough one, officer. Everything she says she doesn’t know.”

¹⁵⁴ For example, an Albanian asylum-seeker, L.N., related to the UNHCR representative a conversation that he had had with an interpreter while waiting to have his case processed at JFK. The interpreter told the asylum-seeker: “If you’re telling the truth, we’ll send you back. If you’re lying, you’ll go to jail.”

her there. The interpreter stated: "The smuggler didn't train her good enough. Mostly the smuggler tell them to say they'll beat me up, they'll do this, they'll do that."¹⁵⁵

UNHCR observed interpreters express their disbelief directly to the asylum-seeker, at times with striking insensitivity. For example, an Albanian interpreter from the INS Interpreters Bank laughed after P.I., an asylum-seeker from Montenegro stated: "Well you can shoot me now. I don't want to go back." One particularly poor interpreter, working for the Los Angeles Department of Airports in several cases involving Chinese asylum-seekers, challenged or commented on the applicants' claims. The interpreter's unsolicited comments about consular notification made one applicant begin to cry. The interpreter stated: "I asked her if she is afraid to contact Chinese government but she is illegal coming here. She is not afraid of that?" In the case of Q.L., an asylum-seeker from China, the interpreter stopped the applicant from saying more about the Falun Gong, stating to the Inspector, "She started saying something about Falun Gong. I said don't start with that because you didn't come for that."

(v) Conflicts of Interest

Related to the issue of interpreter impartiality is that of conflict of interest. Much attention (rightly so) has been placed on the use of government employees of national airline carriers in interviews with asylum-seekers. The use of government airline employees as interpreters risks disclosure of a person's asylum claim to the very government that the person fears, possibly putting himself and his family members in danger, and might prevent the asylum-seeker from feeling that s/he can safely present an asylum claim, or express a fear of persecution, at the port-of-entry. Inspectors at all ports-of-entry were well aware that the use of government airline employees is not permitted under INS policy, a point Supervisors emphasized to the UNHCR representative. In addition, this policy was taught to new Secondary Inspectors in a training class UNHCR observed at JFK. Despite INS policy prohibiting the use of national carrier employees as interpreters, UNHCR observed occasional lapses, most notably in the use of interpreters from Pakistan Airlines.

As noted by some Inspectors to UNHCR, conflicts of interest can exist when airline employees are used as interpreters, regardless of whether the airline is government-owned. This is true, for example, when the airline is fined for carrying an improperly documented alien. A JFK Assistant Area Port Director noted that "sometimes airline agents take it personally," and welcomed the use of airline contractors like Swissport because they could be more impartial as "they do not care about airline fines." These conflicts of interest reinforce the need to use professional interpreters during the inspection interviews whenever possible.

¹⁵⁵ The same interpreter earlier stated: "She starts telling me about books Falun Gong. She didn't understand the question. The smuggler they tell them story to say."

UNHCR Recommendations:

A-6 (1) UNHCR is concerned about the extent and pervasiveness of problems regarding interpretation during secondary inspection. UNHCR recommends that CBP use only professionally-trained and certified interpreters in all substantive interactions with potential asylum-seekers, similar to the Asylum Division's policy with regard to credible fear interviews.

A-6 (2) UNHCR recommends that CBP increase both basic and on-going training for Inspectors and for supervisory and management personnel regarding the use of interpreters. Supervisors should closely monitor Inspectors' proper use of interpreters.

7. The Accuracy of the I-867 Form

a. The Accuracy of the Sworn Statement

As noted above, responses to the I-867 fear-related questions are recorded on the form itself. Because the I-867 is a document that follows asylum-seekers through the course of their proceedings, full and accurate information on that form minimizes the possibility that either the Asylum Officer in the credible fear interview or the Immigration Judge at the credible fear review or asylum hearing will deny relief based on omissions and/or possible discrepancies.

Inspectors generally made good-faith efforts to write down the essence of what the applicant said. However, UNHCR encountered frequent discrepancies between the oral interview and the written record on the I-867. There were a variety of reasons for these inconsistencies. For instance, many Inspectors heard the applicant's words incorrectly, omitted statements made by the applicant, omitted the questions asked by the Inspector to obtain the answer, or wrote an incomplete summary of the applicant's responses. Occasionally, UNHCR's representative found these discrepancies or omissions to be material.

Errors in the written recording of an oral interview are natural and inevitable. This is particularly so given that Inspectors are expected to perform several tasks simultaneously during an interview, such as asking the required questions, determining whether additional questions are necessary, typing responses into the computer, and listening through an interpreter. Poor interpretation, as described above, can also contribute to inaccuracies. These factors highlight the need for Inspectors to verify the accuracy of the sworn statement with the applicant prior to signature, which generally was not done. This will be discussed further below.

The following examples illustrate notable discrepancies between what UNHCR's representative recorded from the oral interview and what actually appeared in the written I-867 statement in the applicant's case.¹⁵⁶ In the first case, the Inspector did not read the statement

¹⁵⁶ We cannot guarantee that the record of the UNHCR representative is 100% accurate in each case, as our representative, like the Inspector, was simply taking notes. The point, however, is that discrepancies exist, reasonable people may disagree about what an applicant has said, and verification with the applicant by reading and translating the sworn statement is imperative.

back to the applicant. UNHCR was unable to observe the full interview in the second case, so is unaware of whether the Inspector reviewed the statement with the applicant.

- In the case of L.M., an asylum-seeker from Kosovo, while a JFK Inspector recorded that the applicant’s family *had not* been persecuted, UNHCR’s representative recorded that the applicant stated her family *had* in fact been persecuted.¹⁵⁷ This individual was eventually referred for a credible fear interview, but the omission of the family’s persecution was a significant error that could have affected the applicant’s credibility in later proceedings.
- In the case of K.S., a Guyanese asylum-seeker, a Miami Airport Inspector apparently did not hear the applicant refer to her fear on account of her husband’s involvement in the Justice Party, and did not write down this statement.¹⁵⁸ The Inspector was prepared to not refer the applicant for a credible fear interview despite a clear expression of a fear of return.¹⁵⁹ The applicant was later referred, after the conclusion of the formal interview, when she expressly asked for asylum.

b. Review of the I-867 before Signature

Regulations require that Inspectors have the applicants read (or have read to them) the I-867 statement prior to their signature.¹⁶⁰ By signing the I-867 statement, the asylum-seeker swears that "I have read (or have had read to me) this statement . . . I state that my answers are true and correct to the best of my knowledge and that this statement is a full, true, and correct

¹⁵⁷ The following was recorded on the I-867, and by the UNHCR representative:

Written I-867 Statement	UNHCR Record
<p>Q. "Have you or any family member ever been persecuted, harmed, or tortured for any reason such as political or religion?"</p> <p>A. "<i>Not me or my family</i> but the whole of Kosovo were persecuted by the Serbs."</p>	<p>Q. "Has she or any family member ever been persecuted, harmed, or tortured for any reason such as political or religion?"</p> <p>A. "<i>Not me but my family, yes.</i> And not just my family but the whole Kosovo."</p>

¹⁵⁸ The following was recorded on the I-867, and by the UNHCR representative:

Written I-867 statement:	UNHCR Record:
<p>Q. Why did you leave your home country...?</p> <p>A. Because I am scared to go back to Guyana.</p>	<p>Q. Why did you leave your home country...?</p> <p>A. In Guyana things don't work well. My husband used to work in like the Justice Party. They can shoot you like</p> <p>Q. So why did you leave?</p> <p>A. I am scared.</p>

¹⁵⁹ See Section (IV)(A), "Inspections Questioning and Decision-Making," *supra*, for further discussion of the failure to refer in cases where a fear of return is expressed.

¹⁶⁰ 8 CFR § 235.3 (b)(2)(i) ("Following questioning and recording of the alien's statement regarding identity, alienage, and inadmissibility, the examining officer shall record the alien's response to the questions contained on Form I-867B, and have the alien read (or have read to him or her) the statement, and the alien shall sign and initial each page of statement and each correction.").

record of my interrogation . . ." However, UNHCR found that Inspectors at most ports-of-entry often ignored this requirement, rarely making efforts to verify with the applicant the accuracy of what they had recorded in the written I-867 statement. At the request of inspection personnel, applicants routinely signed "sworn" statements that they had not read and did not understand.

UNHCR observed several instances in which asylum-seekers were reluctant to sign the I-867 statement when requested to do so without the opportunity to review it first. Sometimes, they would sign anyway, out of apparent deference to the authorities. Some Inspectors, when applicants voiced objections, agreed to read back all or portions of the statement or merely summarized it. Others seemed to see this as a challenge to their authority and responded aggressively, at times leading to verbal confrontations or threats.¹⁶¹

The need for accuracy of an applicant's statement has already been noted. Review of the statement prior to completion helps to ensure accuracy in several ways. First, it provides the applicant the opportunity to correct errors and clarify discrepancies before s/he swears to the statement's accuracy. In addition, it allows him or her to add more information that might have been forgotten or deemed not important during the I-867 interview. Both of these benefits can be important to an Inspector or Supervisor in considering whether to refer a person for a credible fear interview. In the case of L.M., the first example cited above, the Inspector's entry "not me or my family" was the complete opposite of what UNHCR heard the applicant's response to be. This was a material discrepancy that could easily have been discovered and corrected upon a review of the statement prior to signature.

Port policies, the Inspector handling the case, and the interpreter used all impacted whether applicants were read their statements in a language they understood. At all ports-of-entry, when telephonic interpreters were used, sworn statements were rarely translated and read back to applicants. UNHCR observed that interpreters were kept on the line, if at all, only long enough to inform the applicant to initial each page of the statement and sign at the end, but these interpreters generally did not actually read the statement back to the applicants.

At most ports-of-entry, when on-site interpreters were used or when no interpreters were necessary, the translation and re-reading of the sworn statement to applicants occurred more often, but still remained erratic, depending on which Inspector was in charge of the case and the interpreter being used. For example, airline interpreters generally had other responsibilities requiring their attention. Inspectors at Miami Airport were generally more consistent in re-reading statements to applicants before obtaining signatures. This was largely due to the fact that most Inspectors processing cases at Miami Airport spoke Spanish or Creole and could quickly go over the statement with applicants, without the more cumbersome and time-consuming reliance on interpreters. At LAX, in contrast, UNHCR's representative almost never observed statements being translated and re-read to the applicants before signing, even when on-site interpreters were used.¹⁶²

¹⁶¹ See Section (IV)(B)(1), "General Environment in Secondary," *infra*, for further discussion of this issue.

¹⁶² This was due largely to the unique manner in which LAX Inspection handled the decision-making process. Applicants there did not sign the sworn statement until after the case went through the supervisory review process and a final decision had been made. As a result, Inspectors generally asked the interpreters used for the interview to

UNHCR Recommendations:

A-7 (1) UNHCR recommends that increased emphasis be placed on adherence to the regulatory requirement that Inspectors re-read the I-867 statement to applicants in every case, with an interpreter if necessary, providing asylum-seekers with an opportunity to correct errors and omissions before signing.

A-7 (2) Given the inherent danger of the I-867 containing inaccuracies and the limited focus of the expedited removal inquiry, UNHCR recommends that the I-867 be excluded from the record of the Immigration Court. This could be accomplished, in part, by the adoption of a ICE policy that District Counsels not introduce the I-867 as evidence in Immigration Courts to impeach an asylum applicant. At a minimum, UNHCR recommends that language be inserted prominently on the I-867 form indicating that the information recorded by the Inspections Officer does not constitute a verbatim record of the applicant's statements, that some aspects or details of the claim may not have been explored with the applicant or written on the form, and that appropriate weight should be placed on the contents of the form. Trial attorneys should be instructed on the appropriate use of the I-867.

8. Visa Waiver Program (VWP) Refusals

The Visa Waiver Program (VWP) allows foreign nationals from certain countries to be admitted to the US under limited conditions without obtaining a visa. To be designated under the VWP, countries must meet certain requirements, such as having a low refusal rate for US visas and offering reciprocal travel arrangements to US citizens. There are currently 27 countries in the VWP.¹⁶³

Many asylum-seekers seek to enter the US on false VWP passports who are not nationals of the VWP country and who fear return to their country of origin. The protection needs of these asylum-seekers are often identical to those of asylum-seekers who are subject to expedited removal. Asylum-seekers often must flee their country before they can obtain genuine documents or are unable to obtain such documents from the very government that they may fear. UNHCR has long emphasized that "(d)ue to the circumstances in which they are sometimes forced to leave their home country, refugees are perhaps more likely than other aliens to find themselves without identity documents. Moreover, while other aliens can turn to the authorities of their country of origin for help in obtaining documents, refugees do not have this option ..."¹⁶⁴

explain to the applicants at the end of the I-867 interview that "later" they would need to sign some documents. However, when the actual time for reviewing and signing arrived, no interpreters were present, and generally no new interpreters were called.

¹⁶³ According to the DHS web-site, those countries currently participating in the VWP include: Andorra, Austria, Australia, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and The United Kingdom.

¹⁶⁴ Executive Committee of the High Commissioner's Programme, Sub-Committee of the Whole on International Protection, Thirty-Fifth Session, *Identity Documents for Refugees*, EC/SCP/33, para. 3 (July 20, 1984); see also *UNHCR Handbook*, *supra* note 66, at para. 196 ("In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents.").

a. US Law and Policy

In 1999, the Board of Immigration Appeals decided in *Matter of Kanagasundram* that individuals presenting false passports belonging to a country eligible for VWP are not subject to expedited removal.¹⁶⁵ Instead, they are to be referred for an asylum-only hearing before an Immigration Judge.¹⁶⁶ As a result, Inspectors generally did not use the I-867 forms, with their fear-related questions and asylum advisals, to identify asylum-seekers among those bearing VWP passports who were otherwise deemed inadmissible.

In deciding how to process VWP cases, ports-of-entry appear to have designed their own local approaches. Often, the approach taken unnecessarily constrained the ability of Inspectors to identify asylum-seekers. At most ports-of-entry UNHCR visited, applicants subject to VWP refusal were not informed about US protection for refugees and were not asked any questions about their possible fear of return. In fact, high-ranking inspection officials at these ports-of-entry often acknowledged that they were refusing to inform applicants about US refugee protection or to ask the fear questions specifically in order to limit access to asylum. At Newark International Airport, an Assistant Port Director stated: "We don't always ask the fear questions because it opens the floodgates." At LAX, UNHCR was informed, "the person must affirmatively express a desire to apply for asylum." A Miami Airport Inspector explained: "As I was told, we are not supposed to ask the fear questions. If they have a fear they have to come out and tell you themselves."

JFK Inspection was a notable exception to this approach. At JFK, the management had instructed Inspectors to ask the I-867 fear-related questions "even in non-expedited removal cases like a visa waiver case where those questions are not required"¹⁶⁷ and to refer those expressing a fear directly to Immigration Court for an asylum-only hearing. Officials at JFK stressed that this was simply their local policy. It is one that adds an essential layer of refugee protection. As one JFK Inspector told UNHCR, "some people may have a fear or want to ask for asylum, but they don't want to tell me, or they don't think they can tell me...[T]he I-867 statement tells them that they should tell [me], and they will sometimes . . . tell me about a fear right away." Even in New York, however, the preliminary I-867 advisal informing applicants about US protection for refugees was not provided.

¹⁶⁵ Int. Dec. 3407 (BIA 1999); see also Inspector's Field Manual, *supra* note 35, at Chapter 15.7(g)(2) ("Aliens who apply for admission under the VWP shall not be subject to expedited removal regardless of their true and correct nationality. . . . Until the Service revises Title 8 of the Code of Federal Regulations, a VWP applicant who indicates an intention to apply for asylum shall be referred to an immigration judge using Form I-863.").

¹⁶⁶ 8 C.F.R. § 217.4 (a)(1) (" . . . an alien who presents himself or herself as an applicant for admission under Section 217 of the Act [Visa Waiver Program], who applies for asylum in the United States must be issued a Form I-863, Notice of Referral to Immigration Judge, for a proceeding in accordance with Section 208.2(b)(1) and (2) of this chapter.").

¹⁶⁷ UNHCR was informed by JFK Inspection management that visa waiver refusal cases are processed on an I-215 form instead of the I-867, but that JFK Inspectors are instructed to ask the fear questions from the I-867 on the I-215.

b. Refugee Protection for Those Bearing VWP Passports

UNHCR considers the I-867, when properly utilized, to be a useful tool for identifying asylum-seekers at ports-of-entry for VWP cases, as for all other arriving persons. For example, UNHCR observed R.A.A.L., a Colombian man travelling with an Italian passport, tell Inspectors: “My father was killed by the guerrillas, and as a journalist I was commenting on it. I was commenting against the guerrillas and the narco-traffic.” Without asking any further questions about the individual's protection needs, INS Inspectors processed him for removal to Colombia. When UNHCR later spoke with the applicant at the port-of-entry, before he was removed, he told UNHCR that he did not fear returning to Colombia. INS Inspectors, however, never knew this. Had they processed his case using the I-867 form, with its fear-related questions, they would have been better able to determine whether he wished to seek refugee protection in the US. It does not appear that the Inspectors are precluded either by statutory law or by the *Kanagasundram* decision from asking the I-867 fear-related questions to identify possible asylum-seekers seeking to enter the US, regardless of their manner of entry.

c. Accuracy of Information Provided to VWP Asylum-Seekers

When Inspectors processed the cases of asylum-seekers using VWP passports, they often provided inaccurate or misleading information about what would happen to them and the rights that they had. This caused unnecessary anxiety for many asylum-seekers. At Miami Airport and Newark, for example, Inspectors were required to ask certain questions in all visa waiver cases, whether the person was an asylum-seeker or not. Miami had created a form which required Inspectors to ask the following questions of all inadmissible applicants arriving on VWP passports:

- “Do you understand that you have been found inadmissible and that you will be returned as soon as possible to where you boarded the flight for the US?”
- “Do you understand that you have waived your rights to review or appeal from an Immigration officer’s determination as to your admissibility at a port-of-entry?”

These questions clearly frightened some asylum-seekers. For example, an Albanian man from Montenegro responded: “Well you can shoot me right now. I don’t want to go back.” He then began pleading with the Inspector for his children’s safety: “What is going to happen to my kids, they are so little, and my wife?” A Chinese asylum-seeker heard the Inspector say, “You have been determined to be inadmissible . . .” and exclaimed, “But I’ve already entered. I will go to prison rather than go back!”¹⁶⁸

In addition, some Inspectors provided inaccurate information in response to questions from these frightened asylum-seekers. In the case of the Montenegrin asylum-seeker mentioned above, after at last being told that he would be able to see an Immigration Judge, the applicant asked if he could get a lawyer for that hearing. The Inspector's response was: “No, he has no rights. He waived his rights when he signed this visa waiver form. This was an illegal entry.”

¹⁶⁸ Both of these individuals were referred for credible fear interviews.

This was inaccurate information as asylum-seekers cannot waive their right to legal representation in Immigration Court.

Furthermore, because Inspectors did not preface their questioning with an advisal about US protection for refugees (as the I-867 provides), applicants often believed throughout the course of questioning that they were being deported back to their country of origin. This created unnecessary, and at times significant, anxiety on the part of the asylum-seeker. In Newark, for example, UNHCR observed the case of a Chinese asylum-seeker with a false Belgian passport. Before the interview began, both the Assistant Port Director and the Inspector described it as an asylum case to the UNHCR representative present. Everyone in the room, except for the asylum-seeker himself, knew that he was going to have an opportunity to see an Immigration Judge. The applicant repeatedly asked the officer if he would be sent back to China, saying, "I'll jump if you send me back. If I'm here for hard labor, I'll do hard labor here." Only at the conclusion of the sworn statement, about 1½ hours later, did the officer tell him about asylum and seeing the Immigration Judge. At this, the man began to cry, seemingly with relief at finally knowing he would not be placed on the next plane back.

In addition to possibly being re-traumatized, asylum-seekers who are not advised of their right to seek asylum may become more reluctant to reveal information critical of their home country and, thus, may abandon their claims, provide vague or false answers that damage their credibility at future hearings, or be too frightened to express any fear at all.

UNHCR Recommendations:

A-8 (1) UNHCR recommends that all individuals subject to VWP procedures be read the I-867 asylum advisal and fear-related questions to ensure that asylum-seekers are easily identified as persons in need of protection and to prevent *refoulement*.

A-8 (2) UNHCR also recommends that care be taken to avoid the provision of inaccurate or misleading information to asylum-seekers travelling on VWP passports regarding their legal rights and the procedure in which they will be placed.

9. Confidentiality/Consular Notification Issues

a. Overview

The nature of asylum proceedings calls for strict observance of the duty of confidentiality, including at the inspection stage.¹⁶⁹ This duty must often be balanced with other US treaty obligations. By treaty and as implemented by US regulations, the US must report the detention of certain nationals to their consulates. According to 8 CFR 236.1(e):

¹⁶⁹ See *Asylum Processes: Fair and Efficient Asylum Procedures*, *supra* note 1, at para. 50(m) ("The asylum procedure should *at all stages* respect the confidentiality of all aspects of an asylum claim, including the fact that the asylum-seeker has made such a request. No information on the asylum application should be shared with the country of origin.") (emphasis added).

Existing treaties with the following countries require immediate communication with the appropriate consular or diplomatic officers whenever nationals of the following countries are detained in removal proceedings, whether or not requested by the alien and even if the alien requests no communication be undertaken in his or her behalf. When notifying consular or diplomatic officials, Service officers shall not reveal the fact that any detained alien had applied for asylum or withholding of removal.

There are currently about 56 countries with which the US has treaty obligations to mandatorily notify the foreign consulate of the detention of its nationals, with or without the consent of the individual. Among these countries are several refugee-producing states, including China, Nigeria, Armenia, and Sierra Leone.

UNHCR has certain concerns, discussed below, regarding the manner in which the INS carried out its consular notification duties and the potential disclosure to a foreign government that one of its nationals is an asylum-seeker. It should be noted that the UNHCR representative did not identify this issue as a significant problem area until she began her research at LAX, the last port-of-entry observed during UNHCR's field work. As a result, with the exception of an isolated incident at Newark, all comments herein pertain to LAX.

b. The Necessity, Timing, and Content of Disclosure to Consulates

The issue of timing and content of disclosure to consulates arose persistently at LAX with regard to arriving Chinese asylum-seekers. At LAX, consular notification was usually undertaken by inspection personnel directly from the airport. Inspectors faxed a standard form (Form I-264) to the consulate in which they not only informed the consulate of the INS detention, but also noted the nature of proceedings (usually expedited removal), the date of and place of entry to the US, and the person's present location.

Most individuals in expedited removal proceedings who remain in detention after being found inadmissible at an airport are asylum-seekers. Even if Inspectors do not explicitly say that the person is an asylum-seeker, or indicate that the person has expressed a fear of persecution, both of which are prohibited by the Inspector's Field Manual,¹⁷⁰ the mere fact that the INS is (1) providing information from an airport about the national's detention, and (2) informing the consulate that the national has been placed in expedited removal proceedings, is enough to allow that government to deduce that the person is seeking asylum in the US. One Inspector at LAX told UNHCR that the Chinese consulate was aware that immigration officials were calling from LAX specifically about asylum-seekers, despite the fact this information was not explicitly provided. "They know, they know," he said.

DHS headquarters has informed UNHCR that the Department of State does not consider foreign nationals held at a port-of-entry to be "detained" for purposes of consular notification

¹⁷⁰ Inspector's Field Manual, *supra* note 35, at Chapter 17.15 (b)(7) ("When you contact a consular official, never mention any asylum claim which may have been filed, or give any indication that the alien has expressed a fear of persecution or torture.")

obligations. Absent the rare situation where an asylum-seeker is held at the port-of-entry for an extended period of time, therefore, communication with a foreign consulate from a port-of-entry should not be necessary. Instead, it should occur once the asylum-seeker has been transferred to a detention center.

To the extent that consular notification is deemed necessary, whether from a port-of-entry or a detention center, the amount of information that the US government must provide to satisfy consular notification agreements appears to be much more limited than what was provided by Inspectors at LAX. According to a US State Department fax sheet for notifying consular officers of arrests or detentions of foreign nationals, the US government need only provide basic biodata (name, date and place of birth); date of detention; certain passport information (number, date and place of issuance); and information on who to contact to arrange for consular access.¹⁷¹ The additional information provided by LAX Inspection is not required.

Both practices - consular notification directly from the airport and disclosure of excessive information - potentially increase the danger to applicants if they do not prevail in their asylum proceedings and are subsequently removed. It can also lead to the creation of refugee claims *sur place* where no claim may have existed previously but now may exist because the consulate believes the individual is an asylum-seeker. These practices can also endanger the asylum-seekers' families or colleagues who remain in the country of origin. Confidentiality safeguards regarding asylum-seekers under both international and US law are designed to prevent just this sort of occurrence. While the INS/CBP may have limited flexibility as to when or how it notifies consulates, it should be careful to reveal no more than is necessary to put the country concerned on notice that its national is being detained.

c. Informing Asylum-Seekers of Consular Notification Obligations

Another concern regarding consular notification is how asylum-seekers are informed of the disclosure requirement. At LAX, Inspectors informed applicants of this treaty obligation *before* the fear questions were asked. The standard advisal regarding consular notification was simply, "Do you understand that I am required by law to contact your country's consular representative?" Inspectors generally did not elaborate any further. If an applicant expressed confusion, which was common, many Inspectors simply reiterated, "This is a yes or no question, yes or no do you understand I am required to contact your consulate?"

UNHCR observed asylum-seekers at LAX who became frightened or visibly upset by this statement.¹⁷² Some asylum-seekers asked why it was necessary to contact their government or pleaded with Inspectors not to inform the consulate of their presence in the US. This problem was compounded by the failure of Inspectors, in many cases, to provide any additional

¹⁷¹ See US Department of State website, <http://travel.state.gov/notification1.html#summary>.

¹⁷² For example, M.Q.G., a Chinese asylum-seeker, had the following exchange with the Inspector and the interpreter (which occurred before the fear questions were asked):

Q. Do you understand that as a citizen of China I am obliged to let your country know that you are in our custody?

A. [exchange between interpreter and applicant.] I hope you don't contact them because I came out like this. It was illegal. So I am afraid if you contact them. [Applicant starts crying.]

information that might calm their fears. In contrast, one Inspector at Newark demonstrated great sensitivity to these concerns by patiently explaining the disclosure requirement and emphasizing that only the asylum-seeker's name would be revealed, but nothing about the claim itself. Aside from the fear that this practice causes asylum-seekers, it might also cause them to withdraw their request for admission or discourage them from being forthcoming in describing their fear of return.

UNHCR Recommendations:

A-9 (1) Consistent with US Department of State guidance regarding what constitutes “detention” for purposes of consular notification obligations, UNHCR recommends that CBP officials refrain from notifying consulates of the detention of an asylum-seeker at a port-of-entry absent a situation of prolonged detention. UNHCR also recommends that, in cases of prolonged detention, contact with consular authorities not occur from the port-of-entry.

A-9 (2) UNHCR recommends that, when consular communication is necessary due to either prolonged detention at a port-of-entry or placement in a detention facility, the information disclosed consist only of the name and the fact and date of detention and not include any more information than is strictly required by treaty. Information that should *not* be transmitted includes:

- ✓ the fact that the individual has been placed in expedited removal proceedings;
- ✓ the fact that the individual intends to apply for asylum or has expressed any fears related to return to that country;
- ✓ the date and place of entry into the US;
- ✓ any prior residence in a refugee camp.

A-9 (3) When consular notification is deemed necessary due to prolonged detention at a port-of-entry, UNHCR recommends that CBP officials inform asylum-seekers of the required notification in a manner that minimizes anxiety and does not discourage them from pursuing a claim for asylum claim in the US. In particular, CBP officials should emphasize that only the name and the fact and date of detention are revealed. Appropriate training on advising applicants about consular notification obligations should be provided.

B. Inspections: Conditions at Secondary / Treatment of Asylum-Seekers

1. General Environment in Secondary

a. Overview

UNHCR observed many asylum-seekers experience a smooth inspection process, in which they were interviewed calmly, provided essential information about asylum procedures, and allowed to wait peacefully in a waiting area, where they were provided with food and in some airports, allowed to watch TV or read. Some individuals, however, had a decidedly

different experience—they may have been placed in a holding cell, placed in restraints, or intimidated with warnings like “you’re going to jail, or “you’re going back on the next plane.”

One major factor influencing treatment was the degree to which inspection officials perceived the applicants as being "cooperative". Generally, applicants' cooperation was sought in the following areas: (1) admitting their true identity; (2) acknowledging that their documents were fraudulent; (3) describing their travel route; (4) agreeing to be fingerprinted; (5) agreeing to sign the sworn statement and other documents; and (6) allowing themselves to be escorted to other parts of the airport or to outside detention facilities. It appeared to UNHCR that, from the Inspector's standpoint, the failure to cooperate in any of these areas indicated that the applicant was perhaps challenging their authority, was trying to hide a criminal background, or was unstable enough to endanger the officers present.

Many asylum-seekers were comfortable with providing basic information regarding their identity and the purpose of their travel and were even forthcoming with adverse information, such as the use of fraudulent documents. Typical comments made to UNHCR included: “I know the US is a government of human rights, so I was not afraid,” or “I know America accepts refugees.”

However, others who were less trusting or more frightened appeared to have one or more concerns: that they not be returned to their home country, that the government of their home country not learn of their asylum claim,¹⁷³ and that they be secure and safe when in the custody of US authorities. Many were also operating on incorrect or incomplete information that they had received in their country of origin or on inaccurate assumptions about the US immigration and asylum process.¹⁷⁴ Based on UNHCR's observations and conversations with these asylum-seekers, they often incorrectly construed basic requests for information as steps toward their deportation or as a means to identify them to their governments. In particular, they often assumed, in the absence of information to the contrary from Inspectors, that their fingerprints would be shared with their governments.

The anxiety of asylum-seekers stemming from mistaken assumptions or incomplete information could be partially offset by providing prompt and accurate information in a language they can understand. However, this frequently was not done. Often, for example, no explanation was given ahead of time that fingerprints and photographs would be taken and that they would remain confidential. At JFK, where basic information about the credible fear process was not

¹⁷³ See Section (IV)(A)(9), “Confidentiality/Consular Notification Issues,” *supra*, for further discussion of this issue.

¹⁷⁴ Many asylum-seekers often are informed before arrival in the US, or otherwise believe that:

- the only way they can avoid being removed is to be admitted on the document they brought;
- any degree of cooperation with US Immigration authorities will facilitate their deportation;
- they should not sign anything because they may be signing their own deportation order;
- their fingerprints will be used to identify them to their own government;
- the use of restraints or being transported through the airport are steps to their own deportation.

In addition, many asylum-seekers have had experiences in which their own government falsified statements on which they placed their signature, and are thus suspicious of signing anything they do not fully understand.

provided by Inspectors,¹⁷⁵ several asylum-seekers told UNHCR's representative that they did not know that they would be allowed to seek asylum until their arrival in the detention center.¹⁷⁶ Interview logistics at JFK presented further challenges to the effective provision of this information.¹⁷⁷

Some Inspectors told UNHCR that many of the individuals who "acted up" probably did not understand where they were going, particularly when they see airplanes being boarded as they are transported through the airport. Another Inspector noted that the inability to communicate in the individual's native language was often a hindrance in these instances.

Clearly, Inspectors have a responsibility to efficiently process asylum-seekers. The environment that exists in the inspection areas of some ports-of-entry, however, can impede efficiency and risk the *refoulement* of *bona fide* refugees. It creates unnecessary anxiety for asylum-seekers, may make them less forthcoming with information that is crucial to Inspectors' decisions regarding the credible fear referral, and may cause them to seek to withdraw their applications for entry.

b. Treatment of Asylum-Seekers in Secondary

UNHCR observed a variety of approaches to treatment of asylum-seekers at the ports-of-entry visited. In many cases, the provision of helpful information and establishment of rapport occurred. At other times, however, Inspectors' tactics to encourage an applicant's cooperation in such matters as answering questions and submitting to fingerprints involved the use of verbal confrontation or threats or their placement in holding cells. When such strategies were employed, they were typically used as the first, or the only, effort by Inspectors to obtain an applicant's acquiescence, in lieu of explaining the process or responding to an applicant's questions or concerns.

Verbal confrontations frequently arose when Inspectors appeared to interpret an applicant's questions as challenges to their authority. At times, Inspectors used threats in the apparent belief that an applicant's increased fear would lead to acquiescence. In numerous examples from JFK, Miami Airport, and LAX, typical threats observed by UNHCR included: "You need to tell me the truth or you'll go to jail," or "You need to cooperate or we'll send you back." Many times, such threats were used even after the individual expressed a fear of return or

¹⁷⁵ See Section (IV)(B)(4), "Provision of Basic Information on the Expedited Removal Process," *infra*, for further discussion of this issue.

¹⁷⁶ For example, L.N., from Albania, believed that he and his wife were being returned to Albania because they had never been told to the contrary and because they perceived certain procedures as being in preparation to place him back on the plane (such as name tags being placed on his luggage.) He stated: "They took us in a taxi [INS transport van]. I was speaking to my wife, and at that horrible moment, we thought we were going back to Albania. . . . The airport was all around with fences. It was when we went in the other direction away from the airport in a car that I realized we were not going back to Albania."

¹⁷⁷ Because most interaction and interviews at JFK terminals took place at a counter in the middle of a large, crowded room, asylum-seekers were afforded fewer opportunities than at other ports-of-entry to sit, listen quietly to inspections personnel, and calmly ask questions. For further discussion of this issue, see Section (IV)(B)(3), "Privacy," *infra*.

stated a desire to apply for asylum. In one case, the interpreter (working for the INS Language Bank in New York) actually took her own initiative in making these threats.¹⁷⁸

The anxieties of some asylum-seekers appeared to be heightened at times because of the order of procedures that inspection followed. The Inspector's Field Manual appears to instruct Inspectors to take the I-867 statement first and then, if necessary, to fingerprint and photograph the applicant.¹⁷⁹ This order allows for the applicant to receive the advisal about the US asylum process, and to answer the fear-related questions of the I-867, before fingerprints are taken. However at some ports, particularly LAX and Miami Airport, the order of events was often reversed, so that fingerprints and photographs were obtained before the sworn statement was taken. As a result, Inspectors did not necessarily know that the applicant was an asylum-seeker, and were not in a position to explain the need for the fingerprints and the fact that the fingerprints would be kept confidential. This is what occurred to a female Chinese asylum-seeker at LAX. Tensions with the Inspector mounted in part because her prints were taken first, with no explanation as to their purpose or use. The problem was aggravated by the absence of an interpreter at the beginning of the process, when the misunderstandings began.¹⁸⁰

c. Impact on Asylum-Seekers

In UNHCR's observations, the asylum-seekers who were the most fearful, intimidated by, or distrustful of US immigration authorities were those most at risk of harsh treatment at inspection. Intimidating tactics frequently were used in response to an applicant's failure to cooperate, in lieu of provision of basic information. Some of the impacts discussed below are similar to those described above in Section (IV)(A)(4) "Attitudes of Inspectors", since the troubling actions regarding the environment in secondary are based, in large part, on these attitudes.

The environment in secondary sometimes caused asylum-seekers to state that they would rather return to their country of origin than remain in the US, although most changed their minds later. UNHCR observed several instances in which individuals, following an expression of fear of return, became frightened after being threatened, "You're going to jail," and told the Inspector at secondary "Okay I will go back,"¹⁸¹ "I want to go back as soon as possible,"¹⁸² or "I don't

¹⁷⁸ See Section (IV)(A)(6), "Interpretation," *supra*, for more information regarding this case and the role of interpreters in the interview process in general.

¹⁷⁹ Inspector's Field Manual, *supra* note 35, at Chapter 17.15 (b)(2) & (4).

¹⁸⁰ This applicant, who appeared to be cowering, afraid and suspicious, asked the Inspector in English: "Why, what is the purpose?" The Inspector did not respond. When the Inspector took the applicant's hand to start the fingerprinting, the applicant pulled the hand away, leading the Inspector to ask for a Mandarin interpreter because the applicant was "starting to get violent." Once the interpreter arrived, the interpreter explained to the Inspector that the applicant was asking about the purpose of the fingerprints. The Inspector, instead of answering the question, told the applicant very aggressively and impatiently: "You broke the laws of the United States! You paid a smuggler to come here! You are asking for a benefit from the United States. You can have me do your fingerprints now, or they will force you to do this later on!" In this case, the applicant eventually agreed to have her fingerprints taken, but not before intense emotions were expended on both sides.

¹⁸¹ Case of Y.T., an Armenia asylum-seeker.

¹⁸² Case of P.J., a Haitian asylum-seeker.

want anything in this country, I want to go back”¹⁸³ before again recanting and pursuing their claim. When UNHCR followed up with these asylum-seekers at the credible fear interview stage, a typical statement was that once they knew what to expect from the US authorities, they felt calm enough to pursue their asylum claims and answer all of the questions.

Due to fears that information will get back to their government, some asylum-seekers were not forthcoming with information during their secondary inspection interview. This could affect credibility findings in their asylum case in later proceedings. For example, D.S., an Albanian asylum-seeker, initially expressed reluctance in providing much information. The Inspector responded by threatening to lock him up unless he answered all of the questions. The individual then answered the questions but in a vague manner, saying for instance, that “Anything can happen over there.” However, he provided a detailed asylum claim at his credible fear interview. He later told UNHCR that he was concerned that the information he provided at the airport would be shared with the Albanian government.¹⁸⁴

Finally, UNCHR is concerned that asylum-seekers in the circumstances described above may be more likely to attempt injury to themselves or to the Immigration Officers. At LAX, UNHCR’s representative was informed by many Inspectors that Chinese asylum-related cases were often the most difficult, because many of these applicants have tried to injure themselves when in INS custody, or have lashed out at officers in the past. A memo posted in the inspection area reminded officers to be vigilant about officer safety, “especially in light of recent incidents where detained aliens have sustained self-inflicted injuries with concealed sharp objects.”¹⁸⁵ A typical Inspector comment was: “We get a lot of Chinese who start banging their head against the wall, acting up, lashing out at officers. As long as they are just sitting in the waiting room, they are quiet. But as soon as we try to transport them, they can go crazy.” Some Inspectors reflected that the individuals who acted up during transport probably did not understand where they were going, particularly if they see airplanes when escorted through the airport. One Inspector noted that the lack of ability to communicate in Chinese was an issue when dealing with these situations.

d. Positive Approaches

Many Inspectors, realizing that harsh tactics were often ineffective in obtaining information or cooperation, made efforts to calmly question applicants, respond to concerns, and acknowledge asylum-seekers’ fears as the path of least resistance in accomplishing their enforcement responsibilities. UNHCR observed many instances in which Inspectors encouraged cooperation by explaining the asylum process.¹⁸⁶ At times, this tactic involved some sort of

¹⁸³ Case of R.P.V., a Colombian asylum-seeker.

¹⁸⁴ This person explained to the Asylum Officer his family’s history of involvement in pro-democracy causes and his current problems with the authorities. He later explained to the UNHCR representative, “Well first of all I was afraid that officer would return me back to Albania, second of all I was afraid he would share this information with other people. I had concerns about answering questions at the airport. I was afraid in general.”

¹⁸⁵ INS Memorandum from G. Thomas Graber, Area Port Director, to all Immigration Inspectors, “Alien Search Procedures” (Aug. 4, 1999).

¹⁸⁶ One Miami Airport inspector told UNHCR about his efforts with a distraught Colombian asylum-seeker, M.L.C.:

assurance that the US government would be able to assist the asylum-seeker, sometimes an explicit statement (before reading the I-867) that the US can provide protection to refugees. Our representative saw this approach used most often at Miami Airport. It was often effective in putting the asylum-seekers at ease, thereby increasing the likelihood of their being forthcoming with critical information. As alluded to above, providing asylum-seekers with the information they need to assuage their immediate fears also aids officer safety. An Assistant Area Port Director in New York agreed with this conclusion, stating: "More explanations are good for officer safety reasons also."¹⁸⁷

Informally, before the start of the sworn statement, Inspectors sometimes asked persons from certain refugee-producing countries (Haiti, Colombia, Albania), whom they suspected had false documents, questions like "Do you need any help from the US Government?" or "Is there anything you are afraid of?" Occasionally an Inspector would say: "I understand you may be afraid of something but we are able to help you if you tell us the truth." In one case at Miami Airport involving a young asylum-seeker, X.Z., the Inspector managed to defuse a difficult situation by calmly responding to the woman's concerns.¹⁸⁸ Similarly, in a case at Newark International Airport, the Inspector was able to gain the applicant's trust so that the applicant would sign his sworn statement by assuring him that the interpreter would read it over with him.

She was crying and crying, she didn't want to talk. I had to tell her, if you want protection you have to trust me. I asked her, "Why did you choose to come to the United States?" She said, "Because I knew I'd get protection here." So I said, "Well, yes. This is why you didn't go to Cuba or Venezuela or Russia. Now you are in the United States, and you need to trust the first government officer you see." So I explained the process to her. I usually take 2 hours to do a case. This one took 3 ½ hours. I had to explain over and over to her that we were not going to send her back. She was afraid we'd send her back. But she finally got it in her head we weren't going to send her back. And now she's happy.

When our representative spoke with this asylum-seeker after her credible fear interview, she recalled how afraid she was when she first arrived, but emphasized that she was treated very well at the airport and noted that she had been given much information about what to expect in detention and at her credible fear interview.

¹⁸⁷ One reason for the generally informative, helpful behavior of Inspectors at Miami Airport appears to have been a major "customer service" initiative undertaken in recent years by the Miami District Director. Inspectors have noted that this initiative has "kind of trickled down." One Inspector noted, "Sometimes I feel good when I go home for the day knowing that I helped someone out. Even if I had to send him home, I treated him humanely and explained the law to the person."

¹⁸⁸ The woman initially insisted that she was a US citizen. She was first placed in a holding cell and threatened that she would be sent back to China, to no avail (the applicant continued to insist she was a US citizen). Finally, an Inspector brought her into an interview room and said: "I think you are afraid of something. I am here to help you." At this, the applicant at last admitted that she was a Chinese national. This applicant later told UNHCR that she needed assurances that she would not be returned before she was ready to talk to the Inspector. The Inspector then told her that she was there "to help" the applicant "if the applicant told the truth," that "if the applicant was afraid of something or wanted to ask for asylum," she "could do the papers for her, but that [the applicant would] have to cooperate, have her fingerprints taken, sign the papers." After these assurances from the Inspector, the applicant became fully cooperative, and the case proceeded with no further difficulties. Because the interpreter took the time to go over the statement with the applicant in a language he understood, the applicant readily agreed to sign.

UNHCR Recommendations:

B-1 (1) UNHCR recommends that Inspectors be trained to be aware of common causes for asylum-seekers' unwillingness or inability to cooperate with Inspectors and to learn to apply strategies for encouraging cooperation that are appropriate for asylum-seekers. In particular, the range of responses that Inspectors should be prepared to use should include: (a) providing basic information about US asylum procedures when it appears that individuals may be afraid of return to their country of origin; (b) giving assurances that information which asylum-seekers provide, including fingerprints and photographs, will not be revealed to their government (except as required under consular notification treaties; see discussion, *infra*); and (c) confirming that asylum-seekers understand what is being asked of them, including the signing of any forms.

2. Use of Restraints and Holding Cells

a. Restraint Policies at the Ports-of-Entry

UNHCR recognizes that the discretionary use of restraints in secondary may be necessary and appropriate in particular situations, such as genuine risks of flight or harm to officers.¹⁸⁹ INS policy requires that the use of restraints be based on an individualized "assessment of the detainee's risks to the public, the escorting officer(s), and him or herself. . ." and should include, "at a minimum, a review of the detainee's criminal violations (if any), aggressive or asocial behavior, suspected influence of alcohol or drugs, physical condition, sex, age, and medical condition."¹⁹⁰

The Inspector's Field Manual provides similar safeguards. The use of restraints requires the Inspector to have "reasonable articulable facts to support the decision. Officers should employ only the amount of restraint needed to ensure the safety of the detainee or others, and to prevent escape."¹⁹¹ The manual allows the use of shackles and handcuffs when criminal violations are known or suggested, if the detainee is an escape risk, or if the detainee is "verbally abusive, combative, (or) confrontational."¹⁹² With regard to asylum-seekers, officers are instructed to "take appropriate consideration and use discretion when handling (them). The level and type of restraints used shall be reasonable under the circumstances."¹⁹³

Practices regarding restraints at JFK appeared, in general, to be at odds with the national policies described above. JFK Inspectors frequently did not employ individualized assessments but, instead, used shackles (ankle cuffs) on almost every inadmissible applicant while they

¹⁸⁹ Inspectors also were particularly attentive to an applicant's criminal history. However, in UNHCR's observations, while most criminal aliens detained by Inspectors were placed in holding cells, they were not placed in restraints to any greater or lesser degree than the other applicants in INS custody.

¹⁹⁰ INS Detention Operations Manual for Service Processing Centers and Contract Facilities, Enforcement Standards, "Use of Restraints," Section (III)(C) (Feb. 5, 1998).

¹⁹¹ Inspector's Field Manual, *supra* note 35, at Chapter 17.8(h)(3)(i).

¹⁹² *Id.*

¹⁹³ *Id.*

waited in secondary.¹⁹⁴ This was so even for those with minor visa problems. Applicants at JFK with small children, as well as some particularly vulnerable populations like the elderly, generally were exempted from the policy to restrain. Older juveniles, however, were routinely kept in leg restraints, as described above. UNHCR observed two cases at JFK of female asylum-seekers who remained in leg restraints throughout the course of their interview with Inspectors. They had arrived the previous evening and had spent the night at the airport, with the leg restraints around their ankles all night.

Many asylum-seekers found the use of restraints humiliating and confusing, particularly when they were restrained for a long period of time.¹⁹⁵ The fact that, often, the need for restraints was not explained to them added to their feelings of distress and helplessness. At JFK, Wackenhut security personnel frequently appeared with loudly clattering chains, occasionally after an Inspector shouted an order, and wordlessly put them on the individual.

UNHCR is concerned that the use of restraints on asylum-seekers may cause unnecessary trauma (especially to those who may have suffered trauma in the past), may cause asylum-seekers to seek to withdraw their applications to enter the US, or may discourage them from divulging important information during their I-867 interview or at later stages of the proceedings.

Aside from JFK, none of the other ports-of-entry that UNHCR visited restrained individuals inside the secondary inspection area. Other ports-of-entry maintained the security of the inspection area and prevented individuals from fleeing using means other than restraints. The use of an automated locked door and of security guards posted at the exit to check passports, for instance, proved to be effective security policies at several ports-of-entry. Miami Airport maintained control over its typically very busy secondary inspection area with a locked door that Inspectors were able to open and close through a button by the inspection counter and Supervisor's desk.¹⁹⁶ At LAX, inspection maintained a separate "Secondary Two" waiting room

¹⁹⁴ This was true at JFK's main international terminal, Terminal 4, through which all asylum-seekers passed, as this is where long-term the holding cells were located. However, Inspectors appeared to have more discretion regarding restraints in other terminals for those who were temporarily held there. One Inspector told UNHCR that "some Supervisors say to restrain everybody."

¹⁹⁵ Asylum-seekers seemed particularly distressed by the leg restraints and "belly chains" used at JFK. They thought that the restraints made them look like "criminals." For example, M.A., a Nigerian asylum-seeker held in restraints at JFK for over 20 hours, stated:

I felt terrible, very bad when they put leg cuffs on me. They did not explain why I should be in leg cuff, why I cannot have a bed to sleep. I had a different view of America. I thought they were generous. But I have a different view of them now.

One asylum-seeker that UNHCR interviewed in New York, E.C., alleged abuse while restrained with "belly chains." He stated:

I was put in chains, a waist chain and cuffs on my wrists. Then they made me carry my luggage from the airport to the vehicle and from the vehicle into the detention facility. [At this, applicant demonstrated that his hands were against his sides, his movement was very restricted.] It was very painful. I had very limited movement. It was a painful, unpleasant experience. It was humiliating for me walking around, since it is a public place.

¹⁹⁶ Individuals were always escorted into the secondary inspection area by airport employees who knocked on the glass door to gain entry. Occasionally, when the secondary inspection area became too overcrowded (beyond the typical crowds—standing room only), some Supervisors placed all individuals against whom adverse actions were

for processing all inadmissible individuals. The Secondary Two area was more secure, with two contract security guards keeping watch over individuals in their custody. In Newark, contract security officials from the Elizabeth Detention Facility guarded access to and from the secondary inspection area. By contrast, though similar security officials, with a similar role, were present at JFK's main international terminal,¹⁹⁷ JFK supplemented the vigilance of these security officers with the widespread use of leg restraints.

b. Restraints During Transport

Most ports-of-entry used restraints when transporting individuals to the plane, to another part of the airport, or to a detention facility. Most ports used simple handcuffs for these situations. At JFK, however, belly chains were commonly used. According to INS officials, private companies providing security services at the ports-of-entry and at area detention facilities, such as Innovations Security at LAX, often insisted that provisions be included in their INS contracts requiring the use of restraints during transport. These officers, therefore, were not permitted to make individualized assessments.

In contrast, when Inspectors themselves, or, at Miami Airport, INS Detention Enforcement Officers (DEO), escorted applicants to different parts of the airport, they routinely made individualized assessments about the need for restraints, depending on the applicant and the destination (other parts of the airport were generally deemed more secure than outside the airport). At Miami Airport, UNHCR's representative routinely observed Inspectors and DEO officials escorting sometimes multiple individuals outside of the secondary inspection area to another part of the airport for removal without restraints.

c. Use of Holding Cells

At most ports-of-entry, holding cells were generally reserved for applicants who were disruptive, who had criminal backgrounds, or who were otherwise deemed a safety risk. At San Ysidro, however, because no waiting rooms existed, all inadmissible applicants were placed in holding cells. UNHCR was told that JFK has in place a plan to handle inadmissible applicants similarly once its holding cells in the main international terminal become fully operational. Miami Airport used its holding cells when the secondary inspection area became overcrowded. At such times, particularly if the secondary area was past capacity, many Supervisors placed all individuals thought to be inadmissible into the cells. Men and women were kept in separate cells at all ports-of-entry. Individuals with criminal backgrounds were generally separated from those who were simply inadmissible.

being taken inside the holding cells. Miami Airport—unlike the other ports-of-entry UNHCR visited—did not have a contract security service guarding access to and from the secondary inspection area.

¹⁹⁷ Security personnel from the Wackenhut Detention facility maintained a desk by the door of the secondary inspection room in JFK's main international terminal. These officials typically escorted individuals to their seats inside the secondary inspection waiting area and checked passports as individuals were leaving the secondary inspection area.

Holding cells were also occasionally used as a tactic to encourage or coerce an applicant's cooperation. Miami Airport, in particular, dealt with various cooperation issues in such a manner, including when applicants did not want their fingerprints taken or if they appeared to be challenging the officer's authority in some way. For example, during the interview of a Colombian asylum-seeker, J.D.G.P., a Miami Airport Inspector held over the applicant as a threat the prospect of being placed in the holding cell, and when the Inspector appeared to deem an answer to a question as a challenge to her authority, the Inspector placed the applicant in the cell.¹⁹⁸ An Inspector at Miami Airport told UNHCR that he had recently put a Peruvian asylum-seeker in a holding cell when he expressed concern that the signature he was being asked to provide would effect his deportation.¹⁹⁹

As with restraints, placement in a holding cell may invoke past trauma for some asylum-seekers. Some may become intimidated by Inspectors, reluctant to talk, or seek to retract a previously expressed desire to apply for asylum. One previously-cited example is K.S. at Miami Airport. After asking for asylum upon her arrival, she was placed in a holding cell and then, sobbing, told an Inspector during her sworn statement "I don't want to be behind bars. I am innocent. I want to go back home. I don't want to be behind bars."

UNHCR Recommendations::

B-2 (1) UNHCR recommends that DHS develop further guidance on the use of restraints and holding cells on asylum-seekers, emphasizing that they be used only after an individualized assessment has been made that the asylum-seeker poses a security or flight risk, that they not be used to encourage or coerce an asylum-seeker's cooperation, and that they not be used to restrain individuals who are sitting inside a secure waiting or holding area. UNHCR further recommends that DHS develop specific guidance that the use of "belly chains" during transport be avoided unless absolutely necessary based on risks posed by the asylum-seeker.

B-2 (2) Whenever officers deem the use of restraints or holding cells to be warranted, UNHCR recommends that they explain to the asylum-seeker at the outset the reason for their use and the approximate duration of their use. Such a policy would minimize the anxieties and fears of asylum-seekers and the likelihood of them becoming uncooperative or possible security risks.

¹⁹⁸ When the Inspector asked, "Are you willing to answer my questions," the applicant responded, "I am very nervous now." The Inspector then replied: "You can answer now, or sit in the cell for another hour." In the course of questioning, the applicant told the Inspector: "I am coming in search of refuge in another country, in search of political asylum." When the applicant told the Inspector, "I really think it would be good to put [the date his visa application was denied] in the statement," the Inspector became very angry, exclaiming: "I'm the one doing the questioning. You just answer! A little respect here!" The Inspector then stopped the interview and returned the applicant to the holding cell.

¹⁹⁹ The Inspector said: "I counted his money, and he refused to sign. All he would say is 'If I sign, you will deport me and I will be killed.' I could not get it through his head. I said I do not need your signature to deport you, but he did not understand. So I said forget this, if you want to cry, go ahead and cry in the cell there, and maybe in a few hours you will be more cooperative."

B-2 (3) Officers and supervisory staff should receive training to recognize signs of trauma and to acknowledge and ease typical fears that asylum-seekers may have upon being placed in restraints or holding cells.

3. Privacy

Confidentiality can aid asylum-seekers in revealing their fears and often traumatic experiences. In addition, the opportunity to sit down in a quiet, private room appears to help applicants understand and process the information they are being given.

At most ports-of-entry, formal interviews and sworn statements took place in private or semi-private offices or cubicles. For the protection of both the officers and the applicants, most ports used security cameras in the offices and required a witness to be present during the interview or Inspectors to keep a door open.

As previously mentioned, at all four of the JFK terminals that UNHCR observed, inspections personnel conducted interviews and took sworn statements at the secondary inspection counter, an environment that offered little privacy, as there could be as many as four applicants standing near each other along the counter. The secondary inspection room was also often quite crowded.

At the JFK terminals that UNHCR visited, it appeared that Inspections Officers did not use private rooms for interviews, except when a telephonic interpreter was needed. UNHCR was told that these rooms were not wired for cameras and that, for security reasons, an additional staff person would need to be present as a witness. Shortage of staff often did not allow for this to occur.

Given these constraints, JFK Inspection attempted to ensure that applicants who desired privacy were allowed it by requiring Inspectors to ask all applicants on the I-867: "Are you comfortable giving your statement to me here, or do you wish to do so in a more private location?" UNHCR did not observe any individuals request use of private rooms, raising the question of whether they felt comfortable doing so.

UNHCR Recommendations:

B-3 (1) UNHCR recommends that private interviewing rooms be used for all secondary inspection interviews and that logistical obstacles to this end be resolved to the extent possible.

4. Provision of Basic Information on the Expedited Removal Process

a. Importance of the Prompt Provision of Information

Regulations require that Inspections Officers provide applicants who have been referred for credible fear interviews with Form M-444 "Information About Credible Fear Interview".²⁰⁰ In addition, the Inspector's Field Manual instructs that the form "must be . . . explained in a language that the alien understands."²⁰¹ The initial version of the M-444, issued in 1997, was translated into 13 languages,²⁰² with a companion videotape produced in these languages the following year. In March 1999, DHS Headquarters issued a revised version of the M-444, with additional information regarding the Convention Against Torture. As of September 2003, this revised form had been translated into only five languages²⁰³ and no corresponding videotapes had yet been produced. As explained further below, it is unclear which version of the M-444 was used at the ports-of-entry during the period of this study (January-June 2002).²⁰⁴

UNHCR believes that the M-444 contains a great deal of information that can aid asylum-seekers in understanding the credible fear interview process. For example, it explains the purpose of the credible fear interview, the right to consult with other persons, and the consequences of failing to establish a credible fear. A basic explanation of the form's contents, with an opportunity for the asylum-seeker to ask questions, can be useful in allaying fears about what is going to happen next. This is particularly true regarding those issues of most immediate concern to asylum-seekers, such as where they will spend the night, how long they will be detained, when they will be able to call a relative in the US or an attorney, and when they will be able to see an Asylum Officer. The provision of this information in written form, in the applicant's language, is equally important. Many asylum-seekers will not fully comprehend the next steps in the expedited removal process, and their rights as they move through it, until they reach the detention facility, are not in fear of immediate removal, and have time to read the M-444 more carefully.

UNHCR does not expect, or want, Inspectors to provide legal information to asylum-seekers or to discuss their underlying claims given their lack of appropriate training. UNHCR believes, however, that Inspectors can - and often do - play an important role in providing asylum-seekers with *basic* information about the expedited removal process, most notably on the issues of most immediate concern to them. UNHCR found, however, much variation among the ports regarding the provision of this information and whether interpreters were made available to assist in the process.

²⁰⁰ 8 C.F.R. § 235.3(b)(4)(i).

²⁰¹ Inspector's Field Manual, *supra* note 35, at 17.15 (d)(4).

²⁰² These languages included, for example: Albanian, Arabic, Fuchow, Mandarin, Punjabi, Serbo-Croatian, Somali, Spanish (Central American), Spanish (South American), Tamil, and Urdu.

²⁰³ These languages include: Albanian, Arabic, Haitian Creole, French and Mandarin.

²⁰⁴ In Miami, where there were a large number of Spanish-speaking asylum-seekers, it appears that at least the 1997 Spanish version of the M-444 was still being used, given that the 1999 version had not yet been translated into Spanish. This was likely true of other languages that had not yet been adopted. UNHCR does not know which version was being used by Inspections at LAX during its field work there in May and June 2002.

b. Procedures at Each Port-of-Entry

Procedures at Miami Airport: Inspectors were required by local policy to provide a “credible fear orientation” to all asylum-seekers who were referred for a credible fear interview. This credible fear orientation took place immediately after the secondary inspection interview while the interpreter was still present or on the telephone. As part of this orientation, Inspectors provided asylum-seekers with a copy of the M-444 (usually in the applicant’s language)²⁰⁵, a copy of the list of free legal service providers, a change of address form, and a form for notification of a consultant’s presence during the credible fear interview.

Inspectors at Miami Airport generally remained conscious of the fact that they were providing an orientation and not simply handing out forms. Typically, they provided a basic explanation about each form in simple language and answered applicants’ questions. Almost all the questions related to the applicants’ immediate concerns on issues such as detention and phone use. In addition, applicants at Miami Airport often remained in the interview room for the entire period of time in which Inspectors processed the case, allowing many of them the time to develop a comfort level with the Inspector and the opportunity to ask further questions, again primarily about their immediate concerns.

For quality control purposes and consistent with the Inspectors Field Manual,²⁰⁶ applicants were required to acknowledge receipt of the M-444 by signing the form itself. A copy of each signed form was included in the applicant’s A-file as a record that the credible fear orientation was completed. In addition, Inspectors were required to include a statement on the I-867 informing applicants to bring the name and address of a sponsor with them to their credible fear interview, to read this statement to the applicants, and to have the applicants initial it.

Procedures at JFK: In contrast to the Miami procedures, Inspectors at JFK were not required to provide any information about the credible fear process beyond provision of the M-444 form itself. In the few asylum cases that UNHCR observed, Inspectors did provide a copy of the M-444 to the asylum-seeker, but provided it only in English, which an interpreter then translated on the phone. Other asylum-seekers processed through JFK, later detained at the Wackenhut detention facility, also told UNHCR that they had received the M-444 in English, despite speaking another language. It is unclear why only the English version of the M-444 was provided in these cases, although it may have been because the March 1999 version of the M-444 had only been translated into a few languages by that time.

Unlike at other ports-of-entry and contrary to instructions in the Inspector's Field Manual, JFK did not require Inspectors to indicate in the file that the M-444 was provided. The inclusion of such information in case files helps ensure that Inspectors are accountable for providing this important information in a language the applicant understands.

²⁰⁵ See note 204, *supra*.

²⁰⁶ Inspector's Field Manual, *supra* note 35, at Chapter 17.15 (d)(4) ("The Form M-444, Information about Credible Fear Interview, must be given to the alien and explained in a language the alien understands. The alien should sign two copies, acknowledging receipt of the information. One copy should be placed in the A file, and the other retained by the alien.").

UNHCR found that many asylum-seekers who had been processed at JFK, arrived at the Wackenhut facility with little understanding of what would happen next. Many did not know that they were safe from being returned to their home country until after they had arrived at the detention center.²⁰⁷ Some believed that they had never received the M-444 form about the credible fear interview. After UNHCR reviewed their documents with them, it was discovered that they had received it, but simply did not understand what it was. The New York Asylum Office provided a credible fear orientation for those asylum-seekers who had been processed through JFK. These orientations generally occurred at the Wackenhut facility on the next business day after the asylum-seeker's arrival at the detention center. Asylum-seekers who arrived at JFK on a Friday had to wait until the following Monday before obtaining basic information about the reasons for their detention, their ability to pursue an asylum claim, and the nature of the credible fear interview. For many, this delay caused considerable anxiety.

Procedures at LAX: At LAX, applicants remained seated in the interview room with the Inspector only for the duration of the actual interview. Inspectors were required to provide applicants with a copy of the M-444 and a list of legal providers, but Inspectors largely viewed this as a perfunctory requirement. As a result, interpreters generally were not available during the time these forms were handed to the applicant to respond to basic questions about what was going to occur.²⁰⁸

c. Impact on Asylum-Seekers

UNHCR found that asylum-seekers generally expressed concerns regarding two issues: dismissive treatment by Inspectors who failed to respond to questions or concerns and insecurity about what was going to happen to them next. At JFK, many asylum-seekers did not even know whether the Inspections Officer had ordered them removed or not. Not until they arrived at the detention facility, or, at times, until they met with an Asylum Officer, did they know that their removal was not imminent and that they would be able to present their refugee claim to an Asylum Officer. They also were worried about what the prospect of detention meant for them.²⁰⁹

²⁰⁷ For further discussion of this issue, see Section (IV)(B), "Conditions at Secondary/Treatment of Asylum-Seekers," *supra*.

²⁰⁸ At LAX, Inspectors did not provide applicants with these forms, or with any information about the outcome of their case, until the entire supervisory review process was completed. By that time, the interpreters used for the interview had long since been dismissed, and, in most circumstances, no new interpreters were called upon.

²⁰⁹ For example, E.C., an applicant from Nigeria noted: "If you have no experience traveling it is very confusing. . . This stuff gets to my head. . . No one tells you where you are being taken to. You are ignorant. You don't know about your security . . ." When this applicant was transported to the Wackenhut Detention facility, which is located in a warehouse district in Queens, New York, his lack of information about the nature of his detention led to increased fear. As he recounted his first impression of Wackenhut:

I thought this was a junkyard. I thought to myself, if one gets killed in this type of place, no one would know. Nothing was said to me. They took me inside, and a door to an empty room with a steel chair was opened. I understood I was to go in. I spent close to two hours there. I asked them what was happening, if there was someone I could talk to tell me what was happening. They said I should hold on.

In contrast, the provision of basic information about the asylum process at some of the other ports-of-entry placed many asylum-seekers at ease and assured them of their personal safety. Asylum-seekers who were able to ask questions generally had fewer complaints about their treatment while detained. For example, many asylum-seekers whose cases were processed at Miami Airport expressed appreciation to UNHCR about their treatment during secondary, noting that Inspectors explained the asylum process to them and eased their minds about detention.²¹⁰ In contrast, at JFK, the majority of asylum-seekers interviewed by UNHCR were dissatisfied with their treatment, and seemed particularly distraught by dismissive treatment and the failure of Inspectors to answer their questions. While complaints about treatment arose at all ports-of-entry visited, they tended to be less frequent at Miami Airport and more consistent at JFK.

UNHCR Recommendations:

B-4 (1) UNHCR recommends that the current version of the M-444 be promptly translated into a wide variety of languages and that a companion videotape also be produced. All applicants should be provided a copy of the M-444 in their native language. If the form is unavailable in the applicant's language, or if the applicant is illiterate, then it should be translated for the applicant at the port-of-entry and an English version of the form provided.

B-4 (2) In addition to providing a copy of the M-444 form, UNHCR recommends that Inspectors be required to provide basic information to asylum-seekers about the credible fear process, with an opportunity to ask questions, at the conclusion of the secondary inspection interview. Information should include, at a minimum, that the individual: (a) is not being sent home immediately and will be safe while in the US; (b) will be interviewed by an Asylum Officer to determine if s/he has a credible fear of persecution; (c) will be detained throughout the credible fear process; and, (d) will have an opportunity to contact family and an attorney from the detention center prior to the credible fear interview.

B-4 (3) UNHCR recommends that the informational videotapes on the credible fear process be played, if possible, both at the port-of-entry and at the detention center.

²¹⁰ As a Colombian asylum-seeker, M.L.C., explained about her expectations and her treatment at Miami Airport:

I was afraid, I was running away from my country. I was nervous. I didn't know what was going to happen to me. I was scared. Everything was different. I found myself in a different country. But, I was treated well at the airport. I was asked a lot of questions, it was like an interrogation, but everything was fine. I said I wanted to request asylum, and they told me I would be detained while they were doing the investigation. They said they will take me to another place. In that place I will be okay, I didn't have anything to worry about. I was told they will take me to have another interview.

5. Care of Basic Needs

a. Procedures at Each Port-of-Entry

Asylum-seekers, like all non-citizens facing adverse actions by the INS, remain in the custody of inspection officials for significant periods of time. During particularly busy periods, for example, it was not uncommon for asylum-seekers to spend over 24 hours in the inspection area before being transported to a detention facility.²¹¹ During this time, they are dependent on the INS for basic needs like food, water, bathroom use, and medical attention. UNHCR observed that Inspectors at the various ports-of-entry focused different degrees of attention on the provision of basic needs.

Miami Airport, for example, was noteworthy for the degree to which its Inspectors generally maintained a “customer service” ethic in an overwhelming work environment.²¹² Our representative was impressed by the many instances in which she observed Miami Airport Inspectors treating asylum-seekers and others with immigration problems with respect and kindness, making efforts to place them at ease. Inspectors routinely asked individuals on whose case they were working if they were hungry and then brought them food, or noticed that they were shivering and responded by asking if they had any warm clothes they could get from their luggage, or asked about the person’s health. These were small gestures but valuable in that they acknowledged persons as human beings. They were deeply appreciated by the applicants themselves.

At LAX, officers—particularly the Innovations Security contract personnel—were able to provide for applicants’ basic needs at a similar level as Miami Airport, although Inspectors were generally much less successful in providing essential information to asylum-seekers. JFK Inspection appeared to be noticeably less proficient in accommodating applicants’ basic needs. While all applicants in INS custody at JFK had access to food (generally every 6 hours), water, bathroom, and phone use, the manner in which these and other needs were provided was not equal to the other ports. For example, applicants’ requests for any of these items often provoked responses like “not now, wait,” or “sit down,” without further explanation, leading many to believe they were not entitled to these things and should stop asking for them.

b. Reasons for Different Treatment

How each port assigned responsibility for the care of detained individuals affected the degree of attention received. At Miami Airport, local policy made Inspectors personally responsible for promptly meeting the basic needs of applicants whom they had interviewed. They were required to record on a checklist form the provision of food, blanket, or medical

²¹¹ At LAX, for example, asylum-seekers often were processed last, apparently because Inspectors knew that they did not have a return flight to make. LAX maintains a detention area separate from the “Secondary Two” area, where individuals wait if they are awaiting return flights or spend the night if they are still awaiting processing. Other airports occasionally became overwhelmed, stretching out processing times to 24 hours or more.

²¹² Like other ports-of-entry, Miami Airport was short-staffed at the time of UNHCR’s visit. We were informed that Miami Airport, at the time, was 62 Inspectors short of its budgeted number.

attention to the applicant. Once they were finished processing the case and the individual was sent to the detention area of the airport, contract security guards, under the supervision of INS Detention Enforcement Officers, assumed responsibility for their care.

LAX achieved a level of care almost equivalent to Miami Airport's, though asylum-seekers' needs were met not by Inspectors but by personnel working for the private Innovations Security contractor which had responsibility for the waiting areas in Secondary Two and in the airport's detention area.

At JFK, by contrast, there was no clear assignment of responsibility. As a result, care was not consistently provided. Inspectors themselves occasionally handled applicants' requests, but only if they were not too busy with other tasks. Officials from the Wackenhut Detention facility were on-site at JFK. However, unlike security personnel at LAX, they were apparently not required to provide basic care. Their main responsibilities seemed to be limited to escorting people into the secondary inspection area, guarding the door to prevent ineligible people from leaving, and transporting individuals to the Wackenhut facility.

Differing space capabilities at the ports also affected the care provided to asylum-seekers. Miami Airport and LAX, for example, retained a separate detention area at the airport for those whose cases the Inspectors finished processing and who were awaiting flights or transport to a detention facility. In both airports, these areas were similar to, or even more comfortable than, the inspection waiting rooms, in that there was basic airport seating, television sets and magazines, and food available on-site. At JFK and Newark, individuals whose processing was finished remained in the secondary inspection area until their flight or transport elsewhere. At the San Ysidro border, individuals subject to adverse actions—both before and after the completion of their processing—were placed in large holding cells with metal benches instead of a waiting room environment since no such waiting room existed.

UNHCR Recommendations::

B-5 (1) UNHCR encourages CBP to instruct all ports-of-entry to adopt an approach that ensures the prompt and efficient provision of basic needs to asylum-seekers, such as food, bathroom use, and blankets. We encourage DHS to replicate the Miami Airport model at all ports-of-entry and make Inspectors personally responsible for ensuring that these needs are met.

C. Inspections: Administrative Oversight/Management

This report describes certain deficiencies in the identification and treatment of asylum-seekers in the inspection process. These include, for example, the failure, in a few cases to refer applicants for a credible fear interview despite an expression of a fear of return; uneven quality of questioning; the existence of a negative and, at times, hostile atmosphere toward asylum-seekers in secondary inspection; and poor interpretation during secondary interviews. It appears that many of these problems could be addressed by adopting certain measures such as greater

centralized direction and oversight, regular staff training, increased supervisory attention, and the expansion of quality control measures. Each of these areas is discussed below.

1. Centralization of Policy

Each port-of-entry that UNHCR visited had particular management policies or administrative oversight measures that port management deemed to be particularly effective in achieving the goals of the Inspection Division. For example, the inspections management at Miami Airport emphasized a "customer service" approach and the provision of basic information to asylum-seekers, despite an overwhelming work environment. At JFK, Inspectors routinely asked the I-867 fear-related questions to applicants under the Visa Waiver Program (VWP), even though not required to do so by law. LAX made significant efforts to care for the basic needs of individuals in their custody, providing a comfortable, yet secure, waiting area. Many of these policy decisions and their implementation remained unique to the specific port, and there appeared to be little dialogue or coordination to share learned experiences with other ports-of-entry.²¹³ Increased coordination from Headquarters might allow for these successful programs to be replicated nationally. More centralized direction would also improve accountability at the local level.

UNHCR Recommendations:

C-1 (1) UNHCR recommends that CBP give heightened attention to the central coordination of policy development and oversight regarding the expedited removal process. In undertaking such centralization efforts, UNHCR recommends that successful innovations at specific ports be shared and replicated.

2. Training

a. Training at FLETC

All new Inspections Officers attend a ten and half-week training program at the Federal Law Enforcement Training Academy (FLETC). The UNHCR representative observed one day of classes at FLETC and spoke to FLETC's Director, Assistant Director and an INS Supervisory Officer in charge of course development.

The FLETC training program for INS officers included 448 hours of instruction by INS personnel, covering such topics as immigration law and field training and 173 hours of training by FLETC personnel, covering such topics as the use of firearms, physical techniques and behavioral science. According to FLETC's Assistant Director, expedited removal training was not a major focus at the Academy because new Inspectors are being trained to be Primary Inspectors and processing expedited removal cases is not a major part of their job. The program,

²¹³ Other more technical innovations also remained specific to each port. For example, Miami Airport and LAX had independently created their own computerized systems for completing the expedited removal forms, resulting in increased efficiency. Newark had refined and improved upon Miami Airport's base system, but JFK and San Ysidro employed no such computerized system.

therefore, does not contain a separate course on the expedited removal process. Instead, the topic was covered in various classes, such as classes on inadmissibility and field training on the use of forms.

The FLETC program included a class on basic asylum law principles. According to the personnel with whom the UNHCR representative met, the course presented an overview of the laws, regulations, and eligibility requirements for asylum. The course also discussed the procedures for processing asylum and refugee applications. The UNHCR representative did not have the opportunity to attend the asylum law class or any classes that discussed the expedited removal process. In addition, she was not able to review training materials on these topics because the materials are considered confidential. UNHCR regrets not being able to review these documents.

As noted earlier in this report, UNHCR observed instances in which Secondary Inspectors failed to refer individuals for credible fear interviews who had indicated a fear or concern regarding their removal and other instances in which they engaged in excessive questioning, which, at times, was based on apparent misunderstandings of basic asylum law principles. It is not clear whether these errors were due to lack of training or other factors. We note that training materials developed by the Office of Programs provide good instructions in the area of questioning of asylum applicants, but it is not clear to UNHCR whether these materials are being used.²¹⁴

The UNHCR representative learned from FLETC and INS personnel that the FLETC basic training program does not focus on the larger issues affecting asylum-seekers such as reasons for displacement and flight and the impact of trauma, including its impact on behavior that refugees might exhibit when confronted by enforcement officials. Most Inspectors with whom UNHCR representatives discussed this issue, both at FLETC and at the local ports, believed that it was sufficient to train Inspectors simply to use the appropriate expedited removal forms, to ask the required fear questions, and to refer individuals who expressed a fear. Many believed that there was little additional value in training Inspectors about larger asylum-related issues because Inspectors were not responsible for credible fear interviews or final decisions on asylum.

UNHCR believes that border officials “should be trained in appropriate, cross-cultural interviewing skills, be familiar with the use of interpreters, and have requisite knowledge of refugee and asylum matters.”²¹⁵ As noted in several sections of this report,²¹⁶ particularly at ports such as JFK and LAX, there were instances in which Secondary Inspectors’ treatment of asylum-seekers might have been improved if training in the larger issues affecting asylum-seekers had been made available to the Inspectors.

²¹⁴ See “Supplemental Training Materials on Credible Fear Referrals,” *supra* note 62.

²¹⁵ *Asylum Processes: Fair and Efficient Asylum Procedures*, *supra* note 1, at para. 50(j).

²¹⁶ See Sections (IV)(B)(1), “General Environment in Secondary,” *supra*; (IV)(B)(2), “Use of Restraints and Holding Cells,” *supra*; (IV)(B)(4), “Provision of Basic Information on Expedited Removal Process,” *supra*; and (IV)(B)(5), “Care of Basic Needs,” *supra*.

UNHCR understands that, under the new DHS structure, other enforcement officers, such as those working in legacy Customs and Agriculture, will be assuming inspections responsibilities and that the FLETC training curriculum is being reexamined to address more functions. It is not clear to UNHCR whether all officers with inspection responsibilities will be trained in basic asylum concepts and the expedited removal process or how the FLETC curriculum on asylum might change with this re-organization.

b. Supplemental Training at Ports-of-Entry

The FLETC basic training program is the only uniform training program required of Inspectors. There is a FLETC training program for Secondary Inspectors who reach the journey level (GS-9). However, this training is not mandatory, and our UNHCR representative was told by FLETC and INS personnel that participation in this program was declining.

Training for Secondary Inspectors beyond FLETC appears to be at the discretion of the ports-of-entry, and, as a result, training opportunities are inconsistent. At many ports-of-entry, training appeared to be *ad hoc*. For instance, at some ports, training for new Secondary Inspectors consisted of simply observing a more “seasoned” Inspector for a few days before starting to process cases alone. Another training opportunity might be a training class for a limited number of Inspectors. Many Inspectors expressed concerns to UNHCR regarding the lack of opportunity for regular and relevant on-going training.²¹⁷ One noted that, even when sessions are offered, attendance was discouraged by supervisory staff.

In contrast, JFK had recently established a three-week advanced course in secondary inspection in order to provide systematic training for new Secondary Inspectors. UNHCR’s representative had an opportunity to observe one of the class sessions on processing expedited removal cases and was impressed with the instructor’s focus on sensitivity to a variety of refugee protection issues. However, it was troubling that the training instructor told the Inspectors to ask in-depth questions about asylum claims²¹⁸ and that the course did not discuss the potentially traumatizing impact of placing an asylum-seeker in restraints or holding cells.²¹⁹ In addition, there were no written materials handed out on the topics being covered. Such materials might have assisted the Inspectors in retaining the information presented, and also could have served as a useful resource in the future. Despite these limitations, overall the course was a positive development. Unfortunately, most of the more-seasoned Inspectors, who were actually doing the secondary inspection at the time of the study, had not received this newly-instituted course.

²¹⁷ One Inspector felt that training could be improved, even within current resource constraints, if appropriate attention were given to the issue. He contrasted the situation to the frequency of firearms training, which existed due to mandatory firearms renewal every three months: “This has been a huge priority, so all Inspectors do it. That is what is needed for other kinds of training. It needs to be made a huge priority.”

²¹⁸ See Section (IV)(A)(4), “Quality and Scope of Questioning,” *supra*, for further discussion of UNHCR’s concerns regarding inappropriate questioning of applicants based on Inspectors’ misunderstanding of basic asylum law concepts.

²¹⁹ See Section (IV)(B)(2), “Use of Restraints and Holding Cells,” *supra*, for a discussion of UNHCR’s concerns and recommendations with respect to the use of restraints and holding cells during the expedited removal process.

Newark had designed a hands-on two-week course in secondary inspection for new Inspectors, in which Training Officers were assigned to work through actual cases with their trainees. While UNHCR did not have the opportunity to observe this training, it recognizes that this type of case-driven training can be extremely helpful. On the other hand, Newark was the only port-of-entry visited by UNHCR that allowed new Inspectors to work in secondary inspection immediately. This is of some concern to UNHCR given the implications that incorrect decision-making during secondary inspection can have for asylum-seekers.

UNHCR is not aware of any training at FLETC or in other training courses on the use of interpreters when interviewing asylum-seekers.

UNHCR understands that shortly after the expedited removal process was mandated by law, INS provided systematic training on expedited removal processing at various ports. UNHCR has reviewed some of the expedited removal training materials used for these trainings and found much of the information in the materials to be consistent with the recommendations in this report. Materials developed by the Office of Programs dated February 6, 1998, which provide good instruction in the area of questioning of asylum applicants were also used as part of this systematic expedited removal training.²²⁰ The systematic training was discontinued after all ports received it, and, since that time, it appears that there has not been any systematic training in expedited removal of Secondary Inspectors. Given UNHCR's observation that practices at some ports were at variance with the principles contained in INS training materials reviewed by UNHCR, continued systematic training beyond FLETC on the expedited removal process and the treatment of asylum-seekers is critical. This is particularly true given the structural changes that have begun to occur since the field study for this report was completed.

UNHCR Recommendations:

C-2 (1) To address the concerns noted in this report, UNHCR recommends that DHS review its training programs for Secondary Inspectors, including Supervisors, and ensure that the programs provide specific training regarding the expedited removal process. This is particularly important as DHS restructures inspections responsibilities and re-examines its training programs. UNHCR recommends that DHS develop a mandatory training program beyond the FLETC course for all current and new officers with secondary inspection responsibilities that specifically focuses on the expedited removal process and the issues listed in C-2 (2).

C-2 (2) UNHCR recommends that training on the expedited removal process include when to refer for a credible fear interview; appropriate questioning; basic asylum law principles, with a focus on the principle of *non-refoulement*; cross-cultural interviewing skills; cultural sensitivity; factors causing displacement and refugee flight; recognizing signs of trauma; and the use of interpreters.

C-2 (3) In order to ensure the consistent and thorough understanding of any significant policy or procedural guidelines impacting the expedited removal process,

²²⁰ "Supplemental Training Materials on Credible Fear Referrals," *supra* note 62.

UNHCR recommends that DHS institute periodic mandatory trainings for all officers with secondary inspection responsibilities.

3. Supervisory Review and Quality Control Measures

a. Supervisory Review

Supervisory Inspections Officers play a critical role in the expedited removal process, ensuring that Inspectors process cases appropriately, as a matter of law, and that they do so professionally. Supervisors also provide day-to-day training to Inspectors in the expedited removal process, which can be especially important given the limited amount of relevant formal training opportunities for Inspectors discussed above. With regard to refugee protection, supervisory review is the essential back-stop in ensuring that *bona fide* refugees are not subject to *refoulement* from the port-of-entry.

DHS regulations seek to address these needs by requiring that any expedited removal order entered by an Inspector "be reviewed and approved by the appropriate Supervisor before the order is considered final."²²¹ The review must be performed by a Supervisor who has at least second-line authority or a person acting in that capacity and must include "a review of the sworn statement and any answers and statements made by the alien regarding a fear of removal or return."²²² INS training materials indicate that if there is any doubt concerning an applicant's expression of fear, a referral for a credible fear interview is appropriate.²²³ If Supervisors need any assistance in making a decision of whether to remove or refer, they should call a Supervisory Asylum Officer.²²⁴

UNHCR found that, in general, Supervisors at all ports-of-entry conducted the required reviews at the appropriate level. However, as the case examples discussed earlier in this report illustrate,²²⁵ there were instances in which the quality of the review was called into question. For example, as noted earlier, at times the applicants' statements were sufficient to warrant referral for a credible fear interview, yet the Supervisor allowed the Inspector to order the applicant removed.²²⁶ In addition, UNHCR found at least one instance in which further questioning of the applicant was warranted, but the Supervisor failed to require it.²²⁷ UNHCR's representative

²²¹ 8 C.F.R. § 235.3(b)(7). UNHCR learned that, at Miami Airport, port policy also requires a third-level supervisory review in cases in which individuals are charged with 212(a)(7)(A) charges (no valid documents or invalid visa) because these cases are deemed to require "more interpretation, deduction and nuance." The third-level review may be performed by a Deputy Port Director, Terminal Director, or the Port Director.

²²² *Id.*

²²³ "Supplemental Training Materials on Credible Fear Referrals," *supra* note 62.

²²⁴ *Id.*

²²⁵ See Section (IV)(A)(1)(b), "Fear Expressed *During* the I-867 Interview," *supra*.

²²⁶ For instance, in Section (IV)(A)(1)(b), "Fear Expressed *During* the I-867 Interview," *supra*, there are two examples in which the applicant answered one of the four fear-related questions in the affirmative or asked for asylum and should have been referred for a credible fear interview.

²²⁷ A Senegalese applicant at JFK was ordered removed after the following exchange, as recorded on the sworn statement:

Q. Do you have any fear...?

A. My mother is sick and blind. I need to make money in order to take care of her.

observed that when Supervisors instructed Inspectors to ask more questions of applicants, the purpose of the inquiry was generally to obtain more information on issues pertaining to admissibility, rather than on fear of return. These deficiencies in supervisory review merit further attention.

b. Quality Control Measures

In addition to the levels of supervisory review mandated by regulations, INS Headquarters created an Expedited Removal Working Group at the Headquarters level, which met on a weekly basis and reviewed a random sampling of cases in an effort to monitor decision-making quality. UNHCR understands that at some point after the completion of the fieldwork for this study, the Working Group stopped meeting on a regular basis. The Working Group could continue to be a useful means of ensuring that Supervisors conduct the appropriate reviews of expedited removal orders. In addition, by reviewing both positive and negative decisions, the Working Group might be able to identify any inconsistencies in decision-making. The Working Group would also be in a good position to identify any broader implementation issues that needed to be addressed.

With regard to local quality control measures, some ports-of-entry made efforts to utilize specialized expedited removal units called Port Enforcement or "PET" teams. Both LAX and San Ysidro ports-of-entry had such PET teams. The programs were designed to foster experience and promote consistency in application of the law. PET teams such as the one at LAX operated as a voluntary assignment, with longer rotation periods than most Inspector assignments.²²⁸

At the time of UNHCR's study, neither Miami Airport nor JFK were using specialized PET teams in secondary inspection.²²⁹ However, both ports allowed only journey-level (GS-9) Inspectors to work in secondary and scheduled rotations in secondary for at least three months at a time. Some Inspectors self-selected to remain in secondary on a near-permanent basis. Newark was the only port-of-entry that UNHCR visited that allowed trainee Inspectors to work in secondary, but as discussed previously, Newark also had one of the more extensive training programs for new Secondary Inspectors.

Q. Would you be harmed...?

A. I will be humiliated because it is a very big thing to come to the US.

Q. Are you or your family being threatened *by the government* of Senegal?

A. No.

The applicant did not provide a clear answer regarding whether she feared returning to Senegal. However, the applicant's contention that she would be "humiliated," which could indicate a fear/concern of being removed, should have been explored further in an open-ended manner. UNHCR reviewed the complete expedited removal file of this applicant and from the file review, it appears that the Supervisor authorized the expedited removal order despite the fact that further questions should have been asked.

²²⁸ The LAX Port Director created the PET teams precisely because he did not believe that the typical two week rotation periods for inspection assignments allowed for "ownership of position, problem, or productt . . ." He stated that the two-week rotational system did not lend itself to quality control. According to the Director, "For the first five days, Inspectors were just figuring out what they're doing, and then after the second week they're gone."

²²⁹ Miami Airport had maintained a specialized expedited removal unit earlier, but had discontinued it prior to this study's commencement.

UNHCR believes that, in principle, the use of specialized units to decide expedited removal cases could enhance the ability of Secondary Inspectors to correctly identify asylum-seekers and, potentially, could improve the treatment of asylum-seekers. However, in practice, it appeared to UNHCR that Inspectors in the LAX PET team did not handle their expedited removal responsibilities, including the identification and referral of asylum-seekers, any more or less proficiently than other Secondary Inspectors. The nature and extent of the problems noted in this report appeared to be present at the various ports-of-entry regardless of whether PET teams were utilized or not.

There are various possible explanations for the limited effectiveness of the PET teams as currently constructed. First, as the "PET" name signifies, these units view themselves as enforcement teams. Thus, it may be that they do not sufficiently distinguish between the Inspectors' investigatory and decision-making roles.

Second, the responsibilities of the specialized unit members could perhaps be better delimited. At JFK, the same Inspector conducted all phases of the secondary inspection questioning. In contrast, at San Ysidro, LAX and, in most cases, Miami Airport, certain Inspectors were designated to conduct the initial investigatory phase of the inspection process when inadmissibility was determined.²³⁰ Inadmissible applicants or those who were possibly inadmissible, including asylum-seekers subject to expedited removal, were then processed by a separate group of Inspectors. As noted earlier, asylum-seekers are often initially reluctant to provide information about their situation or to admit that their documents are fraudulent, out of fear of what might happen to them or because of confusion, language barriers, or distress.²³¹ As such, the initial investigatory phase of secondary often generates tension between the asylum-seeker and the Inspector. The benefit of the division of labor at San Ysidro, LAX and Miami Airport was that those Inspectors processing the expedited removal portion of the case and making the final removal decision in the case were not unduly influenced by any conflict arising out of the admissibility phase of the case. The blurring of Inspector roles at JFK may have contributed to some of the problems at that port-of-entry noted in this report.

Finally, there does not appear to have been a focus on increased training on the expedited removal process and on refugee-related issues for Inspectors in the specialized expedited removal teams. In fact, it appeared as though newer Secondary Inspectors at ports without specialized expedited removal teams received more training.

²³⁰ This phase of the secondary inspection process was sometimes referred to as "Secondary One."

²³¹ *Asylum Processes: Fair and Efficient Asylum Procedures*, *supra* note 1, at para. 36 ("It may...be that initial lack of cooperation results from communication difficulties, disorientation, distress, exhaustion, and/or fear.").

UNHCR Recommendations:

C-3 (1) UNHCR recommends that DHS develop better systems to ensure that Supervisors substantively review Inspectors' expedited removal decisions. In particular, UNHCR recommends that more emphasis be placed on requiring Supervisory Inspectors to direct further inquiry of the applicant regarding his/her fear of return when warranted, and when there is any doubt about whether to refer the person for a credible fear interview, to refer the case or consult with the Asylum Division.

C-3 (2) UNHCR recommends that DHS continue the meetings of the Expedited Removal Working Group on a regular basis, especially given the structural changes occurring during the transition of INS and other agencies with border enforcement functions to DHS.

C-3 (3) UNHCR encourages CBP to develop a pilot program of specialized expedited removal units in one or two ports. UNHCR recommends that officers in the pilot program and their Supervisors be given longer-than-normal rotations and receive extensive, on-going training of the type discussed elsewhere in this report. UNHCR recommends that the division of Inspector responsibilities used at certain ports-of-entry (e.g., San Ysidro, LAX and Miami Airport) be replicated. UNHCR also recommends that the program be evaluated after a period of time to determine its success in eliminating or reducing the concerns highlighted in this report and whether expansion to other ports would be warranted.

D. Dissolution of Asylum Claims

The UNHCR representative observed a greater number of asylum-seekers dissolve their cases in the New York District than in the other districts she visited. Based on UNHCR's limited case observations as well as Asylum Division statistics on district dissolve rates, UNHCR is concerned that there may be a correlation between the dissolution of asylum claims and district detention policies. Thus, while the focus of this study was not on detention policies or conditions of detention, to the extent that they may affect asylum-seekers' decisions about whether to pursue their claims, we discuss the district policies for those areas visited.

1. District Detention Policies

INS policy favors release of asylum-seekers from detention during the pendency of their hearings, except for those asylum-seekers arriving by sea.²³² However, parole decision-making varies dramatically from district to district. Officials with the New York and New Jersey

²³² See 8 C.F.R. § 235.3; Testimony of Joseph Greene, Acting Deputy Executive Associate Commissioner for Field Operations, US Immigration and Naturalization Service, Hearing on Immigration Detention Policies, House Committee on the Judiciary, Subcommittee on Immigration and Claims, US House of Representatives, 107th Congress (Dec. 19, 2001) (describing classification system and noting that INS policy "favors release" of asylum-seekers in such situations). Regarding detention policies for those asylum-seekers arriving by sea, see Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68,924 (2002).

Districts told UNHCR that they have very strict parole policies.²³³ In the Miami District, on the other hand, the policy at the time of the study was generally to parole asylum-seekers if they passed their credible fear interview and submitted the address and phone number of a sponsor within the US.²³⁴ In addition, in the Los Angeles District, those asylum-seekers who had identity documents were generally released on bond.

UNHCR has previously conveyed to INS officials its concerns regarding the prolonged detention of asylum-seekers in the INS New York and New Jersey Districts.²³⁵ The New York policy appears to start with the presumption that asylum-seekers will not appear for their hearings. The fact that applicants have passed their credible fear interview is not considered a favorable release factor. In fact, a person's status as an asylum-seeker may work to his/her detriment. The District Director appears to view any asylum-seeker as a presumptive "flight risk" given their stated fear of returning to their country of origin.²³⁶ The New York policy also is rooted in the notion that detention should be used to deter other asylum-seekers from coming to the US.²³⁷ As UNHCR has expressed in various communications to US government officials and adjudicators, such a policy is not consistent with international standards.²³⁸

²³³ The UNHCR representative had the opportunity to meet with New York's District Director and with district officials in the other areas visited, with the exception of New Jersey. The information about the various parole policies in this section stems from statements by district officials at those meetings. The discussion of New Jersey's parole policies is based on information learned during a separate UNHCR mission to New Jersey from 18-19 June 2002 to assess conditions at the Elizabeth Detention Facility. During the course of that mission, the UNHCR Deputy Regional Representative for the Washington Regional Office discussed parole policies with district officials.

²³⁴ It should be noted that, since the completion of this study, Haitian asylum-seekers became the exception to this general rule. Upon the arrival of a boat full of Haitian nationals in December 2001, INS instituted an unwritten policy of not keeping Haitian asylum-seekers who arrived by sea detained throughout their asylum proceedings, absent exceptional circumstances. The policy was intended to deter other Haitians from coming to the US on boats. UNHCR has objected to this policy and its underlying purpose. (See note 238, *supra*). This policy was codified in November 2002 and expanded to include all asylum-seekers arriving by sea. (See Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, *supra* note 232).

²³⁵ See, e.g., Letter from Eduardo Arboleda, Deputy Regional Representative, UNHCR Regional Office for the US and the Caribbean, to Michael Pearson, Executive Associate Commissioner for Detention and Removal, Immigration and Naturalization Service (Feb. 5, 2002); Letter from Guenet Guebre-Christos, Regional Representative, UNHCR Regional Office for the US and the Caribbean to Mr. Scott Blackman, Deputy Executive Associate Commissioner, Enforcement, Field Operations, Immigration and Naturalization Service (Jan. 9, 2003) (enclosing UNHCR's report regarding its mission to detention facilities in Elizabeth, New Jersey and Wackenhut, New York on June 18-19, 2002).

²³⁶ See note 233, *supra*.

²³⁷ Testimony of Edward J. McElroy, District Director, US Immigration and Naturalization Service, Hearing on Immigration Detention Policies, House Committee on the Judiciary, Subcommittee on Immigration and Claims, US House of Representatives, 107th Congress (Dec. 19, 2001).

²³⁸ See, e.g., Letter from Eduardo Arboleda, *supra* note 235; Letter from Guenet Guebre-Christos, Regional Representative, UNHCR Regional Office for the US and the Caribbean, to Becky Sharpless, Florida Immigrant Advocacy Center (Apr. 12, 2002) (submitted by FIAC in legal challenge to mandatory detention of Haitian asylum-seekers, *Moise v. Bulgur*); and letter from Guenet Guebre-Christos, Regional Representative, UNHCR Regional Office for the US and the Caribbean, to John Ashcroft, Attorney General, US Department of Justice (March 28, 2003).

2. Dissolutions

At JFK, UNHCR observed 17 asylum-seekers who were referred for credible fear interviews. Seven of those 17 dissolved their claim for asylum at the time of their credible fear orientation or credible fear interview with the Asylum Officer. In contrast, the UNHCR representative was not aware of any asylum-seekers who dissolved their claims in Los Angeles during her time at LAX (out of approximately 40 cases tracked), and of only one or two cases at Miami Airport (out of approximately 150 cases tracked). UNHCR had the occasion to speak to some of the individuals who dissolved their cases in New York. Some who dissolved were distraught and expressed fears clearly falling under the refugee definition. Two stated that they would try to seek refuge in another country after their removal. With regard to why these individuals agreed to return, some explained that they did not want to be detained throughout their proceedings. For instance, A.M., a Senegalese asylum-seeker at the Wackenhut facility, stated, "I made the decision [to dissolve] soon after arriving here because I've met people inside who have been here two years, two and a half years."

While UNHCR does not draw any statistical conclusions from these observations, it notes that the annual dissolution rates in the New York and New Jersey Districts for FY 2002, 24% and 23% respectively, were significantly higher than the national average (5.5%) and the rate in the majority of the other regional offices.²³⁹ As discussed above, asylum-seekers in these two districts are generally detained throughout the asylum process. The applicants observed by UNHCR made their decisions to dissolve their asylum claims within one to three days of their arrival. It is possible that the treatment applicants experienced in the first few days of their arrival in the US and/or the realization that they would likely be detained for months or years, may have led them to decide to abandon their asylum claims.

In determining whether detention is a factor in decisions to dissolve, it would be useful to collect information regarding asylum-seekers' stated reasons for dissolving their claims. The Asylum Division completes a form for each asylum claim that is dissolved at the credible fear interview stage, which asks the reason for dissolution in each case. UNHCR has been informed, however, that the stated reasons are not categorized and quantified.

UNHCR Recommendations:

D-2 (1) UNHCR recommends that BTS and BCIS explore the reasons for the significantly higher dissolution rates in certain districts and modify or adopt policies to address this issue and ensure that detention is not being used as a deterrent to pursuing asylum claims. To facilitate this, UNHCR also recommends that the Asylum Division compile the reasons why individuals choose to dissolve their asylum claims at the credible fear stage and to share this information with CBP and ICE.

²³⁹ Nationally, the dissolve rate was 5.5% in FY 2002, 3.8% in FY 2001, and 4.2% in FY 2000. The dissolve rates for FY 2002 for the other regional offices were: Chicago - 1%, Los Angeles - 2%, Houston - 4%, San Francisco - 6%, Miami - 11%, and Arlington - 31%. As UNHCR did not study the expedited removal process in the Arlington District, we cannot comment on the reasons for its high rate.

D-2 (2) UNHCR has previously noted its concerns regarding widely-varying parole policies among the districts and again recommends that a uniform policy regarding parole of asylum-seekers be adopted that is consistent with international standards.

E. Asylum Office: Credible Fear Process

1. Overview

Through the rulemaking process and internal training and policy guidance, the Asylum Division has implemented the credible fear component of expedited removal quite successfully, with efficiency and sensitivity toward refugee protection concerns. The credible fear standard is defined by statute as "a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the Officer, that the alien could establish eligibility for asylum."²⁴⁰ According to interpretive guidance in INS training materials and internal policy memoranda, the credible fear standard is a low threshold test designed to refer on all persons who could qualify for asylum, and Asylum Officers are directed to draw all reasonable inferences in favor of the asylum-seeker.²⁴¹ Consistent with this low threshold test, in Fiscal Year 2002, Asylum Officers found a credible fear of persecution in the vast majority of cases referred for a credible fear interview, thus sending these applicants for a full hearing before an Immigration Judge.²⁴²

While as a matter of law the US standard appears stricter than the international standard, the relatively high grant rate for credible fear interviews and the guidance provided by the Asylum Division regarding implementation of the standard suggest that, as a matter of practice, the difference between the two standards is marginal. UNHCR is concerned, however, that, in a minority of cases, the domestic standard may be applied more strictly than the international standard such that some cases that would not be considered "manifestly unfounded" under international standards are not being referred for asylum hearings. This issue is discussed further below.

Asylum Officers must also consider whether the applicant has established a significant possibility of torture.²⁴³ Regulations clarify that Asylum Officers and Immigration Judges should consider whether a claim involves novel or unique issues that merit consideration in a full hearing and should not apply statutory bars to asylum at the credible fear stage.²⁴⁴ We note, however, that DHS has stated that it plans to propose in October 2003 a regulatory amendment that would permit Asylum Officers to apply mandatory bars relating to certain criminal

²⁴⁰ INA § 235(b)(1)(B)(v); 8 U.S.C. § 1225(b)(1)(B)(v).

²⁴¹ Asylum Officer Basic Training Course, *supra* note 45.

²⁴² Based on statistics provided by the Asylum Division, in FY 2002, of all cases referred for a credible fear interview, 92% were determined to have a credible fear by an Asylum Officer, 1% were determined not to have a credible fear, and 6% were either withdrawn, dissolved or closed for other reasons. UNHCR is not aware what percentage of the 1% of cases in which no credible fear was found were appealed and reversed by Immigration Judges.

²⁴³ 8 CFR § 208.30(f)(If a credible fear of persecution or torture is found, the case will be referred for full consideration of the asylum and withholding of removal claim).

²⁴⁴ 8 CFR § 208.30(e)(2) & (3).

convictions and national security at the credible fear interview stage.²⁴⁵ This change would be contrary to international standards on expedited processing. As UNHCR and its Executive Committee have stated, exclusion clause issues are often quite complex and should be afforded full procedural consideration.²⁴⁶

As a general matter, the credible fear interview process is well designed, with multiple layers of supervisory review. Asylum Pre-Screening Officers interview individuals referred for credible fear interviews, generally between two to fourteen days after their arrival at a port-of-entry. The interviews that UNHCR observed during the study took place in offices that the Asylum Division maintained inside the detention facilities. Professional interpreters from Language Services Associates (LSA) were always available telephonically. Interviews are designed to be non-adversarial in order to remove common barriers to communication with asylum-seekers.

Applicants may bring a consultant of their choosing to the credible fear interview or have one present telephonically,²⁴⁷ and Asylum Officers generally made efforts to accommodate the consultant's presence either in person or over the telephone.²⁴⁸ According to Asylum Division policy, consultants should play a role similar to that of an attorney or representative in an affirmative asylum interview.²⁴⁹ The consultant "may make a statement, comment on the evidence, or ask the alien additional relevant questions that the APSO did not ask, at the end of the interview" or during the interview if appropriate.²⁵⁰ Our representative, however, observed some variations in the implementation of this policy. In Miami and New York, Asylum Officers routinely asked consultants at the conclusion of the interview whether they had anything to add to the applicant's statement. In Los Angeles, consultants were told only that they could "listen in" to the interview and were not asked to make a statement at any time during the interview. According to some Los Angeles attorneys with whom our representative discussed this issue, it was their understanding that they were not allowed to speak during the interview.

²⁴⁵ Department of Homeland Security, Semi-annual Regulatory Agenda, Sequence No. 1001, 68 Fed. Reg. 30279, 30303 (May 27, 2003).

²⁴⁶ As discussed previously, "[m]any unfounded, and even fraudulent and abusive, applications are not manifestly so, and can only be rejected after careful examination of all the facts of the case and an assessment of the credibility of the applicant." *Follow-up on Earlier Conclusions Regarding Manifestly Unfounded or Abusive Applications* *supra* note 11, at para. 23; *see also*, *Asylum Processes: Fair and Efficient Asylum Procedures*, *supra* note 1, at para. 29 (internal flight alternative and exclusion clause issues can give rise to complex issues of substance and credibility not given appropriate consideration under admissibility or accelerated procedures); UNHCR, *Note on International Protection*, *supra* note 12 ("claims that raise complex substantive issues (such as those connected to the application of exclusion clauses), or that require an in-depth consideration of objective and subjective factors (such as the evaluation of credibility of the application or the concept of the internal flight alternative)" should not be channeled through manifestly unfounded accelerated procedures).

²⁴⁷ 8 CFR § 208.30(d)(4).

²⁴⁸ UNHCR observed Asylum Officers who rescheduled interviews to allow for a consultant's presence or allowed applicants to return to their dorms to obtain an attorney's phone number to ensure the consultant's presence telephonically. UNHCR observed only one occasion when a Los Angeles Asylum Officer did not accommodate an applicant's request to call a consultant.

²⁴⁹ Credible Fear Procedures Manual, *supra* note 44, at 16, para. 4(a).

²⁵⁰ *Id.*

A Supervisory Asylum Officer reviews all decisions. In addition, the Asylum Division maintains a “Quality Assurance Unit” at Headquarters which reviews all negative credible fear determinations, as well as cases involving evolving bases for protection, like domestic violence and claims to protection under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²⁵¹ Applicants may appeal negative credible fear determinations to an Immigration Judge, who conducts a review of the credible fear decision.²⁵² Unless the applicant specifically indicates that s/he does not wish to have the decision reviewed, the case is referred to an Immigration Judge.²⁵³

The Headquarters Quality Assurance Unit is one of the most notable aspects of the credible fear process. This Unit serves as an effective tool for reinforcing concepts taught during training and for ensuring quality decision-making. UNHCR reviewed several cases in which the Headquarters Quality Assurance Unit reversed a negative Asylum Officer determination, taking the opportunity to explain to Asylum Officers the credible fear standard or to point out a more appropriate legal analysis.²⁵⁴

Most credible fear questioning and decision-making was appropriate. In general, Asylum Officers appeared to adequately explore aspects of claims to determine whether a credible fear of persecution existed. However, UNHCR has concerns regarding the questioning and analysis undertaken by Asylum Officers in some cases and the way in which the I-870 forms were completed, which may have consequences beyond the credible fear interview. These concerns are discussed in more detail below.

²⁵¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], *entered into force* June 26, 1987.

²⁵² 8 CFR. § 208.30(g).

²⁵³ *Id.*

²⁵⁴ For example, the Headquarters Quality Assurance Unit reversed an Asylum Officer’s negative credible fear determination in the case of a Nigerian asylum-seeker who feared harm under the Islamic law in place in his region because he was Christian and homosexual, and the Quality Assurance Unit used the opportunity to reinforce certain training concepts. Headquarters instructed the Asylum Officer that an applicant must be given an opportunity to address apparent inconsistencies and “credibility issues that the applicant did not have a chance to address *may not* be used in a negative credibility decision.” The Headquarters Unit also noted that the applicant had reasonable explanations about those inconsistencies he did address and reminded the Asylum Officer that internal relocation is not an issue to be decided at the credible fear stage, but a matter for the Immigration Judge to consider.

Similarly, in a case involving a Chinese asylum-seeker whose fear was based on his failure to comply with China’s one-child policy, the Headquarters Quality Assurance Unit reversed the negative credible fear determination of the Asylum Officer, who did not consider the applicant’s refusal to comply with the population control law to be related to his political opinion or religion. The Quality Assurance Unit instructed the Asylum Officer that the applicant’s “non-compliance, whether voluntary or involuntary, could be interpreted as an opposing political opinion” and directed the Asylum Officer to the INA provision related to coercive population control measures as a grounds for asylum. In addition, the Quality Assurance Unit went through the Asylum Officer’s credibility assessment point by point, reinforcing concepts from training like what is an “implausibility” or “inconsistency” for purposes of credible fear decision-making.

UNHCR Recommendations:

E-1 (1) UNHCR recommends that decisions regarding whether applicants may be barred from asylum, for example on criminal or security grounds, continue to be excluded from the credible fear process.

E-2 (2) UNHCR recommends that, consistent with its policy guidelines, the Asylum Division ensure that all Asylum Offices are aware of the role consultants may play in the credible fear interview process.

2. Questioning and Analysis by Asylum Officers

a. Consistency of Referrals

UNHCR's representative observed some inconsistencies in Asylum Officer analysis in cases that presented similar fact patterns. In particular, UNHCR observed such inconsistencies in the context of Colombian asylum claims that were based on past or feared persecution due to refusal to pay extortion demands of the Revolutionary Armed Forces of Colombia (FARC) or the National Liberation Army (ELN). In most of these types of cases that UNHCR observed (15 out of 27), Asylum Officers found that the applicants had established a credible fear based on imputed political opinion. However, in the remaining 12 cases that were based on very similar facts, Asylum Officers determined that the applicants failed to establish a nexus to one of the five protected grounds. The Headquarters Quality Assurance Unit overturned the Asylum Officer's decision in one of the 12 cases and found that the claim was based on political opinion.²⁵⁵ Of the 11 remaining cases in which no nexus was found, one was ordered removed after an Immigration Judge reviewed the credible fear decision²⁵⁶ and ten were referred for an Immigration Court hearing but designated on the I-870 as only having established a credible fear of torture.²⁵⁷

Various factors appeared to contribute to these inconsistent results. These included whether the applicant used the term "war tax," a term generally used by more educated or sophisticated applicants, or explained that the guerrilla group would consider them enemies if they refused to pay. In some cases, if an applicant did not articulate that failure to pay the demand would result in an enemy label, some Asylum Officers made this connection, while others did not. The reason for this divergence is not clear. It may have been due to greater familiarity with country conditions in Colombia on the part of some Asylum Officers or a greater willingness to find a nexus even when an applicant did not articulate it.

²⁵⁵ This occurred in the case of W.U.G.

²⁵⁶ This occurred in the case of F.H.C.G.

²⁵⁷ The ten cases included: S.S.G., W.D.C.Q., T.H.V., A.E.C.M., C.J.G.I., L.A.C.A., J.D.G.P., H.P.B., G.R.E., and J.J.B.M. For those cases where no refugee nexus was found, the decision to designate a case as CAT-eligible appeared to rest on whether the feared guerrilla forces could be considered a state actor. In cases that were referred but designated CAT-only, the FARC controlled the area in which the applicants lived and were thus considered to be possible state actors. In the case that was not referred, the applicant feared the ELN, perceived to have less power or territorial control than the FARC.

The integrity of any formal adjudicatory process relies in part on the consistency of the decisions rendered. As noted above, the Asylum Division has certain mechanisms in place to promote quality decision-making, such as the Quality Assurance Unit's review of all credible fear denials. It is not clear whether the Quality Assurance Unit specifically tracks inconsistencies in decision-making for similarly-based claims. In addition, UNHCR understands that the Quality Assurance Unit does not always share its more significant decisions with all Asylum Officers which could help promote consistency in decision-making. For instance, in the Colombian extortion case that the Quality Assurance Unit overturned, in order to clarify guidance on these cases with the Asylum Officers working in Miami, the Quality Assurance Unit provided a good explanation of how to approach FARC extortion cases.²⁵⁸ However, it is not clear if this guidance was shared with Asylum Officers working in other areas of the US who might encounter similar claims.

b. Standard Applied in Credible Fear Decision-Making

As discussed earlier, while the credible fear standard is stricter by definition than the international standard, Asylum Division guidance appears to interpret the standard in a manner similar to the international standard.²⁵⁹ As noted earlier, Executive Committee Conclusion 30 defines the "manifestly unfounded" or "clearly abusive" standard as screening out only those applications "which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees nor to any other criteria justifying the granting of asylum."²⁶⁰ UNHCR has emphasized that "the criteria for making such a determination should be defined in such a way that no application will be treated as manifestly unfounded or abusive unless its fraudulent character or its lack of any connection with the relevant criteria is truly free from doubt."²⁶¹

To assess the extent to which implementation of the US standard is actually consistent with the "manifestly unfounded" or "clearly abusive" standard, UNHCR reviewed 40 random files of credible fear denials from the years 2001 and 2002 to see whether a similar conclusion would have been drawn under the international standard. In the majority of cases, UNHCR did not disagree with the conclusions reached by the Asylum Officer. In three cases, however, based upon the claims presented, UNHCR would have referred the claims for full asylum consideration.²⁶² UNHCR would have also referred the 11 Colombian extortion cases mentioned above in which the Asylum Officer found no credible fear of persecution. The Colombian cases

²⁵⁸ In providing this guidance, the Headquarters Quality Assurance Unit noted that it had affirmed the findings of a number of Asylum Officers that no credible fear of persecution was present in Colombian extortion cases, even though the analysis may have been incorrect. The Quality Assurance Unit indicated that it did this because of the recently high workload and the fact that the applicants had been referred for *de novo* asylum hearings based on a finding of a credible fear of torture. This information is based on UNHCR's review of the file of the case of W.U.G.

²⁵⁹ See Sections II(A) "International Standards and UNHCR Policy" and IV(E)(1) "Asylum Office: Credible Fear Process Overview," *supra*.

²⁶⁰ *Executive Committee Conclusions, supra* note 10, No. 30, para. (d).

²⁶¹ *Follow-up on Earlier Conclusions Regarding Manifestly Unfounded or Abusive Applications, supra* note 11, at para. 19.

²⁶² UNHCR reviewed another file in which it would have referred the case for full asylum consideration based on the fact that the applicant presented signs of mental illness. This issue is discussed in more depth in the next section.

are of particular concern given that Colombian nationals comprise the third largest group of asylum-seekers in removal proceedings.²⁶³

A primary area of difference with respect to those cases that UNHCR would have referred centered on the issue of whether the applicant had established a nexus to one of the five protected grounds. With respect to the Colombian extortion cases, it is UNHCR's opinion that the failure to pay war taxes could result in a claim for refugee status based on imputed political opinion,²⁶⁴ yet the Asylum Officers in 11 out of 46 cases did not find such a nexus. With regard to the credible fear denial files that UNHCR reviewed, two cases presented potential social group issues, with one of the cases also raising a conscientious objector issue.²⁶⁵ In both cases, however, the Quality Assurance Unit agreed with the Asylum Officer's conclusion that the feared harm had no nexus to any of the five protected grounds.

The other area of difference in decision-making involved the use of country condition information. This issue arose in one of the credible fear denial files involving an applicant from Barbados. The applicant in that case feared harm as a result of his father's past political activities and murder when the applicant was a small child. The Asylum Officer found no credible fear of persecution based on the fact that the most recent Department of State human rights report indicated that there were no killings, imprisonments or disappearance for political reasons in Barbados.²⁶⁶ It does not appear that the applicant was offered the opportunity to present evidence to rebut this finding, and, even if he had, the applicant had very little education and no lawyer or consultant present during the interview. It is UNHCR's view that generally a

²⁶³ See asylum statistics from US Department of Justice, Executive Office for Immigration Review, Office of Planning and Analysis, Immigration Courts, <http://www.usdoj.gov/eoir/efoia/FY02AsyStats.pdf>.

²⁶⁴ See UNHCR, *International Protection Considerations Regarding Colombian Asylum-Seekers and Refugees*, (Sept. 2002), at 13, para. 47, which states:

The guerillas, and to a lesser but increasing extent the paramilitaries, often kidnap and/or extort persons deemed to hold an opposing political opinion. They also use these practices to finance political / military objectives, targeting members of the middle and upper classes, those engaged in business, and others seen as possible sources of funds. *Due to the significance of the income derived from ransom and extortion to fund political-military activities, refusal or inability to pay is viewed as an act or indication of political opposition.* This is reflected in letters written by paramilitaries demanding payment of a "war tax" and a threat to mark victims as a military target upon failure to pay. (emphasis added) (citations omitted).

²⁶⁵ The first case involved a Colombian woman who had received death threats from unknown persons who had killed her son. They were threatening her as well as her other son because she had reported her son's death to the police. While the applicant did not know who the perpetrators were or why they had killed her son, the applicant had at least the possibility of showing that she was targeted for her membership in a particular social group: her family. It is also possible that she might have been able to show that she was part of a group of individuals targeted for reporting her son's killing. The second case involved a Ukrainian business owner who stated that he had received death threats from unknown individuals who were likely criminals and corrupt police officers. They were threatening him for his refusal to pay them money from his business. He reported that it was common for business owners to be subject to such demands, raising the possibility that Ukrainian business owners might constitute a particular social group. The applicant also deserted a military post and refused orders that he perform military service in Chechnya, raising a potential claim for asylum based on conscientious objection to military service.

²⁶⁶ The applicant stated that his father was killed when he was eight or nine years old and that a friend of his father's had told him his father was taking part in a *coup*. The applicant stated that he saw his father leave the house, there was a lot of shouting in the street, and never saw his father again. He left the country shortly after his father was killed. He said a friend of his father's told him that if he did not leave, the "enforcement" would kill him.

claim should not be screened out during accelerated procedures based on country conditions information, and certainly not based on only one source.²⁶⁷ Applicants should have the chance to produce suitable evidence to rebut what are considered to be “established facts.”²⁶⁸ While this rebuttal generally could occur during accelerated procedures,²⁶⁹ it is UNHCR’s opinion that in the US context, where asylum law is decidedly complex and access to lawyers is difficult to obtain while in detention, it is more appropriate to give applicants the opportunity to make such a showing in a full asylum hearing.

It is UNHCR’s belief that in both types of cases of concern discussed above, regarding ‘nexus and country conditions information, a referral for a full asylum hearing would likely have been made had the international “manifestly unfounded” standard been applied. It is difficult, of course, to know this with any certainty. It is unclear for example, whether the Asylum Officers truly believed that there was “no nexus” in some of the cases and, therefore, no possibility of establishing eligibility for asylum, or rather that there was not a “significant possibility” of establishing eligibility because of a weak nexus. However, there is a qualitative difference between the “significant possibility” standard, which appears to place more of the burden of proof on the applicant than a standard that requires that the claim be “clearly unrelated to the criteria for refugee status” and “truly free of doubt.” Under the latter standard of proof, greater benefit of doubt is afforded the applicant with a higher presumption against screening a person out.

Given the risk of *refoulement*, accelerated procedures should only be used to screen out those cases in which it is absolutely clear that the person has no refugee claim. One of the extortion cases is particularly troubling because the asylum-seeker was in fact removed from the US to Colombia.²⁷⁰ Fortunately, the other ten Colombian applicants were given full asylum hearings because there was a finding of a credible fear of torture.²⁷¹ It is not known whether the other three cases discussed above resulted in removals as UNHCR does not have any information regarding Immigration Judge findings in those cases.

²⁶⁷ We note that Asylum Officers are instructed that, to be implausible, an applicant’s statement must be directly contradicted by two or more country conditions sources, and that before an applicant’s statements are deemed inconsistent, the applicant must be given an opportunity to explain apparent inconsistencies. See Asylum Officer Basic Training Course, *supra* note 45.

²⁶⁸ In accelerated procedures, when country of origin information does not support a person’s claim, the information should be considered a presumption that is “potentially subject to rebuttal by suitable evidence.” *Follow-up on Earlier Conclusions Regarding Manifestly Unfounded or Abusive Applications*, *supra* note 11, at para. 14, 15. “The prevailing practices in a given country of origin may be subject to exceptions, or conditions in the country may change, without this necessarily being known by the determination body.” *Id.*

²⁶⁹ *Id.*

²⁷⁰ The applicant, F.H.C.G., was also found not to have a credible fear of torture because the feared agent was the National Liberation Army (ELN) guerrilla force, which did not control the area in which he lived. Both the Headquarters Quality Assurance Unit and an Immigration Judge reviewed the case and agreed with the Asylum Officer’s negative decision.

²⁷¹ This was due to the fact that the harm they feared was determined to possibly constitute torture and the feared agents were FARC guerrilla forces, which were considered to be possible state actors because they controlled the area in which the applicants lived.

c. Form of Questioning

At times, Asylum Officers made efforts to explore all possible grounds for asylum, but did so in a very legalistic way that may not have been fully understood by the applicant. For example, on many occasions, UNHCR's representative observed applicants being asked: "Have you or any close member of your family ever been threatened or harmed on account of your membership in a particular social group?" Asylum-seekers generally are not trained in refugee law and may not understand the meaning of such a question.

The UNHCR representative also found instances in which Asylum Officers asked compound questions, which could be confusing to asylum-seekers, such as: "Have you or any member of your family ever been mistreated or threatened by the authorities of the country where you may be returned or by anyone else?"²⁷² We note that the Asylum Officer Basic Training Lesson Plan instructs Asylum Officers to ask "clear, short, and simple" questions and not to ask compound questions.²⁷³

UNHCR Recommendations:

E-2 (1) UNHCR recommends that the Asylum Division adopt mechanisms to identify inconsistent decision-making in similarly based claims and to address any such inconsistencies promptly through national guidance. The Asylum Division may wish to share with all Asylum Officers those Headquarters' explanations of reversals of credible fear decisions that would help ensure consistent, quality decision-making. If not currently done, UNHCR also encourages the Asylum Division to analyze Immigration Judge reversals of credible fear denials. Such analysis could help identify aspects of Asylum Officer decision-making in need of improvement.

E-2 (2) UNHCR recommends that the Asylum Division include in its guidance and training for all Asylum Officers that the standard for deciding whether an applicant has established a credible fear should be interpreted in the same manner as the "manifestly unfounded" standard.

E-2 (3) UNHCR recommends that the Asylum Division reiterate its guidance to Asylum Officers that they not ask overly legalistic and compound questions of credible fear applicants.

²⁷² This question was asked in the case of a Brazilian asylum-seeker. UNHCR did not observe the interview, but reviewed the applicant's file. UNHCR's observations stem from its review of the file. In the case of J.W.B.L., a Colombian asylum-seeker, it appears that the Asylum Officer asked whether the applicant's family members experienced harm in a compound question: "Have you ever or any member of your family ever been mistreated or threatened....". The applicant responded by mentioning the harm he had suffered, and the questioning continued on this topic, but never returned to questions about harm to his family members. Later in the Immigration Judge review of the case, the applicant indicated that his brother had been killed. While this omission was not dispositive of the judge's decision to affirm the negative credible fear finding, the judge mentioned that omissions in testimony, including the omission regarding the applicant's brother, was one of the reasons for his decision.

²⁷³ INS, Immigration Officer Academy, Asylum Officer Basic Training: Participant Workbook, "Interviewing Part III: Eliciting Testimony" 18 (Nov. 2001).

3. Credible Fear Interview Record

a. Accuracy and Use of I-870

Asylum Officers record information gained from the credible fear interview on the I-870 form ("Record of Determination/Credible Fear Worksheet"). The I-870 form contains four sections. The substance of the interview is to be recorded in Section III ("Credible Fear Interview"), which constitutes less than a page and includes three protection-related questions regarding past mistreatment or threats, the nature of the applicant's fear, and the nexus to one of the five grounds for asylum. Section IV ("Credible Fear Findings") also contains about half of a page for the Asylum Officer to record any additional information.

Under current policy, in cases in which the decision is made to refer the applicant for a full hearing before an Immigration Judge, Asylum Officers are allowed to record answers to the questions on the I-870 form in legible handwriting.²⁷⁴ Additional information from the interview may be recorded in legible, handwritten informal notes that need not be in a question and answer (Q&A) format. For positive decisions, it is generally sufficient to provide a brief statement of the facts and a description of the basis for the decision. A detailed written assessment is not necessary.²⁷⁵ For negative decisions, however, the notes or substance of the interview must be recorded in typed Q&A format, given that Immigration Judges may be reviewing the decision.

The UNHCR representative observed that in positive credible fear decisions, some Asylum Officers typed their notes of the interview in Q&A format, even though they were not required to do so.²⁷⁶ At times their notes, whether typed or handwritten, were recorded on the I-870 form and at other times on separate sheets of paper. It is UNHCR's understanding that only what is included on the I-870 form itself is considered part of the "formal" record and any information from the interview that is recorded on separate paper is considered "informal" notes.

Attorneys who regularly represent asylum-seekers have raised concerns regarding the use of Asylum Officer notes, whether formal or informal, by District Counsels and Immigration Judges to test an applicant's credibility in removal proceedings.²⁷⁷ These attorneys have told UNHCR that many judges read very carefully any formal or informal Asylum Officer notes that the District Counsel introduces into evidence, particularly when the information is typed in a Q&A format. Judges often view information typed in Q&A format as a verbatim transcript, even though it is not, and use it to find inconsistencies or even omissions in an applicant's

²⁷⁴ Memorandum from Joseph E. Langlois, Acting Director of the Asylum Division, "Streamlining the Credible Fear Process," 2 (Dec. 8, 2000).

²⁷⁵ *Id.* at 2-3 ("The decision is to be documented on the Form I-870, with a brief statement of the facts and description of the basis for the decision. There is generally no need for detailed written assessments.").

²⁷⁶ UNHCR observed that in Miami and Los Angeles, even in positive decisions, most Asylum Officers typed their record of the interview in a Q&A format on their computers.

²⁷⁷ While UNHCR did not have the opportunity to attend the asylum hearings in those cases it observed, UNHCR has spoken about this issue with several attorneys and NGOs that regularly represent asylum-seekers, both during this study and through UNHCR's regular work at the Regional Office in Washington, DC.

testimony.²⁷⁸ The practice of some Asylum Officers of using the first person when summarizing the applicant's claim added to the view that the Q&A notes were akin to transcripts.²⁷⁹

One Asylum Office appeared to view the credible fear interview as less of a screening mechanism than as a means of testing credibility in later proceedings. UNHCR representatives were informed in Los Angeles that the length of the credible fear interview was recently increased by the new Supervisory Asylum Officer. Asylum Officers were instructed to go into more depth on the claims, so that, according to one Asylum Officer, "at least then the trial attorney will have this on record when the time comes for the asylum hearing."

The use of credible fear interview notes to test an applicant's credibility in later hearings is of concern. As is appropriate, the credible fear interview is meant to be a short, screening process. Interviews typically rarely last more than 30-40 minutes. Much of this time is spent with preliminary introductions, biographical questions, and interpretation, not on the substance of the asylum claim. The information that Asylum Officers record on the I-870 is generally just a summary of relevant facts, not a transcript of the interview. In positive credible fear determinations, and at times even in negative ones, Officers generally do not probe into every facet of an applicant's claim, such as persecution of family members, every instance of past mistreatment, or every basis for asylum. Given that the interview is informal and there is no official transcription or recording of it, the notes may also contain inadvertent inaccuracies.²⁸⁰

b. Verification and Quality Control

One of the critical quality control mechanisms to address issues of inaccuracy and material omissions in the I-870 record is to allow the asylum applicant and his/her representative to review the formal I-870 record and to make any necessary changes. According to asylum regulations, an Asylum Officer should create a summary of the interview, review it with the applicant, and allow the applicant to make corrections.²⁸¹ With the possible exception of the Los Angeles Asylum Office, UNHCR's representative did not observe any Asylum Officers

²⁷⁸ UNHCR spoke to an Immigration Judge in Miami who confirmed that he "give[s] a lot of weight" to the I-870 and any accompanying Asylum Officer notes.

²⁷⁹ UNHCR observed that at times Asylum Officers summarized the applicant's statements using the first person (the voice of the applicant). Such summaries, when written in the first person, may be construed as an applicant's complete statement, but more often were simply the Asylum Officer's own summary based on notes from the interview.

²⁸⁰ For example, UNHCR observed one Asylum Officer who regularly entered data directly into the I-870 form on the computer and used previous applicants' forms as templates for efficiency's sake. This practice led to inadvertent but significant errors in at least two cases. For example, in the case of R.S., an asylum-seeker from Guyana, the Miami Asylum Officer recorded in § 3.1: "Applicant was threatened/mistreated (stabbed with an ice pick) in Guyana which forced him to seek asylum in the USA." This, however, was the story of the previous applicant, not R.S.'s account. During R.S.'s interview, the applicant simply stated: "I was hit and pelted with stones." Similarly, in the case of J.V.C., an applicant from Colombia, the Asylum Officer used the previous applicant's form as a template and recorded on the I-870 that the applicant was shot by members of FARC, a claim that the applicant never made during his interview.

²⁸¹ 8 C.F.R. § 208.30(d)(6) (Asylum Officers required to "create a summary of material facts as stated by the applicant" and to "review the summary with the alien and provide the alien with an opportunity to correct any errors therein").

following this regulation. In Los Angeles, Asylum Officers did briefly, orally summarize the applicant's claim and allowed applicants the opportunity to correct or add information; however, this was not a written summary contained on the I-870, which the regulation appears to contemplate. In negative cases, INS policy guidance requires Asylum Officers to read back their Q&A notes to the applicant and to make any corrections.²⁸² UNHCR's representative did not observe in their entirety any credible fear interviews that led to negative decisions and cannot comment on whether this policy was being followed.

INS policy also requires that the asylum-seeker be provided with a copy of the I-870 once the credible fear determination has been made.²⁸³ It is UNHCR's understanding that any notes not included on the I-870 form itself are not provided to the applicant. Some immigration attorneys complained to the UNHCR representative about this policy, which they stated makes it difficult for them to fully respond to issues of credibility stemming from the credible fear interview.

UNHCR Recommendations:

E-3 (1) UNHCR recommends that Asylum Officers be required to read back to the applicant, through an interpreter if necessary, any notes contained on the I-870 form, considered part of the "formal" record, and to allow for corrections of any errors or omissions. If the applicant has a consultant, the consultant should have an opportunity to review these parts of the I-870 with the applicant prior to its completion.

E-3 (2) UNHCR recommends that DHS adopt a policy prohibiting the use of Asylum Officer informal notes against the applicant in Immigration Court. UNHCR also recommends that CIS prominently insert language on the I-870 form and/or on any informal notes indicating that the form and notes do not constitute a verbatim record of the interview, that the credible fear process is a low-threshold screening, that some aspects or details of the claim may not have been explored with the applicant, and that appropriate weight should be afforded to the information. UNHCR recommends that training be provided to ICE District Counsel with regard to appropriate use of the credible fear interview record at the asylum hearing stage.

²⁸² INS, Asylum Division, Procedures Manual: Credible Fear Process, Section III(F)(1), "APSO Concludes a Credible Fear Interview; Q&A Notes (if any)" (December 2000 draft) (Asylum Officers required "to review[] any Q&A notes with the alien and make any corrections requested by the alien") (Note that "Q&A notes" appears to refer to typed sworn statements included in the I-870 in negative credible fear decisions as discussed in Section III(H)(1)(b) of the INS Procedures Manual).

²⁸³ *Id.* at Section III(J)(2). See also Memorandum from Joseph E. Langlois, Deputy Director, Asylum Division, to Asylum Office Directors, et. al, "Distribution of Credible Fear Documents to Applicants" (Dec. 15, 1997).

ATTACHMENT A

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



**NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES**

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28 August 2001

BY FACSIMILE (514-0051) & FIRST CLASS MAIL

Mr. Joseph R. Greene
Acting Deputy Associate Commissioner for Enforcement
Immigration and Naturalization Service
US Department of Justice
425 I Street, NW, Room 7114
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Re: UNHCR Site Visit to Chicago O'Hare Airport

Dear Mr. Greene:

I would like to thank you and your colleagues for facilitating UNHCR's visit to the Chicago area during the week of 6 August 2001. It was a successful mission overall and my colleagues were able to tour a number of area jails and INS facilities where asylum-seekers and others of concern to UNHCR are detained. Local INS staff was quite helpful in coordinating the visits with the various facilities and in answering questions about INS policies and procedures. We will provide an oral report on the mission at the next INS/UNHCR monthly meeting (scheduled for 12 September) and are currently preparing a full written report for your consideration.

As you are aware, (b)(6) and (b)(6) visited the Chicago O'Hare airport on Friday, 10 August 2001. Assistant District Director (b)(6), (b)(7)c was quite helpful in providing UNHCR with a tour of the primary and secondary inspection areas and in answering questions about the expedited removal process. I have been informed, however, of an extremely disturbing incident that occurred toward the end of the visit and that I thought should be brought to your attention.

At approximately 5:00 p.m. that Friday, as (b)(6) and (b)(6) were preparing to depart, they came upon a small crowd of individuals gathered in the secondary inspection waiting area. (b)(6), (b)(7)c was in the process of getting parking passes for their departure and was not in the area at the time. (b)(6) and (b)(6) witnessed a young Colombian woman (Ms. [REDACTED]), crying and backed-up against a wall, surrounded by two US Customs officers, a male INS

inspections officer, an airline attendant, and one unidentified woman in uniform (unclear if Customs, INS, or airline personnel). They overheard the INS inspections officer telling Ms. [REDACTED] that she would not "win asylum," that she would be detained in the United States, and that it would be better for her to go back to her country. The airline attendant was providing interpretation for the INS inspections officer. (The officer later gave instructions to Ms. [REDACTED] in Spanish, making it unclear to what degree he spoke Spanish and why he was using an airline interpreter.) [REDACTED] (b)(6) and [REDACTED] (b)(6) do not recall specific comments from the Customs officers, although they note that it is possible that the officers participated in the verbal exchange. It was clear, however, that the INS inspections officer was directing the conversation.

[REDACTED] (b)(6) and [REDACTED] (b)(6) (both fluent in Spanish and English) started to approach the officers to obtain more information, given their concern that an INS inspections officer appeared to be dissuading an asylum applicant from pursuing her asylum claim in the United States. At this time, [REDACTED] (b)(6), (b)(7)c returned to the secondary inspection area. [REDACTED] (b)(6) and [REDACTED] (b)(6) told him that they were concerned about the situation and asked for more information on what was happening. [REDACTED] (b)(6), (b)(7)c turned to the INS inspections officer and asked for an explanation. The inspections officer then replied "We were just trying to explain to her that she doesn't have a...", at which point his voice dropped to an inaudible level. There was then an inaudible discussion between [REDACTED] (b)(6), (b)(7)c and the inspections officer, at the conclusion of which [REDACTED] (b)(6), (b)(7)c said "Set her up for a credible fear interview."

At this point, [REDACTED] (b)(6) explained to the group UNHCR's concerns about how Ms. [REDACTED]'s case was being handled. The INS inspections officer stated, incorrectly, his belief that Ms. [REDACTED] was not eligible for asylum because it was not the Colombian government that was threatening her. Either he or another official also noted that the person who had threatened Ms. [REDACTED] had not threatened to kill her, implying, again incorrectly, that absent this her claim lacked merit.

With the permission of Assistant District Director [REDACTED] (b)(6), (b)(7)c and [REDACTED] (b)(6) briefly interviewed Ms. [REDACTED], in private, in a secondary inspection holding area. They learned that she had received anonymous threats by phone in Colombia, and that she had been warned to leave the country within a certain amount of time. They informed Ms. [REDACTED] of her right to seek asylum in the United States and briefly explained to her how her case would be processed.

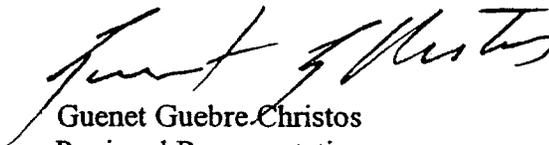
We are gravely concerned about the treatment of Ms. [REDACTED] at the Chicago O'Hare airport and the apparent violation of expedited removal procedures by the INS at the airport. As you are aware, under US asylum law, once an asylum-seeker indicates a fear of returning to her country of origin, or requests asylum, the person shall be referred for a credible fear interview by an INS asylum officer. It is not the responsibility of INS inspections officers, untrained in refugee and asylum law, to assess the validity or strength of an asylum-seeker's claim. It is also wholly improper for INS inspections officers to inform asylum-seekers in an intimidating manner that they will be detained if they seek asylum in the United States and that they should return to their countries of

origin. We are quite concerned that, despite the stated policy of the United States government to the contrary, the threat of detention was used in this case to deter an asylum-seeker from requesting protection in this country.

We urge the INS to ensure that all of its inspections officers are fully trained in the expedited removal process, and receive on-going training as necessary, so as to avoid future situations that could result in the *refoulement* of a refugee seeking protection in the United States. As we have indicated in the past, UNHCR is willing to assist in these trainings to the extent resources allow. We also urge INS not to rely on airline personnel to provide interpretation during the expedited removal process given the likely absence of a confidentiality agreement between the airline and the INS and the airline's possible government affiliation.

Thank you for your assistance on this matter. Please kindly inform us of the actions you are taking in response to this incident. We would also appreciate receiving information as to the status of Ms. [REDACTED]'s case and her present location so that we may send her asylum self-help materials and the names of legal assistance providers in the area. We look forward to speaking with you further about this matter, and the rest of the Chicago mission, at our next monthly meeting.

Sincerely,



Guenet Guebre-Christos
Regional Representative

Cc: Mr. Joseph Langlois
Acting Director of Asylum
Immigration and Naturalization Service
US Department of Justice

ATTACHMENT B



MAR 06 2003

February 27, 2003

New York INS District Director Edward McElroy
U.S. Immigration and Naturalization Service
26 Federal Plaza
New York, New York 10278

Via HAND DELIVERY

RE: INS Inspection of [REDACTED]

Dear Mr. McElroy,

I am writing this letter out of concern for the way my client, [REDACTED], was treated during the secondary inspection process at JFK International Airport on September 10, 2002.

Mr. [REDACTED] arrived in the United States at JFK International Airport on September 10, 2002 with his own valid Liberian passport. Mr. [REDACTED] immediately requested political asylum when questioned by the immigration officers, and was subsequently placed in expedited removal. At no time did Mr. [REDACTED] present any false documents or seek to procure entry based on a false document. In fact, he traveled to the United States with his own valid passport. Mr. [REDACTED] was inspected by Officer (b)(6), (b)(7)c and Officer (b)(6), (b)(7)c. I have attached a copy of the I-867 (Record of Sworn Statement in Proceedings).

I am deeply concerned with the treatment Mr. [REDACTED] endured and believe that both officers violated the standard procedures specified in Chapter 17 of the INS Inspections Field Manual. Primarily, the inspections officers grossly violated procedures listed in Expedited Removal 17.15(a) and (b). The Field Manual specifically states that inspections officers are to adhere to the basic rights of the alien because of the gravity of placing someone in expedited removal. Additionally, the Field Manual provides that if the alien exhibits a fear of returning to his or her home country, the officer is tasked with only asking enough questions to ascertain whether the alien has a generalized fear of persecution. Officers are not to delve into the details of the asylum claim and are not to ascertain the credibility of the aliens intended asylum application.

Continuation of [REDACTED]

Mr. [REDACTED] was questioned by immigration officers who exceeded the bounds of the Inspections Officer Field Manual. Mr. [REDACTED] was asked questions pertaining to the specificity of his intended asylum application. He was asked, "Why are you seeking asylum in the United States? Who tortured you and how did they torture you? What did they beat you with? What year did this happen? Can you show me any marks or any scars? Did you belong to a political party?" Mr. [REDACTED] was then asked geographical and topographical questions about Liberia in order to determine whether he actually is from Liberia. These type of questions are intended to be asked during the "credible fear" interview by an asylum officer who has been specially trained to interview asylum seekers.

Once Mr. [REDACTED] detailed what happened to him in Liberia, he was then asked to strip naked so that the officers would be able to "inspect his body for scars." After he did this, the INS officers promptly noted in the airport statement that, "his body had been checked for scars and no scars were found." See I-867 page 3 of 6.

This episode is extremely disturbing. Not only was Mr. [REDACTED] asked specifics regarding his intended asylum application, he was also told to strip naked in front of the INS officers. Mr. [REDACTED] has described the situation as humiliating and riveting. The officers made disparaging remarks to him about his race, and with regard to his genitalia. In fact, he was forced to stand naked, in front of the officers, with his pants around his ankles for at least three minutes.

I am writing you this letter to bring this situation to your attention. Both INS officers at JFK International Airport exceeded their authority, which is solely to determine whether an arriving alien should be placed in removal proceedings and whether he should be referred to an asylum officer for a credible fear interview. In this instant case, Mr. [REDACTED]'s basic human rights were violated in that he was forced to strip during an interview. Furthermore, the officers exceeded their authority in the interview by inquiring as to the facts of Mr. [REDACTED]'s intended asylum application.

I sincerely hope that the structure of the INS will allow for these officers to be properly reprimanded and re-trained in the proper procedures of secondary inspection and reminded of the consequences of their egregious actions. Should you have any questions with regard to this matter, please contact me at 212 (b)(6). Thank you in advance for your cooperation in this sensitive matter.

Sincerely,

(b)(6)

Enclosures

Office: NYC-JFKIA

File No: [REDACTED]

Statement by: [REDACTED]

In the case of: [REDACTED]

Date of Birth: [REDACTED]

Gender: MALE

At: NYC-JFKIA

Date: September 10, 2002

Before: (b)(6), (b)(7)c SRI
(Name and Title)

In the English language. Interpreter: _____ Employed by: _____

I am an officer of the United States Immigration and Naturalization Service. I am authorized to administer the Immigration laws and to take sworn statements. I want to take your sworn statement regarding your application for admission to the United States. Before I take your statement, I also want to explain your rights, and the purpose and consequences of this interview.

You do not appear to be admissible or to have the required legal papers authorizing your admission to the United States. This may result in your being denied admission and immediately returned to your home country without a hearing. If a decision is made to refuse your admission into the United States, you may be immediately removed from this country, and if so, you may be barred from reentry for a period of 5 years or longer.

This may be your only opportunity to present information to me and the Immigration and Naturalization Service to make a decision. It is very important that you tell me the truth. If you lie or give misinformation, you may be subject to criminal or civil penalties, or barred from receiving immigration benefits or relief now or in the future.

Except as I will explain to you, you are not entitled to a hearing or review.

U.S. law provides protection to certain persons who face persecution, harm or torture upon return to their home country. If you fear or have a concern about being removed from the United States or about being sent home, you should tell me so during this interview because you may not have another chance. You will have the opportunity to speak privately and confidentially to another officer about your fear or concern. That officer will determine if you should remain in the United States and not be removed because of that fear.

Until a decision is reached in your case, you will remain in the custody of the Immigration and Naturalization Service.

Any statement you make may be used against you in this or any subsequent administrative proceeding.

Q. Do you understand what I've said to you?

A. Yes.

Q. Do you have any questions?

A. No.

Q. Are you willing to answer my questions at this time?

A. Yes.

Q. Do you swear or affirm that all the statements you are about to make are true and complete?

A. Yes.

Q. What is your native language?

A. I speak Kru.

Q. Do you speak any other languages?

A. English.

Q. Do you prefer giving me your statement in English or in your native language?

A. English is fine.

Q. It is very important that you understand everything that is being asked. Are you sure that you can understand me?

A. Yes, I understand you.

Q. Are you comfortable giving your statement to me here, or do you wish to do so in a more private area?

A. Yes. I am comfortable here.

Q. What is your true and complete name?

A. [REDACTED]

Q. Have you ever used, or been known by any other names? If so, what names have you used?

A. No.

Q. What is your date and place of birth?

A. [REDACTED], Monrovia, Liberia.

Q. Of what country are you a citizen?

A. Liberia.

Q. In what country do you live in permanently?

A. Liberia.

Q. Of what country are your parents citizens?

A. They are citizens of Liberia.

Q. In what country do your parents live in permanently?

A. My father is dead and my mother is living in Liberia.

Q. Do you have any valid claims to US citizenship?

A. No.

Q. Where did you obtain this Liberian passport # [REDACTED] (b)(6)

A. I got it from the Liberian foreign Ministry.

Q. How much did you pay for the passport?

A. I paid \$20.00.

Q. What airline and flight number did you arrive on to the USA today?

A. Ghana Airways flight 130..

Q. What documents did you show to an immigration officer when entering the USA today?

A. My Liberian passport and my airline ticket.

[REDACTED]

(ALIEN SIGNATURE)

1.967A (4.1.97)

Q. What is your occupation in Libe.

A. I use to work in a rehabilitation Center.

Q. What is the purpose of your trip to the United States today?

A. I came because there is war in my country..

Q. How long were you planning on visiting the United States?

A. Until there is peace in my country, until the Government changes.

Q. Have you ever been to the United States before?

A. No.

Q. Have you been to the U.S. Embassy in Liberia and applied for any visa or seek help in coming to the United States?

A. No.

Q. Why are you seeking asylum in the United States?

A. I am seeking asylum because for the past 6 months I have been hunted by Immigration and Police.

On many occasions they came to my house and took my things away. They came back and they caught me and took me to the precinct. They beat me and they asked me one or two questions. They asked me if I was part of the riot at the University campus. I told them no. They tortured me and I kept telling them no. When night came a friend of mine that works there that is a student of the University released me. I left and went home that night. I did not sleep home, I slept next door. I was next door when they came and bust my door and took some of my belongings. They made threatening remarks about what had occurred at the school campus and if I was a part of SUP "Student Unification Party". The last time they came I was beating mercifully. I contacted the National Police but they had nothing to tell me but SUP members need to be brought down.

Q. Who tortured you and how did they torture you?

A. The SOD "Special Operation Division" and they took off my clothes and beating me.

Q. What did they beat you with?

A. They kicked me with their boots and whipped me with electrical cable wire.

Q. Is that the only way they tortured you?

A. They dragged me on the ground and push me in the back of the pickup.

Q. What year did this happen?

A. This happen July, August and even entering September 2002.

Q. Can you show me any marks or any scars because if you had all those beatings you should have a lot of marks on your body, am I correct?

A. I have a few scars. (Subject body was checked for any marks or scars and there is no marks that would indicate he had been beaten. He had an old scar on his chest) witnessed by (b)(6), (b)(7)c

Q. Did you belong to any political party?

A. SUP.

Q. How long have you been a member of SUP?

A. Since I join the University in 2000.

Q. What do you do for SUP?

A. I am the planning chairman on the committee.

XO 

What is the tallest mountain in Liberia? —
Mount Nimba.

Q. What countries surround Liberia?

A. Sierre Leone, Guinee.

Q. What are the three most common African languages in Liberia besides English?

A. Kapple, Lome and Bassa.

Q. Who controls the Liberian airport?

A. Liberian Government.

Q. Who was Samuel Doe?

A. He was one of the late president of Liberia.

Q. What is your marital status?

A. Single.

Q. Do you have any minor children?

A. Yes I have a son.

Q. What is his name and date of birth and citizenship?

A. [REDACTED], Liberia.

Q. Have you ever been arrested anywhere in the world?

A. Yes when the police came for me.

Q. What were you arrested for and what were the charges filed against you?

A. I was arrested for being a member of the SUP.

Q. Did you spend anytime in jail?

A. Overnight.

Q. Do you have any medical condition?

A. I only feel pain in my body.

Q. Are you taking any medication for your medical condition?

A. Yes, antibiotic.

Q. How are you taking your medication?

A. I take three pills three times per day.

Q. Do you have those pills with you now?

A. No.

Q. Where would you be staying in the United States?

A. I would like to stay in Philadelphia.

Q. Do you have family in Philadelphia or anywhere in the United States?

A. I have an uncle in New jersey and a friend in Connecticut.

Q. What is your uncle address in New jersey.

A. I only have his telephone number.

J. What is that telephone number : —

\. (937) (b)(6)

Q. What was your route of travel to the United States?

A. I left Liberia Monday at 1330 and I went to Accra and then to the United States.

Q. How did you pass immigration in these countries with no visa for the United States?

A. A friend of mine helped me to pass through the terminal and when I was in Accra I had to show only my passport and ticket because I was in transit.

Q. How much U.S. currency do you have in your possession today?

A. \$29.00 U.S. currency seen and returned. (witnessed by SRI (b)(6), (b)(7)c

Q. After a final decision is made in your case, you will be given the opportunity to communicate by telephone with a consular or diplomatic official of your country. Do you wish to do so?

A. No.

Q. Did you understand all the questions that were asked?

A. Yes.

**Jurat for Record of Sworn Statement in
Proceedings under Section 235(b)(1) of the Act**

- Q. Why did you leave your home country or country of last residence?
A. To seek asylum.
- Q. Do you have any fear or concern about being returned to your home country or being removed from the United States?
A. Yes..
- Q. Would you be harmed if you are returned to your home country or country of last residence?
A. Yes. I would be killed.
- Q. Do you have any questions or is there anything else you would like to add?
A. No.

I have read (or have had read to me) this statement, consisting of 6 pages (including this page). I state that my answers are true and correct to the best of my knowledge and that this statement is a full, true and correct record of my interrogation on the date indicated by the above-named officer of the Immigration and Naturalization Service. I have initialed all 6 pages of this statement (and corrections noted on page(s) N/A).

Signature: [Redacted]

(ALIEN SIGNATURE)

Sworn and subscribed to before me at NYC-JFKIA
on September 10, 2002. The subject has been given a copy of this statement by the undersigned.

(b)(6), (b)(7)c

Officer, United States Immigration and Naturalization Service

Witnessed by:

(b)(6), (b)(7)c

SRI

**IF AN INTERPRETER WAS USED FOR TRANSLATING THIS STATEMENT THE FOLLOWING CERTIFICATION MUST
BE COMPLETED**

I am fluent in both the English and _____ languages. I have read the foregoing statement in its entirety to the alien
in _____ language prior to their signature. I swear that the foregoing is an accurate translation of the statement given by the
alien.

Interpreter's signature

Translator's printed name



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR
United Nations High Commissioner for Refugees
Regional Representation in Washington

1775 K Street NW
Suite 300
Washington, DC 20006

Tel.: (202) (b)(6)
Fax: (202) 296.5660
Email: (b)(6)

08/LG/102

11 February 2008

Dear Ms. Cullen,

**Subject: UNHCR Comments on Draft Performance Based
Detention Standards: Group One**

We would like to thank you for sharing with the Office of the United Nations High Commissioner for Refugees (UNHCR) the draft Immigration and Customs Enforcement (ICE) Performance Based National Detention Standards. UNHCR is pleased to submit for your consideration its views on Group One of the proposed standards. UNHCR's comments are provided pursuant to Article II of the 1967 Protocol relating to the Status of Refugees. UNHCR's comments focus on those aspects of the proposed detention standards that may particularly impact asylum-seekers and, as appropriate, reflect observations made in the context of our extensive monitoring of detention facilities used by ICE and its predecessor agency, the Immigration and Naturalization Service.

UNHCR remains concerned about the detention of asylum-seekers in the United States. As UNHCR's Executive Committee has stated, in view of the hardship of detention, the detention of asylum-seekers should normally be avoided (see, e.g., Conclusion No. 44). Detention of asylum-seekers should be resorted to only on an exceptional basis when necessary and should not utilize jails or jail-like facilities. Accordingly, we continue to urge you to adopt a policy clearly favoring release for those asylum-seekers who should not be detained and, to the extent that an asylum-seeker must be detained for specific reasons, to utilize appropriate facilities.

UNHCR has carefully reviewed each draft standard in Group One, including those relating to Food Service, Environmental Health and Safety, Facility Security and

Ms. Susan Cullen
Director
Office of Policy
Immigration and Customs Enforcement
Department of Homeland Security
425 I Street, N.W.
Room 7311
Washington, D.C. 20536

Control, Tool Control, Detention Files, Key and Lock Control, Emergency Plans, Post Orders and Population Counts and has comments only on the Food Service standard.

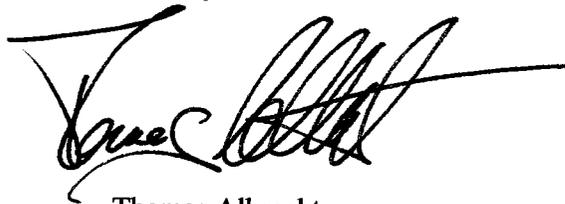
The Food Service standard seeks to ensure that detainees are served a nutritionally balanced diet which is prepared and presented in a sanitary and hygienic food service operation. It also seeks to ensure that special diets and special ceremonial meals will be provided for detainees whose religious beliefs require the adherence to religious dietary laws. The rule implies that such special religious meals will be at no cost to a detainee.

UNHCR is pleased that the Food Service Standard facilitates the ability of detainees to observe religious and medical diets. It is particularly important that asylum-seekers' religious practices are facilitated. An inability to practice one's own religion can create unnecessary anxiety exacerbating the impact of detention. Dietary restrictions are for many religions a critical component of religious practices. UNHCR has observed in one facility detainees being charged a fee in order to receive a kosher diet. Given that many asylum-seekers are indigent, a requirement to pay to observe one's religious diet could be prohibitive. *In order to ensure that the Food Service standard protects against the imposition of such fees, UNHCR recommends that the standard incorporate additional language such as the following: "Detainees shall receive a religious or special diet free of any personal cost."*

In addition, UNHCR has observed several facilities which have adopted a menu that does not include any pork in order to avoid having to create special religious diets, but did not include this information in their facility handbook or orientation. As a result, some asylum-seekers who do not eat pork for religious reasons were not aware of the policy and were avoiding foods on the menu which resembled pork-based items. As a result, they felt they were not being provided sufficient food and experienced unnecessary anxiety. At those facilities, it was UNHCR's recommendation that the facilities alleviate this issue by simply providing clear notice of the food content. *Similarly, UNHCR suggests that the Food Standard adopt additional language such as the following: "If a facility has a no-pork menu, in order to alleviate any confusion for those who observe no-pork diets for religious reasons, this information should be included in the facility's handbook and the facility orientation. If the facility has a chaplain, s/he should also be made aware of the policy."*

Thank you again for the opportunity to provide comments on the proposed detention standards. We hope that our views will be useful to you. We remain available to discuss any aspects of the comments that require further clarification or discussion. We look forward to working with you further on this and future endeavours.

Yours sincerely,



Thomas Albrecht
Deputy Regional Representative

cc: Igor Timofeyev, Director of Immigration Policy and Special Advisor for Refugee
and Asylum Affairs
U.S. Department of Homeland Security

Daniel Sutherland, Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

Joseph Langlois, Director
Asylum Division
Citizenship and Immigration Services
U.S. Department of Homeland Security

Nicole Gaertner
UNHCR Liaison
Bureau of Population, Refugees and Migration
U.S. Department of State

**UNHCR**United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés**UNHCR**1775 K Street, NW
Suite 300
Washington, DC 20006Tel.: 2022965191
Fax: 2022965660
Email: (b)(6)

22 August 2003

BY FACSIMILE & FIRST CLASS MAIL

Mr. Michael Garcia
Commissioner
Bureau of Immigration and Customs Enforcement
Department of Homeland Security
Washington, DC 20536

Re: UNHCR Site Visit to Monroe County Jail

Dear Commissioner Garcia:

I wish to thank you and your staff for facilitating the visit of (b)(6) Senior Protection Officer, UNHCR Washington, and (b)(6) Regional Legal Officer, UNHCR Ottawa, to the Monroe Inmate Dormitory Facility ("Monroe County Jail") in Monroe, Michigan, on 10 April 2003. I have been informed that BICE and local staff, in particular, Mr. Roy Bailey, Assistant District Director for Detention and Removals, were extremely courteous and accommodating of our visits. I very much appreciate both the time that they devoted to our visits, and their full and forthright answers to our many questions about facility operations.

UNHCR's primary interest in visiting the Monroe County Jail relates to its proximity to the US-Canadian border. As you are aware, in December 2002 the US and Canada signed a "Safe Third Country" agreement which would restrict access for certain asylum-seekers to either the US or Canadian asylum systems. This agreement will not go into effect until after DHS implementing regulations are proposed, commented upon and finalized. UNHCR expects that there will be a surge in asylum applications at the US-Canadian border once the proposed regulations have been issued as individuals seek to enter Canada from the US before the agreement goes into effect.

Based on past experience, UNHCR fears that a surge in asylum applications at the border will result in the "direct-back" of asylum applicants from Canada to the US. Under the Canadian "direct-back" policy, if Canadian immigration is unable to process a case at the time of presentation at the border, it can direct the individual back to the US with a re-scheduled interview some days later. UNHCR is concerned that many of these individuals may be in unlawful status in the US and subject to detention by DHS upon return. If this occurs in the Detroit area, it is our understanding that many will likely be held at the Monroe County Jail. We hope that the attached report on conditions at the Monroe County Jail will help identify those areas of its operations that could be improved so as to



better meet the needs of asylum-seekers who are detained there, either as the result of a Canadian "direct-back" policy or as part of regular BICE operations.

In closing, we reiterate our continued concerns about the detention of asylum-seekers in the United States. As you are aware, UNHCR's Executive Committee (*see, e.g.*, Conclusion No. 44), has stated that asylum-seekers should normally not be detained. This principle is also found in UNHCR's Detention Guidelines. We encourage BICE to release individuals who should not be detained and to aggressively pursue alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Sincerely,



Guenet Guebre-Christos
Regional Representative

Cc: Mr. Roy M. Bailey
Assistant District Director
Detention and Removals
Bureau of Customs and Immigration Enforcement
US Department of Homeland Security
333 Mt. Elliot
Detroit, MI 48207

Monroe County Jail

Purpose of correspondence: On April 10, 2003, (b)(6) Senior Protection Officer, UNHCR performed a site visit of the Monroe County Jail located in Detroit Michigan. The attached bullets respond to (b)(6) concerns regarding confinement:

- The last DMCP Review was conducted June 13.
- The recommended and accepted rating by the RIC was ACCEPTABLE.
- Mr. Roy Bailey, Acting Field Office Director accompanied Mr. Painter on the tour and also responded in writing to various concerns (please see attachment).
- Detainees (weather permitting) have access to recreation three hours per day. Inside Recreation is utilized as an alternative for poor weather conditions. UNHCR has recommended that detainees be permitted to participate in outside recreation everyday.
- Detainees currently have access to various recognized religious leaders. Muslim detainees are allowed to pray and receive pork-free meals. UNHCR recommends that ICE work with the Muslim Community in Detroit to identify a Muslim Religious leader.
- Detainees were not able to make free calls to local legal service providers and embassies. Mr. Bailey stated that this issue has been resolved.
- Many asylum seekers have complained that they cannot access personal funds. Mr. Bailey has investigated all allegations and concluded that one detainee refused to sign his check, two others were given cash and two detainees did not arrive with funds. The Field Office will continue to monitor this issue.
- UNHCR noted that detainees did not have access to the Detention Enforcement Officer (DEO). Mr. Bailey has assigned two DEO's to the facility. Additionally, several detainees have been appointed as "team leaders" to keep the DEO's informed regarding detainee issues. Kites received at the facility are answered in a timely manner.
- Asylum-seekers have expressed concern regarding grievances and a response from the facility. Mr. Bailey and his staff have met with detainees and this was not identified as a problem. It was noted during the review that an explanation on how to file a complaint regarding Officer conduct should be added to the detainee handbook.
- UNHCR received numerous complaints about access to stamps and envelopes. Mr. Bailey stated that this issue is resolved and every detainee receives two envelopes with an attached stamp.
- The detainee handbook is available only in English. This issue has been resolved and the handbook is now available in Chinese, Spanish and Arabic.
- The law library (law library trolley) is currently missing publication(s) Immigration Law & Crimes and the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status. Mr. Bailey acknowledged that the law library needs updated. This issue will be addressed by the Field Office.
- Detainees are processed and held separately during the intake process. This is necessary for classification and medical (TB) purposes. Mr. Bailey explained that room 153 is the intake location.
- Issues identified as deficient during last years review (4/15/02) included Classification; Issuance and Exchange of Clothing, Bedding and Towels; Environmental Health and Safety; Post Orders and Hold Rooms in Detention Facilities.

- Issues identified as deficient during this years review (6/13/03) included Access to Legal Materials; Classification; Detainee Handbook; Voluntary Work Program and Hold Rooms in Detention facilities.
- A plan of action to correct deficiencies was submitted by the Monroe County Sheriff on November 7, 2002.



**U.S. Department of Homeland Security
Immigration & Customs Enforcement**

Detroit District Office

333 Mt. Elliott Street
Detroit, Michigan 48207

June 23, 2003

JUN 27 2003

Mr. Andrew Painter
UNHCR
1775 K. Street, NW, Ste. 300
Washington, D.C. 20006

Subject: Monroe County Jail

Dear Mr. Painter,

After reviewing your letter dated June 19, 2003, I immediately began to investigate the issues you raised. Being that you are not the legal representative for any of the stated individuals, certain information will not be discussed with you.

Two of the individuals listed in your letter requested that we (BICE) assist them with providing the funds (checks) to their respective legal representatives. Another individual refused to sign his check, therefore we (BICE) could not deposit his funds into his commissary account. Two individuals were scheduled to depart and my instructions were to provide them with cash not a check so they wouldn't have problems cashing them in their country. And two other individuals never came into custody with funds, but we're working with the detainees to locate any funds or property.

I made the statement (b)(6) would have his funds at his disposal" and he did after April 22, 2003. Mr. (b)(6) stated that he wanted the Service to provide his funds to his representative/attorney. My department has made numerous attempts to provide the funds to his representative but to no avail.

I can assure you and your organization that at no time are detainees restricted from access to their funds for the reasons you stated in your letter. As I stated to you during your visit, Detention and Removals' responsibility is to ensure that transportation, detention and welfare issues and the safe and humane treatment are handled professionally for ALL detainees, not just Asylum seekers.

My staff and I will continue to work in the support of detainee transportation, detention and welfare issues and we will remain committed to working with organizations such as UNHCR, Freedom House and others to provide better service. Eight of the ten individual listed in your letter have had their funds deposited into their commissary accounts. Please be advised that this is not a bank nor can checks be written against these accounts.

Roy M. Bailey
Roy M. Bailey
Field Operations Director
Detroit District

Cc: Regional Representative
Guenet Guebre-Christos



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR

1775 K Street, NW
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Washington, DC 20006

Tel.: 2022965191
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19 June 2003

BY FACSIMILE (313-568-6052) & FIRST CLASS MAIL

Mr. Roy M. Bailey
Assistant District Director
Detention and Removal
Bureau of Immigration and Customs Enforcement
Department of Homeland Security
333 Mt. Elliot
Detroit, MI 48207

Re: Monroe County Jail

Dear Mr. Bailey,

I am writing to follow-up on our previous exchanges regarding the ability of asylum-seekers to access personal funds held by the Bureau of Immigration and Customs Enforcement (BICE) while detained at the Monroe County Jail. As you may recall, during UNHCR's visit to the Monroe County Jail on 10 April 2003, we interviewed (b)(6) (b)(6) an asylum-seeker from the Sudan, about conditions at the facility. (b)(6) stated that, despite repeated requests to BICE, he had been unable to access about \$1,800 in personal funds that was in his possession when he was apprehended by the Department of Homeland Security on 13 March 2003. He stated that he needed this money to secure a lawyer to represent him in his immigration proceedings.

When we raised this issue with (b)(6) Detention Enforcement Officer, after the interview, (b)(6) stated that the money would be made available to (b)(6) through his commissary account. On 23 April, (b)(6) called our Office and informed us that he still did not have access to his funds. When I relayed this information to you a few days later, you informed me that BICE had only obtained the funds from US Border Patrol on 22 April and that the funds would be placed at his disposal through his commissary account.

I am attaching a letter dated 3 June 2003 from ten detainees at the Monroe County Jail, stating that none of them have been able to access their personal funds while being detained at this facility. (b)(6) name is included on this list, despite assurances from you and (b)(6) that his money would be made available to him. In addition to (b)(6) we have spoken with (b)(6) who is an asylum-seeker

from the Ivory Coast, whose name is also included on the attached list. (b)(6)
informed us in late May that he had been requesting access to his personal funds, over \$2,500, for at least a month. He indicated that he needs these funds to telephone his family in the Ivory Coast to arrange for payment of his bond.

UNHCR is extremely concerned about the ability of asylum-seekers to access their personal funds while detained at the Monroe County Jail. These funds can be critical in obtaining legal representation, securing funds for release from detention or paying for telephone calls to family and service providers in the United States or abroad. Under international standards, asylum-seekers should not be detained as a general principle.¹ Restricting an asylum-seeker's access to personal funds needed to pay his/her bond frustrates and runs counter to this principle. Asylum-seekers are also entitled to the assistance of legal counsel.² To exercise this right, asylum-seekers must have access to their personal funds to hire a lawyer if free legal assistance is not available. Detained asylum-seekers also have the right to communicate with friends, relatives, legal counsel, and religious advisors, for which they may need access to their funds to pay for phone cards.³

We would appreciate your assistance in investigating this matter further. Please let us know what steps will be taken to ensure that all asylum-seekers detained at the Monroe County Jail have prompt access to their personal funds. Please do not hesitate to contact me should you wish to discuss this matter further.

Sincerely,



R. Andrew Painter
Senior Protection Officer

Cc: Mr. Anthony Tangeman
Interim Director
Detention and Removal
Bureau of Immigration and Customs Enforcement
Department of Homeland Security
801 I Street, N.W., Suite 900
Washington, DC 20536

¹ UNHCR, *Guidelines on applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, Guideline 2 (1999).

² *Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment*, Principle 17(1).

³ UNHCR, *Guidelines on applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, Guideline 10(iv) (1999).

73384 (AP)

(b)(6)

MONROE MI 48161
June 3, 2003

UNITED NATIONS
HIGH COMMISSIONER FOR REFUGEES
1775 k street, NW
suite 300
Washington DC 20006

RE: REQUEST FOR ASSISTANCE ROW # 73384

Dear Mr. R. ANDREW PAINTER, I am writing you asking for help for me and a few other inmates at the Monroe County Jail.

We have written numerous kites the INS liaison at the jail concerning our money, legal materials and stationary *i.e. envelopes* but our efforts have gone unanswered.

Some of us here at the jail have bonds and families we need to contact but without access to our money which the INS has in its possession we are unable to meet our basic needs, some of these needs are international phone cards which are sold at the jail for \$20.00.

The following are the inmates described in this letter;

1. [redacted] owed \$190.00
2. [redacted] (b)(6) owed \$900.00
3. [redacted] owed \$600.00 plus plane ticket.
4. [redacted] (b)(6) owed \$100.00
5. [redacted] owed \$1,800.00
6. [redacted] (b)(6) owed \$638.00
7. [redacted] owed \$455.00
8. [redacted] (b)(6) owed \$109.00
9. [redacted] (b)(6) owed \$ 492.00
10. [redacted] (b)(6) owed \$ 2580.00

JUN 09 2003

Monroe County Jail

On 10 April 2003, Andrew Painter, Senior Protection Officer, UNHCR Washington, and Rana Khan, Regional Legal Officer, UNHCR Canada visited the Monroe Inmate Dormitory Facility ("Monroe County Jail") in Monroe, MI. At the jail, they met with Roy Bailey, Assistant District Director, Detention & Removal, Bureau of Immigration and Customs Enforcement (BICE); (b)(6) Detention Enforcement Officer, BICE; and (b)(6) Jail Administrator, Monroe County Sheriff's Office. This report is based on information received from BICE and jail officials, the observations of the UNHCR representatives during their tour of the facility, and information received from detainees, both during individual interviews at the facility and from written correspondence received at the UNHCR Office in Washington, DC.

Facility Background: The Monroe County Jail is a minimum security facility with direct-supervision located about 30 miles outside of Detroit, MI. It is a "Spring Instant Structure", similar in appearance to a small airplane hangar, that was opened in November 2000 at a cost of \$7 million. The facility has an administrative area (which includes visitation rooms, medical, booking, etc.) and two housing wings, each with a capacity of 80 beds. One housing wing holds county inmates, and the other holds BICE detainees. The administrative area was built to accommodate up to 400 detainees. While the current population is only 160 people, the county plans to build additional housing wings to bring the facility to full capacity.

General: The physical conditions at the Monroe County Jail appeared better than at most detention facilities visited by UNHCR in the US. This is in large part due to the fact that it is a minimum security facility. The facility appeared clean, and detainees had access to washing machines and a large outdoor recreation area. The hangar-like structure of the jail also made the facility appear more open and somewhat less prison-like. Detainees interviewed by UNHCR generally described conditions at the jail as satisfactory.

INS HQ Inspection: Mr. Bailey informed UNHCR that INS HQ inspected the jail last year and found only two areas where it was out of compliance with INS Detention Standards. According to Mr. Bailey, these issues have since been addressed.

Comments & Recommendations: *UNHCR would appreciate receiving more information on these two areas of non-compliance and how they have since been addressed.*

Other Area Facilities Used by BICE: UNHCR was informed that BICE uses a number of facilities in the Detroit area to hold immigration detainees, including another Monroe County facility near the Monroe County Jail at 100 Second Street where many detainees are held for initial processing. UNHCR did not have the opportunity to visit this facility, but has received numerous complaints about conditions there from detainees who were held there, some for as long as ten days. Detainees described being held in "Room 153", a small room about 12 feet by 20 feet that was so overcrowded that it was difficult to

walk around. They noted that there was little air in the room and that many detainees felt ill as a result.

***Comments & Recommendations:** UNHCR would appreciate additional information about the Monroe County facility at 100 Second Street, including whether it has been inspected by BICE HQ and, if so, the results of that inspection. UNHCR recommends that BICE investigate the conditions at this facility, in particular "Room 153", to ensure that they satisfy relevant international standards.*

Bonds: Factors that are considered in adjudicating a bond request include criminal history, family ties, flight risk, and ability to pay the bond. Mr. Bailey stated that he will generally make a bond re-determination decision within 24 hours of the request being made.

UNHCR discussed with Mr. Bailey the bond issue as it relates to people directed-back from Canada and then detained in the US, *i.e.*, that (a) they may not be able to pay a bond and therefore may miss their re-scheduled appointments with Citizenship and Immigration Canada (CIC), and (b) that even if they do bond out, they may be ordered deported *in absentia* by an Immigration Judge and then lose the bond. Mr. Bailey indicated a willingness to consider these issues in bond decisions for detained "direct-back" cases.

***Comments & Recommendations:** UNHCR remains concerned about direct-backs from the Canadian border that result in the detention of asylum-seekers in the US. UNHCR has encouraged CIC to ensure either that sufficient resources be deployed to process cases at the Canadian border or that asylum-seekers be paroled into Canada pending their initial screening so as to avoid direct-backs to the US. Should direct-backs occur, however, UNHCR recommends that BCBP and BICE not detain those in unlawful status unless there are clear security or flight risk concerns. For those who are detained, UNHCR recommends that low bonds be established and that procedures be implemented that would allow those who post bond to recover this money once they have proven that they have entered Canada and submitted a refugee claim there.*

Dormitory: The dormitory area at the Monroe County Jail was a large open space, akin to the inside of a small airport hangar, surrounded by a metal fence to prevent detainees from damaging the walls of the facility, which are akin to hard rubber. One area of the dorm contained 40 bunk beds. Each bunk-bed had two plastic boxes underneath it containing detainee property. The remaining area had some fixed tables, washers and dryers, and phones. A metal cage was in the middle of the dorm, where a shift supervisor stays 24/7. The dorm area appeared clean. A low wall was in front of the toilet area, allowing some degree of privacy.

***Comments & Recommendations:** The dormitory area was better than the housing areas at most detention facilities visited by UNHCR in the US. While freedom of movement was still confined to the dormitory area, its relatively large size, the presence of washing facilities and tables, and the high ceilings (resulting from the nature of the facility*

structure), all gave the dorm area less of a prison atmosphere. The minimum-security nature of the facility was an improvement over the more secure facilities that BICE and its contractors (private and local government) usually use.

Outdoor Recreation: There appeared to be a large area outside of the dorm which was used for outdoor recreation. According to Mr. Bailey, if the weather is good, detainees can be outside for as much as three hours/day and can move freely in and out of the dorm area. If the weather is cold, they use one of the indoor meeting rooms for recreation. BICE tries to stay away from competitive games and activities at the jail to keep the detainees calm. A detainee confirmed that detainees do have regular access to outdoor recreation.

Comments & Recommendations: UNHCR appreciates the relatively liberal outdoor recreation policy that appears to exist at the Monroe County Jail. UNHCR generally recommends that at least one hour of outdoor recreation a day be offered. If weather does not permit outdoor recreation, indoor recreation should be made available as an alternative. Access to the outdoors can be especially critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement. It is also critical to those of concern to UNHCR who remain in detention for extended periods of time.

Religion: UNHCR was informed that any recognized religious leader can gain access to the Monroe County Jail if a detainee requests religious services. The only requirement is that the religious leader make himself available to all who wish to meet with him. Detainees informed UNHCR that, at the time of our visit, there were about ten Muslims detained at MCJ. Muslim detainees have informed UNHCR that they are allowed to pray and that pork-free meals are available to them. BICE officials also informed UNHCR that soft-cover copies of the Quaran, provided by the local Arab League, have been made available to Muslim detainees. One Muslim detainee stated, however, that he would like to have access to an Imam. BICE officials stated that they have tried to locate an Imam to visit the facility on Fridays, but have been unsuccessful.

Comments & Recommendations: UNHCR appreciates the efforts that have been made to accommodate the religious needs of its detainee population. The provision of pork-free meals, the distribution of copies of the Quaran, and the allowance of religious prayers are positive aspects of the jail's operations for Muslim detainees. As a general matter, UNHCR recommends that detainees be provided access to religious leaders and services as appropriate based on the religious profile and demand of the INS detainee population. UNHCR recommends that BICE continue to make efforts with the local Muslim community, which is significant in the Detroit metropolitan area, to identify a religious leader who could meet the needs of the Muslim detainees.

Legal Orientations: A local shelter and legal services organization, Freedom House, provides group rights presentations to asylum-seekers at the Monroe County Jail once every two weeks. The Florence video is also shown to new detainees as a group every week or two.

Comments & Recommendations: *UNHCR appreciates BICE's efforts in facilitating legal rights orientations at the Monroe County Jail. These orientations, both in person (which allow detainees to ask questions) and by video better ensure that detainees are aware of the relief that is available to them, including asylum, and the nature of the proceedings underway. For asylum-seekers, especially those who may have suffered trauma in the past, this information can be critical in lessening anxiety and stress.*

Telephones: UNHCR received repeated complaints about the telephone system at the Monroe County Jail. All domestic calls from the Monroe County Jail must be made collect. Phone cards are available, but for international calls only. Toll-free numbers are not possible at this time and telephones are not pre-programmed to allow for free calls to local legal service providers and embassies. One detainee said that he was having difficulty securing a lawyer because there was no toll-free line.

UNHCR discussed this issue with BICE and jail officials, in particular the INS Memorandum from August 2001 requiring that all jails ensure that INS detainees can make free calls to consulates, local legal service providers, and immigration courts. We were told that BICE and jail administrators are in discussions with Ameritech to make this happen, and that it should take about 30 days. ~~BICE officials stated that detainees can ask the Detention Enforcement Officer (DEO) to make non-collect calls from his Office if necessary to contact lawyers, as well as family members, although detainees have said that the DEO is not easily accessible.~~

After UNHCR's visit to the facility, Mr. Bailey kindly provided updates on the telephone programming to UNHCR Washington by e-mail. We were informed in late April that a contract between "PCS" and Monroe County had been signed, which would allow "Team PCS" to program the toll-free numbers into the phones. Mr. Bailey expected that this would be completed within 2-3 weeks (by mid-May). Mr. Bailey also stated that he would post UNHCR's phone number by the telephone once he received authorization to do so.

Comments & Recommendations: *UNHCR recommends that telephone access to UNHCR, as well as local service providers, be ensured. Given that the high costs of calls from detention centers often impedes access to legal assistance, UNHCR recommends that BICE ensure the lowest telephone rates possible to INS detainees. We would appreciate an update on the status of discussions with the local telephone provider on the establishment of a toll-free line for calls to legal service providers, the immigration court, and to UNHCR. UNHCR recommends that UNHCR contact information be provided to all INS detainees and would appreciate confirmation that UNHCR's telephone number has been posted in the dormitory area.*

Access to Personal Funds: UNHCR has received various complaints from asylum-seekers detained at the Monroe County Jail about their ability to access personal funds in the control of BICE. Detainees have stated that they needed these funds to pay for an attorney, to buy phone cards, and to buy food from the commissary. These complaints

resulted to an exchange of letters between UNHCR and Mr. Bailey (attached) about this matter. Mr. Bailey's response suggests a difference in opinion between the detainees and BICE regarding the availability of personal funds. In at least one case, it appears that BICE did not receive the asylum-seeker's money from US Border Patrol (which apprehended him) for over a month. The reason for this delay is unclear.

***Comments & Recommendations:** UNHCR is concerned about the ability of asylum-seekers to access their personal funds while detained at the Monroe County Jail. These funds can be critical in obtaining legal representation, securing funds for release from detention or paying for telephone calls to family and service providers in the United States or abroad. UNHCR appreciates Mr. Bailey's prompt review of this issue upon receipt of our letter, but remains concerned about the inconsistency between reports from detainees and from BICE about the availability of personal funds. UNHCR is also concerned about the length of time required to transfer funds from the apprehending US authority to the detaining US authority. Access to funds is especially important during the first few weeks of detention when an asylum-seekers must secure legal counsel.*

UNHCR recommends that DHS review its procedures on this issue to ensure: (1) that BICE officials responsible for detention facilities receive the personal funds of detained asylum-seekers from the detaining authority as soon as possible after apprehension, and (2) that these funds are made available to detained asylum-seekers upon request. UNHCR recommends that procedures regarding access to personal funds (for purposes other than the purchase of commissary items) be clearly outlined in the Monroe County Jail Inmate Guidebook.

Access to BICE / Case Information: UNHCR has received a number of complaints about detainee access to BICE officials at the Monroe County Jail, especially the DEO. BICE officials informed UNHCR that detainees have easy access to the DEO, who makes himself available to detainees in the living area three to four times a week. Detainees, in contrast, have complained that the DEO rarely visits the pod and does not respond to their concerns.

UNHCR has also received complaints regarding detainee access to case information, including detention and removal information. It is UNHCR's understanding that, at the time of our visit, BICE had only six Deportation Officers for the entire state of Michigan, three of whom were working with "fugitives operations." It appeared that the remaining three Deportation Officers had about 100 detainees assigned to each of them.

***Comments & Recommendations:** UNHCR is concerned about the difficulty that asylum-seekers expressed in submitting requests and/or complaints to jail and BICE officials about their cases or conditions of confinement. To effectively represent their interests, access to case and custody status information is critical. Lack of information also fuels anxiety and a sense of isolation. These difficulties are exacerbated if the asylum-seeker does not speak English.*

If not already done so, UNHCR recommends that BICE establish regular hours during which time the DEO is available to respond to detainee questions/concerns regarding conditions at the Monroe County Jail. UNHCR further recommends that BICE ensure that deportation officers meet with BICE detainees on a regular basis to facilitate communication. If necessary, BICE should increase the number of deportation officers in the district to accomplish this.

Grievance Procedure: According to the Monroe County Jail Inmate Guidebook, a shift supervisor is to review detainee complaints and provide a written response within five days. If the situation is not resolved, the detainee may submit his complaint to the "Jail Administration", which must reply with a written response "within a reasonable period of time." UNHCR received various complaints about the failure of BICE/jail officials to respond to their complaints/concerns, which are submitted on "kites", suggesting that the established grievance procedure is not functioning as intended. Detainees have stated that they have written kites on such issues as telephone access, access to personal property, and access to envelopes and stamps, with no response.

Comments & Recommendations: As noted above, UNHCR is concerned about the difficulty that asylum-seekers have expressed in receiving responses from requests or grievances submitted to jail and BICE officials. UNHCR recommends that the jail's grievance procedures be reviewed to ensure that those procedures outlined in the Inmate Guidebook are being followed as a matter of practice.

Mail: UNHCR received numerous complaints about access to stamps and envelopes at the Monroe County Jail, a problem acknowledged by BICE officials. One detainee wrote to UNHCR in early-May that detainees had not received any envelopes since 12 March, and others stated that numerous kites complaining about the situation have gone unanswered. According to BICE officials, BICE spent \$5,000 on stamped envelopes last year for detainees at the Monroe County Jails. Efforts to address this expense (and apparent abuse by some detainees of this privilege) have had mixed results, but these efforts continue.

Comments & Recommendations: Access to envelopes and stamps is critical for detained, indigent asylum-seekers needing to communicate with legal counsel, immigration courts, or family members. The inability to make toll-free calls to legal providers from the Monroe County Jail makes the need for written communication all the more important. UNHCR would appreciate an update on the jail's policy with regard to the provision of envelopes and stamps, and urges BICE to ensure that access to both is ensured.

Trainings: Officers at the Monroe County Jail attend a regional training program that occurs twice a year, which includes a section on cultural diversity. There is no specific curriculum, however, for BICE and jail staff on working with asylum-seekers and refugees in particular.

Comments & Recommendations: UNHCR recommends that training be provided for jail staff on working with immigrant and refugee populations. UNHCR is willing to assist with such training to the extent resources allow.

Interpretation / Rule Book: UNHCR has received complaints about the inability of some immigration detainees to access interpreter services at the Monroe County Jail. UNHCR was informed by BICE that while interpreter services are available through the DHS New York interpreter bank or through AT&T, they are rarely used. According to BICE, this is because many of the Monroe County Jail staff speak Spanish, many detainees speak English or learn it quickly, or because other detainees are available to translate if necessary. Interpreters are also not generally used for medical examinations, unless the person is to be sent to the hospital for treatment.

The jail's Inmate Guidebook is available only in English. There was, however, posted on the bulletin board in the detainee living area, one series of rules in Spanish, apparently translated by the detainees. Mr. Bailey indicated that he would be willing to post detainee translations of the rules into other languages as well. BICE officials believed that those detainees who do not speak English are able to learn the facility's rules from other detainees, a process facilitated by the "team" structure that BICE established within the dormitory (information is conveyed from BICE and jail officials to a detainee "team leader" who then passes the information on to individuals in the team).

Comments & Recommendations: UNHCR is concerned that asylum-seekers with language barriers may lack orientation as to jail rules and privileges and may be unable to communicate effectively with medical personnel. UNHCR recommends that interpreters be used when needed to facilitate essential communication between jail staff and BICE detainees. UNHCR recommends that BICE take any necessary measures to ensure that officials at the Monroe County Jail have easy access to interpreters (including DHS' telephonic interpreter services) and that the use of interpreters be encouraged whenever necessary. UNHCR further recommends that BICE make efforts to translate the rules of the facility into the primary languages of the detainee population. UNHCR appreciates Mr. Bailey's willingness to work with the detainees in this regard.

Library: The Monroe County Jail had two rooms which previously served as its library. Detainees used to receive one hour a day, five days a week, in the law library. According to BICE officials, however, detainees were not using the library as much as expected. To make materials more accessible, BICE and jail officials decided to place the library resources on a trolley, which was then placed in the dorm area during down-time. At the time of our visit, detainees had access to the materials for three hours a day, seven days a week. To save paper, BICE and jail officials are now allowing detainees to save their documents on computer disks.

The law library trolley contained the following resources: INS regulations (current until September 2000); BIA decisions (current until 1998), and Administrative Court decisions. There was also a notebook with self-help materials provided by the NGO refugee shelter Freedom House on applying for asylum and other forms of relief. Neither

Immigration Law & Crimes or the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* were available. Mr. Bailey stated that the Monroe County Jail used to receive updates from INS HQ in hard copy, but that this was no longer the case. the Monroe County Jail does receive regular updates to Lexus-Nexus materials on CD-ROM.

The dorm area, where detainee research and writing is now conducted, had only one computer in it. In contrast, a separate room at the facility had 12 computers in it, but was not available to detainees. Mr. Bailey stated that BICE is considering giving detainees access to these computers as well. While BICE officials did note that "computer hogs are a problem," Mr. Bailey believed that there generally was no problem of computer access.

Comments & Recommendations: Given that the majority of asylum-seekers who are detained typically do not have legal assistance and must prepare their own cases, the availability of legal materials is extremely important. UNHCR appreciates the expanded hours of library access that detainees now have at the Monroe County Jail. We also appreciate the willingness of BICE to explore the use of computer disks for the storage of documents, which should allow those detainees who are computer literate to research, write and edit court submissions more easily.

UNHCR is concerned, however, about the absence of certain legal materials (such as those noted above) from the law library and the fact that many of those that are available are out-of-date. While some of these materials may be available on CD-Rom, they may not be easily accessible to detained asylum-seekers either because they are not computer literate or because there is only one computer terminal in the dormitory area.

UNHCR recommends that BICE obtain up-to-date copies of its legal materials in hard copy. UNHCR further recommends that it make available to those detainees who are computer literate the other computer terminals in the facility. We encourage BICE to include other general immigration law resources that might be useful to asylum-seekers preparing their own cases, such as the materials listed in the *INS Detention Standards on Access to Legal Material*. UNHCR is willing to provide any international legal resources that might be available through our Office.

UNHCR Washington
22 August 2003

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES



NATIONS UNIES
HAUT COMMISSARIAT
POUR LES RÉFUGIÉS

with the compliments
of the
Regional Office
for the United States of America & the Caribbean

December 5, 2003

**Please find enclosed a courtesy copy of UNHCR's
report on its recent mission to the Chicago area.**

(b)(6)

1775 K Street, N.W., Suite 300, Washington, D.C. 20006
Tel.(202)296-5191 • Fax (202)296-5660



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR

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4 December 2003

BY FIRST CLASS MAIL

Mr. Anthony Tangeman, Director
Office of Detention and Removal Operations
US Bureau of Immigration and Customs Enforcement
801 Eye Street, NW, Suite 900
Department of Homeland Security
Washington, DC 20536

Mr. Jayson Ahern, Assistant Commissioner
Office of Field Operations
US Bureau of Customs and Border Protection
1300 Pennsylvania Avenue, NW, Suite 5.5C
Department of Homeland Security
Washington, DC 20229

Re: UNHCR Site Visit to Chicago Area Detention Facilities
& Meeting with Local CBP Officials re: Chicago O'Hare International Airport

Dear Mr. Tangeman and Mr. Ahern,

Please find enclosed the report of the Office of the United Nations High Commissioner for Refugees (UNHCR) on its visit to the Chicago area during the week of 15 September 2003, during which time we visited the Broadview Service Staging Area (15 September), McHenry County Jail (15 September), Kenosha County Detention Center (16 September), Ozaukee County Justice Center (17 September), and Dodge County Detention Facility (18 September). We also met with local representatives of US Customs and Border Protection (CBP) to discuss operations at the Chicago O'Hare International Airport. I wish to thank (b)(6) Special Assistant to Mr. David Venturella, Assistant Director, Office of Detention and Removal; (b)(6), (b)(7)c, Interim Field Office Director, US Immigration and Customs Enforcement (ICE); and (b)(6), (b)(7)c Director, Field Operations Mid-America, CBP, for facilitating the visit of UNHCR representatives (b)(6) Senior Protection Officer, and (b)(6) Protection Officer. I have been informed that local ICE / CBP officials and county jail staff at each location were extremely courteous and accommodating during the visit. I very much appreciate both the time that they devoted to our visits and their full and forthright answers to our many questions about facility and port operations.

This visit was a follow-up to UNHCR's trip to the Chicago area in August 2001 to assess what changes, if any, had occurred since then. A full report containing our observations, comments and recommendations is attached for your review. For those facilities that UNHCR visited in August 2001, our comments are limited to issues of previous concern and new issues that have arisen in the interim. We have provided a more comprehensive report for the Kenosha County Detention Center, Ozaukee County Justice Center, and Dodge County Detention Facility, given that this was UNHCR's first visit to these facilities.

Please note that we have included as an attachment to this report references to the international standards implicated by the conditions and procedures we observed. We hope that these international standards will be useful for you and your staff in assessing the adequacy of ICE detention conditions and port of entry operations. Copies of the underlying international instruments and policy guidance materials were forwarded to your Office in September 2003.

While detailed comments and observations are contained in the attached report, we would like to highlight the following.

Assessment of Changes in Conditions and Procedures Since August 2001 Visit

General Areas of Improvement

UNHCR noted a number of improvements in detention conditions in the Chicago area since our last visit in August 2001. These improvements include the following:

- (1) *Decision to No Longer Use Racine County Jail:* In our 2001 report, UNHCR recommended that INS cease holding asylum-seekers at the Racine County Jail due to a number of serious deficiencies in the conditions of confinement there. We were pleased to learn during this last visit that ICE is no longer holding its detainees at that jail.
- (2) *Consolidation of Detention Facilities:* ICE has now consolidated its detainee population into five county jails, which should limit the number of transfers for detained asylum-seekers between facilities and make it easier for them to secure legal representation. This consolidation should also provide ICE with greater leverage in ensuring adequate conditions of confinement.
- (3) *Implementation of ICE Detention Standards:* UNHCR was informed that the ICE Chicago Field Office has dedicated one full-time staff person to ensure implementation of ICE's detention standards at local/county jails. This will hopefully expedite jail compliance with ICE's detention standards, many of which are consistent with international detention standards.
- (4) *ICE Relations with Local Immigration Attorneys:* The Chicago Field Office has taken a number of positive initiatives to facilitate attorney contact with their detained clients. These include an e-mail system that enables attorneys both to locate their clients within 24 hours (in the event of a jail transfer) and to arrange for a personal meeting with the client at the Broadview Service Staging Area within 48 hours. ICE has also offered to make available a private telephone for attorneys to speak with their clients during video-conferenced master calendar hearings at the Broadview
- (5) *Installation of Pre-Paid Phone Systems:* During UNHCR's 2001 visit, a major problem was the inability of detained asylum-seekers to contact the immigration courts and local NGOs because of the agencies' inability to accept collect phone calls. ICE's pre-paid phone system, allowing for free calls to consulates, NGOs, immigration courts and UNHCR, has since been installed at a number of the jails visited, making it easier for detained asylum-seekers to obtain case information and communicate with their lawyers.
- (6) *Computer Law Library:* Since UNHCR's 2001 visit, ICE has installed immigration legal materials on computers at the county jails. UNHCR appreciates this effort, which should greatly assist detained asylum-seekers who must represent themselves in immigration court. UNHCR remains concerned, however, that many asylum-seekers may not be computer literate, and recommends that law/computer tutors (from the detainee population if necessary) be allowed to assist individuals in conducting their research.

General Areas of Continued/New Concern

There are also a number of areas of continuing or new concern for UNHCR regarding detention conditions in the Chicago area. These include the following:

- (1) *Continued Use of Remote Jails:* While UNHCR appreciates ICE's jail consolidation in the area, all of its jails continue to be between one to six hours away from Chicago. This distance makes it difficult for asylum-seekers to secure legal counsel and to maintain contact with them. UNHCR continues to recommend that ICE use one facility near Chicago that is owned and operated by ICE and that meets both international and ICE detention standards.
- (2) *Access to ICE Officials:* As in 2001, detained asylum-seekers consistently complained about not having contact with ICE officials. Many did not know the status of their immigration cases, the possibility of release, and/or ICE's efforts to deport them. UNHCR was informed that ICE HQ has issued a new detention standard requiring weekly visits to ICE detainees. UNHCR urges ICE to implement this standard promptly in the Chicago area.
- (3) *Outdoor Recreation:* Outdoor recreation can be critical for detained asylum-seekers, especially those who are victims of abuse or trauma. International detention standards require at least one hour a day of outdoor recreation. UNHCR visited three jails with no outdoor recreation (McHenry County Jail, Dodge County Detention Facility and Kenosha County Detention Center (with respect to female detainees)) and one facility with more limited hours (Ozaukee County Justice Center). UNHCR objects to the use of facilities with no outdoor recreation.
- (4) *Treatment of Detainees by County Jail Officers:* A major complaint by detained asylum-seekers in 2001 (Racine County Jail) and in 2003 (Ozaukee County Justice Center and Dodge County Detention Facility) was poor treatment by guards at the local jails being used by ICE. These complaints reinforce UNHCR's concerns about the use of local and county jails to hold asylum-seekers. Absent detention in an ICE owned and operated facility, UNHCR recommends that all jail officials receive training on working with immigrant and refugee populations and that all allegations of unprofessional or abusive treatment be fully investigated and addressed as necessary.
- (5) *High Cost of Collect Calls:* The cost of collect calls to private attorneys and families/friends remains very high, as much as \$20 for a 15-minute call. Unlike Tri-County Jail, most of the jails that UNHCR visited in September do not offer calling cards for long-distance calls. The impact of these charges can be great on asylum-seekers, who are often indigent with no local support network. High charges make it difficult, if not impossible, for detained asylum-seekers to maintain contact with private attorneys or with families/friends who can assist in the preparation of their asylum cases or provide emotional support.
- (6) *Medical Care:* UNHCR continues to have concerns about the adequacy of medical care for asylum-seekers detained in the Chicago area. For example, jails seem ill-equipped to treat detainees with mental health problems and charge co-pays for medical treatment. In addition, there is no routine medical examination by medical staff either upon a detainee's initial processing by ICE at Broadview or at the jails where detainees are held, and medical records are routinely not transferred with detainees from one facility to another. Among the recommendations included in this report, UNHCR recommends that (1) at a minimum, medical staff conduct an initial examination of all individuals coming into ICE custody; (2) adequate mental health services be made available to asylum-seekers; (3) detainee medical records be provided whenever a detainee leaves a detention facility; and (4) detainees not be charged for medical treatment. These recommendation are generally consistent with ICE detention standards,
- (7) *Interpretation:* UNHCR continues to be concerned that telephonic interpretation is rarely used to communicate with detained asylum-seekers who do not speak English. As a result, many asylum-seekers do not understand their rights and responsibilities at the jail (violations of rules

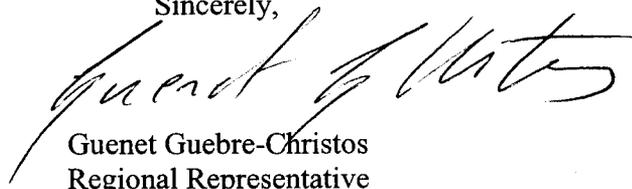
often resulting in disciplinary segregation), and are unable to effectively communicate with medical staff about any medical conditions.

- (8) *Legal Orientation Materials*: In UNHCR's 2001 visit, we recommended that ICE and county jails show the legal orientation videos produced by the Florence Project on Immigrant and Refugee Rights. ICE indicated that it would do so at the Broadview facility, and McHenry County Jail officials said they would do the same. The video is still not being shown at either Broadview or McHenry, and is also not being shown at Dodge, Ozaukee or Kenosha. All of the jails expressed a willingness to show the videos once they receive them from ICE or have the technical capacity to do so.

Finally, we would like to briefly note our meeting with CBP officials about operations at the Chicago O'Hare Airport. UNHCR was informed that there had been increased training on the expedited removal process for inspection officers following the incident which UNHCR observed in 2001 of INS and Customs officials urging an asylum-seeker not to seek protection in the US. UNHCR was also informed that new interpreter guidelines has been received from ICE Headquarters and distributed to inspection officers but that no training on the implementation of the guidelines had been provided. UNHCR recommends that such training be provided given UNHCR's observations during its recent study of the US expedited removal process of consistently poor interpretation in secondary inspection interviews. A copy of UNHCR's report of this study is attached for Chicago CBP officials' reference.

In closing, we reiterate our continued concerns about the detention of asylum-seekers in the United States. As you are aware, UNHCR's Executive Committee (*see, e.g.*, Conclusion No. 44), has stated that asylum-seekers should normally not be detained. This principle is also found in UNHCR's Detention Guidelines. We encourage ICE to release individuals who should not be detained and to aggressively pursue alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Sincerely,



Guenet Guebre-Christos
Regional Representative

cc: Joseph Langlois
Director
Asylum Division
Citizenship and Immigration Services
Washington, DC

Molly Groom
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Interim Field Office Director
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Chicago, IL

Follow-Up Meetings/Visits
Chicago O'Hare International Airport,
Broadview Service Staging Area & McHenry County Jail

A. Chicago O'Hare International Airport

On 19 September 2003, (b)(6), Senior Protection Officer, and (b)(6) Protection Officer, met with several officials from the US Customs and Border Protection (CBP) to discuss changes in CBP operations at the Chicago O'Hare International Airport since UNHCR's visit in 2001. Participants from CBP included (b)(6), (b)(7)c Director, Field Operations, Mid-America (former US Customs); (b)(6), (b)(7)c Assistant Port Director (former US Customs); (b)(6), (b)(7)c (b)(6), (b)(7)c Interim Port Director; and (b)(6), (b)(7)c Assistant District Director - Inspections.

1. *Referrals for Credible Fear Interviews:* During UNHCR's 2001 visit to Chicago O'Hare, it observed an incident of the Immigration and Naturalization Service (INS), Customs and airline officials seeking to dissuade a young, female Colombian asylum-seeker from seeking asylum in the US. UNHCR staff members overheard the INS Supervisory Inspections Officer telling the woman that she would not "win asylum," that she would be detained in the US, and that it would be better for her to go back to her country. The INS Inspector later told UNHCR that his comments were based on his (incorrect) belief that the woman was not eligible for asylum because it was not the Colombian government that was threatening her.¹ As a result of this incident, UNHCR recommended that secondary inspections officers at Chicago O'Hare receive supplemental training on the expedited removal process and that INS Headquarters ensure that the proper expedited removal procedures be followed.

During its recent visit, CBP officials informed UNHCR that additional training has been provided regarding the proper referral of individuals in secondary inspection for credible fear interviews. Officers have been instructed to refer to an Asylum Officer any individual who indicates an expression of fear and that it is not their decision whether the individual should be allowed to apply for asylum. They are instructed that if there is an affirmative answer to any of the four fear-related questions, the person must be referred and that those individuals who, in fact, are not seeking asylum may be able withdraw their request for admission at the credible fear interview stage.

UNHCR Comments and Recommendations: UNHCR appreciates that further training on the expedited removal process has been provided. UNHCR recently completed a six-month study of the expedited removal process, in coordination with DHS. A copy of UNHCR's report is attached. UNHCR encourages local CBP officials to review the report and recommendations, especially with regard to the attitude and actions of many inspections officials.

2. *Interpreters:* During UNHCR's last visit to Chicago O'Hare, it was informed that INS did use airline interpreters to assist primary inspections officers, but tried not to use them during secondary inspection. For secondary inspection interviews, INS was using either Language Services, AT&T or its own New York service. During UNHCR's recent visit, CBP officials

¹ See Letter from Guenet Guebre-Christos, Regional Representative, UNHCR Regional Office for the United States and the Caribbean to Joseph Greene, Acting Deputy Executive Associate Commissioner, Enforcement, Field Operations, Immigration and Naturalization Service (Aug. 28, 2001).

informed UNHCR that CBP Headquarters had recently issued new guidelines on the use of interpreters and that these guidelines had been distributed to inspectors at Chicago O'Hare. It did not appear that any training had been done in conjunction with the guidelines.

UNHCR Comments and Recommendations: In its recent report on the US expedited removal process, UNHCR noted the consistently poor quality of interpreters used during secondary inspection interviews at the ports-of-entry it studied. The recent guidelines on interpreters issued by CBP Headquarters could help to address a number of the concerns raised by UNHCR. To ensure that the interpreter guidelines are effective, UNHCR recommends that training on the use of interpreters be provided in conjunction with the guidelines and that systems be established at the Headquarters level to ensure that the guidelines are being followed.

B. Broadview Service Staging Area

On 15 September 2003, (b)(6) Senior Protection Officer, and (b)(6) Protection Officer, visited the Broadview Service Staging Area in Broadview, Illinois, approximately 30 miles outside of Chicago, Illinois. The visit included a meeting with (b)(6), (b)(7)c Interim Field Office Director for the Chicago district, a tour of the facility led by Chief Detention Officer, (b)(6), (b)(7)c and (b)(6), (b)(7)c Detention Operation Supervisor, and individual interviews with three asylum-seekers being processed through the Broadview facility that day. (b)(6), (b)(7)c accompanied UNHCR during the tour of the facility.

1. Facility Background: The facility continues to be a staging facility designed to hold ICE detainees for less than 24 hours. There were some changes to the layout of the building since UNHCR's last visit, but none that significantly affect the detainees.

2. Telephones: UNHCR expressed concern in its last report that detainees were unable to call UNHCR either collect or through UNHCR's toll-free number from Broadview. Since our last visit, Broadview has installed a prepaid phone system, through which detainees can call consulates, the Immigration Court, non-profit legal service providers and UNCHR free of charge. UNHCR tried the phone system and was able to make a call to the UNHCR office in Washington, DC.

Comments & Recommendations: UNHCR appreciates the installation of the prepaid phone system at Broadview which should facilitate communication between detained asylum-seekers and legal services providers, the immigration court and UNHCR.

3. Orientation: At the time of UNHCR's 2001 visit, INS was providing all new detainees with a copy of legal orientation materials prepared by a local NGO, the Midwest Immigrant and Human Rights Center (MIHRC), when they were initially processed at Broadview. INS was not providing individuals, however, with any type of orientation about the detention process at Broadview, nor was it showing the Florence Project's Know Your Rights video.

During its recent visit, CBP officials informed UNHCR that it no longer provides MIHRC's legal orientation materials and still does not provide a general orientation to detainees regarding the detention process or inform detainees about why they were being transported to Broadview. One of the detainees UNHCR interviewed had no idea why he had been brought to Broadview that day.

ICE also stated that under its remodeling plans for Broadview, television sets would be placed in the holding rooms with built-in VCRs that would allow ICE to show the Florence videos.

Comments & Recommendations: UNHCR is disappointed that MIHRC's legal orientation materials are no longer provided to detainees at Broadview and recommends that this practice be resumed. UNHCR would appreciate more information about why this practice was discontinued. UNHCR continues to recommend that ICE explain the detention process to asylum-seekers when they are processed through Broadview, including the reasons for any transports to and from the facilities where they are being held. UNHCR also continues to recommend that the Florence Know Your Rights videos be shown to detained asylum-seekers at the Broadview facility.

4. **Visitation:** The family and lawyer visitation area consists of three booths with plexi-glass windows dividing the detainee and the outside visitor. Visitors talk to detainees by telephone; there are no slots for passing documents back and forth. During its last visit, UNHCR was informed that lawyers could request face-to-face interviews and that the female pod would be available for that purpose (female detainees would be moved if necessary). According to INS officials, however, such requests were few. During its recent visit, UNHCR was informed that only about two lawyers per week meet with their clients at Broadview. ICE officials stated that lawyers rarely request private contact meetings but that such requests could be accommodated. Local *pro bono* attorneys, however, told UNHCR that there was no mechanism for having face-to-face interviews with clients at Broadview.

Comments and Recommendations: UNHCR considers private contact visits between asylum-seekers and their lawyers to be extremely important. The underlying refugee claims of many asylum-seekers may involve sensitive or traumatic events that are difficult to discuss. Private contact facilitates communication between attorneys and their clients so that the asylum-seeker's refugee claim can be clearly established and presented to the immigration court. UNHCR recommends that ICE inform immigration attorneys, perhaps at one of its regular meetings with local legal services providers, that private contact visits between attorneys and their clients can be accommodated at Broadview.

C. McHenry County Jail

On 15 September 2003, (b)(6) Senior Protection Officer, and (b)(6) Protection Officer, visited the McHenry County Jail in Woodstock, Illinois. The Chief of Corrections at the jail is still (b)(6), (b)(7)c. This visit included a meeting with Lieutenant (b)(6), (b)(7)c McHenry County Sheriff's Police Department; individual interviews with detained asylum-seekers; and a tour of the construction of a new floor that will be dedicated to ICE detainees. (b)(6), (b)(7)c Interim Field Office Director for the Chicago district, accompanied UNHCR during the tour of the facility.

1. **Background:** McHenry continues to house males and females, but is mainly used by ICE to hold its female detainees. The jail is still planning a major build-out of its third floor to house ICE detainees and hopes to complete construction by the middle of next year.

2. **Co-mingling:** McHenry is no longer co-mingling ICE detainees with county inmates, even if the number of ICE detainees is small. Females ICE detainees are held in an old section of the jail (formerly a work release area) that has a capacity for 34 beds.

Comments & Recommendations: UNHCR appreciates McHenry's efforts to separate asylum-seekers from its county inmates.

3. **Recreation:** McHenry continues to lack outdoor recreation. As during UNHCR's last visit in 2001, McHenry continues to use an indoor room with "fresh air panels" that condition the air before it enters the room. UNHCR was informed that ICE Headquarters considers this type of arrangement to satisfy ICE's outdoor recreation standard. Detained asylum-seekers continue to complain about their lack of access to outdoor recreation.

During UNHCR's last visit to McHenry, there was no established recreation schedule. Recreation times were determined by the officers on duty. It appears that there is still no set recreation schedule, that recreation is made available only upon request and that it is limited to 30 minutes per day. Detained asylum-seekers complained that they are not provided access to the indoor recreation room with the fresh air panels.

Comments & Recommendations: UNHCR continues to object to the use of a detention facility that lacks outdoor recreation. Access to the outdoors can be critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement. In UNHCR's view, an indoor recreation room with fresh-air panels does not constitute outdoor recreation, and UNHCR is concerned that ICE might have concluded otherwise. UNHCR also continues to be concerned about the lack of a regular schedule for recreation and to recommend that one be established.

4. **Medical:** During its last visit, jail officials informed UNHCR that ICE detainees were not subject to the jail's requirement that inmates make a co-payment for any appointments with medical staff. Although medical staff stated that ICE detainees "knew" that they were not subject to this requirement, it was not stated in the jail handbook and ICE detainees were required to sign a form at the time of their medical appointments indicating that they would make the co-payment. The nurse stated that the jail was trying not to make the difference in treatment between county inmates and INS detainees obvious for fear that it would upset the county inmates. When asked about the co-payment policy, asylum-seekers expressed confusion to UNHCR. It is UNHCR's understanding that ICE detainees are still not subject to medical co-payments, but that they are still not formally informed of this fact.

UNHCR also learned during its last visit that detainees on suicide watch whom the jail feared would hang themselves with their clothes were placed naked in a suicide watch room with nothing but a mattress to sleep on. Jail officials informed UNHCR during its recent visit that the jail now has a "suicide gown," which is provided to detainees when such a risk exists.

Comments & Recommendations: UNHCR continues to be concerned that indigent asylum-seekers might refrain from seeking medical care due to a mistaken belief that they must pay for this care. UNHCR continues to recommend that McHenry inform ICE detainees that they are not subject to any medical co-payment requirement. Concerns of jail officials about distinguishing between ICE detainees and county inmates should be minimized by the fact that the two populations are no longer

co-mingled. UNHCR appreciates the use of a suicide smock for those who are at risk of self-harm, which should help to maintain the dignity of those on suicide watch.

5. Telephone Access: During UNHCR's last visit, UNHCR representatives were unable to make a collect telephone call to UNHCR's Office in Washington, DC. McHenry has since installed the DHS pre-programmed phone system, which allows detainees to call consulates, NGO legal service providers and UNHCR at no charge.

Comments & Recommendations: *Given that the high costs of calls from detention facilities often impedes access to legal assistance, UNHCR appreciates the installation of the prepaid phone system at McHenry.*

6. Law Library: In its previous report, UNHCR noted that McHenry's law library had very few immigration law resources. Detainees were also only allowed one hour per week in the library upon request. The jail now has a computer with immigration research materials loaded on it, and detainees can access the computer upon request for up to 5 hours a week. At the time of UNHCR's last visit, McHenry had just received VCRs and TVs to show the Florence Project Know Your Rights videos, but had not yet developed a plan for when and where to show it. The jail is still not showing the videos and lacks the Spanish version of the video.

Comments & Recommendations: *UNHCR appreciates that ICE has expanded the immigration law resources available to detainees at McHenry and has increased the number of hours that detainees can access them. UNHCR is concerned, however, that it may be difficult for detainees to utilize the computer resources and recommends, if not already done, that McHenry allow more than one detainee use the computer at a time so that detainees with more computer and research experience can assist those who are less capable. UNHCR continues to recommend that the written asylum and detention self-help materials produced by the Florence Project, available in both English and Spanish, be made available at the library and that the Florence videos be shown. Legal orientation materials, both written and video, provide critical information to detained asylum-seekers about immigration removal proceedings, their rights in these proceedings, and the forms of relief that may be available to them. These materials can also reduce anxiety among detained asylum-seekers, some of whom may have been victims of torture or trauma.*

Kenosha County Detention Center

On 16 September 2003, Senior Protection Officer (b)(6) and Protection Officer (b)(6) visited the Kenosha County Detention Center (KCDC) in Kenosha, Wisconsin. The jail is situated about an hour from Chicago, Illinois. The visit included a tour of the facility conducted by Captain (b)(6), (b)(7)c and Lieutenant (b)(6), (b)(7)c. UNHCR was accompanied by (b)(6), (b)(7)c ICE Supervisory Deportation Officer. This report is based on information received from ICE and jail officials, the observations of the UNHCR representatives during their tour of the facility, and information received from detainees, both during individual interviews at the facility and from written correspondence received at the UNHCR Office in Washington, DC.

Facility Background: Kenosha County has two facilities: the older downtown facility (“Kenosha Downtown”) and Kenosha County Detention Center (“KCDC”), which was built in 1998. KCDC has 447 beds, and Kenosha Downtown has 264 beds. ICE detainees used to be held at Kenosha Downtown, but now are held there only for purposes of intake (which apparently can take a few days) or for medical emergencies due to the availability of 24 hour medical care. About 100 beds are available at KCDC for ICE detainees, both male and female. There are 10,000 square feet of current storage space that KCDC would like to use for 100 more beds with indoor and outdoor recreation. The building’s infrastructure could handle up to 1400 beds total. At the time of UNHCR’s visit, there were 97 ICE detainees at KCDC. Kenosha County has been housing ICE detainees for about a year and a half, but has increased the number of ICE detainees over the previous 4 months. UNHCR did not have the opportunity to visit the downtown facility, but received consistent complaints from asylum-seekers about conditions there.

Comments & Recommendations: UNHCR is concerned about the complaints from asylum-seekers about conditions at the downtown facility. UNHCR recommends that ICE review the conditions there to ensure that they are adequate.

Classification and Housing: Most of the living areas at KCDC are dorm-like settings with direct supervision. The facility also has 65 lockdown beds. Kenosha County classifies its inmates from 1 to 8, with 1 and 2 being the most serious offenders. Those inmates classified from 3 to 8 are less serious offenders and can be housed in a dorm setting. ICE classifies its individuals from 1 to 3, with those classified as 3's having the most serious criminal history. Under ICE policy, 1's and 2's can be housed together and 2's and 3's may be housed together. KCDC has two dorms set aside for ICE male detainees in order to accommodate this policy.

Co-mingling: Due to insufficient numbers of ICE detainees that can be housed together at any given time, ICE detainees are co-mingled with county inmates. However, the majority of dorm residents are usually ICE detainees. If the number of ICE detainees were increased, KCDC would be willing to consider dedicating entire dorms to ICE detainees. Since there is only one dorm for female detainees, this would require transferring some of its county female inmates to the downtown facility.

Comments & Recommendations: UNHCR objects to the commingling of asylum-seekers with persons serving their criminal sentences. UNHCR recommends that the jail make all efforts to ensure that the two populations are separated in all aspects of its operations.

Housing Units: The male housing units are open areas with a guard in the middle of the dorm. The female housing unit contains two separate living areas of between 24 to 30 beds each. One side is used for county females on work-release and the other for other females, including county and ICE females. There is a guard room separating the two living areas, staffed by a female officer. Both male and female housing areas have bunkbeds with lockers at the end of the bed, adequate shower and toilet facilities, and appeared clean. They had tables and chairs in a common living area and an adequate number of pay phones. At the time of UNHCR's visit the female housing section with ICE detainees was overcrowded with four "stack-a-bunks," which Captain (b)(6), (b)(7) said was temporary due to the recent arrival of female ICE detainees the previous month. Several female detainees complained that their housing area was too cold and that they did not have enough bedding for the temperature.

Comments & Recommendations: UNHCR recommends that detainee complaints of temperature be addressed if they have not already and that ICE ensure that detainees are not subject to overcrowding.

Legal Resources/Law Library: There are small multi-purpose rooms adjoining each housing unit, each with a computer loaded with immigration law resources. Only one inmate can be in the room at a time. When asked about detainees who may not know how to use computers, jail staff indicated that jail officers could assist them. There are two sets of law books that circulate, but they do not cover immigration law topics. Jail staff was not aware of the Florence Project's Know Your Rights videos and the accompanying booklets, but indicated that they would be willing to show the videos and provide access to the booklets if provided with copies. The jail currently has the ability to show the Florence videos to detainees during intake, and hopes to rewire the television sets in the dorms next year. If the rewiring is completed, it could show the videos in the dorms.

Comments & Recommendations: UNHCR appreciates the availability of immigration law resources to detainees at KCDC. Many detained asylum-seekers are unrepresented and must prepare their cases by themselves, making access to legal materials critical. UNHCR is concerned, however, that some detained asylum-seekers may not know how to use the computer resources. As is done at other facilities, UNHCR recommends that KCDC allow more than one detainee to use the computer at a time so that detainees with more computer and research experience can assist those who are less capable. UNHCR further recommends that the asylum and detention release self-help materials produced by the Florence Project on immigrant and refugee rights, available in both English and Spanish, be made available to detainees housed at KCDC. UNHCR recommends that the Florence videos also be shown. Legal orientation materials, both written and video, provide critical information to detained asylum-seekers about immigration removal proceedings, their rights in these proceedings, and the forms of relief that may be available to them. These materials can also reduce anxiety among detained asylum-seekers, some of whom may have been victims of torture or trauma.

Intake/Interpretation: Jail officials indicated that they use the interpreter line at the downtown facility during intake if needed but generally do not use telephonic interpretation at KCDC. They also explained that they have a Chinese receptionist at the downtown facility and have used her to read the rules to Chinese detainees. There is one rulebook for both the downtown and KCDC facilities, which is in English and Spanish. The jail also has videos in English and Spanish that

discuss the rules of the facility. Captain (b)(6), (b)(7) stated that ICE detainees who did not speak English generally would not be disciplined for rule violations if they were simply misunderstandings due to language.

UNHCR Comments and Recommendations: UNHCR appreciates KCDC's efforts to overcome language barriers, but is concerned, that telephonic interpretation is not consistently used to communicate essential matters. UNHCR recommends that additional efforts be made in this regard. UNHCR also recommends that any rules or orientation materials be translated into the most common languages (other than Spanish) spoken among the population residing there.

Strip-Searches/Restraints: Detainees and inmates are strip-searched at KCDC after initial processing downtown. If a detainee has left the building, he is strip-searched upon return. Detainees are strip-searched after attorney contact visits. Lawyers are given the option of contact or non-contact visits. Several detainees complained about being shackled while transported. One detainee said she was placed in belly chains, which was humiliating. Another detainee complained that he was strip-searched after getting out of segregation.

Comments and Recommendations: UNHCR appreciates the fact that KCDC allows for non-contact visits so as to avoid strip searches after attorney visits. UNHCR, however, is concerned that asylum seekers (especially former victims of trauma and other vulnerable populations) may suffer undue trauma when going to Broadview to attend Immigration Court hearings knowing that they will have to undergo strip-searches upon their return. We recommend that this policy be modified, especially for those detainees with no criminal background, and that strip-searches of asylum-seekers be avoided whenever possible. UNHCR objects to the use of handcuffs or shackles on asylum-seekers unless absolutely necessary.

Medical:

KCDC has at least one nurse on duty sixteen hours a day. There is 24-hour medical coverage at the downtown jail. A physician is available by phone 24 hours a day, seven days a week and is on-site once a week for three hours. UNHCR notes the following issues regarding medical care:

- (1) **Interpretation:** Medical staff stated that they have never used a telephonic interpreter, although they know the option is available.
- (2) **Mental Health Care:** There is a group called "Crisis Intervention" in the community that is available 24 hours a day, 7 days a week. There is a social worker, psychologist and psychiatrist available through this service who are contracted through the county. The jail also intends to have a psychology intern on-site 40 hours a week for a one year period.
- (3) **Medical Intake:** Under Wisconsin state law, medical staff at detention facilities must prepare a medical transfer form before a detainee is released to another facility. KCDC follows this practice. This requirement does not extend, however, to detainees arriving from county jails in Illinois (such as Tri-County and McHenry), which has made it difficult for medical staff to quickly assess detainee medical needs upon arrival at the facility.
- (4) **Co-Payments:** The jail charges \$5 to see the nurse or doctor and \$3 for medications. These charges apply both to inmates and ICE detainees, although ICE detainees are not subject to the co-pays until they have been at the facility for more than 30 days. Jail officials explained

that because DHS piggybacks on a Marshall's contract, it is subject to the same contractual obligations as the Marshals, which has agreed to this co-pay.

Comments & Recommendations: Many asylum-seekers are victims of trauma or violence. Their detention may result in or aggravate pre-existing mental health conditions. The availability of mental health care through Crisis Intervention and a full-time psychology intern is a positive aspect of KCDC's operations. UNHCR is concerned, however, that asylum-seekers may not receive adequate medical care due to language barriers. UNHCR recommends that interpretation be made available, either in-person or telephonic, during any medical screenings or consultations. UNHCR is also concerned that indigent asylum-seekers might refrain from seeking medical care due to the co-pay expenses charged for their care. UNHCR encourages ICE to change its contract with KCDC to cease such charges. UNHCR appreciates the fact that KCDC provides a medical summary upon release of detainees consistent with Wisconsin law. Given that Illinois law does not have the same requirement, consistent with ICE's detention standards, UNHCR recommends that ICE require all facilities to provide copies of medical records to discharged detainees or medical staff at subsequent facilities.

Attorney Visitation/ Access: Some *pro bono* attorneys complained to UNHCR that they were not able to communicate with their clients detained at KCDC by fax. According to Captain (b)(6), (b)(7)(c) this issue had not arisen, but he expressed a willingness to facilitate such communications when necessary. Jail officials also indicated a willingness to accommodate reasonable attorney requests for extra visitation time with their clients.

*Comments & Recommendations: Given the distance of KCDC from Chicago where most *pro bono* immigration attorneys practice, UNHCR appreciates KCDC's willingness to accommodate reasonable attorney requests for extra visitation time or for communication with clients by fax. UNHCR recommends that KCDC communicate to local *pro bono* attorneys its willingness to be flexible on these matters.*

Programs: UNHCR staff met with KCDC's Programs Manager, (b)(6) who stated that ICE detainees may participate in any of the programs offered at KCDC. There is no requirement that detainees be at the jail for a certain length of time. The most comprehensive program offered at KCDC is the Living Free program, which accepts up to 32 males for 12 weeks and 8 females for 8 weeks. The program involves six hours of classes a day in such subjects such as drug and alcohol abuse, domestic violence, sexual abuse, anger management and wellness. No ICE detainees have enrolled in the program yet, but (b)(6) expects that more will do so now that they are likely to be at the facility for a longer period of time given ICE's recent reduction in transfers. KCDC has been offering GED classes for men, and just started GED classes for women. Some ICE detainees have enrolled in the GED classes. KCDC is considering ESL classes, for which there is a high demand. The jail does not offer AA or other substance abuse programs aside from the Living Free Program.

Comments & Recommendations: UNHCR appreciates the breadth of educational and rehabilitative programs available to detained asylum-seekers at KCDC. Such programs enable detained asylum-seekers to receive necessary counseling and provides them access to constructive activities during potentially prolonged detention. ESL classes are especially helpful for detained asylum-seekers

who do not speak English. Given that many ICE detainees may be at KCDC for an extended period, these classes also increase detainee equities for possible release from custody. UNHCR encourages the continuation and expansion of these programs.

Religious Practices: There are a number of bible study groups available throughout the week, one of which caters to Spanish-speakers, but is for men only. There are religious services on Saturdays. (b)(6) indicated that it is easy to provide Korans for Muslim detainees but he has had difficulty getting an Imam to come to the jail. An Imam at a major Islamic Center in Milwaukee has advised the jail on religious practices. A volunteer named (b)(6) of the Kenosha County Jail Chaplaincy has recently begun spending time at the jail. UNHCR had the opportunity to meet with her. She has begun collecting bibles in various different languages as they are needed and is creating a library so that she can meet detainees' needs. (b)(6) also helps detainees complete request forms for information on their immigration cases and does spiritual counseling if requested. She also brings in newspapers in Chinese.

Comments & Recommendations: UNHCR is encouraged that some ICE detainees have access to religious services and would encourage that such services be extended to Spanish-speaking women as needed and to all faiths. UNHCR recommends that detainees be provided access to religious leaders and services as appropriate given the religious profile and demand of the INS detainee population. Numerous detainees praised the work of (b)(6) in meeting detainee needs, which is commendable.

Recreation: The outdoor recreation area is adjacent to the male housing areas. It is a fairly large, concrete courtyard with an open roof and wires covering it. Detainees can jog, walk or sit in the courtyard. There is also an indoor recreation area like a gymnasium with basketball hoops, volleyball net and games. Male detainees have access to the recreation area twice a day for about an hour each time out. Female detainees currently do not have access to outdoor recreation because of its location and concerns that male inmates can view the women through the windows. Several female detainees who had been detained at KCDC for several months complained about the lack of outdoor recreation.

Comments & Recommendations: UNHCR objects to the use of a jail that does not offer outdoor recreation to all detained asylum-seekers, be they male or female. Under international standards, detainees are entitled to at least one hour of suitable exercise in open air daily weather permitting. Access to the outdoors can be especially critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement. UNHCR recommends that accommodations be made to ensure that female detainees have access to at least one hour of outdoor recreation a day.

Telephones: Pre-paid calls are now available at KCDC to consulates, the Immigration Courts, NGO legal service providers, and UNHCR. UNHCR successfully made a pre-paid call to the UNHCR Office in Washington, DC. All other calls must be made collect. According to jail staff, phone cards are not available because the jail needs the revenue stream from collect calls.

Comments & Recommendations: UNHCR appreciates that the ICE pre-paid telephone service to consulates, Immigration Courts, NGOs and UNHCR is available at KCDC. This should better

enable detained asylum-seekers to find legal representation. With regard to other calls, UNHCR does not believe that detained asylum-seekers should be required to pay unusually high rates to maintain KCDC's operating budget. High rates may prevent asylum-seekers from communicating with private attorneys who cannot afford to accept collect calls, as well as to contact family members. UNHCR recommends that ICE ensure the lowest telephone rates possible. As is done at the Tri-County Detention Center, UNHCR also recommends that calling cards be made available to detainees.

Food: Religious diets are allowed at KCDC. Medical diets are restricted to diabetic diets. The facility is generally a no-pork facility, and there is notice given when an item contains pork. Detainees are provided 3,200 calories per day. Two detainees complained about the lack of a low-cholesterol diet and expressed concerns about their health.

Comments & Recommendations: UNHCR appreciates the number of calories provided to detainees at KCDC. UNHCR encourages KCDC to provide medical diets other than diabetic diets, as is done at other detention facilities.

Segregation/Discipline: Isolation cells are used for purposes of administrative and disciplinary segregation. If a person is in segregation, s/he has access to a day area twice a day for one hour, which has a table with benches. Those who are disciplined are usually in segregation for three to six days. For minor sanctions, KCDC has a "time out room," which is an isolation room for use under 24 hours. An inmate can also be "bunked" or lose privileges for minor violations.

Detainees complained that minor rule violations unnecessarily lead to segregation and that segregation was particularly difficult or traumatic. One detainee stated that she had been imprisoned in her home country and had been placed in isolation as a form of torture. As a result, being placed in segregation at KCDC was very traumatic for her.

Comments and recommendations: UNHCR is concerned that KCDC may unnecessarily place asylum-seekers in segregation for minor rule infractions. UNHCR supports the use of disciplinary measures other than the use of segregation cells for detained asylum-seekers in ICE custody. Segregation cells can be especially traumatic for victims of trauma or other vulnerable groups.

Ozaukee County Justice Center

On 17 September 2003, Senior Protection Officer (b)(6) and Protection Officer (b)(6) visited the Ozaukee County Justice Center ("Ozaukee") in Port Washington, Wisconsin. Sergeant (b)(6), (b)(7)c provided a tour of the facility. UNHCR was accompanied by (b)(6), (b)(7)c Detention and Removal Officer with ICE. This report is based on information received from ICE and jail officials; the observations of the UNHCR representatives during their tour of the facility; and information received from detainees, both during individual interviews at the facility and from written correspondence received at the UNHCR Office in Washington, DC.

Facility Background: Ozaukee is approximately 90 minutes from Chicago, IL. The facility has a capacity of 260 inmates and generally holds about 65-80 ICE detainees. At the time of UNHCR's visit, there were 67 ICE detainees. The jail has been holding ICE detainees for two to three years. ICE pays the jail \$60/day for each detainee.

General: UNHCR has received generally negative comments about Ozaukee. When compared to other jails in the area, detainees have usually placed Ozaukee near the bottom of the list in terms of conditions. Treatment by Ozaukee guards is a common complaint. Detainees have commented that guards do not respect detainees, are rude and unprofessional, often shout at detainees, and are unresponsive to detainee requests, especially to those who do not speak English.

Comments & Recommendations: UNHCR is concerned about allegations of rude and disrespectful treatment of detainee by Ozaukee staff. Such behavior should not be tolerated by either the jail or by ICE. At a minimum, UNHCR recommends that training be provided to jail staff on working with immigrant and refugee populations. UNHCR is willing to assist with such training to the extent resources allow. UNHCR also recommends that any allegations of unprofessional behavior be fully investigated and, if borne out, that staff be disciplined accordingly.

Law Library: The "law library" was a small room with a video-teleconferencing machine and a desk with about five books on Wisconsin criminal law. There were no materials on immigration law. Jail officials stated that they are waiting for ICE to provide a computer system, which will be made available to all inmates at the facility. Given the large number of inmates at Ozaukee, jail officials do not expect that they will be able to guarantee a minimum amount of computer time for people to conduct legal research. Access will depend on demand. One detainee has complained to UNHCR about the lack of legal materials at Ozaukee. He noted that he had regularly used available legal materials at a previous jail where he had been held, but has been unable to do so at Ozaukee.

Comments & Recommendations: UNHCR is extremely concerned that the jail lacks a law library with any immigration materials. Many detained asylum-seekers are unrepresented and must prepare their cases by themselves. Access to immigration law materials for these detainees is critical. UNHCR urges ICE to promptly ensure that basic immigration legal materials are made available to its detainees. Given that ICE is now putting these materials on a computerized system, UNHCR urges that, like other facilities, Ozaukee allow more than one detainee to use the computer at a time so that detainees with more computer and research experience can assist those who are less capable.

Legal Orientations and Materials: One of the dayrooms visited by UNHCR had legal orientation materials produced by the Midwest Immigrant and Human Rights Center (MIHRC) posted on the dayroom bulletin board. Jail officials stated that these materials are generally held in the control room rather than in the dayroom to prevent them from being destroyed or stolen. According to jail officials, detainees know that the materials are there, but have to ask an officer for them. One detainee stated that he had asked a guard for MIHRC materials, but the guard said that he would “have to look for it.” The detainee never received them. MIHRC also does legal orientations at the jail two to four times a year. The jail has the ability to show detainees the videos on immigrants’ rights produced by the Florence Project if they were to receive them from ICE.

Comments & Recommendations: UNHCR is concerned about the availability of legal orientation materials at Ozaukee. UNHCR did not see any notices informing ICE detainees that these materials were available. The experience of the asylum-seeker noted above in trying to obtain a copy of the materials further suggests that they are not easily available. UNHCR recommends that detainees be informed of the availability of these materials and that they actually be made available when requested. UNHCR appreciates the willingness of Ozaukee staff to show the Florence videos to detainees in the housing areas and urges ICE to provide a copy of the videos as soon as possible. Legal orientation materials, both written and video, provide critical information to detained asylum-seekers about immigration removal proceedings, their rights in these proceedings, and the forms of relief that may be available to them. These materials can also reduce anxiety among detained asylum-seekers, some of whom may have been victims of torture or trauma.

Medical: Ozaukee has one nurse on duty from 8 a.m.-10 p.m., and a physician on-call 24 hours/day and on-site once a week as necessary. Booking officers do initial medical screening during intake. Nurses will review the intakes every day. Nurses will not see new detainees unless they arrive with medication, something is indicated during initial screening, or the detainee requests to see a nurse. UNHCR noted the following problems/issues in medical treatment:

- (1) **Distribution of Medication:** Due to limited medical staff, nurses do not dispense medication to detainees. This is done by guards.
- (2) **Pre-Existing Medical Conditions:** According to the jail rulebook, Ozaukee will not treat pre-existing medical conditions unless the detainee is in need of urgent treatment.
- (3) **Dental Treatment:** Due to disagreements between the Ozaukee's dental provider and ICE regarding ICE's payment of bills, there is currently no dental care available at Ozaukee.
- (4) **Co-Payments:** The jail rulebook states that detainees will be charged a co-pay for nurse and doctor consultations. According to medical staff, ICE detainees do not have to make a co-payment, but this information is not posted anywhere.
- (5) **Delays in PHS Approval:** Medical staff complained that PHS is often slow in authorizing treatments/medication, delaying the delivery of treatment to ICE detainees.
- (6) **Medical Records:** Detainees often arrive at Ozaukee without medical records or health transfer forms. Many state that they were on medications at the prior facility, but do not know which ones. Medical staff must then try and obtain records from the prior facility.

Comments & Recommendations: UNHCR has significant concerns about the adequacy of medical care at Ozaukee. UNHCR recommends that: (1) medical staff distribute medications to detainees to ensure proper distribution and to answer any questions that might arise; (2) pre-existing conditions

be treated if medically necessary and not only if urgent treatment is required; (3) detainees be assured access to adequate dental care; (4) detained asylum-seekers not be required to make a co-payment to receive medical treatment and that they be informed of such; (5) PHS promptly approve medical treatments and allow local medical staff to provide any treatment deemed necessary in the absence of prompt approval; (6) consistent with ICE's detention standards, UNHCR recommends that ICE require all facilities to provide copies of medical records to discharged detainees or medical staff at subsequent facilities.

Outdoor Recreation: The outdoor recreation area at Ozaukee is a relatively small, enclosed concrete courtyard. Detainees can jog, walk or sit in the courtyard. The number of hours per week of outdoor recreation was unclear and appeared to be based on where the detainee was housed. One housing unit had notices indicating that detainees were entitled to three hours of recreation a week, while another unit had notices indicating that they were entitled to five hours a week. Detainees who were interviewed gave similarly inconsistent reports regarding the amount of recreation they received, with reports ranging anywhere from two to five hours a week. UNHCR was also informed that only a limited number of detainees can go outside at a time (about 10 people), such that access to outdoor recreation was on a "first come, first-serve" basis.

Comments & Recommendations: UNHCR is concerned about the availability of outdoor recreation at Ozaukee. Under international standards, detainees are entitled to at least one hour of suitable exercise in open air daily weather permitting. This does not appear to be the case at Ozaukee. UNHCR recommends that the facility adopt an established and consistent recreation schedule. Access to the outdoors can be especially critical for asylum-seekers and refugees who may have experienced personal trauma and have particular difficulty with extended periods of confinement.

Telephones: Only collect calls can be made from Ozaukee, at a cost of \$5.31 for the first minute and 89 cents every minute thereafter (*i.e.*, almost \$20 for a 15 minute call). UNHCR was able to place a collect call to the UNHCR office in Washington, DC. Ozaukee does not offer calling cards, and toll-free numbers cannot be used. The ICE pre-paid telephone system to consulates, legal service providers, and the Immigration Courts, had not yet been installed. While most of the detainees with whom UNHCR spoke did not have difficulties placing collect calls, all complained about the high cost of calls, which prevented some from calling family members and others on a regular basis.

Comments & Recommendations: UNHCR urges ICE to install its pre-paid telephone service at Ozaukee. This service will better enable detained asylum-seekers to find legal representation and maintain contact with the immigration courts and their NGO attorneys. With regard to collect calls, UNHCR recommends that ICE ensure the lowest telephone rates possible. High rates may prevent asylum-seekers from communicating with private attorneys who cannot afford to accept collect calls, as well as with family members. As is done at the Tri-County Detention Center, UNHCR recommends that calling cards be made available to detainees.

Programs: While a variety of programs are available to county inmates at Ozaukee, it appears that ICE detainees are ineligible for most of them. Programs available to county inmates include GED classes, drug and alcoholic counseling, computer courses, bible study and "inmate labor" (work opportunities). ICE detainees are not eligible for GED classes, inmate labor, or bible study (unless

they know they will be at the jail for at least a month). The officer in charge of programs did not know if ICE detainees were eligible for drug and alcohol counseling classes. Detainees complained to UNHCR about the lack of available programs, especially as compared to other facilities.

Comments & Recommendations: UNHCR is concerned about the limited availability of rehabilitation and educational classes for ICE detainees at Ozaukee. UNHCR recommends that available classes be extended to ICE detainees whenever possible. In addition to the valuable instruction and treatment provided, these courses allow ICE detainees to demonstrate rehabilitation for purposes of release from custody. They also provide asylum-seekers with meaningful activity during their detention.

Interpretation / Language: The jail rule book is available in both English and Spanish. It appeared that officers at Ozaukee rarely use telephonic interpretation to communicate with detainees who do not speak English. Non-English speaking detainees have noted their inability to communicate with staff. One person said that language was the most difficult issue at the jail. He said that he had never been given the opportunity to speak through an interpreter while there, including during his medical intake. At one point, he was given a vaccine, but he is not even sure what it was.

Comments & Recommendations: UNHCR is concerned that asylum-seekers with language barriers may lack orientation as to jail rules and privileges and may not receive proper medical treatment. UNHCR recommends that interpreters be used when needed to facilitate essential communication between jail staff and ICE detainees. UNHCR recommends that ICE take any necessary measures to ensure that Ozaukee has easy access to interpreters (including ICE's telephonic interpreter services) and that the use of interpreters be encouraged whenever necessary. UNHCR further recommends that the jail's rulebook be translated into the languages of its detainee population. Efforts should begin with translations into the most common languages spoken among the ICE detainee population.

Food: Religious and medical diets are honored at Ozaukee. Medical diets include diabetic, low-salt and low cholesterol. Ozaukee is a no-pork facility, which is not advertised to detainees but will be explained if asked.

Comments & Recommendations: UNHCR appreciates that a number of medical and religious diets are provided at Ozaukee. UNHCR recommends that detainees be informed that the jail is a no-pork facility at the time of admission.

Strip-Searches: Detainees are strip-searched at the time of booking at Ozaukee. If a detainee leaves the building, he is strip-searched upon return. Detainees are not strip-searched, however, after attorney contact visits, although they are patted down.

Comments & Recommendations: UNHCR appreciates the fact that Ozaukee does not subject detainees to strip-searches after attorney contact visits. UNHCR, however, is concerned that asylum-seekers (especially former victims of trauma and other vulnerable populations) may suffer undue trauma when going to Broadview to attend Immigration Court hearings knowing that they will have to undergo strip-searches upon their return. We recommend that this policy be modified,

especially for those detainees with no criminal background, and that strip-searches of asylum-seekers be avoided whenever possible.

Living Areas: Five of the 14 living areas have ICE detainees, which appeared relatively clean during the tour. The notice boards in each dorm, however, were not enclosed in Plexiglas, so notices were ripped and defaced. Detainees commented that the dayrooms are generally clean and that temperature and artificial light levels were fine. Detainees did complain, however, about the lack of natural light in the dayrooms.

Comments & Recommendations: *UNHCR recommends that notice boards be enclosed in plexiglass, as is regular practice at other facilities, to ensure that important notices regarding detainee rights and jail rules not be defaced or destroyed.*

Dodge County Detention Facility

On 18 September 2003, Senior Protection Officer (b)(6) and Protection Officer (b)(6) (b)(6) visited the Dodge County Detention Facility in Juneau, Wisconsin. (b)(6), (b)(7)c Corrections Supervisor, provided a tour of the facility. UNHCR was accompanied by an ICE Detention and Removal Officer. This report is based on information received from ICE and jail officials; the observations of the UNHCR representatives during their tour of the facility; and information received from detainees, both during individual interviews at the facility and from written correspondence received at the UNHCR Office in Washington, DC.

Facility Background: Dodge County Jail is located about 150 miles from Chicago, Illinois, and has been open for about three years. The jail has 358 beds, 269 of which are contract beds. ICE has a contract for about 200 beds at the facility. At the time of UNHCR's visit, there were 195 ICE detainees held at Dodge. Dodge has three types of living areas: Dormitory, Indirect Supervision, and Direct Supervision. At the time of our visit, five pods were holding ICE detainees: two indirect supervision, two direct supervision, and one dormitory.

General Comments: Detainee comments about Dodge were mixed. Positive comments included that the jail is "good", "nice and clean" and "better organized" (with more available services) than others. Negative comments included that the jail is "very harsh", with particular complaints about the classification system and the resulting restrictions on their privileges. Detainees also had mixed comments on their treatment by guards. While one stated that the majority of guards treat detainees with respect, other ICE detainees complained that they were treated poorly and worse than the county inmates.

Classification System: Dodge maintains an extremely complicated classification system. Dodge classification ranges from Phase 1 (highest risk) to Phase 3 (lowest risk). ICE classification ranges from Level 1 (lowest risk) to Level 3 (highest risk). Dodge will do its own assessments of each detainee's risk, but will respect ICE classifications to the extent that it will follow ICE rules on commingling of levels. As a result, each detainee is assigned both a Dodge "Phase" and an ICE "Level."²

Intake and Initial Classification: For the first 72 hours after intake, ICE detainees are categorized as either "Intake High" (high security risk) or "Intake Low" (low security risk). Classification is done through a personal interview with a Program Officer. It is based primarily on criminal history, prior

² At the time of our visit, Dodge had the following number of ICE detainees by classification:

Phase 1 Level 1: 0 ICE detainees

Phase 1 Level 2: 2 ICE detainees

Phase 1 Level 3: 11 ICE detainees (highest risk per Dodge and ICE)

Phase 2 Level 1: 1 ICE detainees

Phase 2 Level 2: 9 ICE detainees

Phase 2 Level 3: 6 ICE detainees

Phase 3 Level 1: 73 ICE detainees (lowest risk per Dodge and ICE)

Phase 3 Level 2: 42 ICE detainees

Phase 3 Level 3: 51 ICE detainees

disciplinary history at Dodge, and escape history. ICE detainees are generally placed in "Intake High" because the jail does not have information about their underlying criminal convictions. Due to time constraints, telephonic interpretation is generally not used during the classification interview. All detainees can earn their way to Phase 3 within 28 days.

Classification Privileges: Detainee privileges correlate to their classification phase. The privileges primarily impacted include: (a) amount of time allowed out of one's cell in the dayroom, (b) access to active recreation, and (c) access to programs. (a) Detainees classified as either "Phase 1" or "Intake High" have access to the dayroom only 6 1/2 hours a day (*i.e.*, confined to their cells 17 1/2 hours/day); "Phase 2" and "Intake Low" detainees have about 10 1/2 hours in the dayroom (*i.e.*, confined to cells 13 1/2 hours/day); "Phase 3" detainees can use the dayroom at all times when the facility is not on scheduled lockdown. (b) No "active" recreation is allowed for "Phase 1"/"Intake High" detainees (except for calisthenics in the dayroom); "Phase 2" / "Intake Low" detainees receive "three active recreation periods" per week; and "Phase 3" detainees "may sign up for active recreation during open dayroom hours when the pod schedule permits." (c) "Phase 1"/"Intake High" detainees cannot participate in any programming activities; "Phase 2" / "Intake Low" and "Phase 3" detainees do have access to programming activities.

Re-Classification: A detainee's classification level can be changed based on (a) successful completion of designated amount of time as Phase 1 or Phase 2; (b) a finding that the detainee violated a jail rule; (c) addition, deletion, or change in assigned programming; (d) administrative segregation or special management needs; (e) addition or deletion to the detainee's current charges; (f) per request of Shift Commander; and (g) review per inmate request at discretion of Program Specialist.

Detainee Comments: Some detainees had strong complaints about the classification system. Complaints included the fact that all ICE detainees must go through Phase 1 when they first enter, which is essentially 17-hour lockdown, and that any rule violation can result in re-classification back to Phase 1 with the accompanying privileges restrictions. Detainees must then wait a number of weeks before they achieve Phase 3 status once again.

Comments & Observations: UNHCR has significant concerns about Dodge's classification system, primarily the limited rights that Phase 1/Intake High and Phase 2/Intake Low detainees are afforded. These detainees have limited access to indoor recreation and programs (including the law library) and limited time outside of their individual cells. Many asylum-seekers may be classified as Intake High at the time of admission at Dodge and would have to wait almost a month before being afforded full rights at the facility. Minor rule infractions can result (and apparently have resulted) in a person's reclassification as Phase 1, again subjecting them to a 28 day transition period. The restricted rights afforded Phase 1/Intake High and Phase 2/Intake Low detainees fall below international standards. UNHCR recommends that asylum-seekers not be subject to the facility's classification system.

Medical: Medical services at Dodge are provided by a private company, Health Services Limited. A nurse is on duty for sixteen hours a day, with a supervisor on call twenty-four hours a day. A doctor comes to the jail every two weeks. Booking officers conduct a medical intake, which nurses

will later review. If the intake suggests a problem, the nurse will assess it and, if necessary, pull the detainee aside during the next medication delivery. Nurses distribute medication, not guards.

Detainees consistently complained about medical treatment at Dodge. Issues of concern regarding medical care include the following:

- (1) Mental Health Care: There is no psychologist or psychiatrist on staff. While a mental health professional may make visits to the jail, we were informed that he does so very infrequently (maybe two times a year). UNHCR interviewed one asylum-seeker with a clear mental illness (apparently diagnosed as schizophrenic) who was receiving a variety of psychotropic medications, despite the fact that there is no psychiatrist on staff or on call to regulate it. The asylum-seeker complained that he was not able to see a psychiatrist. Another detainee, who is on an anti-depressant, had had access to mental health therapy at a previous facility but had not received any counseling at Dodge despite repeated requests.
- (2) Co-Payments: The jail rulebook states that detainees will be assessed \$5 for a nurse visit and \$10 for a doctor's visit, but that "contract inmates" will be charged \$2.50 and that federal inmates will only be charged after 30 days at the jail. Under these rules, therefore, an ICE detainee must pay \$2.50 for every medical visit after being held at Dodge for more than 30 days. There was much confusion, however, among detained asylum-seekers about the co-payment system, with some saying they were charged \$10 to see the doctor and \$5 to see a nurse.
- (3) Scope of Treatment: Two detainees stated that, prior to their transfer to Dodge, the medical staff at their previous detention facilities told them that they needed operations for their conditions. One detainee had a hernia, the other had angina. Once at Dodge, however, the medical staff decided that these surgeries were not necessary. The patient with the hernia stated that he is still in pain.
- (4) Medical Records: It is not uncommon for detainees transferred from jails outside of Wisconsin to arrive with no medical records. At times it can take days to confirm a detainee's medication, which is extremely frustrating for medical staff and delays medical treatment at Dodge.
- (5) Interpretation: Medical staff stated that they generally use other detainees to interpret during medical exams/visits if the patient does not speak English. They generally do not ask the patient if he would prefer not to have another detainee translate. When another detainee is not available, they will use the AT&T interpreter line. They use the interpreter line about once every two months. One detainee with a medical problem who does not speak English said that he had asked to use an interpreter to speak with medical staff, but had been told that one was not needed.

Comments & Observations: UNHCR has significant concerns about the adequacy of medical care at Dodge, particularly for those suffering from mental illnesses. While the mere detention in a county jail of an asylum-seeker suffering from schizophrenia is of concern, the absence of a psychiatrist on staff or on call to monitor his medication is quite disturbing. With regard to medical care at Dodge in general, UNHCR recommends that: (1) persons with serious mental illnesses not be detained at Dodge or any local county jail; (2) a mental health professional be placed on staff or on call at Dodge to ensure proper treatment of any ICE detainees with mental health problems; (3) detained asylum-seekers not be required to make a co-payment to receive medical treatment and that they be informed of such; (4) consistency of care be ensured for detainees who are transferred from one facility to another; if one facility determines that certain medical treatment is necessary, the

recommended treatment should be provided at the new facility or the detainee should be allowed to receive a second, outside opinion on the diagnosis and recommended treatment; (5) consistent with ICE's detention standards, UNHCR recommends that ICE require all facilities to provide copies of medical records to discharged detainees or medical staff at subsequent facilities; (6) detainees have access to interpretation, either in-person or telephonic, during any medical screenings or consultations; medical staff obtain patient consent before asking another detainee to interpret during a medical appointment.

Outdoor Recreation: There is no outdoor recreation at Dodge. One detainee said that he had not been outside for nearly six months. While there is a small outdoor space at the jail, only inmate labor can use it during their 15 minute work breaks. Each grouping of dorms has a carpeted indoor recreation area, which detainees can access depending on their classification level. ("Phase 1"/"Intake High" detainees have no access; "Phase 2" / "Intake Low" detainees get "three active recreation periods" per week; "Phase 3" detainees may have access, dayroom schedule permitting, during open dayroom hours.) No more than 6 detainees can be in the recreation area at one time.

Comments & Observations: UNHCR objects to the use of a jail that does not offer any outdoor recreation. Access to the outdoors can be especially critical for asylum-seekers and refugees who may have experienced personal trauma and have particular difficulty with extended periods of confinement. Under international standards, detainees are entitled to at least one hour of suitable exercise in open air daily weather permitting. UNHCR is also concerned that access to indoor recreation may be denied based on a person's classification level. If weather does not permit outdoor recreation, indoor recreation should be made available to detainees as an alternative.

Programs: Dodge offers a number of programs to both county inmate and ICE detainees. These include AA, GED, ESL and computer classes. There is no drug counseling available. Dodge also offers an "inmate labor" program to Phase 3 detainees, which provides a small amount of financial compensation for certain services. ICE detainees are eligible for all work, except kitchen work. Available work includes laundry, dayroom services (*i.e.*, cleaning), meals service, library, tutoring (e.g., GED, ESL, law library) and interpretation. Workers also get a 15 minute outdoor "break" on the days that they work. UNHCR interviewed two detainees who had jobs at the jail. One worked in the dayroom, and the other worked as an interpreter and law library tutor for other detainees.

Comments & Observations: UNHCR appreciates the breadth of educational and rehabilitative programs available to detained asylum-seekers at Dodge, as well as their ability to participate in inmate labor programs. Such programs enable detained asylum-seekers to receive necessary counseling and provides them access to constructive activities during potentially prolonged detention. ESL classes are especially helpful for detained asylum-seekers who do not speak English, as are inmate labor programs which allow detainees to assist others through interpreter services and tutoring. Given that many ICE detainees may be at Dodge for an extended period, these classes also increase detainee equities for possible release from custody.

Library: Each housing area has a library and law library located in an adjacent carpeted, multi-purpose room. Books in the general library include bibles, self-help books (AA) and fiction. Immigration legal materials are available on computer; most multi-purpose rooms have one computer. According to the jail rulebook, eligibility to use the law library is based upon one's

classification status. If person is not eligible to use the library because of his status, he can request Programs staff to bring him a copy of the materials that he wants to review. There are no set hours to use the library, rather detainees must request use. Dodge limits the number of detainees who can use the library at one time to three to five people. There are detainees who work as tutors for inmate labor and can assist detainees with the computer and research. Most detainees interviewed had positive comments about the law library, with one detainee commenting that computer access at Dodge was better than at other jails.

Comments & Observations: UNHCR appreciates that detained asylum-seekers have access to legal materials on the computer and that library tutors are available to assist those who are not computer literate or do not speak English easily. Many detained asylum-seekers are unrepresented and must prepare their cases by themselves. Access to immigration law materials for these detainees is critical. UNHCR also recommends that the asylum and detention release self-help materials produced by the Florence Project on immigrant and refugee rights, available in both English and Spanish, be made available to detainees housed at Ozaukee.

Telephones: Collect calls are possible from Dodge, but calling cards cannot be used. Telephone rates are \$4.25 for the initial connection and then 8 cents to 38 cents for an "Intralata call" (up to \$10 for a 15-minute call) and 89 cents to 94 cents for an "Outside Lata" call (up to \$20 for a 15-minute call). Calls are limited to 15 minutes. Jail officials stated that Dodge is getting a new telephone provider that will allow for the use of calling cards. The ICE pre-paid telephone service to consulates, UNHCR, Immigration Courts, and NGOs was operational. The directions for use, however, were confusing and required all four members of the tour, including jail staff (all educated, English-speakers) some time to successfully place a call to the UNHCR office in Washington, DC. While detainees appeared to appreciate the ability to make free calls to service providers and consulates, all complained about the high cost of collect calls and the unavailability of calling cards.

Comments & Recommendations: UNHCR appreciates that the ICE pre-paid telephone service to consulates, Immigration Courts, NGOs and UNHCR is available at Dodge. This is a positive step which will better enable detained asylum-seekers to find legal representation. UNHCR recommends, however, that the operating instructions be provided in a more understandable format and in a variety of languages. With regard to collect calls, UNHCR recommends that ICE ensure the lowest telephone rates possible. High rates may prevent asylum-seekers from communicating with private attorneys who cannot afford to accept collect calls, as well as with family members. As is done at the Tri-County Detention Center, UNHCR recommends that calling cards be made available to detainees.

Segregation: Dodge has both administrative and disciplinary segregation. Detainees can be held in disciplinary segregation for up to 10 days. Those in disciplinary segregation can have books and magazines, but do not have access to the law library. If a detainee needs specific legal materials, the Programs Officers will print it. There is no guaranteed one-hour out of the cell, although they will be allowed to take a shower or make a call if necessary. Some detainees complained that guards placed people in disciplinary segregation for minor infractions, sometimes as a result of misunderstandings.

UNHCR is also aware of two detainees with possible mental health problems who were placed in disciplinary segregation. One person said that he had been put "in the hole" for 18 days due to behavioral problems, which he attributed to lack of attention to his mental condition. He stated that he had had no disciplinary incidents at his previous detention facilities. Another detainee stated that he had been in segregation for over four months, although it is unclear how much of this time was in administrative or disciplinary segregation.

Comments & Observations: UNHCR is concerned that Dodge may unnecessarily place asylum-seekers in segregation for minor rule infractions and subject them to restricted rights once released from segregation due to a re-classification of their risk level. UNHCR is also concerned that persons with mental health issues may be subject to segregation for behavioral problems that arise from their psychological condition. Segregation cells can be especially traumatic for victims of trauma or other vulnerable groups. UNHCR supports the use of disciplinary measures other than the use of segregation cells for detained asylum-seekers in ICE custody.

Legal Orientations: Jail officials stated that they have the ability to show the Florence legal orientation video to detainees in the housing areas and are willing to do so if a copy of the video is provided.

Comments & Observations: UNHCR appreciates the willingness of Dodge staff to show the Florence videos to detainees in the housing areas and urges ICE to provide copies of the videos as soon as possible. Legal orientation materials, both written and video, provide critical information to detained asylum-seekers about immigration removal proceedings, their rights in these proceedings, and the forms of relief that may be available to them. These materials can also reduce anxiety among detained asylum-seekers, some of whom may have been victims of torture or trauma.

Food / Kitchen: Most detainees complained about both the quality and amount of food at Dodge, with one person stating that the food at Dodge was the worst of all of the jails where he had been detained. Dodge contracts with Aramark for food services. Detainees are provided 2,400-2,800 calories/day. Fresh fruit is only allowed for Huber inmates because of concerns of detainees hoarding fruit and making fermented drinks. Fresh juice is available. Diabetic, vegetarian, and religious diets are available. An altercation between a detainee and jail guards occurred during UNHCR's visit, apparently due to detainee frustration over the food.

Comments & Observations: UNHCR is concerned about the number of complaints received about the quality and quantity of food at Dodge. UNHCR recommends that ICE investigate these complaints further and, if borne out, either improve the food being provided by Aramark or require Dodge to change its food service provider. UNHCR also encourages Dodge to provide medical diets other than diabetic diets, as is done at the Ozaukee facility.

Religion: Dodge offers non-denominational services on Sunday, as well as Spanish, Catholic, and non-denominational Bible studies. Jail officials stated that they had tried to identify a Muslim religious leader to provide services to Dodge's Muslim detainees, but had been unsuccessful. Muslim detainees are entitled to a prayer towel and have been provided Korans. There has been some conflict at the jail between ICE detainees and jail staff, however, because Dodge does not allow the inmates to pray together in the multi-purpose room due to staffing resources.

Comments & Observations: UNHCR is encouraged that ICE detainees have access to some religious services and appreciates the efforts that have been made to identify a religious leader for its Muslim detainee population. As a general matter, UNHCR recommends that detainees be provided access to religious leaders and services as appropriate based on the religious profile and demand of the INS detainee population. Given the jail's inability to identify a religious leader to meet the needs of the Muslim detainees, UNHCR recommends that it allow Muslim group prayer when requested and that it devote the necessary staff resources to this end.

Training: Jail officials stated that the facility has a "new philosophy" in its management, whereby it tries to "manage" cases rather than "lock them up and forget about them." Before the jail opened, the staff received training on issues such as direct supervision and interpersonal communication. There have only been two staff assaults in three years. To UNHCR's knowledge, jail officers do not receive training on working with refugee and immigrant populations.

Comments & Recommendations: UNHCR appreciates that jail staff have received training on interpersonal communication, which is often critical in settings where jails officials and detainees speak different languages. UNHCR recommends that training also be provided for jail staff on working with immigrant and refugee populations. UNHCR is willing to assist with such training to the extent resources allow.

INDEX

International Instruments and Policy Guidance Materials

1. **1967 Protocol to the 1951 Refugee Convention** Protocol relating to the Status of Refugees, *adopted* 31 January 1967, *entered into force* 4 October 1967, 606 U.N.T.S. 267 (1967); Convention relating to the Status of Refugees, *adopted* 28 July 1951, *entered into force* 22 April 1954, 189 U.N.T.S. 137 (1951).
2. **Basic Principles** Basic Principles for the Treatment of Prisoners, *adopted* 14 December 1990, G.A. res. 45/111, annex, U.N. Doc. A/45/49 (1990).
3. **Body of Principles** Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, *adopted* 9 December 1988, G.A. res. 43/173, U.N. Doc. A/RES/43/173 (1988).
4. **ECRE, Position Paper on Detention of Asylum-Seekers** European Committee on Refugees and Exiles, *Position on Detention of Asylum Seekers* (April 1996).
5. **ICCPR** International Covenant on Civil and Political Rights, *adopted* 19 December 1966, *entered into force* 23 March 1976, G.A. res. 2200A (XXI), UN Doc. A/6316 (1966).
6. **Standard Minimum Rules** Standard Minimum Rules for the Treatment of Prisoners, *adopted* 1955, First U.N. Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva (1955), *approved* 31 July 1957, ECOSOC res. 663 C (XXIV) and 13 May 1977, ECOSOC res. 2076 (LXII).
7. **UNHCR Detention Guidelines** UNHCR Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers, Geneva (February 1999).
8. **UNHCR EXCOM Conclusions** Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme.

Relevant International Standards

Access to ICE Officials: Body of Principles, Principle 33 (right to make request or complaint about treatment to appropriate authorities); Standard Minimum Rules, Rule 36 (right to make request or complaint to director of institution or designated officer and to central prison administration or other proper authorities, and right to receive prompt reply); UNHCR Detention Guidelines, Guideline 10(x) (right of access to a complaints mechanism)

Co-mingling: Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from persons imprisoned by reason of a criminal offense); UNHCR Detention Guidelines, Guideline 10(iii) (asylum-seekers should not be co-mingled with convicted criminals); UNHCR EXCOM Conclusion No. 44, para. (f) ("refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as common criminals"); UNHCR EXCOM Conclusion No. 85, para. (ee) (noting concern that asylum-seekers are often held with common criminals); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from those imprisoned for criminal offenses); Body of Principles, Principle 8 (same); ICCPR, Article 10(2)(a) ("accused persons shall, save in exceptional circumstances, be segregated from convicted persons").

Diet: Standard Minimum Rules, Rule 20(1) (right to food at usual hours of nutritional value adequate for health and strength).

Interpretation: UNHCR EXCOM Conclusion No. 8 (asylum-seekers to be given necessary facilities, including interpreter services, to submit claim to authorities); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints to be made available to detainees in different languages); ECRE Position Paper on Detention, paras. 20, 29 (right of asylum-seeker to information on detention in language s/he understands); Standard Minimum Rules, Rule 35 (right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations) and Rule 51(2) (whenever necessary, the services of an interpreter shall be used); Body of Principles, Principle 14 (right of detainee to receive information about his rights in detention in language he understands).

Legal Resources: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to the asylum-seekers' possibilities to pursue their asylum application).

Medical: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers shall have opportunity to receive appropriate medical treatment and psychological counselling); Body of Principles, Principle 24 (medical care shall be offered free of charge); Standard Minimum Rules, Rule 22(1) (services of medical officer with some knowledge of psychiatry should be available) and Rule 22(2) (sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals; if institution has hospital facilities, its resources shall be proper for necessary medical care); UNHCR Detention Guidelines, Guideline 10 (detention conditions should be humane with respect shown for inherent dignity of person); Basic Principles, Principle 1 (same).

Orientation: UNHCR Detention Guidelines, Guideline 5(i)(asylum-seekers should receive prompt, full communication of detention order, reasons for order, rights in connection with order, in language they understand); Body of Principles, Principle 11(2) (detained person shall receive prompt and full communication of detention order and the reasons therefor); Principle 13 (upon detention, information on and explanation of rights and how to avail oneself of rights will be provided); Body of Principles, Principle 14 (entitled to receive information in Principle 11 and 13 through interpreter free of charge).

Programs: UNHCR Detention Guidelines, Guideline 10(vii) (detained asylum-seekers should have opportunity to continue further education or vocational training); ECRE Position Paper on Detention, para. 46 (during prolonged detention, adult education and training should be provided and it should attend to cultural and linguistic needs; it is crucial for detainees' mental health to not be deprived of access to constructive activities during prolonged detention); Basic Principles, Principle 6 (prisoners shall have right to take part in education aimed at full development of human personality).

Recreation: UNHCR Detention Guidelines, Guideline 10(vi) (asylum-seekers should have opportunity for daily indoor and outdoor recreational activities); Standard Minimum Rules, Rule 21(right to at least one hour suitable exercise in open air daily weather permitting).

Religion: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers should have the opportunity to exercise their religion); Standard Minimum Rules, Rule 41 (if institution contains sufficient number of prisoners of same religion, a qualified representative of that religion shall be appointed or approved and made available to hold regular services and pay private pastoral visits) and Rule 42 (as far as practicable, every prisoner shall be allowed to satisfy his religious needs by attending religious services).

Restraints: Standard Minimum Rules, Rules 33 (instruments of restraint never to be applied as punishment, only to be used as precaution during transfers, on medical grounds, or, by order of director, if other methods of control fail, to prevent prisoner from injuring himself, others or damaging property) and 34 (restraints not to be used for any longer than is strictly necessary).

Segregation: Basic Principles, Art. 7 ("efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction on its use, should be undertaken and encouraged."); ECRE Position Paper on Detention, para. 44 (Detained asylum-seekers "should...never be placed in isolation"); UN Human Rights Committee, Gen. Comment 20 (prolonged solitary confinement may amount to cruel, inhuman or degrading treatment or punishment).

Strip-searches: UNHCR Guidelines, Guideline 10 (detention conditions should be humane with respect shown for inherent dignity of person); Basic Principles, Principle 1 (same); Human Rights Committee, Gen. Comment 16, para. 8 (personal and body searches should be conducted "in a manner consistent with the dignity of the person who is being searched"); European Commission on Human Rights, *McFeeley v. United Kingdom*, App. No. 8317/78 (strip searches should be used only in limited circumstances).

Telephone Access: UNHCR EXCOM Conclusion No. 44, para. (g)(detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv)(asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (the means shall be made available for detained asylum-seekers to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate); Body of Principles, Principle 16(2) (detained foreigners have right to communicate by appropriate means with representative of competent organization); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons); ECRE Position Paper on Detention, para. 29 (asylum-seekers should have access to telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counsellors).

Temperature: Standard Minimum Rules, Rule 10 (sleeping conditions shall meet all health requirements, including necessary heating) & Rule 19 (every prisoner should be issued sufficient bedding).

Training: Standard Minimum Rules, Rule 47 (personnel shall receive on-going training to maintain and improve their knowledge and professional capacity); ECRE Position Paper on Detention, para. 51 (staff should receive proper training on asylum matters, causes of refugee movements, relevant cultural factors, and methods of recognizing and responding to stress-related illnesses).

Women Asylum-Seekers: UNHCR Detention Guidelines, Guideline 8 ("Women asylum-seekers should receive the same access to legal and other services, without discrimination as to their gender...").



UNHCR

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Haut Commissariat des Nations Unies pour les réfugiés

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31 December 2003

BY FIRST CLASS MAIL

Mr. Anthony Tangeman, Director
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US Bureau of Immigration and Customs Enforcement
801 Eye Street, NW, Suite 900
Department of Homeland Security
Washington, DC 20536

Mr. Jayson Ahern, Assistant Commissioner
Office of Field Operations
US Bureau of Customs and Border Protection
1300 Pennsylvania Avenue, NW, Suite 5.5C
Department of Homeland Security
Washington, DC 20229

Re: UNHCR Site Visit to Dallas Area Detention Facilities
& Meeting with Local CBP Officials re: Dallas-Forth Worth International Airport

Dear Mr. Tangeman and Mr. Ahern,

Please find enclosed the report of the Office of the United Nations High Commissioner for Refugees (UNHCR) on its visit to the Dallas area during the week of 10 November 2003, during which time we visited the Suzanne L. Kays Detention Center and the Rolling Plains Regional Detention Center. We also met with local representatives of US Customs and Border Protection (CBP) to discuss operations at the Dallas-Fort Worth International Airport. We wish to thank (b)(6), (b)(7)c Chief, Detention Compliance Branch, US Immigration and Customs Enforcement, (b)(6), (b)(7)c Field Office Director for the Dallas District of the Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Office of Detention and Removal, and (b)(6), (b)(7)c CBP Area Port Director, for facilitating the visit of (b)(6) UNHCR Protection Officer. I have been informed that local ICE / CBP officials and county jail staff at each location were extremely courteous and accommodating during the visit. I very much appreciate both the time that they devoted to our visits and their full and forthright answers to our many questions about facility and port operations.

This visit was a follow-up to UNHCR's trip to the Dallas area in November 2001 to assess what changes, if any, had occurred since then. A full report containing our observations, comments and recommendations is attached for your review. Since the Dallas district is no longer using any of the five detention facilities that UNHCR visited in 2001, we have provided a full comprehensive report for the two facilities which are now used.

Please note that we have included as an attachment to this report references to the international standards implicated by the conditions and procedures we observed. We hope that these international standards will be useful for you and your staff in assessing the adequacy of ICE detention conditions and port of entry operations. Copies of the underlying international instruments and policy guidance materials were forwarded to your Office in September 2003.

While detailed comments and observations are contained in the attached report, we would like to highlight the following.

Assessment of Changes in Conditions and Procedures Since November 2001 Visit

General Areas of Improvement

UNHCR noted a number of improvements in detention conditions in the Dallas area since our last visit in November 2001. These improvements include the following:

- (1) *Decision to No Longer Use George Allen and Lou Sterrett Detention Facilities:* In our 2001 report, UNHCR recommended that INS cease holding asylum-seekers at these facilities due to a number of serious deficiencies in the conditions of confinement there. We were pleased to learn during this last visit that ICE is no longer holding its detainees at that jail, though we are concerned about the occasional use of George Allen.
- (2) *Consolidation of Detention Facilities:* ICE has now consolidated its detainee population into two county jails, which limits the number of transfers for detained asylum-seekers between facilities. This consolidation should also provide ICE with greater leverage in ensuring adequate conditions of confinement.
- (3) *Regular Detainee Access to ICE:* The Dallas district has developed a jail liaison team composed of immigration enforcement agents. A team of two agents visits each facility weekly to meet with detainees and answer their questions. A priority is placed on providing requested information to detainees the same day or, at the latest, by the appropriate deportation officer within 72 hours.
- (4) *Installation of Pre-Paid Phone Systems:* During UNHCR's 2001 visit, a major problem was the inability of detained asylum-seekers to contact the immigration courts and local NGOs because of the agencies' inability to accept collect phone calls. ICE's pre-paid phone system, allowing for free calls to consulates, NGOs, and immigration courts has since been installed at a number of the jails visited, making it easier for detained asylum-seekers to obtain case information and communicate with their lawyers. UNHCR's phone number was not included on the list for collect calls, though Ms. Prendes has indicated to UNHCR a willingness to promptly add this number to the list.
- (5) *Improved Law Library Facilities:* Since UNHCR's 2001 visit, ICE has installed immigration legal materials on computers at the facilities and to provide more current bound materials as well. UNHCR appreciates this effort, which should greatly assist detained asylum-seekers who must represent themselves in immigration court. UNHCR remains concerned, however, that many asylum-seekers may not be computer literate, and recommends that law/computer tutors (from the detainee population if necessary) be allowed to assist individuals in conducting their research.

- (6) *Improved Recreational Opportunities:* Many facilities used in 2001 containing asylum-seekers did not have outdoor recreational opportunities. Others did not allow frequent recreation access. Both facilities used in 2003 have outdoor recreational areas and provide daily or near-daily recreation. This is a welcome development. As noted in the report, frequent access to the outdoors can be especially critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement. It is also critical to those of concern to UNHCR who remain in detention for extended periods of time.

General Areas of Continued/New Concern

There are also a number of areas of continuing or new concern for UNHCR regarding detention conditions in the Dallas area. These include the following:

- (1) *Continued Use of Remote Jails:* UNHCR appreciates ICE's jail consolidation in the Dallas area. However, its primary facility, Rolling Plains, is a four to five hour drive from Dallas. This distance makes it difficult for asylum-seekers to secure legal counsel and to maintain contact with them and with family that may be in Dallas. UNHCR continues to recommend that ICE use one facility near Dallas that is owned and operated by ICE and that meets both international and ICE detention standards.
- (2) *High Cost of Calls:* In order to call family members or attorneys who do not accept collect calls, detainees at Rolling Plains must purchase calling cards. The cost for these calls is \$.50 per minute for domestic calls and \$2.00 per minute for international calls. The impact of these charges can be great on asylum-seekers, who are often indigent and with no local support network. High charges make it difficult, if not impossible, for detained asylum-seekers to maintain contact with private attorneys or with families/friends who can assist in the preparation of their asylum cases or provide emotional support.
- (3) *Medical Care:* UNHCR remains concerned about the shortage of mental health staff available to treat detainees. Though the Rolling Plains facility draws on local resources, it has no on-site mental health professional to treat a population of up to 450. In addition, UNHCR is concerned with detainee reports of long waits for doctor visits despite perceptions of jail staff that medical requests are addressed promptly.
- (4) *Use of Non-Inspected Facilities:* ICE transfers male and female detainees with special medical and mental health needs to a facility known as West Tower. It also transfers pregnant women to the George Allen Detention Center for obgyn care. On its 2001 visit, UNHCR determined that George Allen is not in compliance with international detention standards. Use of West Tower is also of concern since it is not inspected by ICE immigration enforcement agents, does not prohibit the commingling of ICE detainees with the general population, and does not offer outdoor recreation. While acknowledging that there may be few options for detention of asylum-seekers in facilities that conform to international standards and that relatively small numbers of detainees may be impacted by the use of West Tower and George Allen, UNHCR nevertheless is concerned with the use of non-inspected facilities. UNHCR urges ICE to explore the availability of facilities that meet applicable standards and which can also meet the medical and mental health needs of ICE detainees.

Finally, we would like to briefly note our meeting with CBP officials about operations at the Dallas-Fort Worth Airport. These officials stressed to UNHCR that CBP is using only legacy INS inspectors in secondary until legacy agricultural and customs personnel and new hires are adequately trained in procedures in secondary and have accumulated sufficient experience in primary. UNHCR was concerned that CBP still uses airline interpreters in interviews with asylum-seekers and recommends that this practice be changed. UNHCR was also informed that new interpreter guidelines has been received from ICE Headquarters but, apparently, no training on them has yet occurred on the local level. UNHCR recommends that such training be provided given UNHCR's observations during its recent study of the US expedited removal process of consistently poor interpretation in secondary inspection interviews. A copy of UNHCR's report of this study is attached for Dallas CBP officials' reference.

In closing, we reiterate our continued concerns about the detention of asylum-seekers in the United States. As you are aware, UNHCR's Executive Committee (*see, e.g.*, Conclusion No. 44), has stated that asylum-seekers should normally not be detained. This principle is also found in UNHCR's Detention Guidelines. We encourage ICE to release individuals who should not be detained and to aggressively pursue alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Sincerely,



(b)(6)

Officer in Charge

cc: Joseph Langlois
Director
Asylum Division
Citizenship and Immigration
Services
Washington, DC

Molly Groom
Chief, Refugee and Asylum Law Division
Office of Policy and Legal Affairs
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Chief
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Field Office Director for the Dallas District of the Department of Homeland Security
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09 January 2003

BY FACSIMILE (202-514-0051)

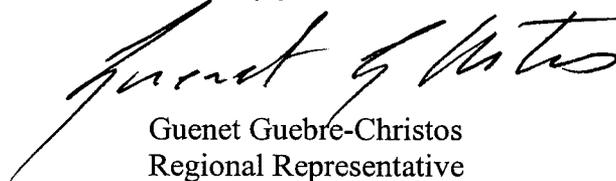
Mr. Scott Blackman
Deputy Executive Associate Commissioner
Enforcement, Field Operations
Immigration and Naturalization Service
425 Eye Street, NW
Washington, DC 20536

Re: UNHCR Mission to Elizabeth and Wackenhut Detention Facilities

Dear Mr. Blackman,

Please find annexed the report prepared by this Office regarding UNHCR's visit to Elizabeth and Wackenhut detention facilities, which took place in June 2002. While fully aware that the report is some months late, we believe that its observations are still very relevant. As always, we greatly appreciate the support and full access to the detention facilities provided by the INS and look forward to your feed back on this report.

Sincerely yours,



Guenet Guebre-Christos
Regional Representative

Cc: Ms. Renee Harris, Director, Division of International Affairs
Ms. Molly Groom, Chief of Refugees and Asylum Division
Mr. Joe Langlois, Acting Director, Asylum Division
Mr. Anthony S. Tangeman, Deputy Executive Assistant Commissioner

UNHCR MISSION TO
ELIZABETH (NEW JERSEY) and WACKENHUT (NEW YORK)
DETENTION FACILITIES
18-19 JUNE 2002

1. **Introduction:** On June 18-19 2002, (b)(6) Deputy Regional Representative of the UNHCR Regional Office in Washington, DC, visited the Elizabeth and the Wackenhut Detention Facilities in New Jersey and New York respectively. UNHCR was given a tour of each facility by the agencies running them. Meetings were held with INS officials and a number of asylum seekers were interviewed in both New Jersey and New York. The following observations are based on the information provided by the INS officials, the information gathered during the tours of the facilities, the discussions held with asylum-seekers during the interviews and UNHCR's observations.

2. **General Comments:** It is noteworthy that the conditions at the Elizabeth and Wackenhut detention facilities, as observed by UNHCR and as reported by detained asylum-seekers, were very different. The information/observations for Elizabeth give UNHCR much cause for concern; those for Wackenhut are, relatively, more positive.

Elizabeth Detention Center: The most striking observation of the visit to this detention facility was the contradiction between the CCA/INS perspectives and those of the INS detainees. On the one hand, the INS officials with whom UNHCR spoke were very complimentary of the facility, believed that the CCA was doing its utmost to maintain the facility adequately and to treat all asylum-seekers with dignity. They did acknowledge that general improvements could always occur and were open to constructive observations. The asylum-seekers, on the other hand, were extremely critical of the detention facility and expressed anger bordering on desperation about the ill-treatment they feel they receive. There was unanimity among the asylum-seekers interviewed that the facility is not conducive to long term detention and that their continued detention there was particularly inappropriate given that they had not committed any crime. The asylum-seekers expressed much frustration about their inability to improve their detention conditions and all felt that they were being seriously punished and unjustly treated like "hardened criminals". In this connection, all of those interviewed complained about what they consider a lack of respect from prison guards, who often are "mean", unduly strict and threatening to asylum-seekers.

Wackenhut Detention Facility: Unlike at Elizabeth, the comments of the six asylum-seekers interviewed at Wackenhut largely mirrored those made by the INS Officer-in-Charge (OIC) at Wackenhut. While none of the asylum-seekers was happy to be detained, all agreed that there is a mutual respect between the guards and themselves, that there is minimal tension within the facility, and that the guards are often quite helpful, especially with certain more vulnerable individuals. All but one of those interviewed stated that they had no major complaints about the facility or the way they are treated. This being said, all were frustrated with their continued detention and hoped to be released soon.

3. Length and Rationale for Detention

Elizabeth Detention Center: INS officials at Elizabeth informed UNHCR that the average length of detention is between three and four months for asylum-seekers. This, however, is only an approximation given that the INS could not provide any actual statistics. When asked why individuals are not paroled after a determination is made that they have a credible fear of persecution, INS stated that the credible fear standard is so generous that it has become meaningless in determining whether an individual is truly a refugee. INS stated that very few asylum-seekers are paroled due to concern about, *inter alia*, i) identity, ii) whether the person has ties to the community and/or family members in the US, and iii) whether the person poses a security risk. The ultimate decision for parole lies with the District Director who, we were informed, grants parole very restrictively, particularly in light of the limited information available about each person.

When asked whether anybody was paroled before completing the asylum process, INS insisted that indeed quite a number of asylum-seekers are paroled within a few weeks of their arrival. When asked to elaborate on which type of cases and what percentage of the overall caseload are paroled quickly, INS stated that between 15-20% of the caseload is granted parole soon after the credible fear interview. INS explained that most individuals are freed after being granted asylum, withholding or Torture Convention protection. Likewise, individuals are deported once their case is denied, if they do not appeal the decision.

It is interesting to note that, of the eight asylum-seekers interviewed at Elizabeth, most had been detained for much longer than the three to four month time period cited by the INS. Two individuals had been detained for over a month, three for over six months, another for a year, and another for 15 months. One asylum-seeker had been detained for two and a half years. When the asylum-seekers were asked about early parole, all stated that they knew of no-one who had been paroled promptly from the facility and adamantly challenged the INS to provide evidence of such cases. Also, most asylum-seekers felt that while they and others have met the requirements for parole, they are systematically being denied this opportunity, primarily as a punitive measure and to further discourage them from pursuing their asylum claims.

Wackenhut Detention Facility: As at Elizabeth, INS estimated that the average time of detention at Wackenhut to be between three and four months. The exception to this rule are the few who are given parole early (10 to 20% according to INS estimates) and those who stay longer than four months (mainly those who appeal their decisions). Also at Wackenhut, the credible fear determination is considered irrelevant given the high credible fear rate. The District Director's general policy appears to be to detain asylum-seekers for the length of the asylum process. While exceptions are said to exist, most asylum-seekers interviewed did not know of anyone who had been paroled soon after their arrival. Based on UNHCR's interviews at the facility, it appeared that some of the asylum-seekers did, in fact, meet INS criteria for release (identity established, community ties, family in the US, somebody to sponsor them, no danger to the community). None of them, however, expected to be paroled.

4. Access to Information/INS

Elizabeth Detention Center: INS stated that there are four Deportation Officers at Elizabeth with a caseload of approximately 65 to 80 cases per officer. UNHCR was informed that these Deportation Officers are always current with their cases and are always accessible to detainees. The asylum-seekers we interviewed told a very different story. All of them stated that INS is totally inaccessible. A few stated that they had repeatedly requested, in writing, to speak to their Deportation Officers about their cases, but that their efforts had been in vain.

Wackenhut Detention Facility: Unlike at Elizabeth, most asylum-seekers interviewed acknowledged having relatively easy access to their Deportation Officer. They request a meeting with the Deportation Officer in writing and generally have been able to see the Deportation Officer soon after.

5. Living Quarters

Elizabeth Detention Center: INS stated that the Elizabeth facility has successfully passed all of the assessments regarding INS standards. The few non-compliant elements in the last assessment have been addressed and changes are being made. For example, the law library had been missing a few volumes because of pages torn from the books, previously inadequate phone access has been ameliorated, and attorney access and know your rights presentation are now offered systematically for asylum-seekers. INS also emphasized that they try to keep the asylum-seekers busy with activities and try to make the detainees as comfortable as possible within their limitations. INS emphasized that they focus on maintaining the human dignity of the detainees at the facility.

Ironically, all eight asylum-seekers refused to talk about the general conditions at the facility, insisting it was a jail where individuals were treated like criminals and where they were denied such basic rights as natural light, adequate food and dignified treatment. All felt that they were being punished for seeking asylum and reiterated their complaints against the guards. They emphasized that the guards are "mean", "aggressive", and not interested in the well-being of the detainees. All of the asylum-seekers interviewed complained that they feel intimidated by the guards because of the negative and derogatory comments that the guards constantly make. They also accused the guards of being overly "bossy" and of creating an oppressive environment. In this regard, they complained that they are often punished and placed in segregation for unjust reasons. When asked whether it was just a matter of the guards doing their job to keep order, most of the asylum-seekers responded angrily and accused UNHCR of trying to protect the authorities. Most alleged that many hardened criminals are not kept in facilities like Elizabeth and that most are not treated as harshly. They insisted that UNHCR look into the "abusive behavior" of the guards and the authorities who allow them to act with impunity.

Wackenhut Detention Facility: INS stated that, regarding the conditions of detention, they do all they can, and assured UNHCR that all employees treat the asylum-seekers with respect. All of the asylum-seekers interviewed pointed out that, while they objected to the fact of their continued detention, they did appreciate the

respect and, often times, kindness shown to them by the guards and other service staff.

6. Conclusions/Additional Comments

i) General: While UNHCR has received on-going complaints from asylum-seekers at both the Elizabeth and Wackenhut facilities, as well as from other sources, a first hand view illustrated stark differences between the two facilities.

ii) Living Conditions: Both Elizabeth and Wackenhut are jails that are not, by any measure, suited for asylum-seekers. Both offer limited freedom and limited, if any, sunlight. Indeed, the facilities are like most maximum-security jails, justifying, in UNHCR's opinion, the frustrations and anger of the asylum-seekers who are held there. There is a clear difference between these two facilities and other detention facilities used by INS that allow for more humane treatment. This inherently unfair system will continue to be a point of criticism against the INS.

The tension and negative atmosphere at Elizabeth exacerbates this situation. The INS needs to improve the treatment of asylum-seekers at the Elizabeth facility. All of the asylum-seekers interviewed at Elizabeth alleged that the INS is purposely incarcerating them for very long periods of time to "break them" and force them to abandon their asylum claims. They claimed that INS officials and the guards undermine their asylum claims at any opportunity, often commenting that their claims are frivolous.

While the asylum-seekers' strong criticisms of the conditions of their detention at Elizabeth can be considered, in part, to be symptomatic of their general frustration with being incarcerated for a long period of time, the substance of their comments is not without merit. While visiting Elizabeth, UNHCR witnessed less than hospitable treatment by the guards, who were often rude and unhelpful during the interview process with the asylum-seekers. Equally disturbing, all of the pods with the exception of the two that UNHCR visited, had the windows on to the hallways covered, making it impossible to see into them. The management informed us that this was for "privacy reasons", which was odd since UNHCR has never seen this at any other detention facility. All of the asylum-seekers interviewed stated that the windows had been covered to keep UNHCR from seeing everything at the facility and that they had been requested extra-ordinarily the night before UNHCR's visit to scrub and clean the pods that UNHCR was shown.

Also, consistent with information UNHCR had received from other sources (which was subsequently verified), the asylum-seekers informed UNHCR that one of the detainees had attempted suicide a few days before UNHCR's visit. They pointed out that the management most likely did not inform UNHCR about this incident, which indeed they had not. On the contrary, the INS officials had insisted that the asylum-seekers were satisfied at the facility and that there were no serious problems.

In light of the very serious allegations made by the asylum-seekers and UNHCR's own observations, there is a need to review INS's work at the Elizabeth detention facility in New Jersey. Given that the UNHCR delegate who conducted the visit to Elizabeth has much experience in interviewing asylum-seekers and was able to speak

with most of the asylum-seekers in their mother tongue (Spanish), their unanimous negative observations were disturbing. It is not difficult to discern a tangible tension between the guards and the asylum-seekers at the Elizabeth detention facility, in notable contrast to the atmosphere at the Wackenhut facility.

iii) Lack of INS Uniformity in Parole Criteria: At both Elizabeth and Wackenhut, UNHCR raised with the INS the fact that in other places, like Miami, asylum-seekers are, for the most part, paroled after the credible fear interview. UNHCR noted that it had found a systematic lack of uniformity among detention facilities managed directly or indirectly by INS. In response, the INS officials insisted that every region has different types of problems, faces different situations and thus must make its parole decisions accordingly. When pushed on the fact that average times of detention at Elizabeth and Wackenhut appear much higher than most places UNHCR has visited, the same explanation was given.

iv) US Commitment to International Protection: In light of the above-mentioned observations and UNHCR's position that detaining asylum-seekers, particularly for long periods of time, is inconsistent with "best practices" of asylum, the INS position that the US government seeks to protect and not punish those who flee persecution and may be in need of international protection is seriously undermined.



UNHCR

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08/LG/106

20 March 2008

Dear Ms. Cullen,

**Subject: UNHCR Comments on Draft Performance Based
Detention Standards: Groups Two, Three and Four**

We would like to thank you for sharing the draft Immigration and Customs Enforcement (ICE) Performance Based National Detention Standards with the Office of the United Nations High Commissioner for Refugees (UNHCR). UNHCR is pleased to submit for your consideration its views on proposed standards in Groups Two, Three and Four. UNHCR's comments are provided pursuant to Article II of the 1967 Protocol relating to the Status of Refugees. UNHCR's comments focus on those aspects of the proposed detention standards that may particularly impact asylum-seekers and, as appropriate, reflect observations made in the context of our extensive monitoring of the detention facilities used by ICE and its predecessor agency, the Immigration and Naturalization Service.

As stated in its previous submission on Group 1 of the proposed standards, UNHCR remains concerned about the detention of asylum-seekers in the United States. We wish to again call your attention to the conclusion of UNHCR's Executive Committee that, in view of the hardship of detention, the detention of asylum-seekers should normally be avoided (see, e.g., Conclusion No. 44). Detention of asylum-seekers should be resorted to only on an exceptional basis when necessary and should not utilize jails or jail-like facilities. UNHCR continues to urge you to adopt a policy clearly favoring release for those asylum-seekers who should not be detained and, to the extent that an asylum-seeker must be detained for specific reasons, to utilize appropriate facilities.

UNHCR has carefully reviewed each draft standard in Group Two, including those relating to Medical Care, Hunger Strikes, Terminal Illness, Sexual Abuse and Assault, Suicide Prevention, Personal Hygiene, Recreation, Voluntary Work Programs, Religious Practices, and Staff Training.

Ms. Susan Cullen
Director
Office of Policy
Immigration and Customs Enforcement
Department of Homeland Security
425 I Street, N.W.
Room 7311
Washington, D.C. 20536

In Group Three, UNHCR commented on those standards relating to Transfer of Detainees, Admission and Release, Searches of Detainees, Funds and Personal Property, Use of Physical Force and Restraints, Disciplinary System, Special Management Units, and Escorted Trips for Non-Medical Emergencies.

Finally, in Group Four, UNHCR commented on those standards relating to Law Libraries and Legal Material, Legal Rights Group Visitation, Correspondence and Other Mail, Visitation, Telephone Access, Staff/Detainee Communication, and Detainee Handbook.

Due to resource and time constraints, UNHCR was not able to comment on the Group Three draft standards on Contraband, Transportation by Land, Classification System and Hold Rooms in Detention Facility or the Group Four draft standards on News Media Interviews/Tours, Marriage Requests and Grievance System. The lack of review and comments on these standards should not be construed as an indication that these standards are not important to UNHCR, and we are happy to discuss them with you if there is time and opportunity.

We hope that our views will be useful to you. We remain available to discuss any aspects of the comments that require further clarification or discussion. We look forward to working with you further on this and future endeavours.

Yours sincerely,



Thomas Albrecht
Deputy Regional Representative

cc: Igor Timofeyev, Director of Immigration Policy and Special Advisor for Refugee and Asylum Affairs
U.S. Department of Homeland Security

Daniel Sutherland, Officer for Civil Rights and Civil Liberties
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Joseph Langlois, Director
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General Comments and
Follow-Up Visits to Dallas- Fort Worth International Airport and
Dallas Area Detention Facilities
12-13 November 2003

Introduction: The detention facilities that UNHCR visited in 2001 in the Dallas area are no longer used. Instead, UNHCR visited the two facilities which are primarily used at this time. UNHCR observed significant improvements in the conditions and/or procedures regarding detained asylum-seekers in the Dallas area but also identified some new concerns. The description below of each site visited contains a summary general assessment of the conditions and concerns at each location. First, however, we discuss general detention practices and policies and related UNHCR concerns.

A. General Detention Practices

1. Consolidation of Detainee Population

Since UNHCR's last visit to the Dallas area in 2001, ICE has consolidated its detainee population. At that time, INS utilized at least seven facilities in the region for detention; UNHCR visited five of them (George Allen and Lou Sterrett facilities in downtown Dallas, Denton County, Navarro County, and Grayson County). Currently, the Dallas ICE Field Office primarily uses two detention facilities for detainees. One is the Suzanne L. Kays Detention Facility ("Kays") in downtown Dallas. The other is the Rolling Plains Regional Detention Center ("Rolling Plains") in Haskell, Texas. Dallas also uses facilities in Euless, Texas and Bedford, Texas for short-term detention needs, particularly for those awaiting imminent removal, due to the proximity of those two centers to the Dallas-Fort Worth Airport. In addition, two facilities in downtown Dallas, West Tower and George Allen, are used for medical and mental health needs. The use of these two facilities will be further discussed below.

Consolidation of detention facilities has been motivated, in part, by the impact of the DHS detention standards. For instance, ICE's decision to cease using the George Allen facility, for the most part, was dictated by its lack of outdoor recreation. Other reasons also contributed to this shift. For example, ICE stopped using Denton due to a shortage of sufficient bed space for immigration detainees as the county's general population increased. Additional bed space is expected to become available again once Denton's new building is opened. Also, about 75 detainees were relocated from a facility in Jefferson County, Oklahoma to Haskell in October 2003 due to funding problems by the ICE regional office, which had used the Jefferson County facility.

ICE utilizes Rolling Plains (ICE capacity of 450 beds) to a much greater extent than Kays (100 beds). At the time of UNHCR's visit, 451 individuals were detained at Rolling Plains and 14 at Kays, though the average at Kays is about 30-50 at any given time. In December 2003, the population at Kays was above 60.

Rolling Plains is located about four hours' drive from downtown Dallas. When UNHCR expressed concern about the distance from Rolling Plains to Dallas, where most immigration lawyers and NGOs are located, ICE responded that attorneys also had concerns initially until

We found conditions of confinement unacceptable at Jefferson

they saw that the conditions at the jail were better than elsewhere. Authorities in Haskell have informed ICE that Rolling Plains can be doubled in size in less than a year, should ICE indicate that its demand for additional bed space would warrant such a development. In addition, Denton County has completed construction on a 500-bed facility, though it is not yet open because the county has not budgeted money for its operation. The Dallas District has tentative plans to use this center as a back-up to Rolling Plains, rendering the Kays facility third in terms of priority.

UNHCR Comments & Recommendations: UNHCR is pleased that the Dallas area ICE detainee population has been consolidated into a fewer number of regularly-used facilities, which has resulted in less frequent transfers between jails and more certainty for asylum-seekers. UNHCR also appreciates that ICE is no longer using the George Allen (for the most part) and Lou Sterrett facilities given the numerous deficiencies in the jail's operations as raised in UNHCR's 2001 report. UNHCR remains concerned, however, that most asylum-seekers are now held in Rolling Plains, far from Dallas, where most area immigration lawyers practice and Catholic Charities is located. Catholic Charities is the main free legal service provider for Dallas detainees. These same concerns apply to ICE's consideration to begin using the use again of the Denton County detention facility, given its distance from Dallas.

2. Compliance with ICE Detention Standards

Since UNHCR's last visit to the Dallas area, the Dallas ICE Office has developed a team of about six jail inspectors. The inspectors attend classes at headquarters and must be certified before conducting inspections. Once a year, at least two inspectors inspect each detention facility used by ICE. Inspection reports are sent, without prior district review, to headquarters. Any facility determined not to be in compliance is required to develop a plan to bring the facility into compliance. The plan must receive headquarters approval.

Haskell's latest inspection report was good. However, the detainee population at Kays was low (about 14) at the time of UNHCR's visit because of ICE concerns with the most recent inspection of Kays in June 2003. The facility was rated as "at risk" of falling out of compliance with the detention standards. UNHCR was informed in early December 2003 that the detainee population at Kays had increased to about 65, due to that facility's work to remedy problems highlighted in the June inspection.

As discussed elsewhere in this report, ICE also transfers male and female detainees to a facility known as West Tower for medical and mental health needs and pregnant women to the George Allen detention center for obgyn care. Both are located in downtown Dallas and operated by Dallas County. These facilities are not inspected by ICE jail inspectors and, according to ICE, are not in compliance with DHS detention standards in many respects. For instance, neither has outdoor recreation facilities. In addition, regarding West Tower, immigration enforcement agents visit only when they receive kites (requests for a visit), there is no telephone access to UNHCR or Catholic Charities, and commingling with the general population occurs. ICE informed UNHCR of its concerns with detention of individuals at West Tower given its lack of compliance with DHS detention standards.

UNHCR highlighted several concerns regarding George Allen in its report following its 2001 visit to the facility. Most notably, these concerns included the possibility of commingling,

unresponsiveness of jail staff to detainee requests and complaints, lack of outdoor recreational opportunities, infrequent access to the law library and lack of up-to-date legal materials, and poor quality of food. UNHCR did not visit George Allen on its 2003 mission to Dallas, and is therefore not aware whether these inadequacies still exist, though the known lack of outdoor recreation and regular ICE inspections are causes for concern. UNHCR also appreciates that, since ICE prefers to release pregnant females whenever possible, only small numbers of ICE detainees apparently are detained at George Allen.

HQDEO
visited
Larey #
of detainees
Insp. #
WK-Medical

UNHCR Comments and Recommendations: UNHCR appreciates ICE's efforts to regularly inspect the Kays and Rolling Plains facilities and to follow-up on any aspects that are not in compliance with DHS detention standards. UNHCR is very concerned, however, regarding the use of two facilities, West Tower and George Allen, given the numerous and serious concerns which UNHCR had as a result of its 2001 visit to these facilities and the fact that they are not currently inspected by ICE. UNHCR urges that ICE only utilize facilities, including for medical cases, that provide telephone access to legal services, prohibit commingling, have outdoor recreation facilities, and are regularly inspected and otherwise meet detention standards. In addition, immigration enforcement agents should make regular visits to these facilities when ICE detainees are held there.

3. **Detainee Access to ICE**

The Dallas district has developed a jail liaison team composed of immigration enforcement agents. A team of two agents visits each facility weekly to meet with detainees and answer their questions. Detainees write a kite ahead of time in order to speak with an enforcement agent. The agents can often answer questions on-the-spot through, for instance, the immigration court 800 line. Agents are to receive laptops in the near future, which will enable them to access the detainees' files, including comments of the deportation officers. Agents forward questions which cannot be answered immediately to the appropriate deportation officer. Local policy requires responses to be provided within 72 hours. Despite these efforts, some detainees at Rolling Plains expressed concerns about perceived unresponsiveness by the agents. (See Rolling Plains section on ICE access).

UNHCR Comments and Recommendations: UNHCR appreciates the priority that the Dallas district places on weekly visits by immigration enforcement agents and efforts to respond to requests promptly. UNHCR is concerned, however, about the difficulty that some asylum-seekers expressed in submitting requests regarding their cases. To effectively represent their interests, access to case information is critical. Lack of information also fuels anxiety and a sense of isolation. Related to this, UNHCR encourages ICE to provide laptop access for immigration enforcement agents as quickly as possible. This will allow for faster and more effective responsiveness to detainees' requests.

4. **Detainee Transfers**

In general, detainee transfers between facilities occurs less frequently than in the past because of the smaller number of centers used by ICE. When a represented detainee is transferred, ICE attempts to notify the attorney of the transfer. However, if the detainee's file is not readily available, it is not possible to know whether he or she is represented and by whom. When a transfer takes place, all of the detainee's property and account money follows him or her.

UNHCR Comments and Recommendations: *Reduced instances of detainee transfers is a positive development. Transfers may increase the difficulties that asylum-seekers face in obtaining legal representation or maintaining regular contact with their attorneys and family members. In this regard, UNHCR recommends that better coordination of detainee file location be effected in order to facilitate notification to attorneys of client transfers.*

B. Suzanne L. Kays Detention Center

On 12 November 2003, UNHCR representative (b)(6) visited the Kays Detention Facility in Dallas, Texas. Kays is part of the Dallas County Jail System. He was accompanied by (b)(6), (b)(7)c Field Office Director for the Dallas District of the Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Office of Detention and Removal. Providing the tour was (b)(6), (b)(7)c Captain of the Kays Facility for the Dallas Sheriff's Department and (b)(6), (b)(7)c Staff Sergeant, Contracts Division for the Dallas Sheriff's Department. UNHCR also conducted individual interviews with detained asylum-seekers. This report is based on information received from ICE and jail officials, the observations of the UNHCR representative, and information received from detainees, both during the tour and from separate written correspondence received at the UNHCR Office in Washington, DC.

1. *Facility Background*

Facility Location and Background: The Kays facility is located in downtown Dallas, Texas. The immigration court is close to the facility. Originally built as an auto assembly plant in the 1950's, the building was converted to a detention facility in 1994. It has been used to house immigrant detainees since 2002. It will be torn down, possibly in the next two years, to make way for a freeway interchange.

Kays is primarily used for overflow from Rolling Plains and for those with specialized situations, such as those with medical needs which require them to be close to Dallas hospitals and those whom the F.B.I. want to interview. As a result, many of the individuals placed there remain for extended periods of time. The Center has a total capacity of 1,008 beds. At the time of the visit, there were 14 ICE detainees, though the average is about 30-50 at any given time with a maximum of 100. Only males are housed in the facility. The building has a ceiling height of about 20 feet throughout. A long row of large windows along the top ten feet runs the entire length of the building, allowing natural light through much of the facility.

As mentioned above, ICE's most recent inspection of Kays indicated problems for which ICE has required immediate attention through a plan for improvements. While ICE did not inform UNHCR of the full extent of these concerns, it did indicate that the telephone partitions (see section below on Living Quarters) were installed pursuant to required improvements. Other changes made or planned include revision of the detainee handbook to include more information about use of the telephone system and more secure methods of tool control and storage of hazardous and dangerous chemicals.

Comments & Recommendations: UNHCR appreciates the fact that Kays is located in a large city, close to the Immigration Court where immigration cases are heard. The location makes it easier for asylum-seekers to access legal assistance and receive visits from family members, friends or others providing support.

2. *Living Quarters*

Each ICE detainee tank has 24 beds, in bunks, three day tables, three sink/toilet combinations, showers, a television, and three telephones. One detainee told UNHCR that the tanks are too crowded when the number in each tank approaches 24. The tanks and the facility in general appeared to be clean. Two tanks were reserved for ICE detainees and more are used during those times when the number of detainees exceeds 48. The facility also has some eight-person tanks. Because the ICE tanks are in the interior of the building, almost no natural light reaches them, causing the area to be somewhat dark despite the presence of electric lights overhead. One detainee informed UNHCR that their tank had not received disinfectant for cleaning toilets and the floor for ten days. This is normally distributed daily. He was concerned about the ongoing cleanliness of the tank in the absence of the disinfectant. Another detainee complained to staff about the ICE tank being too cold, but received no response or change in the perceived temperature of the tank.

frequent
air
exchange
to limit
health
risks

Comments & Recommendations: UNHCR urges that jail staff distribute cleaning supplies and materials to detainees on a regular basis.

3. **Commingling** - Not an issue if classification is done properly
Kays does not commingle ICE detainees with county inmates. They are kept separate for all functions. However, as mentioned above, detainees with certain medical and mental health needs are taken to West Tower and pregnant women may be placed in George Allen. Commingling can occur at either of these facilities.

Comments & Recommendations: UNHCR appreciates the fact that, as a general matter, Kays separates ICE detainees from criminal inmates. UNHCR objects, however, to the possibility of commingling with persons serving criminal sentences of asylum-seekers who are transferred to the West Tower or George Allen for medical and mental health reasons. UNHCR recommends that ICE make all efforts to prevent commingling when detainees are transferred for medical or mental health reasons and that ICE inspect all facilities containing ICE detainees in order to ensure compliance with all applicable standards, including those relating to commingling.

4. **Recreation** - meets the standards...
ICE detainees are allowed recreation for a period of one hour five days per week. No recreation is available on the weekends due to additional staff responsibilities regarding family visitation and religious services. There are both indoor and outdoor recreation areas. The indoor recreation area consists of a half basketball court with a high ceiling. A maximum of twenty detainees is allowed in the area at a time. The outdoor area is the size of a full basketball court with space around the outside for sitting and gathering.

Comments & Recommendations: UNHCR views the availability of outdoor recreation as a positive aspect of the jail's operations. However, UNHCR recommends that at least one hour of outdoor recreation every day be provided to all ICE detainees. Frequent access to the outdoors can be especially critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement. It is also critical to those of concern to UNHCR who remain in detention for extended periods of time. UNHCR encountered detainees at Kays who had been detained for five months or more.

5. Medical

Licensed practical nurses are on-site at Kays at all times. At least two are on the day and graveyard shifts and one on the evening shift. A physician is present every day and sees patients who have requested attention. Detainees requiring serious medical attention are sent to the West Tower or to Parkland Hospital, which is nearby. Hospital care requires Public Health Service (PHS) approval, which is usually obtained in less than a day. Emergency room visits, however, are made immediately and PHS approval is obtained later. As of December 9, 2003, out of a total ICE detainee population of 60, seven were in West Tower for medical or psychological treatment.

According to jail staff, detainees write a request to seek medical attention, and have an average wait of one to two days. Emergency medical requests can be given to an officer for more immediate needs. However, one detainee reported to UNHCR that, though he had not needed medical attention himself, he knew of several other detainees who had been required to wait up to two weeks from the date of their medical request until their doctor visit, often for painful or potentially health-threatening conditions. According to him, one of his fellow detainees had a painful back that made walking difficult. He waited two weeks for treatment and, in the end, only received medication. He told UNHCR of another detainee who had lumps in his stomach, made several kites and, after a couple of weeks, was sent to Parkland Hospital for treatment.

Testimony
Not enough
File
review
required

A mental health professional is present, as needed. Those requiring mental health attention are sent to the West Tower. Individuals attempting suicide are listed on a suicide log sheet and put in a holding cell with precautions (e.g., shorts only). They are also transferred to the West Tower as quickly as possible.

Initial medical screening is done at the central processing center downtown, prior to transfer to Kays. A more complete medical screening is performed at Kays for new detainees within fourteen days of arrival, but usually within four days. ICE detainees are not charged for any medical-related services. LPNs distribute needed medications to detainees at the times prescribed. Detainees are allowed to keep some non-dangerous medications on their person for taking as prescribed. PHS clearance is required for any requests for outside consultations. They are rare and requests are usually granted.

Women requiring obgyn care are taken to the George Allen detention facility. However, UNHCR was informed that it is rare for the Dallas District to detain pregnant women. Generally, they are released on their own recognizance.

Comments & Recommendations: UNHCR is concerned with detainee reports of long waits for doctor visits despite perceptions of jail staff that medical requests are addressed promptly, though UNHCR is aware that many of these reports were second-hand. UNHCR also has concerns that pregnant women are transferred to George Allen for any required obgyn care due to the problems that UNHCR found in its 2001 visit to this facility. (See the section on Compliance with ICE Detention Standards above for more information). UNHCR is also concerned with the use of West Tower for the reasons also highlighted above in this report. UNHCR recommends that ICE only utilize facilities which are regularly inspected and in compliance with international detention standards and that all efforts are made to ensure that

ICE detainees are separated from those serving their criminal sentences in all aspects of detention operations.

6. Telephone Access

There are three telephones in each 24-person tank. One of them is separated by a small plexiglass partition mounted to the wall. The phones are available for use between 6:00 A.M. and 10:00 P.M. for collect calls. ICE has a contract with a provider, PCS, which allows detainees to make free, programmed calls to a list of offices, including Catholic Charities, the Immigration Court Information System, and many consulates. UNHCR's phone number is not included on the list. Users enter the code for the phone number they want to call, then their A#. They are guided by voice prompts. Instructions on the use of the phone system are posted near the phones in the tanks. If necessary, detainees can make emergency calls to attorneys and family members for free from the staff office with use of a card made available free-of-charge by ICE. Confidentiality can be requested. One detainee told UNHCR that, when he had tried to place a collect call to his consulate through the jail's phone system the previous week, he heard a recording that it does not accept collect calls. He reported this to the Kays staff, who promised to investigate the matter but had not yet reported back. When he requested to call the consulate on a jail phone, he was refused. Telephone cards are not yet available for purchase, though Kays hopes that such a system will be available soon.

Comments & Recommendations: UNHCR appreciates that many essential phone numbers are on the pre-programmed list and are free to detainees. However, UNHCR requests that the telephone number to its Washington office be added to the list. This number is 1-888-272-1913. UNHCR requests that a system allowing non-collect calls to be made on a regular basis also be developed. If this takes the form of calling cards, UNHCR recommends that the INS ensure the lowest telephone rates possible to INS detainees. UNHCR requests that Kays staff promptly assist detainees who are unable to place phone calls through the facility's pre-paid phone system.

7. Legal Resources/Law Library

The detention facility contains a good-sized law library. A computer with the ICE Law Library installed is available. This system includes the Immigration and Nationality Act, Benders Regulations, and Immigration Law and Practice. It seems to be current. There is also a typewriter available. On the shelves is Steel on Immigration Law, updated to August, 2003. ICE detainees can visit the library twice a week for 1 ½ hours. More frequent visits can be arranged, if necessary. Detainees told UNHCR that they had not received adequate training on use of the computer to use it effectively.

An immigration Know-Your-Rights videotape, prepared by the Florence Immigration Project, is played in Spanish and English three times a day over the television channel in the ICE tanks.

Comments & Recommendations: Given that the majority of those detained typically do not have legal assistance and must prepare their own cases, UNHCR appreciates that current immigration law materials are available at Kays. We encourage ICE to expand the immigration law resources available to detainees to include country of origin information and materials produced by the Florence Immigrant and Refugee Rights Project. UNHCR is willing to provide

any international legal resources that might be available through our Office. UNHCR is concerned that some detained asylum-seekers may not know how to use the computer resources. As is done at other facilities, UNHCR recommends that Kays allow more than one detainee to use the computer at a time so that detainees with more computer and research experience can assist those who are less capable.

in standards

UNHCR also appreciates the playing of the Know-Your-Rights videotape by the Florence Project on a daily basis. Legal orientation materials, both written and video, provide critical information to detained asylum-seekers about immigration removal proceedings, their rights in these proceedings, and the forms of relief that may be available to them. These materials can also reduce anxiety among detained asylum-seekers, some of whom may have been victims of torture or trauma.

8. Interpretation

Kays' Detainee Orientation Handbook is available in English and Spanish. For those with language needs, jail staff are used whenever possible. The jail has a contract for telephonic interpretation services.

Comments & Recommendations: UNHCR appreciates that the facility provides contract interpreters. UNHCR recommends that ICE take any necessary measures to ensure that the Kays staff have easy access to interpreters and that the use of interpreters be encouraged whenever necessary. UNHCR also recommends that the jail's rulebook be translated into the languages of its detainee population. Efforts should begin with translations into the most common languages spoken among the ICE detainees.

9. Food

Meals for all of the Dallas County jails are prepared off-site by one provider. An off-site dietician plans the menus. Special needs diets are available for people with medical issues such as low-salt and diabetic diets. All meals are pork-free but this fact is not mentioned in the inmate handbook. Medically-prescribed diets, such as vegetarian, renal, and soft, are available. Vegetarian meals are also available to anyone requesting it. Kosher/Halal diets are available but detainees must pay for them. The reason for the requirement of payment for Halal meals was not clear, given the availability of other special meals.

ICE will pay

Comments & Recommendations: UNHCR requests that Halal meals be available free of charge to any detainees who request them. UNHCR recommends that the fact that the diet is pork-free be included in the Inmate Handbook or posted in tanks holding ICE detainees.

10. Observance of Religious Practices

A chaplain's office sets up religious services. Presently, services are provided or available for Christians, Jews, and Muslims. When requests are received to serve the needs of other religions or denominations, the chaplain will attempt to contact resources in the community. Religious items, such as Bibles and Korans in a variety of languages and rosaries, are available through the chaplain's office. Family members who want to send a religious item to a detainee can do so through the chaplain's office, provided the items are in the original packaging, sent directly from a manufacturer or distributor.

Comments & Recommendations: UNHCR appreciates that ICE detainees are provided access to religious materials in other languages and that ICE detainees have access to various religious services.

11. Attorney Visitation/ Access

Detainees have access to private non-contact meetings with attorneys. They are separated by a thick plate glass window. There is no pass-through in the window; papers are passed between attorney and client via officers. Contact meetings are not available. Attorneys are able to visit at any time of day or night for an unlimited period of time. Interpreters and non-legal staff can be admitted to the facility with pre-approval. Pat-down searches are conducted on detainees following attorney visits.

Comments & Recommendations: UNHCR appreciates the unlimited attorney access and the privacy afforded to these visits. However, UNHCR considers private contact visits between asylum-seekers and their lawyers to be extremely important. The underlying refugee claims of many asylum-seekers may involve sensitive or traumatic events that are difficult to discuss. Private contact facilitates communication between attorneys and their clients so that the asylum-seeker's refugee claim can be clearly established and presented to the immigration court. UNHCR recommends that Kays accommodate requests for contact meetings between detainees and their attorneys.

C. Rolling Plains Detention Center

On 13 November 2003, UNHCR representative (b)(6) visited the Rolling Plains Regional Detention Facility in Haskell, Texas. His tour of the facility was preceded by a meeting with the following individuals:

- (b)(6), (b)(7)c Field Office Director for the Dallas District of the Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Office of Detention and Removal
- (b)(6), (b)(7)c Rolling Plains Senior Warden
- (b)(6), (b)(7)c Rolling Plains Assistant Warden
- (b)(6), (b)(7)c Rolling Plains Chief of Security
- (b)(6), (b)(7)c Director of the ICE Institutional and Removal Program in Big Spring, TX
- (b)(6), (b)(7)c Executive Director of Haskell Development Corporation (which administers operation of Rolling Plains on behalf of Haskell County).

Most of the above individuals accompanied UNHCR on most or all of the facility tour. UNHCR also conducted individual interviews with detained asylum-seekers. This report is based on information received from ICE and jail officials, the observations of the UNHCR representative, and information received from detainees, both during the tour and from separate written correspondence received at the UNHCR Office in Washington, DC.

1. *Facility Background*

Facility Location and Background: The Rolling Plains facility is located about 200 miles from downtown Dallas, Texas. It was built as a county detention facility in 2002. The building is a large modern one, with little natural light on the inside. It was relatively clean and brightly painted.

Of the total capacity of 500, 450 beds are reserved for ICE detainees. Typically, about 30 of the ICE detainees are female. It is the main detention facility for the Dallas district. While the staff informed UNHCR that most detainees are there for short periods, most of those interviewed by UNHCR had been at Haskell for longer periods, some for as long as seven months.

Comments & Recommendations: UNHCR is concerned that Rolling Plains is located so far from Dallas, where the immigration court and most immigration lawyers and non-profit legal service providers are located. The distance from Dallas makes it difficult for asylum-seekers to access legal assistance or to receive visits from family members, friends or others providing support. To the extent that ICE detains asylum-seekers in the Dallas District, UNHCR recommends that ICE use acceptable detention facilities closer to Dallas.

2. *Spring 2003 Hunger Strike*

In the Spring, 2003, UNHCR received letters from some Rolling Plains detainees discussing a hunger strike at the facility. When UNHCR inquired about this incident during its visit, the staff explained that there was some detainee dissatisfaction at that time due to a shift to stricter security procedures. From the time that Rolling Plains opened in 2002 until early 2003, the total number of ICE detainees was deliberately kept well under capacity. Until 15 March 2003, it was

about 150. Numbers started increasing at that time to at or near its capacity. At this same time, management of Rolling Plains was changed from Management Training Corporation to Emerald Corporation, the current operator. Emerald instituted more safety and security measures due to the increased numbers and the perceived need to separate members of rival Mexican gangs within the detainee population.

Rolling Plains explained that the "hunger strike" was, in reality, a minor hunger action undertaken by two individuals, who laid down in the kitchen, for one day. Only minor disciplinary action, such as commissary restrictions, were taken. No similar actions have occurred since.

3. Living Quarters

Most detainees are held in tanks that sleep 24 individuals in bunk beds. Each of these tanks has two tables, two telephones, a television, toilets and showers, and a tiny window slit. There is no privacy partition for the phones, as exists at Kays. The tanks and the facility in general are clean. Other detainees are held in eight-person tanks, which have a proportionally smaller number of features, including one telephone. Rolling Plains also has disciplinary segregation tanks. Each segregation tank has twelve small single-person cells with lockable doors which face a central day area. At the time of UNHCR's visit, no or very few of these segregation units were in use as originally intended. Instead, they were converted for use by trustees (See section on Education and Work Opportunities below). ICE detainees are eligible to be trustees. The cell doors are kept unlocked to allow uncontrolled access to the day area. These cells are coveted by ICE detainees because of the privacy each cell provides and because of unlimited access afforded to an enclosed outdoor area.

Comments & Recommendations: UNHCR appreciates the fairly spacious and clean living areas provided to ICE detainees and, in particular, the additional amenities available to those who serve as trustees.

4. Commingling

Rolling Plains does not commingle ICE detainees with the general population. They are kept separate for all functions. However, as mentioned above, detainees with certain medical and mental health needs are taken to West Tower and pregnant women may be placed in George Allen. Commingling can occur at either facility.

Comments & Recommendations: UNHCR appreciates the fact that, as a general matter, Rolling Plains separates ICE detainees from criminal inmates. UNHCR objects, however, to the possibility of commingling of asylum-seekers with persons serving criminal sentences who are transferred to the West Tower or George Allen for medical and mental health reasons. UNHCR recommends that ICE make all efforts to prevent commingling when detainees are transferred for medical or mental health reasons and that ICE inspect all facilities containing ICE detainees in order to ensure compliance with applicable standards.

5. Recreation

ICE detainees are allowed recreation for a period of two hours every day of the week. There are both indoor and outdoor recreation areas. The indoor recreation area consists of a full basketball

court with a high ceiling. There are exercise machines. A maximum of twenty detainees is allowed in the area at a time. The outdoor area is very large, mostly grass, that contains a full-size soccer field and a quarter-mile track. Some of the area is covered. Water tanks are available.

Comments & Recommendations: UNHCR views the size and availability of outdoor recreation as a positive aspect of the jail's operations. Frequent access to the outdoors can be especially critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement. It is also critical to those of concern to UNHCR who remain in detention for extended periods of time.

6. Medical

currently being reviewed at HQDRO/HQPHS
A registered nurse oversees all medical operations. LPNs or RNs are on-site at Rolling Plains at all times. A physician's assistant is present three hours per week. A physician sees detainees on Thursday nights. Detainees requiring serious medical attention are treated either at the community hospital in Haskell or are sent either to West Tower in Dallas, North Tower or George Allen (in the case of pregnant females for obgyn care) in Dallas, or to Parkland Hospital in Dallas. Hospital care requires Public Health Service approval, which is usually obtained quickly. Emergency room visits, however, are made immediately and PHS approval is obtained later. Detainees are not charged for medical services.

Detainees write a request to seek medical attention. Emergency medical requests can be given to an officer for more immediate needs. One detainee reported to UNHCR that he was told that he could not get an eye examination or eyeglasses for one year. Another reported that, though the physician had prescribed cough medicine for him three weeks previously, he still had not received the medicine.

No mental health professional is available on-site. Those with needs are referred to a local mental health facility, as needed. Those requiring psychiatric attention beyond the capacity of the local facility are sent to West Tower in Dallas. An attempted suicide, via a hanging with a shoelace, occurred the night before UNHCR's visit. This detainee was immediately isolated in a solitary tank in the medical area and put on a 15-minute monitoring watch by medical staff. All other privileges, such as recreation (depending on medical condition) and phone access, were maintained for this individual.

Initial medical screening is done at central processing in downtown Dallas, prior to transfer to Rolling Plains. A more complete medical screening is performed promptly for new detainees. Medications are distributed to detainees at the times prescribed.

Women requiring obgyn care are taken to the George Allen detention facility. However, UNHCR was informed that it is rare for the Dallas District to detain pregnant women. Generally, they are released on their own recognizance.

Comments & Recommendations: UNHCR is concerned that mental health professionals do not have a regular presence at Rolling Plains, given the likely needs in a large population of 450, and strongly recommends that such an arrangement be made. UNHCR also has concerns that

pregnant women are transferred to George Allen for any required obgyn care due to the problems that UNHCR found in its 2001 visit to this facility. (See the section on Compliance with ICE Detention Standards above for more information). UNHCR is also concerned with the use of West Tower for the reasons also highlighted above in this report. Finally, UNHCR is concerned with reports of delays in receiving necessary medical care or medications.

7. Telephone Access

ICE has a contract with a provider, Evercom, which allows detainees to make free, programmed calls to the Immigration Court Information System and many consulates on a list. UNHCR's phone number is not included on the list. Catholic Charities, the local NGO providing free legal services to detainees, is also not included on the list. However, an arrangement exists whereby Catholic Charities speaks confidentially with detainees every two weeks. Detainees put their names on a sign-up list ahead of time.

Users enter the code for the phone number they want to call, then their A#. They are guided by voice prompts. There were no instructions posted regarding use of the phones nor in the Inmate Handbook. Jail staff informed UNHCR that instructions have been posted in the past but that detainees use the paper for notes, etc.

Collect calls can also be made. For telephone calls requiring payment, calling cards are available for purchase. The cost is \$0.50 per minute for domestic calls and it is believed to be \$2.00 per minute for international calls. A number of detainees complained to UNHCR about the high cost of calls, preventing them from having regular phone contact with family. Jail staff told UNHCR that it believes that the costs are reasonable.

Comments & Recommendations: UNHCR appreciates that some essential phone numbers were on the pre-programmed list and are free to detainees. However, UNHCR requests that the telephone number to its Washington office be added to the list. This number is 1-888-272-1913. Given that the high costs of calls made with calling cards from detention centers often impede the ability of detainees to contact legal representatives and family members, UNHCR recommends that the INS ensure the lowest telephone rates possible to INS detainees. In addition, UNHCR recommends that a method be developed to allow the permanent posting in each tank of instructions regarding use of the phones.

8. ICE Access

Despite the system for regular visits by immigration enforcement agents (see discussion above in Detainee Access to ICE above), detainees told UNHCR that the agents are often not responsive to their requests, telling them for instance that "I am not your detention officer." One individual commented that the unresponsiveness was similar to what he had experienced when detained in Dallas and Denton.

Comments & Recommendations: UNHCR appreciates the priority that the Dallas district places on weekly visits by immigration enforcement agents and efforts to respond to requests promptly. UNHCR is concerned, however, about the difficulty that some asylum-seekers expressed in obtaining information regarding their cases. To effectively represent their interests, access to case information is critical. Lack of information also fuels anxiety and a sense of isolation.

UNHCR encourages ICE to ensure greater responsiveness to detainee requests and in a prompt fashion.

9. Law Library

The detention facility contains a good-sized library containing both legal materials and several hundred paperbacks in English and Spanish. A number of useful, up-to-date legal materials are provided. A computer with access to LEXIS and word processing and a typewriter are available. ICE detainees can visit the library for at least one hour five days a week.

Comments & Recommendations: UNHCR encourages ICE to expand the immigration law resources available to detainees to include country of origin information and materials produced by the Florence Immigrant and Refugee Rights Project and any other helpful sources that are not available on the computer system. Such materials can be very helpful for ICE detainees, given that the majority of them typically do not have legal assistance and must prepare their own cases. UNHCR is willing to provide any international legal resources that might be available through our Office.

10. Discipline

Progressive discipline is practiced. Minor or moderate violations, such as breaking the rules or being in possession of extra clothing, may result in commissary restrictions for 3-5 days, loss of TV privileges, and the like, but all other privileges would remain. A second violation might bring longer restrictions. Isolation cells for purposes of administrative and disciplinary segregation are used for more serious violations, such as a fight with another detainee. An investigation, always completed within 72 hours, is performed to determine fault. Longer isolation might result for the guilty party.

Comments and recommendations: UNHCR supports the use of disciplinary measures other than the use of segregation cells for detained asylum-seekers in ICE custody. Segregation cells can be especially traumatic for victims of trauma or other vulnerable groups.

11. Interpretation

Rolling Plains' Detainee Orientation Handbook is available in English and Spanish. Approximately 80% of the jail staff, including three nurses, are bi-lingual in Spanish. For those with language needs, jail staff are used whenever possible. The facility also uses ICE's telephonic interpreter services and has a contract for interpretation with Berlitz or ATT, for provision of interpreters by phone.

Comments & Recommendations: UNHCR appreciates that the facility provides interpreters through a contract with a professional service. UNHCR recommends that the ICE take any necessary measures to ensure that the Rolling Plains staff have easy access to interpreters and that the use of interpreters be encouraged whenever necessary. UNHCR also recommends that the jail's rulebook be translated into additional (non-Spanish) languages of its detainee population. Efforts should begin with translations into the most common languages spoken among the ICE detainees.

12. Food

Food is prepared on-site in the facility kitchen. A dietician gives food lists, including calorie counts, to a food service administrator, who plans the meals. Diets are prepared with a 2,400 calories per day minimum. All meals are pork-free, but this fact is not mentioned in the detainee orientation handbook. Attempts are made to accommodate religious diets such as through meat substitutes, but no Halal meat is available. The staff attempts to honor religious needs in other ways. For instance, during Ramadan, additional items are available at breakfast and dinner and a special meal of lamb and rice will be provided for break-the-fast.

Comments & Recommendations: UNHCR recommends that the fact that the diet is pork-free be included in the detainee orientation handbook.

13. Observance of Religious Practices

Religious services are provided or available for Christians, Church of Christ, and Muslims. Volunteers from the local community provide Bible study. When requests are received to serve the needs of other religions or denominations, the chaplain attempts to contact resources in the community. Attempts are made to honor requests for worship in other denominations. Rolling Plains allows reasonable possession of beads, books and other religious items. A Muslim prayer rug is in a room devoted to Muslim worship. English and Spanish Bibles are available as are the Koran in Arabic and English. Religious items can be accepted if received in the original packaging.

Comments & Recommendations: UNHCR appreciates that ICE detainees are provided access to religious materials in other languages and that ICE detainees have access to various religious services.

14. Attorney Visitation/ Access

Detainees have access to private non-contact meetings with attorneys. They are separated by a thick plate glass window, with a pass-through for transfer of papers. In addition, contact meetings are available upon request. A strip search follows such visits. ICE detainees told UNHCR, however, that they were not aware that they could request contact visits. Attorneys are able to visit at any time of day or night for an unlimited period of time. Interpreters and non-legal staff can be admitted to the facility with pre-approval. Occasionally, a Dallas-based attorney will request that ICE bring his detained client to the Dallas area for interviewing purposes. ICE has informed UNHCR that it tries to accommodate these requests, bringing the detainee to the Euless facility overnight before returning him or her to Rolling Plains but that it "does not like to make a habit of this."

Comments & Recommendations: UNHCR appreciates the unlimited attorney access at Rolling Plains, including the possibility of contact visits, and the privacy afforded to these visits. UNHCR considers private contact visits between asylum-seekers and their lawyers to be extremely important. The underlying refugee claims of many asylum-seekers may involve sensitive or traumatic events that are difficult to discuss. Private contact facilitates communication between attorneys and their clients so that the asylum-seeker's refugee claim can be clearly established and presented to the immigration court. UNHCR recommends that ICE inform immigration attorneys and detainees that private contact visits between attorneys and their clients can be accommodated. However, UNHCR is concerned that asylum-seekers

(especially former victims of trauma and other vulnerable populations) may suffer undue trauma when undergoing strip-searches. UNHCR also appreciates the willingness to transport detainees to Euless when requested by an attorney and encourages ICE to comply with each such reasonable request, given the great distance involved between Dallas and Rolling Plains.

15. Family Visitation Access

Rolling Plains allows detainees contact visits with up to four visitors at a time. These occur in a room with several tables and a vending machine. Visitors must be on a pre-approved list supplied by the detainees. Visiting hours are during eight hours on Saturday for males and the same time on Sundays for females. Special times, such as for visitors coming a long distance or for birthday parties, can be accommodated. Visits are for a maximum of two hours. Strip searches are conducted following such visits.

Comments & Recommendations: UNHCR appreciates the fairly liberal visitation hours available and the opportunity for contact visits. UNHCR, however, is concerned that asylum-seekers (especially former victims of trauma and other vulnerable populations) may suffer undue trauma when undergoing strip-searches. We recommend that this policy be modified.

16. Education and Work Opportunities

Classes in anger management, CPR, and life skills were scheduled to begin shortly after UNHCR's visit. These will be available for longer-term detainees only. GED classes were previously available but were stopped because many detainees were not at the facility long enough to benefit. Rolling Plains has a voluntary work program. Those who succeed in this program over a period of time become trustees. Some trustee are rewarded with special living amenities, as space permits. (These amenities were discussed above in the section on Living Quarters.)

Comments & Recommendations: UNHCR appreciates the education and work opportunities offered. UNHCR recommends that the range of classes be expanded and that classes be offered to all ICE detainees, regardless of their anticipated length of detention.

D. Dallas-Forth Worth International Airport (DFW)

On 12 November 2003, UNHCR representative (b)(6) visited the Dallas Fort Worth International Airport (DFW) located in Dallas, Texas to discuss changes in US Customs and Border Patrol (CBP) procedures since its previous visit in 2001. The meeting was held with (b)(6), (b)(7)(c) (b)(6), (b)(7)(c) CBP Area Port Director and (b)(6), (b)(7)(c) Assistant Port Director. Unlike the earlier visit, UNHCR did not tour airport facilities on this occasion.

1. Port of Entry Background and Statistics

DFW has about 2.3 million international arrivals per year, or an average of about 6,300 per day. Currently, there are six flights per day arriving from Europe and three from Asia. Several terminals are still used to inspect the arrivals. However, impending new construction will enable CBP to consolidate its inspections operations into one location.

2. Credible Fear Referrals and Training

DFW had only two credible fear referrals in 2003. Management stressed that, despite this low number, inspectors are trained to refer to an Asylum Officer any individual who expresses a fear of return or indicates a desire to apply for asylum. They also are instructed to refer any person who provides an affirmative reply to any of the fear-related questions on the I-867 A & B forms.

Despite the implementation of the "One Face at the Border" program, Dallas CBP is currently using only legacy INS inspectors in secondary, until legacy agricultural and customs personnel can receive adequate cross-training. They will then be rotated in slowly, after some months of experience in primary. Presently, they are receiving training in procedures for primary. Even before One Face at the Border, Dallas INS/CBP used only journeymen inspectors in secondary with close second-line supervision.

UNHCR Comments and Recommendations: UNHCR appreciates that inspectors are used in secondary only after adequate training and experience has been obtained. UNHCR recently completed a six-month study of the expedited removal process, in coordination with DHS. A copy of UNHCR's report is attached. UNHCR encourages local CBP officials to review the report and recommendations for possible assistance in CBP operations at DFW.

3. Interpreters

During UNHCR's last visit to DFW, it was informed that INS used airline interpreters to assist officers during secondary inspection. On its visit in November, 2003, UNHCR was informed that CBP still uses interpreters provided by American Airlines, as well as persons provided by the airport and others through the CBP district office. While Dallas CBP was aware of new guidelines that had been issued by CBP Headquarters on the use of interpreters, it did not appear that any training had been done in conjunction with them.

UNHCR Comments and Recommendations: UNHCR recommends that CBP cease using airline interpreters during secondary inspection. In its recent report on the US expedited removal process, UNHCR noted the consistently poor quality of untrained interpreters used during secondary inspection interviews at the ports-of-entry it studied. The recent guidelines on

interpreters issued by CBP Headquarters could help to address a number of the concerns raised by UNHCR. To ensure that the guidelines are effective, UNHCR recommends that training on the use of interpreters also be provided and that systems be established at the Headquarters level to ensure that the guidelines are being followed.

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International Instruments and Policy Guidance Materials

1. **1967 Protocol to the 1951 Refugee Convention** Protocol relating to the Status of Refugees, *adopted* 31 January 1967, *entered into force* 4 October 1967, 606 U.N.T.S. 267 (1967); Convention relating to the Status of Refugees, *adopted* 28 July 1951, *entered into force* 22 April 1954, 189 U.N.T.S. 137 (1951).
2. **Basic Principles** Basic Principles for the Treatment of Prisoners, *adopted* 14 December 1990, G.A. res. 45/111, annex, U.N. Doc. A/45/49 (1990).
3. **Body of Principles** Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, *adopted* 9 December 1988, G.A. res. 43/173, U.N. Doc. A/RES/43/173 (1988).
4. **ECRE, Position Paper on Detention of Asylum-Seekers** European Committee on Refugees and Exiles, *Position on Detention of Asylum Seekers* (April 1996).
5. **ICCPR** International Covenant on Civil and Political Rights, *adopted* 19 December 1966, *entered into force* 23 March 1976, G.A. res. 2200A (XXI), UN Doc. A/6316 (1966).
6. **Standard Minimum Rules** Standard Minimum Rules for the Treatment of Prisoners, *adopted* 1955, First U.N. Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva (1955), *approved* 31 July 1957, ECOSOC res. 663 C (XXIV) and 13 May 1977, ECOSOC res. 2076 (LXII).
7. **UNHCR Detention Guidelines** UNHCR Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers, Geneva (February 1999).
8. **UNHCR EXCOM Conclusions** Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme.

Relevant International Standards

Access to ICE Officials: Body of Principles, Principle 33 (right to make request or complaint about treatment to appropriate authorities); Standard Minimum Rules, Rule 36 (right to make request or complaint to director of institution or designated officer and to central prison administration or other proper authorities, and right to receive prompt reply); UNHCR Detention Guidelines, Guideline 10(x) (right of access to a complaints mechanism)

Co-mingling: Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from persons imprisoned by reason of a criminal offense); UNHCR Detention Guidelines, Guideline 10(iii) (asylum-seekers should not be co-mingled with convicted criminals); UNHCR EXCOM Conclusion No. 44, para. (f) ("refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as common criminals"); UNHCR EXCOM Conclusion No. 85, para. (ee) (noting concern that asylum-seekers are often held with common criminals); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from those imprisoned for criminal offenses); Body of Principles, Principle 8 (same); ICCPR, Article 10(2)(a) ("accused persons shall, save in exceptional circumstances, be segregated from convicted persons").

Diet: Standard Minimum Rules, Rule 20(1) (right to food at usual hours of nutritional value adequate for health and strength).

Interpretation: UNHCR EXCOM Conclusion No. 8 (asylum-seekers to be given necessary facilities, including interpreter services, to submit claim to authorities); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints to be made available to detainees in different languages); ECRE Position Paper on Detention, paras. 20, 29 (right of asylum-seeker to information on detention in language s/he understands); Standard Minimum Rules, Rule 35 (right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations) and Rule 51(2) (whenever necessary, the services of an interpreter shall be used); Body of Principles, Principle 14 (right of detainee to receive information about his rights in detention in language he understands).

Legal Resources: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to the asylum-seekers' possibilities to pursue their asylum application).

Medical: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers shall have opportunity to receive appropriate medical treatment and psychological counselling); Body of Principles, Principle 24 (medical care shall be offered free of charge); Standard Minimum Rules, Rule 22(1) (services of medical officer with some knowledge of psychiatry should be available) and Rule 22(2) (sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals; if institution has hospital facilities, its resources shall be proper for necessary medical care); UNHCR Detention Guidelines, Guideline 10 (detention conditions should be humane with respect shown for inherent dignity of person); Basic Principles, Principle 1 (same).

Programs: UNHCR Detention Guidelines, Guideline 10(vii) (detained asylum-seekers should have opportunity to continue further education or vocational training); ECRE Position Paper on Detention, para. 46 (during prolonged detention, adult education and training should be provided and it should attend to cultural and linguistic needs; it is crucial for detainees' mental health to not be deprived of access to constructive activities during prolonged detention); Basic Principles, Principle 6 (prisoners shall have right to take part in education aimed at full development of human personality).

Recreation: UNHCR Detention Guidelines, Guideline 10(vi) (asylum-seekers should have opportunity for daily indoor and outdoor recreational activities); Standard Minimum Rules, Rule 21(right to at least one hour suitable exercise in open air daily weather permitting).

Religion: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers should have the opportunity to exercise their religion); Standard Minimum Rules, Rule 41 (if institution contains sufficient number of prisoners of same religion, a qualified representative of that religion shall be appointed or approved and made available to hold regular services and pay private pastoral visits) and Rule 42 (as far as practicable, every prisoner shall be allowed to satisfy his religious needs by attending religious services).

Restraints: Standard Minimum Rules, Rules 33 (instruments of restraint never to be applied as punishment, only to be used as precaution during transfers, on medical grounds, or, by order of director, if other methods of control fail, to prevent prisoner from injuring himself, others or damaging property) and 34 (restraints not to be used for any longer than is strictly necessary).

Segregation: Basic Principles, Art. 7 ("efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction on its use, should be undertaken and encouraged."); ECRE Position Paper on Detention, para. 44 (Detained asylum-seekers "should...never be placed in isolation"); UN Human Rights Committee, Gen. Comment 20 (prolonged solitary confinement may amount to cruel, inhuman or degrading treatment or punishment).

Strip-searches: UNHCR Guidelines, Guideline 10 (detention conditions should be humane with respect shown for inherent dignity of person); Basic Principles, Principle 1 (same); Human Rights Committee, Gen. Comment 16, para. 8 (personal and body searches should be conducted "in a manner consistent with the dignity of the person who is being searched"); European Commission on Human Rights, *McFeeley v. United Kingdom*, App. No. 8317/78 (strip searches should be used only in limited circumstances).

Telephone Access: UNHCR EXCOM Conclusion No. 44, para. (g)(detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv)(asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (the means shall be made available for detained asylum-seekers to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate); Body of Principles, Principle 16(2) (detained foreigners have right to communicate by appropriate means with representative of competent organization); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority

whose task it is to protect such persons); ECRE Position Paper on Detention, para. 29 (asylum-seekers should have access to telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counsellors).

Training: Standard Minimum Rules, Rule 47 (personnel shall receive on-going training to maintain and improve their knowledge and professional capacity); ECRE Position Paper on Detention, para. 51 (staff should receive proper training on asylum matters, causes of refugee movements, relevant cultural factors, and methods of recognizing and responding to stress-related illnesses).

Women Asylum-Seekers: UNHCR Detention Guidelines, Guideline 8 ("Women asylum-seekers should receive the same access to legal and other services, without discrimination as to their gender...").

UNHCR Comments and Recommendations
ICE Draft Performance Based Detention Standards Groups Two through Four
20 March 2008

Draft Performance Based Detention Standards: Group Two

Please note that when recommendations regarding specific language in the proposed standards are provided, any new suggested language will appear in bold and any language that we recommend should be deleted will appear with a line through it.

Medical Care

The Medical Care Standard seeks to ensure that detainees have access to a continuum of health and emergency care services, so that detainee health care needs are met in a timely and efficient manner. Provision of quality medical and psychological care is particularly critical for asylum-seekers who may have experienced severe trauma or torture of either a physical or mental nature or both.¹ Accordingly, UNHCR recommends that ICE have medical experts review this standard. Specifically, we recommend that ICE seek the views of the Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, who have reported on the impact of detention on the health of asylum-seekers.² While UNHCR does not have medical expertise, we offer the following views based on international standards and our extensive monitoring of ICE facilities.

UNHCR appreciates the stated purpose of this standard; however, we note that neither the Purpose and Scope nor the Expected Outcomes section indicates that health care and emergency services are to be provided at no cost to detainees. Asylum-seekers often arrive in the United States without any financial resources and may not be able to afford medical care in the facility if there is any charge for the services.³ UNHCR has observed several facilities where detainees were required to pay for medical care despite our understanding that this was contrary to INS/ ICE policy.

UNHCR recommends that this standard adopt language in the Purpose and Scope and Expected Outcome sections such as the following: “Detainees will have access to a continuum of health care services, including prevention, health education, diagnosis, and treatment at no charge to the detainee.”

V. Expected Practices

C. Notifying Detainees about Health Care Services

This section states that “the facility shall provide each detainee, upon admittance, a copy of the detainee handbook or equivalent, in which procedures for access to health care services are explained” and that “access to health care services shall be included in the orientation curriculum for newly admitted detainees.” The draft then refers to the section

¹ UNHCR, UNHCR’s Revised Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers, Guideline 10 (February 1999) [hereinafter “UNHCR Guidelines”] (asylum-seekers shall have opportunity to receive appropriate medical treatment and psychological counselling).

² See Physicians for Human Rights and The Bellevue/NYU Program for Survivors of Torture, From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers, 2003 [hereinafter “Health Consequences”].

³ See Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, adopted 9 December 1988, G.A. res. 43/173, U.N. Doc. A/RES/43/173, Principle 24 (1988) [hereinafter “Body of Principles”] (medical care and treatment shall be offered free of charge).

on Orientation in the proposed Detention Standard on Admission and Release. Neither draft standard, however, states specifically what will be included in the orientation provided to newly admitted detainees. The draft Detainee Handbook's discussion of Medical Care does not indicate that services will be provided to detainees at no cost to the detainee.

UNHCR is concerned that asylum-seekers detained by ICE may not know that medical services are provided without cost and may be deterred from seeking medical care due to perceived costs. UNHCR has observed facilities operated under an intergovernmental service agreement (IGSA) which charged their regular inmate population a fee for medical services, and, although the charges did not apply to ICE detainees, the orientation material provided by the facility to ICE detainees upon arrival indicated there was a cost for services. UNHCR observed that some asylum-seekers were deterred from seeking care because they believed they would be charged for it and could not afford the fee.

In accordance with our previous recommendation, UNHCR recommends that the first sentence of the Medical Care section of the Detainee Handbook at page 11 adopt language such as the following: "The United States Public Health Service or contract medical staff provides medical care to all detainees staying in ICE approved facilities at no charge to the detainee. If you are in a facility that charges its regular detention population a fee for medical services, this fee does not apply to you." UNHCR further recommends that the Orientation Standard require that this information be provided in the orientation to newly admitted detainees.

D. Facilities

3. Medical Housing

This section discusses minimum standards for separate medical housing areas where detainees may be admitted if in need of health observation and care. It is UNHCR's view that an asylum-seeker suffering from a medical condition that necessitates constant health observation and care should generally be released from detention or placed in an appropriate medical facility.

To the extent that an asylum-seeker suffering from this kind of condition may need to be detained for specific reasons for a limited time, UNHCR is concerned that the standard does not address access to telephones, legal materials or outside visitors such as family or attorneys, which can all be critical to preparation of an asylum claim. UNHCR further notes that these access issues are not addressed in the Telephone Access, Law Libraries and Legal Material, or Visitation Standards.

UNHCR recommends that in the Telephone Access, Law Libraries and Legal Material, and Visitation Standards as well as in Section D.3. of this standard, language such as the following is incorporated: "Detainees housed in medical housing areas shall have the same access to the law library, telephones and social and legal visitation as the general population."

H. Medical Screening of New Arrivals: Medical Screening

1. Medical Screening

Section H.1 provides that "[i]mmediately upon their arrival, all newly admitted detainees shall receive initial medical and mental health screening by a health care provider or a detention officer specially trained to perform this function." Section H.2 provides that

“each facility’s health care provider shall conduct a health appraisal and physical examination on each detainee within 14 days of arrival.” The standard does not specify what kind of training a detention officer performing these screenings would be provided. UNHCR is concerned that, even with training, a detention officer will not have the expertise to perform a medical or mental health screening, and that an asylum-seeker may not see a health care professional for as long as 14 days after arriving in a facility.⁴

UNHCR recommends that the standard require that a health care professional conduct all medical screenings. Accordingly, UNHCR recommends that the first sentence of section H.1. be amended as follows: “Immediately upon their arrival, all newly admitted detainees shall receive initial medical and mental health screening by a health care provider or a detention officer specially trained to perform this function.”

In addition, section H.1. on page 10 of the draft standard states that with respect to health intake screenings:

If language difficulties prevent the health care provider/officer from sufficiently communicating with the detainee for purposes of completing the medical screening, the provider/officer shall obtain translation assistance.

- Translation assistance may be provided by another staff member or by a professional service, such as a telephone translation service.
- A detainee may be used for translation assistance, only in the most temporary and emergency situations. The translator must be proficient and reliable and the detainee must consent to the use of another detainee as translator.

These provisions improve upon the previous INS Detention Standard on Medical Care, which did not specify that other detainees could be used for translation assistance only in emergency situations. UNHCR has repeatedly observed that, despite the availability of an ICE telephonic translation service, medical staff at facilities holding asylum-seekers routinely did not use translation services to communicate with detainees. Medical staff on many occasions reported that they used other detainees to translate (often without requiring the patient’s consent), and some staff reported using computer translation programs or at times even “sign language.” This often appeared to occur because medical staff was not aware that telephonic translation services were available.

The availability of translation services is essential to ensuring that asylum-seekers’ medical needs are communicated. A medical screening or medical appointment with an asylum-seeker who is not fluent in the language spoken by the health care professional should not be conducted without the use of an interpreter. The relationship between a

⁴ See Body of Principles, *id.* at Rule 24 (“A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary.”); See also, European Council on Refugees and Exiles, *Position Paper on the Detention of Asylum Seekers*, ¶ 41 (April 1996) (“Medical and health screening should be introduced at the beginning of detention to detect, where possible, persons who may already be suffering from trauma due to experiences in the country they have fled, and/or to detect suicidal risk.”)

health care professional and a patient is one of trust and confidentiality. Accordingly, other detainees should not be the main source of translation services at a facility. Given the availability through ICE of telephonic translation services covering most languages, it should be very rare that a telephonic interpreter is not available. Hence, detainees should be used only in emergency situations or when an asylum-seeker states a preference that another detainee serve as a translator rather than the telephonic service.

While it is UNHCR's view that this section, as written, is a positive step forward, UNHCR is concerned about the widespread lack of knowledge on the part of medical staff as to the availability of the ICE telephonic translation service. UNHCR is also concerned that, apart from the provision in Expected Outcome 39 of Section II., the Medical Care Standard does not specify that obtaining translation assistance is a requirement that applies any time medical staff interact with detainees.

UNHCR recommends that Section V.A., which covers general expected practices, incorporate language such as the following: “In all medical and mental health interviews and examinations and procedures, if the detainee is not fluent in the language of the person conducting the interview, examination or procedure translation assistance shall be provided.”

UNHCR further recommends that following this statement, ICE repeat the following language:

If language difficulties prevent the health care provider/officer from sufficiently communicating with the detainee for purposes of completing the medical screening, the provider/officer shall obtain translation assistance.

- Translation assistance may be provided by another staff member or by a professional service, such as a telephone translation service.
- A detainee may be used for translation assistance, only in the most temporary and emergency situations. The translator must be proficient and reliable and the detainee must consent to the use of another detainee as translator.

I. Mental Health Program

a. Mental Health Services Required

This section states that each facility shall have an in-house or contractual mental health program and specifies the kind of mental health services facilities must provide. While the list of services includes “referral as needed for detection, diagnosis and treatment of mental illness,” the section does not define what is meant by the term “treatment” and whether such treatment would include ongoing individual counseling. Asylum-seekers who have experienced traumatic events often are in need of therapeutic counseling to deal with the impact of these events as well as the impact of being detained.⁵ UNHCR has observed many facilities which do not have sufficient mental health services. It is our observation that in some facilities only asylum-seekers exhibiting acute psychiatric

⁵ See UNHCR Guidelines, *supra* note 1.

problems were being treated and then only through medication. In many facilities, psychological counseling was not available.

In order to ensure that psychological counseling is available at all facilities used by ICE to hold asylum-seekers, UNHCR recommends that the list of required services in Section I.a. include services such as “Psychological counseling as needed.”

d. Mental Health Examinations and Appraisal

This section details when a detainee who has or may have an acute or chronic mental illness or disability shall be referred to a mental health provider for a mental health examination and appraisal. The section describes the assessments which the mental health provider shall conduct, including what “level of care” should be recommended. The different potential levels of care include:

- Remain in general population with psychotropic medication and counseling,
- “Short-stay” unit or infirmary,
- Special Management Unit, or
- Community hospitalization.

UNHCR is concerned that someone who has an acute or chronic mental illness and/or is in need of psychotropic medication would remain in a detention facility. It is UNHCR’s view that it is inappropriate for such an individual to remain detained whether in the general population, a short stay unit, an infirmary, or, in particular, in a special management unit which we understand typically to mean a unit of cells segregated from the general population. UNHCR has observed facilities that place asylum-seekers suffering from mental illness in segregation cells, an inappropriate measure which is likely to further impair an asylum-seeker’s mental health.⁶ An asylum-seeker suffering from this kind of condition should generally be released from detention or placed in an appropriate medical facility.

UNHCR recommends that the bullet points related to “levels of care” in section I.d. be deleted and replaced with language such as the following: “If a detainee is determined to be suffering from an acute or chronic mental illness or disability, the detainee shall be considered for release from detention or referred to an appropriate medical facility.”

⁶ See e.g., The European Council for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, “Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 10 to 20 May 1992,” Strasbourg, France, 1 April 1993, CPT/Inf (93 (CPT)) (“It is generally acknowledged that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects resulting in deterioration of mental faculties and social abilities.”); European Council on Refugees and Exiles, *supra* note 4, at ¶ 44 (“Detainees should have the opportunity for physical exercise and should never be placed in isolation.”); Standard Minimum Rules for the Treatment of Prisoners, *adopted* 1955, First U.N. Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva (1955), *approved* 31 July 1957, ECOSOC res. 663 C (XXIV) and 13 May 1977, ECOSOC res. 2076 (LXII) (hereinafter “Standard Minimum Rules”) (Rule 32(1): “Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.”)

f. Seclusion, g. Restraints, and h. Involuntary Administration of Psychotropic Medications

These sections indicate when a detainee at high risk for violent behavior because of a mental health condition may be placed in seclusion or restraints and require that involuntary administration of psychotropic medications to detainees comply with applicable laws. As discussed above, it is UNHCR's opinion that someone suffering from such an acute mental health condition should be released from custody or transferred to an appropriate medical facility and not be kept in a detention facility.

In addition to our recommendation above regarding release or transfer, UNHCR recommends that the standard clarify that the measures discussed in Sections I.f., g., and h. should only be resorted to when absolutely necessary and on a very temporary basis until transfer or release can be effected.

K. Dental Treatment

This section indicates that emergency dental treatment will be provided to detainees "for immediate relief of pain, trauma and acute oral infection that endangers the health of the detainee" and that routine dental care may be provided to detainees in ICE custody for over twelve months. It is not clear from the section as written whether emergency dental treatment will only be provided to relieve pain or trauma if the detainee's health is endangered. It is UNHCR's view that asylum-seekers who suffer any of the following: pain, trauma or an acute oral infection should receive dental treatment to alleviate the condition itself regardless of whether the individual's health is endangered.⁷

UNHCR recommends that Section K be rewritten in the following manner: "Emergency Dental treatment shall be provided for: immediate relief of pain, trauma, and acute oral infection, that endanger the health of the detainee."

41. Sick Call

This section requires each facility to have regularly scheduled "sick call" times when medical personnel are available to see detainees who have requested medical services, and to enact procedures for detainees to request health care services from a physician or qualified medical officer. The section specifies that if the procedure uses written request slips, these shall be provided in English and the most common languages spoken by the detainee population of that facility. It also states that "If necessary, detainees, especially those illiterate or non-English speaking, shall be provided assistance to complete a request slip."

UNHCR welcomes ICE's recognition that detainees may have trouble filling out a medical slip in English but is concerned that the standard does not specify how such assistance might be provided. UNHCR notes that the current INS Standard on Medical Care contains this same requirement, yet, UNHCR has rarely observed facilities with such a process in

⁷ See, Standard Minimum Rules, *id.* at Rule 22(3) (The services of a qualified dental officer shall be available to every prisoner); Body of Principles, *supra* note 3, at Principle 24 ("A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.").

place. Those facilities with such a process have tended to be those with larger populations of a particular nationality, such as Chinese. UNHCR is concerned that asylum-seekers may not be able to access the procedure for obtaining medical services due to language barriers.

UNHCR recommends that Section 41 provide specific guidance to facilities on how assistance shall be provided to detainees who are illiterate or non-English speaking.

P. Special Needs and Close Medical Supervision

Under this section, the “medical care provider for each facility shall notify the facility administrator in writing when a detainee has been diagnosed with a medical or psychiatric condition requiring special attention” such as “chronic illness, mental illness, physical disability, pregnancy, geriatrics, need for special diets, medical isolation, AIDS, etc.” This section further provides that “a treatment plan that includes directions to health care and other personnel regarding care and supervision, shall be developed” and “staff responsible for such matters as housing and program assignments, and disciplinary measures shall consult with the responsible clinician, clinical director, or health services administrator when there are any questions about the appropriateness of such actions.” UNHCR reiterates its concern regarding the detention of asylum-seekers who suffer from any of these medical or psychiatric conditions.

UNHCR recommends that Section P adopt language such as the following: “If a detainee is determined to be suffering from a condition requiring special attention such as chronic illness, mental illness, physical disability, pregnancy, geriatrics, or AIDS, the detainee shall be considered for release from detention or referral to an appropriate medical facility.”

To the extent that it is necessary for specific reasons to detain an asylum-seeker with such a condition, UNHCR welcomes the standard’s provision for a treatment plan and its requirement of consultations with the responsible health care personnel on matters such as housing, program assignments and disciplinary measures. As stated above, UNHCR has observed facilities that place asylum-seekers suffering from mental illness in segregation cells, an inappropriate measure which is likely to further impair the asylum-seeker’s mental health. UNHCR has also observed inappropriate use of segregation as a disciplinary measure for asylum-seekers who suffered persecution in the past.

As indicated later in our discussion of the Standard on Training, it is imperative that medical care professionals and facility staff in regular contact with detainees and those in charge of facility management and housing decisions receive training on the specialized needs of asylum-seekers. *UNHCR encourages ICE to make such training mandatory for these staff and to invite experts on refugees and trauma to conduct such trainings.*

Q. HIV/AIDS

1. Clinical Evaluation

This section states that when a detainee has symptoms suggestive of HIV infection, a clinical evaluation shall be conducted. One of the components of such an evaluation includes a determination of the medical need for isolation.

UNHCR reiterates its comments and recommendation from the previous section regarding the use of isolation and the need to release or transfer an individual in need of specialized care.

4. Continuity of Care and 5. Informed Consent and Forced Treatment

Section 4 states: “The Facility medical care provider must ensure there is continuity of care and no interruption in the provision of medication to detainees.” Section 5 states that “[a]s a rule, medical treatment shall not be administered against a detainee's will” and includes a series of directives that must be followed when a detainee does not consent to a necessary medical examination or treatment. It is not clear whether these two sections apply only to detainees who are infected with HIV/AIDS or to all detainees. As discussed in our comments below on Transfer of Health Records, it is important that the Standards specify that all detainees should have continued medication and no interruption of care. The general rule that medical treatment shall not be administered against a detainee’s will should also apply equally to all detainees.

In order to clarify that sections Q.4. and Q.5 apply to all detainees, UNHCR recommends that these two sections be moved to Section V.A., which deals with Expected Practices generally.

R. Medical Records

2. Confidentiality and Release of Medical Records

This section provides that “copies of health records may be released by the facility health care provider directly to a detainee or any person designated by the detainee, upon receipt by the facility health care provider o[f] a written authorization from the detainee.” It further states: “When information is covered by the Privacy Act, specific legal restrictions govern the release of medical information or records.” Asylum-seekers may need copies of their medical records to submit to an immigration court in support of their case. For instance, an asylum-seeker may be receiving treatment while at the facility for a mental or physical condition resulting from past persecution or torture, and the treatment records may help substantiate their past persecution.

UNHCR has observed instances in which facilities have refused to provide copies of medical records to detainees while they were still in the facility, citing security concerns, as well as instances in which detainees were charged for copies of their medical records. UNHCR is also aware of reports by attorneys who have been required to file a Freedom of Information Act (FOIA) request to obtain copies of their detained client’s records and that FOIA requests were not responded to promptly, making it difficult to obtain information in time to present to the immigration court at asylum hearings.

UNHCR is concerned that the standard does not specify that health records *must* be released to a detainee or any person designated by the detainee upon written consent by the detainee at no cost to the detainee, or if there is a fee, that it will be waived for indigency. UNHCR is also concerned that the standard does not specify exactly when FOIA requests may be necessary or that FOIA requests should be responded to promptly.

*UNHCR recommends that this section be amended with language such as: “Copies of health records may **shall** be released by the facility health care provider directly to the detainee...”*

UNHCR further recommends that this section adopt language such as the following: “If requested by a detainee, copies of the records shall be provided immediately upon request rather than after the detainee leaves the facility. The records shall be provided at no cost to the detainee.”

Finally, regarding the use of FOIA requests, UNHCR is not clear on whether and when filing such requests is necessary under United States law. If such requests are necessary in the context of requesting a detainee’s medical records, UNHCR recommends that this section state that such requests must be responded to expeditiously.

4. Transfer and Release of Detainees: Transfer of Health Records

This section provides that a “detainee’s medical record, copies, or transfer summary shall accompany the detainee who is being transferred” in or out of ICE custody and refers to the Transfer of Detainees Standard for requirements regarding medical records when a detainee is transferred among ICE facilities.

UNHCR notes that the current INS Detention Standard on Medical Care requires medical records to accompany detainees when transferred, yet UNHCR has observed in several facilities that, upon transfer out of the facility either to another facility or out of ICE custody, detainees were not being provided either a copy of their medical records or a summary of the records. Thus, while we welcome the principles underlying both the current and the proposed standard regarding transfer of medical records, we remain concerned about the enforcement of the standard.

UNHCR is further concerned that neither the draft Medical Care Standard nor the Transfer of Detainees Standard specifies the number of days of prescription medication that should accompany a detainee when transferred from a facility either to another facility or out of ICE custody, except with regard to detainees receiving anti-TB therapy in Section V.B.2. The Transfer of Detainees Standard states that “prior to transfer, medical personnel shall provide the transporting officers instructions and, if applicable, medication(s) for the detainee’s care in transit.” Again, similar language exists in the current INS Detainee Transfer Standard, yet UNHCR has observed that, in some facilities, detainees were routinely transferred without any supply of prescription medications, and UNHCR has observed asylum-seekers who were not able to see a doctor or a mental health care professional for many days after transfer, causing serious interruption in their medical care.

UNHCR is concerned that the continuity of medical care for some asylum-seekers has been compromised because they have been transferred from a detention facility without a supply of prescription medication despite the requirements in the INS Detainee Transfer Detention Standard.

UNHCR recommends that both the Medical Care Standard and the Transfers of Detainees Standard incorporate language requiring medical personnel to provide at least a two week supply of any prescribed medications to detainees upon transfer.

V. Examinations by Independent Medical Service Providers and Experts

UNHCR is pleased that the proposed Medical Care standard incorporates this new section, which recognizes that independent medical and mental health examinations may at times provide useful information for detainees with cases pending before the Executive Office

for Immigration Review. It directs Field Office Directors to generally approve requests by detainees for such independent examinations absent an unreasonable security risk and to provide a written rationale for any denials. Asylum-seekers in particular may find such examinations useful to support claims based on past persecution or torture or lasting physical or psychological effects of such harm. UNHCR has observed facilities where such requests were denied.

*Given the unlikelihood that such a medical examination by an independent expert would present an unreasonable security risk, UNHCR recommends amending Section V. to include language such as: “If a detainee seeks an independent medical or mental health examination, the detainee or his or her legal representative shall submit to the Field Office Director a written request that details the reasons for such an examination. Ordinarily, the Field Office Director shall approve the examination, **absent unusual circumstances when there is an unreasonable security risk** as long as it would not present an unreasonable security risk. If a request is denied, the Field Office Director shall advise the requester in writing of the rationale.”*

Hunger Strikes

The Hunger Strike standard aims to protect “detainees’ health and well-being by monitoring, counselling and, when appropriate, treating any detainee who is on a hunger strike.” The standard states that a detainee on a hunger strike may be placed in isolation upon a medical recommendation. Many asylum-seekers have experienced severe physical and/ or mental trauma or torture.

In UNHCR’s view, when making a decision whether to isolate an asylum-seeker who is on a hunger strike, detention staff should take into consideration the effects of isolation on the asylum-seekers’ physical and mental well-being.

*UNHCR recommends the addition of language such as the following be added to the Initial Referral section: “**In deciding whether to place a detainee into isolation, due consideration should be given to any past trauma experienced by that detainee and whether isolation would have a harmful effect on the detainee’s mental health.**”*

In addition, UNHCR recommends that the “Impact on Trauma and Torture” training recommended in the Staff Training Standard include information on the effects of isolation.

Terminal Illness, Advance Directives, and Death

The Terminal Illness, Advance Directives, and Death standard seeks to provide specific guidance to ensure that each facility is able to appropriately address terminal illness and fatal injury of a detainee, and to provide adequate opportunity for detainees to issue advanced directives expressing their wishes in the event of death or terminal illness.

V. Expected Practices

A. Terminal Illness

This section states that when a detainee’s medical condition becomes life-threatening “ICE/DRO shall provide family members as much opportunity for visitation as possible.” A key aspect of comfort and adequate pre-death preparation is to allow as expansive visitation as possible when death is anticipated, and UNHCR appreciates the recognition

that family visits play an important role in the comfort and well-being of an individual facing death.

UNHCR has observed, however, that asylum-seekers may not have family members living in the United States. Even in situations where family members are nearby, friends, social and religious connections are often relied upon for comfort and assurance at the time of death. The opportunity to receive visits from friends, relatives, and social and legal contacts is important under any circumstance where asylum seekers and others are detained.⁸ This is even more crucial when death may be imminent.

*To ensure that a terminally ill asylum-seeker is provided the greatest opportunity for comfort and well-being, UNHCR recommends that Section V.A. incorporate language such as, “ICE/DRO shall provide family members, **friends, and social and religious contacts** as much opportunity for visitation as possible.”*

Sexual Abuse and Assault Prevention and Intervention

The Sexual Abuse and Assault Prevention and Intervention Standard is a new standard, which requires facilities to affirmatively act to prevent sexual abuse and assaults, to provide prompt intervention and treatment to victims of sexual abuse or assault and to deal appropriately and expeditiously with perpetrators. It is critical that asylum-seekers in detention are safe from sexual abuse or assault by other detainees or facility staff. UNHCR is aware of instances in the past when facility guards at immigration detention facilities engaged in sexual misconduct against detainees, including asylum-seekers. UNHCR welcomes the incorporation of a standard on this issue.

At the same time, UNHCR is concerned that IGSA facilities are unnecessarily exempt from several of the standard’s important requirements. We understand that IGSA facilities are expected to conform to these procedures or adopt, adapt, or establish alternatives, provided they meet or exceed the intent represented by them; however, it is UNHCR’s view that in the areas described below, IGSA facilities should be provided with additional guidance.

V. Expected Practices

B. Written Policy and Procedures Required

This section of the standard requires the facility administrator of each SPC and CDF to ensure that written policies and procedures are in place and that the facility is in full compliance with this standard’s requirements and guidelines within 90 days of the standard’s effective date. However, there is no similar requirement specified for IGSA facilities. UNHCR believes it is critical for all facilities to have a deadline to ensure that written policies and procedures are implemented in a timely manner.

*UNHCR recommends that Section V.B. incorporate language such as the following: “The facility administrator of each SPC and CDF shall ensure that, within 90 days of the effective date of this Detention Standard, written policy and procedures are in place and that the facility is in full compliance with its requirements and guidelines. **Each IGSA***

⁸ See, e.g., UNHCR Guidelines, *supra* note 1 (“Asylum-seekers should have the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel. Facilities should be made available to enable such visits. Where possible such visits should take place in private unless there are compelling reasons to warrant the contrary.”); Standard Minimum Rules, *supra* note 6, at Rule 37 (“Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.”).

shall have written policy and procedures in place within 90 days of entering into a contract with ICE.”

This section of the standard also requires SPCs and CDFs, but not IGSA, to submit the local policy and procedures document to the respective Field Office Directors. UNHCR believes that reporting to Field Office Directors promotes accountability and that requiring such reporting will help to ensure that local policy and procedures conform to this standard.

To ensure that IGSA conform to this standard, UNHCR recommends that the following language in Section V.B. not be italicized: “The facility administrator shall submit the local policy and procedures document to the respective Field Office Director for review and approval.”

C. Program Coordinator

UNHCR is pleased that this section of the standard requires the designation of a Sexual Abuse and Assault Prevention and Intervention Program Coordinator, but is concerned that this requirement does not apply to IGSA facilities. Having a coordinator at each facility should help ensure that sexual abuse and assault prevention programs are well-planned and run effectively.

UNHCR recommends that Section V.C. be amended to include language such as:

In SPCs and CDFs, the facility administrator shall designate a Sexual Abuse and Assault Prevention and Intervention Program Coordinator to

Management at IGSA facilities shall also designate a Sexual Abuse and Assault Prevention and Intervention Program Coordinator to perform these functions.

M. Tracking Incidents of Sexual Abuse and Assault

This section includes a series of requirements for maintaining both general and investigative files so that incidents of sexual abuse and assault can be effectively tracked. Tracking incidents of sexual abuse and assault is essential to combating them effectively.

Among the requirements, this section specifies that SPCs and CDFs should assign the files of assailants and victims involved in sexual assaults a specific designation that will allow appropriate staff to confidentially track incidents “across the system” and report annually on the number of sexual assaults occurring within ICE/DRO facilities. These requirements do not apply, however, to IGSA facilities. For adequate and appropriate responses to sexual assault and abuse, it is important that all facilities track their occurrence. The standard is not clear how information on any sexual assaults or abuse occurring at IGSA facilities would be tracked and reported.

To ensure that all incidents of sexual abuse and assault occurring in facilities used by ICE are tracked and included in ICE’s annual report, UNHCR recommends Section V.M. require IGSA facilities to assign the same specific designators as required under the official reporting system to the files of assailants and victims of sexual assault. If this is not possible, UNHCR recommends that the standard specify how IGSA will track

incidents of sexual abuse and assault and that this information will be included in ICE's annual report.

J. Notification and Referrals

This section sets forth the reporting requirements for sexual abuse and sexual assault incidents with different procedures depending on who was involved in the incidents. This section requires that where an incident involves an alleged staff perpetrator, the following individuals must be notified directly: the facility administrator, the highest ranking on-site ICE/DRO representative and the Field Office Director. In turn, the Field Office Director will further notify his or her superiors within DHS. Unfortunately, these reporting requirements do not apply to incidents involving detainee perpetrators.

Given the extremely serious nature of all incidents involving sexual misconduct, it is UNHCR's view that it is important for Field Office Directors to be notified of all incidents of sexual abuse or assault, regardless of whether the perpetrator is staff or another detainee. This reporting requirement should help ensure effective responses to negative patterns whether staff or a detainee is the perpetrator.

In order to ensure a timely response to any pattern of sexual abuse and sexual assault in a facility, UNHCR recommends that Section J.1. include the following language: "The following shall be notified immediately: the facility administrator, the highest ranking on-site ICE/DRO representative, and the respective Field Office Director."

Suicide Prevention and Intervention

This standard requires each facility to have a written suicide prevention and intervention program approved by the health authority and facility administrator. The standard also mandates training in suicide prevention for all facility staff supervising ICE detainees.

The need for suicide prevention measures is particularly relevant when housing asylum-seekers who may have experienced severe trauma or torture of either a physical or mental nature or both.⁹ UNHCR is aware of recent reports of suicides in ICE detention and has observed many asylum-seekers who express suicidal ideation, particularly while in detention.

Given the importance of this topic and, as with the Medical Care Standard, its specialized nature, UNHCR recommends that ICE ask medical experts to review this standard. Specifically, we recommend that ICE seek the views of the Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture who have reported on the impact of detention on the health of asylum-seekers.¹⁰

Personal Hygiene

The Personal Hygiene standard seeks to ensure that detainees are "able to maintain acceptable personal hygiene practices through the provision of adequate bathing facilities and the issuance and exchange of clean clothing, bedding, linens, towels, and personal hygiene items."

⁹ See UNHCR Guidelines, *supra* note 1, at Guideline 10 (asylum-seekers shall have opportunity to receive appropriate medical treatment and psychological counselling).

¹⁰ See Physicians for Human Rights and The Bellevue/NYU Program for Survivors of Torture, *supra* note 2.

V. Expected Practices

B. Issuance of Clothing

This section states that “all new detainees shall be issued clean, temperature-appropriate, presentable clothing during in-processing.” SPC and CDF facilities are required to issue “as necessary” additional clothing for changing weather conditions or as seasonally appropriate. IGSA facilities are not subject to the same requirement. UNHCR has visited several facilities where asylum-seekers have complained about inadequate clothing for the temperature inside of the facility where they are housed, as well as for outside weather conditions. In one facility, if detainees wanted extra clothing such as sweatshirts they had to buy them, leaving indigent asylum-seekers to suffer from colder temperatures both inside the facility and during outdoor recreation.

Detainees who do not have sufficient clothing to keep warm may suffer chronic discomfort or be prevented from participating in outdoor recreation. It is not clear to UNHCR why IGSA facilities would be exempt from providing appropriate clothing to detainees.

Accordingly, UNHCR recommends that the following sentence in Section V.B. not be italicized and include language such as: “Additional clothing shall be issued at no cost to the detainee as necessary for changing weather conditions, facility temperatures or as seasonally appropriate and taking into account the facility temperature.”

D. Personal Hygiene Items

This section provides that male and female detainees shall be provided with appropriate personal hygiene items, which will be replenished as needed. UNHCR is concerned that in some facilities, female detainees have been asked to demonstrate a need for personal hygiene items before such items will be dispensed. This can be particularly humiliating for detainees from certain cultural backgrounds.

Accordingly, UNHCR recommends that Section D include language such as: “Staff shall provide male and female detainees personal hygiene items appropriate for their gender and shall replenish supplies as needed. Staff shall issue feminine hygiene items to female detainees upon request.”

G. Issuance of Bedding, Linens and Towels

This section states that “all detainees shall be issued clean bedding, linens, and a towel and be held accountable for those items.” It also states that in CDF and SPC facilities, “[a]dditional blankets shall be issued, based on local weather conditions.” UNHCR’s concerns with this section are similar to those stated above in Section V.B. UNHCR has visited facilities where asylum-seekers have complained about insufficient bedding to stay warm at night. Being continuously cold can cause chronic discomfort and difficulty sleeping.

Accordingly, UNHCR recommends that the following language in Section V.G. apply to all facilities and be amended such as the following: “Additional blankets shall be issued, based on local weather conditions- at no cost to the detainee upon request, taking into account the temperature in the facility.”

Recreation

The Recreation standard seeks to ensure that all detainees have access to recreation and exercise on a daily basis, consistent with the “safety, security, and good order” of the facility. Recreation encompasses both indoor and outdoor activities. UNHCR’s comments and recommendations focus on the standard as it relates to outdoor recreation.

V. Expected Practices

B. Recreation Schedule

This section states that detainees must be provided access to outdoor recreation at least one hour every day, including weekends. UNHCR is pleased that this language reflects the minimum requirement for outdoor recreation; however, there are exceptions to this requirement that are of concern to UNHCR. One concern is that, as written, this section applies to SPCs and CDFs, but this does not apply to IGSA facilities.

G. Transfer Option Where Only Indoor Recreation is Available

This section allows for a minimum of six months in a facility that lacks outdoor recreation before a detainee is eligible to request a transfer to a facility that provides outdoor recreation. However, no request will be entertained unless any immigration court proceedings have been completed, the presiding immigration judge has issued a final decision, and the individual will likely remain in detention for at least another three months. UNHCR is very concerned that under this standard, an asylum-seeker could be detained for six months or even longer without outdoor recreation before a requested transfer will be considered.

H. Transfer Option When No Recreation Opportunities Are Available

This section allows an individual to be held in a facility that provides neither indoor nor outdoor recreation for 45 days before being eligible to request a transfer to a facility that does provide recreation, and allows for a maximum of 60 days in a facility without any recreation at all.

UNHCR has observed that confinement can have a particularly damaging effect on asylum-seekers. One study referenced in the United States Commission on International Religious Freedom Report on Asylum Seekers in Expedited Removal concluded that “measurable increases in psychopathological symptoms have been found to occur after only 72 hours of confinement.”¹¹ Although there is no definitive way to prevent these adverse psychological effects in detention, outdoor activity in fresh air can provide a vital, constructive means for detainees to release some of the negativity and stress that result from confinement.

Asylum-seekers should be provided regular, daily, outdoor activity.¹² “Every detainee who is not employed in outdoor work *shall have at least one-hour of suitable exercise in the open air daily* if the weather permits” (emphasis added).¹³

This outdoor recreation requirement is fulfilled only by *actual* outdoor activity. UNHCR has observed some facilities which provide an indoor recreation area with “fresh air panels,” which were considered under the INS Detention Standard to constitute “outdoor

¹¹ United States Commission on International Religious Freedom, Report on Asylum Seekers in Expedited Removal, Volume II, 192 (February 8, 2005).

¹² See UNHCR Guidelines, *supra* note 1.

¹³ Standard Minimum Rules, *supra* note 6, at Rule 21(1).

recreation.” In UNHCR’s view, this is not outdoor recreation and an outdoor recreation area must, at a minimum, provide an open air roof. IGSA facilities should be held to the same minimum as all other facilities.

Based on the international standard, we recommend that the new Recreation Standard state unequivocally that all detainees must, at a minimum, be provided at least one hour daily of outdoor recreation in an area with an open-air roof.

*UNHCR recommends that Section V.B. of this standard be amended by removing the italicized font and by stating: “**In SPCs and CDFs, all facilities**, detainees shall **generally** have access to outdoor recreation at least one hour every day, including weekends. **This requirement is not satisfied by using fresh air panels, but must be an outdoor area with an open roof.**”*

Voluntary Work Program

The Voluntary Work Program standard aims to provide detainees, to the extent possible, with the opportunity to work and earn money. UNHCR appreciates that ICE has continued to promulgate this standard. A detained asylum-seeker can greatly benefit from educational and rehabilitative programs as well as other constructive activities such as vocational opportunities.

UNHCR has observed at some IGSA facilities that ICE detainees were not given an opportunity to join voluntary work programs due to a belief by facility staff that they were detained for an indefinite period of time, and therefore lacked the necessary incentive to volunteer for these programs.

To ensure that asylum-seekers are not precluded from consideration of such programs, UNHCR recommends that ICE detainees’ eligibility to participate in voluntary work programs is emphasized when IGSA staff members are trained on the detention standards as discussed in the “Staff Training” section below.

Religious Practices

The Religious Practices standard aims to ensure that detainees of different religious beliefs are provided reasonable and equitable opportunities to participate in the practices of their respective faiths. Any asylum-seeker who is detained should have the opportunity to practice his or her religion.¹⁴

V. Expected Practices

J. Religious Property

This section states that detainees shall be allowed access to personal religious property consistent with safety, security, and good order. It states that at CDF and SPC facilities, a chaplain shall verify the significance of such items. It also provides, for CDF and SPC facilities, a non-exhaustive list of religious property and apparel and states the locations within the facility where a detainee may wear religious items and apparel. None of these provisions apply to IGSA facilities. UNHCR understands that an IGSA may not have a

¹⁴ See UNHCR Guidelines, *supra* note 1 (asylum-seekers should have the opportunity to exercise their religion); Standard Minimum Rules, *id.* at Rule 41 (if an institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved and made available to hold regular services) and Rule 42 (as far as practicable, every prisoner shall be allowed to satisfy his religious needs by attending religious services).

designated chaplain and therefore could not adhere to the requirement that “[i]f necessary, the religious significance of such items shall be verified by the chaplain prior to facility administrator approval.” However, it is not clear to UNHCR why the remaining requirements could not be adhered to by IGSA facilities.

Accordingly, UNHCR recommends that, with the exception of the sentence: “If necessary, the religious significance of such items shall be verified by the chaplain prior to facility administrator approval,” the remaining sentences in section J should not be in italics.

Staff Training

This standard aims to ensure that facility staff, contractors and volunteers are “competent in their assigned duties by requiring that they receive initial and ongoing training.” UNHCR appreciates that ICE has incorporated a new standard on staff training and that training will include such topics as cultural diversity, suicide prevention, health-related emergencies, and sexual harassment and sexual misconduct. The last three topics are important to ensure that asylum-seekers remain safe and in good health. The topic of cross-cultural training is important to sensitize facility staff on the different needs and behaviours of asylum-seekers.

V. Expected Practices

C. Initial and Annual Training

This section provides that each new facility employee, contractor, and volunteer shall be provided with training prior to assuming their duties. The standard provides a list of trainings that, at a minimum, should be provided to various categories of facility staff.

However, in addition to these topics, it is necessary for detention staff to have an understanding of asylum-seekers’ unique situations in order to work effectively with them. UNHCR understands that ICE is planning to require all SPC and CDF staff to receive the training created by the Office of Civil Rights and Civil Liberties entitled the “Asylum Seekers Overview,” which is designed to educate DHS enforcement personnel on the unique needs and behaviours of asylum-seekers. UNHCR recommends that this requirement be included in this standard and that it apply as well to IGSA staff.

UNHCR recommends that the list of orientation programs in Section B. include the “Asylum Seekers Overview” training.

In addition to this training, UNHCR recommends that facility staff be specifically trained on the effects of past trauma and persecution, which can significantly affect asylum-seekers’ behaviour and mental state. It is important that employees working with asylum-seekers understand this effect and treat asylum-seekers with sensitivity.¹⁵

UNHCR recommends that the lists of trainings for staff in categories C.2, C.3, C.4 and C.5 include “Impacts of Trauma and Past Persecution.” UNHCR further recommends that

¹⁵ European Council on Refugees and Exiles, *supra* note 4 at ¶ 51 (“All staff should receive proper training on basic matters relating to the right of asylum, on the causes of refugee movements relevant to the main countries of origin, on relevant cultural factors, and on methods of recognizing and responding appropriately to the symptoms of stress-related illness which asylum-seekers in detention may exhibit. Authorities should seek assistance from UNHCR and specialised NGOs in order to provide such training.”).

ICE involve the Center for Victims of Torture in designing and/or conducting such trainings.

It is also necessary for all detention staff to understand that asylum cases involve a great deal of sensitive information which must be kept confidential, particularly in interactions with government officials from an asylum-seeker's country. Divulging the fact that someone sought asylum alone can put asylum-seekers or their families in danger.

*UNHCR recommends that the list of trainings for staff in categories C.1, C.2, C.3, C.4 and C.5 include **"Confidentiality of Asylum Information"** training.*

To ensure effective communication, in many instances, the use of an interpreter is necessary when working with asylum-seekers.

*In order to give employees, contractors and volunteers the proper skills and knowledge to work with interpreters and translators, UNHCR recommends that the list of trainings for staff in categories C.1, C.2, C.3, C.4 and C.5 include **"How to Work with Translators and Interpreters."***

In order to ensure that the ICE/DRO detention standards are followed, it is UNHCR's view that staff and contractors should be trained on the standards.

*UNHCR recommends that the list of orientation programs in Section B. include **"ICE/DRO Detention Standards."***

UNHCR is willing to assist ICE with the development of any of these trainings.

Draft Performance Based Detention Standards: Group Three

Transfer of Detainees

The Transfer of Detainees standard seeks to ensure "that transfers of detainees from one facility to another are professionally and responsibly managed in regard to notifications, detainee records, safety and security, and protection of detainee funds and personal property." UNHCR has observed that asylum-seekers have been transferred without adequate information about the reason for the transfer or the destination of the transfer. As a result, some asylum-seekers have experienced unnecessary anxiety, with some believing that they were going to be removed to their home country. Asylum-seekers with language barriers may be particularly disoriented during a transfer.

II. Expected Outcomes

The third expected outcome in this section addresses the need to notify detainees of an upcoming transfer.

UNHCR recommends that the language in the third paragraph of the Expected Outcomes section be modified as follows: "The detainee will be properly notified, orally **in a language he or she is fluent in** and in writing when he or she is being transferred to another facility, in accordance with sound security practices."

V. Expected Practices

A. Types of Transfers

This section outlines the different reasons that transfers may be necessary, such as medical reasons, change of venue, recreation or security reasons. UNHCR is pleased that the new standard requires ICE/DRO to take into account legal representation of the detainee when considering a transfer. The ability to secure and maintain legal counsel is vital to asylum seekers' ability to access the asylum system. In addition, for many asylum-seekers, the availability of medical, social and psychological can be essential. While the standard mentions "medical reasons" as a consideration in deciding whether to transfer someone, UNHCR recommends that the standard discuss the need to take into account existing medical and psychological services being accessed by the detainee before transferring someone. UNHCR has observed an asylum-seeker being transferred away from needed psychological services.

UNHCR recommends that this standard adopt language in section V.A. such as: "In such cases, ICE/DRO shall consider alternatives to transfer, especially when the detainee is represented by local, legal counsel and where immigration court proceedings are ongoing. **In deciding whether to transfer a detainee, ICE/DRO shall also consider alternatives to transfer when a detainee is being provided with local social or psychological services, particularly when such services are not available at the proposed transfer facility.**

B. Notification Procedure

1. Attorney

This subsection details the procedures for notifying the detainee's attorney of a transfer. A transfer has a significant effect on representing a client. In some cases, an attorney may be forced to cease representing a client due to a transfer. It is important that attorneys are informed of a transfer with sufficient time to raise any issues they may have with the

transfer, make proper arrangements and plans for continued representation, and handle any other impacts of the transfer on their client's case.

UNHCR recommends section incorporate language such as the following: "The attorney shall be notified of the transfer ~~once the detainee is en route to the new detention location~~ **in advance**, and the notification shall not include specific travel details (day of travel, mode of travel, etc.). ~~Generally,~~ **If it was an emergency transfer**, notification will be made 24 hours after the transfer."

3. Detainee

The procedures for notifying the detainee of a transfer are contained in this subsection. The section states that detainees shall not be informed of a transfer until immediately prior to leaving the facility and will be put in administrative segregation from the time of notification until the time of departure. A transfer can have a significant impact on the legal case of a detainee as well as their access to social services and support systems. For many asylum-seekers, detention is traumatic in and of itself. Therefore, contact with family, psychological and social services, and informal support systems are irreplaceable resources. By providing an asylum-seeker with prior notice and a means to contact their legal representative, family members, and other sources of support in the community, asylum-seekers are able to take the necessary steps to ensure that important resources for their well-being will remain available after a transfer. Additionally, it allows asylum-seekers to begin resolving any legal issues that may arise due to a transfer.

As asylum-seeker may have been victims of past persecution and trauma, a transfer may be especially anxiety-producing, especially without prior notice. Asylum-seekers in administrative segregation will be cut off from their support systems both within and outside of the detention center. Additionally, asylum-seekers may have experienced persecution or torture that involved solitary confinement and therefore may find administrative segregation to be especially traumatic.

UNHCR recommends that the section be amended as follows: "The detainee shall ~~not be informed of the transfer until immediately prior to leaving the facility~~, be notified that he or she is being moved to a new facility within the United States and not being deported **with sufficient time to contact his or her attorney and family and to make any other necessary arrangements.** ~~at which time he or she shall be notified that he or she is being moved to a new facility within the United States and not being deported "~~

UNHCR further recommends that other, less restrictive methods for maintaining security prior to a transfer be developed, and that the following language be removed from the standard: "Following notification, the detainee shall normally not be permitted to make or receive any telephone calls or have contact with any detainee in the general population until the detainee reaches the destination facility. When necessary, the detainee may be housed in Administrative Segregation 24 hours before the transfer."

C. Preparation and Transfer of Records

6. Medical Procedures and Information Required for Transfer

e. Medications

This section specifically addresses procedures to ensure that a detainee has proper care and medication during a transfer. UNHCR is concerned that neither the draft Transfer of Detainees Standard nor the Medical Care Standard specifies the number of days of

prescription medication that should accompany a detainee when transferred from a facility either to another facility or out of ICE custody, except with regard to detainees receiving anti-TB therapy in Section V.B.2 of the Medical Care Standard. The Transfer of Detainees Standard states that “prior to transfer, medical personnel shall provide the transporting officers instructions and, if applicable, medication(s) for the detainee’s care in transit.” Again, similar language exists in the current INS Detainee Transfer Standard, yet UNHCR has observed that, in some facilities, detainees were routinely transferred without any supply of prescription medications. UNHCR has also observed asylum-seekers who were not able to see a doctor or a mental health care professional for many days after transfer causing serious interruption in their medical care.

UNHCR recommends that both the Medical Care Standard and the Transfers of Detainees Standard incorporate language requiring medical personnel to provide at least a two week supply of any prescribed medications to detainees upon transfer.

E. Miscellaneous

1. Detainee Phone Calls

This subsection lays out the procedures for special phone calls that are allowed to detainees when they are transferred. The standard allows detainees one domestic phone call when they arrive at the new facility. This phone call will be at the cost of the Government if the detainee is declared indigent.

As discussed earlier, UNHCR recommends that detainees be notified in advance of a transfer with time to contact relatives, attorneys, or other people important to their legal or psychosocial support. Accordingly, we further recommend that the standard require that a free phone call be provided to the detainee prior to transfer in order to allow the detainee to make proper arrangements for transfer. UNHCR has also received reports that, in some facilities, the waiting period to be declared indigent is up to 30 days, which means that, under the current standard, the detainee may be unable to inform his or her family for a month after the transfer.

*UNHCR recommends that section incorporate language such as the following: “~~Upon arrival at the final transfer destination~~ **Following the detainee's notification of transfer**, an indigent detainee shall be permitted a single domestic phone call at the Government's expense, ordinarily using a PCS Emergency card. Where a PCS Emergency card is not available, the Field Office shall make arrangements for such phone calls. **The detainee will be allowed to make additional phone calls at his or her own expense prior to departure.**”*

Admission and Release

The Admission and Release Standard seeks to protect the community, detainees, staff, volunteers, and contractors by ensuring secure and orderly operations when detainees are admitted to or released from a facility.

V. Expected Practices

B. Intake and Reception

This section of the standard details the procedures that take place when a detainee is admitted into the facility. It covers topics such as searches, medical screenings and documentations.

3. Strip Searches

This section explains when strip searches are necessary and provides standard procedures for conducting such searches. UNHCR is pleased that, under the standard, strip searches are no longer mandatory for each admission and are to only be conducted when there is “reasonable suspicion that the individual may be concealing a weapon or other contraband.” UNHCR has observed several facilities with automatic strip search policies on such occasions as after returning from court visits, after contact visits with attorneys or family members. UNHCR has met with asylum-seekers in those facilities who felt humiliated by the searches and UNHCR has expressed its concern that such policies could create unnecessary trauma and anxiety for asylum-seekers.¹⁶

UNHCR is concerned that two of the factors that could lead to a reasonable suspicion and subsequent strip search include a lack of identity documents or possession of fraudulent identity documents. Many asylum-seekers have no choice but to leave their countries without their proper identity documents and many arrive without documents or with fraudulent documents. This fact should not lead to an automatic suspicion that he person is concealing a weapon or contraband.

UNHCR recommends that the training on this standard include information that many asylum-seekers lack proper identity documents due to extenuating circumstances and this should be taken into consideration when making the decision whether to conduct a strip search.

C. Clothing and Bedding

This section sets forth procedures for issuing clothing and bedding to new detainees. UNHCR requests that our recommendations on this topic contained in our comments on the draft Personal Hygiene Standard be incorporated into this section.

F. Orientation

This section discusses the topics to be covered in orientations for newly admitted detainees. The standard requires that all CDF and SPC facilities show an orientation video followed by a question and answer session with staff. It also requires that the video be in English and the most prevalent language(s) spoken by detainees at the facility and that an interpreter be made available for detainees who do not speak the language of the video. With regard to IGSA facilities, the standard requires that orientation procedures be approved by the ICE/DRO office of jurisdiction but provides no instruction on what information those orientations should include. These requirements were also in the prior INS Detention Standard on Admission and Release.

An orientation in one’s own language as to facility rules and operations such as use of telephones, availability of legal resources, grievance procedures is essential for asylum-seekers to observe jail procedures and to meaningfully access the asylum system. Information about immigration proceedings and the roles and responsibilities of officers is also particularly helpful to asylum-seekers.

¹⁶ UNHCR Guidelines, *supra* note 1, at Guideline 10 (conditions of detention for asylum-seekers should be humane); European Council on Refugees and Exiles, *ECRE Summary of Key Recommendations on the Detention of Asylum Seekers*, Recommendation 11 (April 1996) (“Conditions in detention should reflect the non-criminal status of the detainees and be consistent with all international standards”).

The video and question and answer period required by both the old and the draft new Admission and Release Standards would be very helpful to ensuring asylum-seekers receive a proper orientation upon admittance to a facility. However, UNHCR is not aware of the existence of such a video and the majority of asylum-seekers with whom we have met did not receive an orientation on the topics outlined in these standards in a language they understood. *UNHCR urges ICE if it has not done so already to develop such a video and to ensure its usage along with the follow up question and answer period.*

As discussed in UNHCR's comments on the draft Medical Care Standard, UNHCR has observed asylum-seekers who were not aware that medical care was available free of cost. *Accordingly, UNHCR recommends that the topics covered in the orientation video listed in section V.F.4. include "Accessing Medical Care."*

UNHCR is also concerned that the standard does not address the topics to be covered in orientations at IGSA facilities. *In order to ensure that IGSA facilities cover appropriate topics, UNHCR recommends including additional language in section V.F such as: "Orientation procedures in IGSA's must be approved in advance by the ICE/DRO office of jurisdiction and must include, at a minimum all topics required in Section V.F.4 with the exception of the following: typical case chronology and authority, responsibilities and duties of security officers. All detainees must receive an orientation in a language in which the detainee is fluent in or an interpreter must be provided." UNHCR further recommends that ICE develop a video on these latter topics to be shown at all IGSA facilities and that a DHS officer be present to answer questions following the video.*

G. Detainee Handbook

This section contains procedures for issuing and ensuring understanding of the standard National Detainee Handbook. UNHCR is pleased that this standard addresses the need for the Detainee Handbook to be understood by all detainees regardless of their language.

The standard requires that CDFs and SPCs use the I-385 form to track the receipt of the detainee handbook but does not contain any guidance on tracking receipt in IGSA facilities. *In order to ensure that all detainees receive a copy of the Detainee Handbook, UNHCR recommends that the standard require IGSA facilities to adopt a tracking system by adopting language in section V.G.4 such as the following: "IGSA's shall create and adhere to a record-keeping system which tracks the receipt of the Detainee Handbook. This system will include tracking, at a minimum, the date and time of the receipt, the name and A-number of the detainee, and the officer who provided the handbook."*

H. Release

The section outlines procedures which must be completed before any detainee's release, removal, or transfer from a facility. The standard does not contain any required procedures to ensure detainees have access to transportation when being released from a facility. Asylum-seekers often lack resources and may not have a family member or other person from the community to meet them upon release. In addition, many detention facilities are located in remote areas where access to public transportation may be limited or nonexistent. UNHCR has received reports of asylum-seekers being released at times or on days when public transportation is not available.

In order to ensure that asylum-seekers are able to reach their intended destination upon release from a facility or can access any available shelter services if they are not immediately able to reach their intended destination, UNHCR recommends that section V.H. adopt language such as the following:

Prior to release from a facility:

- **Detainees shall be given an opportunity to make, at a minimum, one phone call. If the detainee is indigent this call will be at the Government's expense.**
- **If public transportation services are not within walking distance of the facility, facility staff must provide transportation of detainees to the closest public transportation station.**
- **To the greatest extent possible, detainees should be released during the normal operating hours of local public transportation.**
- **The facility shall provide the detainee an information sheet with shelter services in the immediate area upon release."**

Searches of Detainees

The Searches of Detainees Standard is a new detention standard. Its purpose is to protect detainees and staff and enhance "facility security and good order by detecting, controlling, and properly disposing of contraband." The standard establishes when various types of searches may be conducted to detect contraband, including searches of detainees' housing areas, strip searches, body searches and body cavity searches. The standard states that canine units, in facilities that have them, may only be used for contraband detection when detainees are not present and that it is prohibited to use canines for force, control, or intimidation of detainees. UNHCR appreciates the standard's new prohibition against the use of canines, which could be unnecessarily traumatizing for asylum-seekers.

V. Expected Practices

B. Staff Training

This section mandates that those staff who conducts housing, work area, or body searches receive initial and annual training in effective techniques. UNHCR recommends that both the initial and annual trainings include instruction on the particular vulnerabilities of asylum-seekers, techniques for recognizing signs of trauma and the need to take these factors into account when determining whether to conduct intrusive searches and, in particular, whether to put someone in a "dry cell."¹⁷

D. Body Searches of Detainees

2. Strip Search

c. Reasonable Suspicion

This section states that "staff may conduct a strip search where there is reasonable suspicion that contraband may be concealed on the person." It then provides examples of circumstances that may justify a strip search including: admission to a facility, placement in a special management unit, leaving a facility, boarding a transportation vehicle, or re-entry after contact with the public.

UNHCR is concerned that the draft standard does not specifically state that such automatic strip search policies are prohibited and recommends that the first sentence of

¹⁷ European Council on Refugees and Exiles, *supra* note 15.

*section V.2.c. be amended as follows: “Staff may conduct a strip search **only** where there is reasonable suspicion that contraband may be concealed on the person.” UNHCR further recommends that the examples of circumstances which may justify a strip search be deleted.*

E. Close Observation in a “Dry Cell”

This section discuss the circumstances under which a facility administrator may “authorize the placement of a detainee in a room or cell to be closely observed by staff until the detainee has voided or passed ... contraband or until sufficient time has elapsed to preclude the possibility that the detainee is concealing contraband. Placement in a “dry cell” amounts to solitary confinement in a room with the lights always under constant supervision. This is a very restrictive status and, in UNHCR’s view, should not be used with asylum-seekers unless absolutely necessary.¹⁸ As mentioned above, UNHCR recommends that staff be trained in this view. UNHCR further recommends that a mental health professional be consulted prior to placement in a “dry cell” and that, in the rare circumstance that placement in a dry cell is warranted for an asylum-seeker, mental health counseling be provided in order to mitigate any trauma from the placement. UNHCR also recommends that detainees be provided telephone privileges in order to contact family, legal counsel or others who serve as support.

Accordingly, UNHCR recommends that section V.E.1 adopt language such as the following: “A mental health professional will be consulted on the decision to place in a “dry cell” any detainee exhibiting signs of stress.”

UNHCR further recommends that section V.E.4. adopt language such as the following:

- “The detainee shall be provided regular telephone access.
- The detainee shall be provided daily counseling by a mental health professional.”

Funds and Personal Property

The Funds and Personal Property Standard seeks to ensure "that detainees' personal property is safeguarded and controlled" and "that contraband does not enter the facility." Funds and personal property are frequently necessary to prepare for immigration proceedings, and, therefore, it is crucial for asylum-seekers to have access to them.

II. Expected Outcomes

In order to ensure that asylum-seekers who choose to hire private legal counsel or pay a bond imposed to ensure their appearance are able to access any funds they have, it is necessary to have procedures in place for detainees to do so. Additionally, in order for asylum-seekers to contact family members, friends or others in the community who serve as a support to them during the asylum process, they may need access to address books and papers, but also mobile phones or personal data assistants (PDAs) in order to copy down numbers if necessary.

¹⁸ Basic Principles for the Treatment of Prisoners, *adopted* 14 December 1990, G.A. res. 45/111, annex, U.N. Doc. A/45/49, Article 7 (1990) (“Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction on its use, should be undertaken and encouraged.”); European Council on Refugees and Exiles, *supra* note 4 at ¶ 44 (“Detainees should have the opportunity for physical exercise and should never be placed in isolation.”); The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *supra* note 6.

*UNHCR recommends that an Expected Outcome such as the following is added to this standard: **Each detainee will have access to personal property and funds which are needed for his or her immigration court proceedings.***

V. Expected Practices

As stated above, having access to funds and contact information is crucial during legal proceedings for asylum-seekers.

UNHCR recommends that a section outlining procedures for detainee access to funds and other property which may be necessary for legal proceedings be drafted and added to section V.

D. Admission

This section seeks to ensure that all detention facilities have "policies and protocols in place to account for and safeguard detainee property at time of admission." Within this section it is specified that "medical staff shall determine the disposition of all medicine accompanying an arriving detainee." UNHCR agrees that medical staff should be responsible for this task, we have observed situations in which a detainee's prescribed medication was taken from them at admission and dispensation of the medication was not started for several days, causing a significant period of time in which the detainee was unable to take his or her prescribed medication. Such gaps in treatment can be detrimental to the health of an asylum-seeker.

*It is UNHCR's recommendation that the standard be modified as follows: "Medical staff shall determine the disposition of all medicine accompanying an arriving detainee **upon arrival, prior to the next time the detainee or the prescription indicates medication is to be taken.**"*

E. Limitations of Possession of Funds and Personal Property

This section details the personal property and funds which may remain in the detainee's possession while he or she is in detention. UNHCR is pleased that this standard includes a list of items that detainees shall be permitted to keep in their possession in CDFs and SPCs. While we understand that IGSA facilities often have individual policies regarding what items detainees are permitted to keep in their possession, it is the view of UNHCR that some of the items on the list are so basic to health, and exercising legal rights or observing religious practices that they should be specified in the list of items all detainees should be allowed to possess, regardless of the facility.

*UNHCR recommends that the following language in section V.E. not be italicized and be amended as follows: "~~In SPC and CDFs,~~ Each detainee shall be permitted to keep in his or her possession reasonable quantities of the following, as long as a particular item does not pose a threat to the security or good order of the facility." *Directly following this, UNHCR recommends that the following items not be italicized:* "small religious items, religious reading material (softbound), and correspondence; legal documents and papers, including property receipts; prescription glasses; dentures; personal address book or pages; wedding ring; and other items approved by the facility administrator or chief security officer."*

F. Excess Property

In this section, the standard provides guidance on how facilities should manage excess property. However, some of the language is unclear. It appears that if a detainee does not provide an appropriate mailing address, the facility may make accommodations to store the property or dispose of it; however, the standard does not specify a reason for taking one action or the other. In many cases, asylum-seekers enter the United States without any friends or family here and may be unable to provide an address of a third party to store their belongings. Additionally, it may be important that excess property not be destroyed as it may include legal documents which are too voluminous for the facility to accommodate or religious items which are not allowed in the facility.

To eliminate confusion and ensure that the excess property of asylum-seekers is not destroyed, UNHCR recommends that section V.F. incorporate language such as the following: "If a detainee does not provide an appropriate mailing address, cannot provide an appropriate mailing address the facility will make reasonable accommodations to store the excess property during detention and up to 30 days after the detainee's release. If the detainee is financially able but unwilling to pay the postage, the facility administrator may dispose of the property."

G. Officer Processing of Funds and Valuables, H. Supervisor Processing of Funds and Valuables, I. Officer Processing of Baggage and Personal Property Other Than Funds and Valuables, J. Inventory and Audit, K. Release or Transfer

Sections G, H and I detail the procedures for processing funds and valuables and other baggage and personal property. Section J seeks to safeguard detainee property through procedures of inventories and audits. Section K covers procedures to ensure that detainee funds and personal property are returned to a detainee upon release or transported to the accepting facility upon transfer. UNHCR is concerned that all of these sections appear in italics and none indicate how these issues will be addressed in IGSA facilities

Accordingly, UNHCR recommends that the standard adopt language in sections V.G. through V.K. which, at a minimum, require IGSA's to have written standard procedures for each of the respective topics.

Use of Force and Restraints

The Use of Force and Restraints Standard seeks to ensure that detention staff use necessary and limited force only after all reasonable efforts to otherwise resolve a situation have failed, and that such use of force or restraints is done through proper consultation, is limited in scope, and is used for only the amount of time necessary to resolve the immediate situation. The use of force and restraints is a particularly sensitive issue for asylum-seekers who may have experienced trauma or torture of either a physical or mental nature or both. Instruments of restraint should never be applied as punishment,¹⁹ and should not be used for any longer than necessary.²⁰

UNHCR appreciates the stated purpose of this standard and the improvements made from the previous INS detention standard on the Use of Force and Restraints, specifically the institution of a use of force continuum that sets a standard on the level of force necessary

¹⁹ See Standard Minimum Rules, *supra* note 6, at Rule 33 (Instruments of restraint shall never be applied as punishment.)

²⁰ *Id.* at Rule 34 (Instruments of restraint "must not be applied for any longer time than is strictly necessary.").

to deal with changing situations. However, we note that neither the Purpose and Scope nor the Expected Outcomes section indicates that the use of soft techniques and soft restraints should be the preference in handling most detainee situations. UNHCR has received reports from asylees at several facilities of the use of excessive force and hard restraints.

UNHCR recommends that this standard adopt language in the Purpose and Scope and Expected Outcome sections such as the following: “The use of soft techniques regarding the use of force and soft restraints should be the clear preference when dealing with situations where force or restraint has been judged necessary.”

V. Expected Practices

D. Training

1. General Training

This section lists the ongoing (at least annual) training in which all detention staff must participate in order to know how to effectively handle situations involving aggressive detainees. UNHCR commends the changes in this detention standard that expand the amount of training necessary for each employee, but notes that the training requirements do not include specific training on the distinct needs of asylum-seekers who may have suffered torture and trauma.

UNHCR recommends that section D.1 include in the list of required trainings “Unique Needs of Asylum-Seekers” training which addresses the particular circumstances faced by asylum-seekers. We recommend, as we have in previous comments, that ICE/DRO consult with outside experts to prepare and conduct such training. Specifically, we recommend that ICE seeks the views of the Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, who have reported on the impact of detention on the health of asylum-seekers²¹ as well as the Torture Survivors Network.

F. Use of Force in Special Circumstances

3. Detainees with Special Medical or Mental Health Needs

This section deals with the situation when confrontation avoidance measures have failed and the staff must make a judgment on whether to use force. UNHCR is pleased that when dealing with “special needs” detainees, the standard requires detention staff to consult with medical staff before deciding that the situation is grave enough to warrant the use of physical force. *UNHCR recommends that the training on “Unique Needs of Asylum-Seeker” recommend above explain that asylum-seekers should be included in this “special needs” category.*

Disciplinary System

The Disciplinary System Standard discusses procedures for providing notice to detainees of facility rules and regulations, for investigating disciplinary incidents and for determining appropriate disciplinary measures. UNHCR notes that confidentiality protections have been enhanced in the proposed standard, that the disciplinary measures for “High Offenses” is now set at a maximum of 30 days in segregated housing, and allows a warning to serve as sufficient punitive measure in this category. These are positive improvements from the former standard.

²¹ See Physicians for Human Rights and The Bellevue/NYU Program for Survivors of Torture, *supra* note 2.

II. Expected Outcomes.

This provision states that “Detainees will be informed of facility rules and regulations, prohibited acts, disciplinary sanctions that may be imposed, and the procedure for appealing disciplinary findings.” The provision does not address what language or languages this information will be provided in. As discussed above in our comments on the Admission and Release Standard, an orientation in one’s own language as to facility rules and operations is essential for ensuring asylum-seekers observe jail procedures and are not penalized for innocent infractions.

Accordingly, UNHCR recommends that the Expected Outcomes section be amended to include language such as: “Detainees will be informed of facility rules and regulations, prohibited acts, disciplinary sanctions that may be imposed, and the procedure for appealing disciplinary findings in a language that the detainee understands.”

V. Expected Practices

A. Guidelines²²

This section discusses a number of practices concerning interpretation, levels of review and appeal, the prohibition on retaliatory or capricious disciplinary actions, consideration of medical conditions and mental and physical incompetence. Paragraph #3 of this section prohibits imposition of certain sanctions as a result of a disciplinary proceeding where punishment is deemed warranted. Among the prohibited sanctions is “deviations from normal food services.”

Because many detainees are on special diets for religious, medical, or other significant reasons, UNHCR recommends paragraph # 3 be amended to state “Staff shall not impose or allow imposition of the following sanctions: corporal punishment; deviations from ~~normal~~ normally received food services . . .”

Paragraph # 3 also prohibits “deprivation of physical exercise unless such activity creates an unsafe condition.” As we discuss more fully in our earlier comments on the Recreation Standard, outdoor activity is an essential component of recreation and exercise.

UNHCR recommends that paragraph #3 be amended to state “Staff shall not impose or allow imposition of the following sanctions: corporal punishment; deviations from ~~normal~~ normally received food services; deprivation of clothing, bedding, or items of personal hygiene; deprivation of correspondence privileges; or deprivation of outdoor physical exercise unless such activity creates an unsafe condition.”

B. Notice to Detainees

The opening paragraph of this section requires that “the Detainee Handbook “or equivalent” be issued to each detainee, providing notice of all aspects of the facility’s disciplinary system. Following the opening paragraph and bulleted list of some of the specific advisals to be included in the detainee handbook is an italicized paragraph, making its applicability to IGSA’s unclear, stating that the rules “shall be posted in English, Spanish, and/or other languages spoken by significant numbers of detainees . . .” It is UNHCR’s view that it would be helpful to have the rules posted in all facilities.

²² We note there are two consecutive paragraphs, dealing with separate topics that are both numbered “2.” Our comments here reflect the current paragraph numbering, not accounting for any renumbering that might occur in the final version of the Standard.

Accordingly, UNHCR recommends that the italics be removed from the third full paragraph of section V.B. so that its applicability to all facilities, including IGSA's, is clear.

K. Duration of Sanctions

Paragraph #1 under this section provides that the “time in segregation *after* a hearing shall generally not exceed 60 days.” UNHCR is concerned that the standard allows segregation up to 60 days or even possibly more than 60 days.²³ Segregation from the general population is an extreme disciplinary measure, and, it is UNHCR’s view that segregation should not be imposed as a punishment on asylum-seekers and refugees unless absolutely necessary.²⁴ UNHCR recommends that staff be trained in this view. UNHCR further recommends that a mental health professional be consulted when determining whether to impose this as a sanction, and that, in the rare circumstance that its imposition upon an asylum-seeker or refugee is warranted, mental health counseling be provided in order to mitigate any trauma from the placement.

Accordingly, UNHCR recommends that section V.K. adopt language such as the following: “When segregation is being considered as a potential sanction, a mental health professional will be consulted prior to rendering the final decision. Decision makers shall be trained on the unique needs of asylum-seekers. Detainees placed in segregation shall be provided daily counseling by a mental health professional.”

Attachment A Prohibited Acts and Sanctions

Each category of prohibited offenses contains one or more sanctions that concern loss of privileges or other removal or restrictions on activities, housing, or possessions. UNHCR is concerned that, with the exception of the 60 day maximum on the imposition of disciplinary segregation, the standard does not provide any maximum time for which the detainee could suffer these losses, removals, or restrictions.

UNHCR recommends that wherever loss, removal or restrictions of privileges or activities are allowed as a sanction, a maximum duration for the imposition of each is specified. These sanctions include: loss of privileges including, among others, commissary, vending machines, movies, recreation; removal from program, group activity; loss of job; impounding and storing personal property; restriction to housing unit.

Special Management Units

The Special Management Unit Standard discusses when a detainee could be isolated from the general population in either disciplinary or administrative segregation for either the detainee’s own protection or the protection of staff or other detainees.

We reiterate our comments above regarding the use of segregation as punishment and our comments submitted previously on the Medical Care Standard on the use of administrative

²³ The standard does not specify what would be an exception to the 60 day maximum and that the time limit only accrues after a hearing, rather than commencing with the first day in segregation. Paragraph 2 provides that the time served in segregation *before* a hearing *may* be credited to the total time but does not specify the basis for why it would or would not be credited to the total time in segregation.

²⁴ Basic Principles for the Treatment of Prisoners, *supra* note 18, at Article 7; European Council on Refugees and Exiles, *supra* note 4 at ¶ 44; The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *supra* note 6.

segregation for detainees suffering from mental health or other medical issues. UNHCR has observed asylum-seekers with mental health issues being placed in administrative segregation, exacerbating their mental health condition. It is UNHCR's view that an asylum-seekers suffering from a medical condition or mental health issue that precludes them from remaining in the general population of a detention facility should generally be released from custody or transferred to an appropriate medical facility. UNHCR is concerned about the use of administrative segregation as protective custody for individuals who are homosexual or transsexual. Again, we recommend that the standards reflect that such persons should be considered for release.

Escorted Trips for Non-Medical Emergencies

The Escorted Trips for Non-Medical Emergencies Standard permits detainees to visit their families outside of the detention facility through staff-escorted trips when their family members are critically ill or there is a need to attend a funeral. The ability to maintain family relations is particularly critical for asylum-seekers, as they are often in an unfamiliar place, and family may be their only bond to the United States.

F. Escort Instructions

This section gives instructions for persons escorting detainees outside of the detention facility to visit with critically ill family members and/or attend funerals and requires that at all times the detainee will be in at least minimum restraints, including when visiting a family member's deathbed or attending a funeral. UNHCR understands the need to protect the security and safety of both the escort and the detainee during these trips; however, UNHCR urges the standard allow an officer to remove the restraints during a funeral or hospital visit and to employ other means of protecting against the detainee's escape, such as close physical monitoring in order to preserve one's dignity at such a time of tragedy.

*UNHCR recommends adding language in Section F.7 such as the following, "If necessary the transporting officers may increase the minimum restraints placed on the detainee at the outset of the trip, but at no time may reduce the minimum restraints **during the trip. Escorts may remove the restraints to enable the detainee to visit the deathbed of a relative or attend a relative's funeral, as long as the detainee has not exhibited any security risk or can be appropriately monitored.**"*

Draft Performance Based Detention Standards: Group Four

Law Libraries and Legal Material

The purpose of this draft standard is to protect "detainees' rights by ensuring their access to courts, counsel and legal materials."

According to recent studies, the majority of individuals in detention do not have legal representation. This is due to the remote locations of many detention facilities, the lack of sufficient non-profit legal service providers and the financial disability many asylum-seekers face. Many detained asylum-seekers must prepare their cases by themselves, and rely heavily on the resources available at the detention facility to establish their refugee claims. Accordingly, legal orientation and research materials provide critical information to detained asylum-seekers about immigration removal proceedings, their rights in these proceedings, conditions in their country of origin, and the forms of protection that may be available to them under the law. Access to legal materials can also reduce the anxiety of dealing with an unfamiliar legal system.

Pursuant to international principles and standards, asylum-seekers should be provided with all necessary facilities to present their case.²⁵ In a complex system such as that in the United States, such facilities should include legal assistance and, for those who cannot secure a legal representative, access to those legal materials essential for preparing an asylum claim.

Detained individuals shall have access to a diverse collection of library materials²⁶ and the library shall be "for the use of all categories of prisoners."²⁷ Access to the library may be subject to reasonable restrictions for the purpose of security and good order.²⁸

The draft standard's requirements are largely similar to those in the previous INS Detention Standard on Access to Legal Material. The draft standard requires all detention facilities to provide a law library "large enough to provide reasonable access for all detainees who request its use." Facilities must "devise a flexible schedule that permits all detainees regardless of housing or classification, to use the law library on a regular basis" and, at a minimum, five hours per week. Staff is to accommodate detainee requests for additional law library time to the extent that is "consistent with the orderly and secure operation for the facility, with special propriety given to such requests from a detainee who is facing a court deadline."

As in the previous INS Detention Standard, facilities are directed to provide certain equipment and immigration and asylum law publications in the law library. The draft standard clarifies that in lieu of the required paper-based legal publications, facilities may provide this information through the Lexis/Nexis publications on CDROM. This change to the standard is consistent with a 14 June 2007 amendment to the prior INS Detention Standard.

²⁵ UNHCR Executive Committee Conclusion No. 8 (XXVIII) (1977 Determination of Refugee Status), at ¶ e(iv).

²⁶ Standard Minimum Rules, *supra* note 6, at Rule 40; Body of Principles, *supra* note 3, at Principle 28.

²⁷ Standard Minimum Rules, *supra* note 6, Rule 40.

²⁸ Body of Principles, *supra* note 3, Principle 28.

As previously mandated by the INS Detention Standard, each facility administrator must “designate an employee to be responsible for updating legal materials, inspecting them weekly, maintaining them in good condition, and replacing them promptly as needed.”

UNHCR notes that the draft standard continues to require, as did the previous INS standard, that additional assistance be provided to “unrepresented illiterate or non-English speaking detainees who wish to pursue a legal claim related to their immigration proceedings or detention and indicate difficulty with the legal materials.” Under both the old and new draft standards, such assistance can include: helping the detainee obtain assistance from other detainees or from *pro bono* legal-assistance organizations or further actions after discussions with the ICE/DRO Filed Office. While UNHCR has observed some individual facility staff providing such assistance, many facilities do not as a general matter do so.

UNHCR is concerned with the sufficiency of both the old and new draft detention standards on access to legal materials as well as implementation of the standards. While the standard continues to require that facilities establish a law library, UNHCR has observed few facilities which have a real law library with all of the materials required by the standard maintained with current updates. Most facilities monitored by UNHCR in recent years have chosen to provide the required publications through the Lexis/Nexis CDROM. Most facilities, whether providing the required materials in paper form or through the CDROM, did not have a librarian trained to assist detainees in accessing materials through this computerized system. In some facilities, either the CDROM or the computer housing the CDROM did not work and in others, the number of computers with the CDROM compared to the number of detainees housed there was insufficient. In those facilities which provided the required materials in paper form, the materials were often incomplete or outdated. The requirement in the previous INS standard, which is maintained in the draft DHS standard, of allowing detainees to assist other detainees with legal research and document preparation was often not observed.

While UNHCR commends DHS for continuing to recognize in its standards that unrepresented, non-English speaking or illiterate individuals may have difficulty accessing English legal materials, UNHCR recommends that the standard go further and require each facility to have a full-time librarian with the appropriate background and training to maintain the required legal materials and to assist detainees with legal research. UNHCR further recommends that the standard require librarians to use a qualified interpreter, either on-site or through the DHS telephonic interpreter service, when a detainee is not fluent in the language(s) spoken by the librarian. To ensure that asylum-seekers are aware of these services, including legal assistance with interpreters if needed, UNHCR further recommends that the standard require each facility to advertise these services in English, Spanish and the language spoken by a majority of detainees and to include a discussion of these services in the orientation video required in the Admission and Release Standard. With respect to IGSA facilities, the standard should require that this topic be discussed in orientations for newly admitted detainees or in the standard video we have recommended that ICE develop. See our comments on the Admission and Release Standard, supra pp. 21-24.

We also offer the following comments on specific sections of the standard.

V. Expected Practices

D. Equipment

This section requires the law library to provide “an adequate number of computers with printers, one or more photocopiers, and sufficient writing implements, paper, and related office supplies to enable detainees to prepare documents for legal proceedings.” It allows typewriters to be substituted for computers and printers if approved by ICE/DRO.

In order to ensure that there are a sufficient number of computers for the detainee population, UNHCR recommends that section V.D. mandate a specific and adequate ratio of computers and printers to detainees that facilities must maintain.

*Given that asylum-seekers who are representing themselves in immigration proceedings may need to prepare legal submissions of considerable length and complexity, UNHCR recommends that facilities not be allowed to substitute typewriters for computers. At the same, in some cases, as when filling out forms, a typewriter may be a useful tool. Accordingly, UNHCR recommends that the last sentence in section V.D. be modified as follows: "Typewriters, carbon paper, and correction tape ~~may be substituted~~ **may be available in addition to** computers and printers ~~only if approved by ICE/DRO.~~*

E. Maintaining Up-to-Date Legal Materials

2. Updating and Replacing Legal Materials

b. Sources for Publications

UNHCR is pleased that the draft standard continues to include a fairly comprehensive list of legal publications in Attachment A which each facility is required to provide. *However, UNHCR would suggest adding to the list in Attachment A RefWorld.* RefWorld is a comprehensive research tool containing information on refugees and human rights. In 2006, DHS agreed to distributed copies of UNHCR's RefWorld DVD to be included in the legal materials in all DHS Service Processing Centers, Contract Detention Facilities and major facilities operated through Intergovernmental Service Agreements. UNHCR recommends that the standard require all facilities to provide the DVD.

UNHCR further recommends that the list in Attachment A include the following publication published by the Immigrant Legal Resource Center, Robert Jobe, Mark Silverman, and Larry Katzman Winning Asylum Cases, 2004 Edition as well as the self help materials produced by the Florence Immigrant and Refugee Rights Project on removal proceedings and different forms of relief from removal. The first resource is a succinct legal publication, which while geared toward lawyers, could provide helpful information for asylum-seekers who have to prepare their own cases. The second are materials designed to assist refugees, asylum-seekers and others in immigration removal proceedings who do not have legal counsel.

(2) Lexis/Nexis CDROM (or ICE-approved equivalent)

This section states that “[a]s an alternative to obtaining and maintaining the paper-based publications in *Attachment C*, a facility may substitute the Lexis/Nexis publications on CDROM.” UNHCR believes that it was intended that this sentence refer to Attachment A rather than Attachment C given that Attachment C contains a list of publishers while Attachment A lists required substantive legal resource materials. UNHCR reiterates its concerns above regarding the ability of asylum-seekers to access a computerized database and the need for full-time trained librarians in all facilities. That said, UNHCR notes that some of the materials listed in Attachment A might not be available on the CDROM which

UNHCR understands is developed at a national level. Such materials include local phone books and locally approved self-help materials. *UNHCR recommends that the standard clarify that these materials should be made available in paper form if a facility opts to provide materials through the CDROM and these are not included in the CDROM.*

Accordingly, UNHCR recommends that the first sentence in section V.E.2.b(2) be amended as follows: "As an alternative to obtaining and maintaining the paper-based publications in Attachment C A, a facility may substitute the Lexis/Nexis publications on CDROM. Any materials listed in Attachment A which are not loaded onto the Lexis/Nexis CDROM must be maintained in paper form."

K. Personal Legal Materials

This section describes the rights and limitations of accessing personal legal materials. It states that "for a detainee with a large amount of personal legal material, the facility may place some of it in a personal property storage area, with access permitted during designated hours." Refugees and asylum-seekers may need to access personal legal materials for an extended amount of time in order to prepare their cases. UNHCR is concerned that the standard does not provide a minimum weekly time period in which detainees should be allowed to access those materials.

UNHCR recommends that section V.K. adopt a minimum time period in which detainees can access personal legal materials which have had to be stored due to their volume.

Legal Rights Group Presentations

This standard encourages facilities to grant requests from attorneys or legal representative interested in provided "group legal rights presentations" to detainees which include an interactive group orientation, an individual orientation and a referral/self-help component. As discussed in our comments above on the Law Libraries and Legal Material Standard, given the complexity of United States asylum law and procedures, legal assistance is vital to refugees and asylum-seekers in removal proceedings. However, many lack the resources to hire private counsel, and rights presentations from non-profit legal services may be the only source of direct legal assistance available to them. UNHCR appreciates that the previous INS standard and the new draft standard encourage facilities to facilitate legal rights presentations given the fact that the number of organizations available to provide such presentations and to facilitate full representation of those served by the presentations is insufficient for the number of individuals detained by ICE.²⁹

V. Expected Practices

D. Who May Present

This section outlines who is allowed to present legal rights presentations including lawyers or legal representatives, legal assistants and interpreters. It states that as a general rule, presentation parties may not exceed four persons.

While this rule can be waived in advance upon receipt of a written request, UNHCR is concerned about this general limitation. Many legal rights presentations feature a session of individualized orientations following the group presentation in which detainees may ask specific questions about their case and get more information. Such sessions may include

²⁹ UNHCR understands that only about 28% of those detained have benefited from LOP presentations in Fiscal Year 2007. Many of the non-profit legal service providers have very limited staff and can only represent or refer for pro bono representation a very small percentage of those served by the presentations.

conducting case intakes in order to assess full representation by the presenter's agency or by a private pro bono attorney. Some agencies which conduct presentations are only able to travel to more remote facilities sporadically and may need to bring additional staff or trained volunteers in order to reach large numbers of people at once.

Accordingly, UNHCR recommends that the following sentence in section V.D. be removed and replaced with language such as the following: "As a general rule, presentation parties may not exceed four persons (including legal assistants and interpreters); however, a facility may waive this rule upon advance receipt of a written request. Facility administrators should in general allow presentation parties to include as many legal assistants and interpreters as requested."

Visitation

This standard ensures that detainees will be able to receive visits from family, community members, legal representatives and officials from consulates. The standard also provides that information regarding ICE/DRO detention operations and facilities be provided to the public by sharing information with appropriate NGOs, allowing NGOs to tour facilities and to interview detainees with the consent of the detainee and ICE/DRO. The ability and adequate opportunity for asylum-seekers to meet with loved ones, members of the community, religious contacts and legal representatives is critical to their health and well-being and, in many cases, to their ability to present their claim for asylum in the most effective manner.³⁰

V. Expected Practices

B. General

This section establishes written visiting procedures. In the second paragraph, the facility administrator is given the authority to "decide whether to permit contact visits, as is appropriate for the facility's physical plant and detainee population." UNHCR views this as unduly restrictive for those individuals who are in detention pursuing a claim for asylum or related protection. In many cases, these individuals have not been convicted of any crime. If the physical plant itself or the detainee population in general warrants a per se prohibition on contact visits, UNHCR would strongly urge that asylum-seekers not be housed in such facilities.

Because asylum seekers have often been separated from family, friends and loved ones, isolated from others, and forced to flee alone or with strangers, it is especially important for them to have appropriate contact from caring individuals. UNHCR recommends that contact visits be allowed and that exceptions to this general principle be made only when the specific circumstances or needs or conduct of a specific individual requires it. Accordingly, UNHCR suggests that the second sentence of section V.B. incorporate language such as: "Each facility administrator shall ~~decide whether to permit contact visits, as is appropriate for the facility's physical plant and detainee population.~~ Exceptions to this policy can be made by the facility administrator on a case-by-case basis when compelling circumstances or individual needs or conduct warrant it."

³⁰ UNHCR Guidelines, *supra* note 1, at Guideline 10 ("Asylum-seekers should have the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel. Facilities should be made available to enable such visits. Where possible such visits should take place in private unless there are compelling reasons to warrant the contrary.")

1. Visits by Family and Friends

2. Persons Allowed to Visit.

a. Immediate Family

This section defines who constitutes immediate family for visitation purposes. The definition includes stepparents and foster parents but not stepsiblings, foster siblings, stepchildren or foster children. Many asylum seekers have developed close relationships with extended family members. These close kinship ties often develop as a result of having had to flee their country of origin where they may become separated from family and friends, travel long distances in unknown and often dangerous territory, and live in camps or under other difficult circumstances. Because of their vulnerability and past trauma that many asylum seekers have faced, it is particularly important that they have visitation from a range of loved ones.

UNHCR recommends that the definition of immediate family members in section I.2.a. be amended as follows: “Mothers, fathers, stepparents, foster parents, brothers, sisters, stepbrothers, stepsisters, foster brothers, foster sisters, stepchildren, foster children, and spouses, including common-law spouses and same-sex life partners.”

This section also provides that “immediate family members detained at the same facility may visit with each other during normal visiting hours.” UNHCR has received reports that a number of detention facilities do not allow family members at the same facility to meet—not even during regular visiting hours. This is of great concern to UNHCR, particularly since this opportunity for family members detained in the same facility to visit each other is included in the original INS Detention Standards. In addition, UNHCR is aware of instances where family members were detained in separate facilities that were near each other but were not allowed to visit. The trauma and stress that asylum-seekers have endured calls for measures to be taken to ensure the greatest opportunity for them to remain with and have regular and frequent contact with their family members who are also in detention.

UNHCR recommends that compliance with the provision setting forth that family members detained in the same facility be closely monitored to ensure these visits are provided consistently and regularly. In addition, UNHCR recommends that the provision be amended to include that family members detained at separate facilities that are near each other be transferred to the same facility whenever possible and that, if such transfer is not possible, that these family members be allowed to visit each other at one or the other facility where they are detained on a regular and consistent basis.

2. Persons Allowed to Visit

b. Other Relatives, Friends and Associates

This list of relatives other than immediate family members includes aunts and uncles but not nieces and nephews. As discussed above under section V.I.2.a., asylum seekers often have developed close relationships with extended family members and given the past traumatic experiences they may have faced and the isolation they often experience as detainees in a strange country, it is especially important that asylum seekers be able to visit with the broadest range of friends and family.

*UNHCR recommends that section V.I.2.b. be amended to add nieces and nephews, as follows: “Grandparents, uncles, aunts, **nieces, nephews**, in-laws, cousins, non-relatives*

and friends, unless they would pose a threat to the security and good order of the institution.”

2. Persons Allowed to Visit

c. Minor Visitors

This section allows facilities that do not generally accommodate visits from children, to exceptionally arrange visits from children and stepchildren of ICE detainees on a monthly basis. Facilities may consider transferring a detainee with children to another facility which does allow such visits.

*UNHCR recommends that requests for transfers in such situations be encouraged and that foster children be referenced in this section. Accordingly, UNHCR recommends that the first sentence in section V.I.2.c. be amended to read as follows: “At facilities where there is no provision for visits by minors, upon request, ICE/DRO shall arrange for a visit by children, and stepchildren **and foster children, . . .”.***

5. Visits for Administrative and Disciplinary Segregation Detainees

This section provides instruction on when, where, and how detainees in administrative and disciplinary segregation will receive visits. UNHCR is concerned that the last paragraph of this section is italicized making its applicability to IGSA facilities unclear and states that detainees in protective custody “shall not use the visitation room during normal visitation hours.” There is no further explanation as to when or where individuals in protective custody shall receive visits. UNHCR believes this restriction is unduly harsh for individuals in non-punitive segregation and that, absent a reasonable belief that a detainee in administrative segregation would be at particular risk, these detainees should be allowed visits during the normal visiting hours.

*UNHCR recommends that the last paragraph in section V.I.5. not be italicized and incorporate language such as the following: “~~In SPCs and CDFs, detainees in protective custody and~~ Violent and/or disruptive detainees shall not use the visitation room during normal visitation hours. **Detainees in protective custody shall be afforded visits during the normal visitation time and place unless there is a reasonable basis to believe such detainee would be at particular risk if allowed to visit in the visitation area with other detainees present. If a determination is made that a detainee in protective custody would be at risk in the visitation area during normal visitation hours, accommodations should be made to allow the detainee to receive visits at a reasonable alternative time, place or both.**”*

I. Visits by Legal Representatives and Legal Assistants

(We note that this section should be designated section “J” as the previous section is designated as section “I”)

This section describes appropriate standards and access for legal representatives and assistants to visit with detainees. However, despite similar language in the previous standard, UNHCR has received recent reports from legal representatives that they have faced serious obstacles in meeting with detainees. These have included: lack of appropriate meeting space; lack of privacy during visits; transfers of clients to remote areas making regular visitation difficult; long waiting periods before being able to meet with a detainee, especially in more remote facilities that require long distance travel to reach; and lack of assistance in locating detained clients. As discussed above, legal

representation is crucial to ensure a detainee's rights and opportunities under the law are fully protected and availed. Detained asylum-seekers should be provided with timely and adequate access to legal representatives in an appropriate setting.³¹ *UNHCR urges that full compliance with the final standards governing visits by legal representatives and assistants be carefully overseen and monitored to ensure that detainees receive legal visits in the most appropriate time, place and manner as is possible.*

11. Detainee Search

This section states that facilities must have written procedures governing detainee searches and that each detainee must be made aware of these procedures through the detainee handbook or equivalent. The second paragraph is italicized and states that "Facilities shall conduct searches of detainees returning from legal visitation." There is no explanation as to the extent of the search or whether and, if so under what circumstances, a fuller search may be warranted. While the Searches of Detainees Standard addresses in general terms when strip searches or other intrusive searches may be conducted, UNHCR recommends that the standard reiterate those general rules here given UNHCR's observations of some facilities routinely requiring strip searches after contact visitation with lawyers or others.

Accordingly, UNHCR recommends that the italics in the last sentence of paragraph #11 of this section be removed so that it is applicable to IGSA's as well as SPCs and CDFs and that the sentence incorporate language such as the following: "Staff shall conduct nothing more intrusive than visual or pat-down searches of detainees returning from legal visitation. An exception to this general rule shall be made only when there is reasonable suspicion that the detainee has concealed contraband."

Telephone Access Standard

The purpose of the Telephone Access standard is to ensure that detainees can maintain ties with their families and others by providing them with reasonable and equitable access to telephone services. International guidelines direct that during normal hours, detainees should be provided the opportunity for meaningful contact with friends, family, legal counsel and UNHCR.³² Restrictions on phone access should only be made in limited circumstances, according to reasonable written regulations made in the interest of "security and good order."³³ Detainee phone calls should be made in private, in the absence of compelling reasons to the contrary.³⁴ The ability to contact legal representatives and family members can be vital to an asylum-seeker's mental health and preparation of an asylum claim.

³¹ See e.g., Body of Principles, *supra* note 3, at 18(1) ("A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel."), 18(2) ("A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel."), 18(3) ("The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order."); See also, UNHCR Guidelines, *supra* note 1, at Guideline 10.

³² See, e.g., UNHCR Executive Committee Conclusion No. 44 (XXXVII) 1986, at para. b (stating that detained asylum seekers should have the opportunity to contact UNHCR); European Council on Refugees and Exiles, *supra* note 4, at ¶ 29; Standard Minimum, *supra* note 6, at Rule 37; UNHCR Guidelines, *supra* note 1, at Guideline 10.

³³ Body of Principles, *supra* note 3, at Principle 18(1).

³⁴ UNHCR Guidelines, *supra* note 1, at Guideline 10.

V. Expected Practices

2. Costs

This section states that, with some exceptions, detainees or the persons they call are responsible for the cost of telephone calls. This section seeks to ensure that detainees have access to reasonably priced telephone services. The standard states that contracts for telephone services shall be “based on rates and surcharges commensurate with those charged to the general public. Any deviations shall reflect actual costs associated with the provision of services in a detention setting.” This requirement was not in the previous INS Telephone Access standard and UNHCR appreciates that ICE has incorporated this new language. However, UNHCR is concerned that allowing an exception to the rule will result in the continuation of prohibitively expensive telephone costs for detainees. UNHCR has observed that in many facilities, the high price of calling cards and collect calls making it difficult if not impossible for asylum-seekers with limited resources to call legal representatives as well as family members. For example, UNHCR has observed facilities where the cost of a collect call was as high as \$5.31 for the first minute and 89 cents per additional minute and calling cards were reported to cost as much as \$45 for 15 minutes.

*To ensure that asylum-seekers are not prevented from making calls to outside parties by prohibitively high costs for calling cards and collect calls, UNHCR recommends incorporation in section V.2. language such as the following: “~~Any deviations shall reflect actual costs associated with the provision of services in a detention setting.~~ **Where costs deviate substantially from rates and surcharges charged to the general public, facility will make all reasonable efforts to provide detainees with a reasonably priced alternative, including access to a cell phone as described in Section V.E.4.”***

5. Monitoring Detainee Telephone Services

This section provides that facility staff will monitor telephones to ensure that they remain in good working order. UNHCR appreciates the expansion of this section to include specific actions staff must take to test phones, as we have observed many facilities in which phones did not function properly. In those facilities where pre-programmed services were available, including CDF, SPC and many IGSA facilities, UNHCR observed that in the majority of facilities, the pre-programmed phones did not work. Problems with the phones included: broken number buttons, disconnection during speed-dial instructions, non-operational provider access codes and incorrectly pre-programmed telephone numbers. In addition, although the standards require CDF and SPC facilities to have pre-programmed phones, UNHCR has observed CDF and SPC facilities which did not comply with this requirement. *UNHCR hopes that the specific requirements of this section will ensure greater compliance with the Telephone Access standard. UNHCR further recommends that full compliance with the final standards governing telephone access be carefully monitored to ensure that detainees can regularly access working telephones and place reasonably priced telephone calls to lawyers and individuals in the community.*

E. Direct or Free Calls

This section lists specific offices and individuals to whom detainees shall be provided a means to make direct or free calls. The ability for an asylum-seeker to call these individuals and offices is often vital to their legal case and well-being. Requiring the lists to be posted in detainee housing units is a valuable addition to the standard as UNHCR has observed many facilities where the numbers for these offices were not posted in a visible

and accessible location. UNHCR has also observed facilities where the lists had been damaged.

Accordingly, UNHCR recommends that section V.E. incorporate language such as, “Updated lists need to shall be posted in a visible location in the detainee housing units and/ or near all detainee telephones. Facility staff must monitor the lists on an ongoing basis and replace those which become damaged or otherwise illegible.”

In 2004, the private firm contracted by DHS to provide pre-programming at its facilities, Public Communications Services, Inc. (PCS), included UNHCR’s toll free number such that any facility providing free calls through PCS would have UNHCR’s number. UNHCR appreciates having its number conveniently available to those asylum-seekers housed at facilities utilizing a PCS phone system. To ensure that asylum-seekers at all facilities are able to contact UNHCR, we would request that UNHCR be added to the list of entities to whom free calls are permitted and that our toll free number be included.

According UNHCR recommends that the list in Section E include: “United Nations High Commissioner for Refugees (UNHCR): 1-888-272-1913 (accepting calls from asylum-seekers and stateless individuals).

I. Incoming Calls

This section explains how facility staff should handle incoming calls for detainees. It is different from the previous INS standard in that it no longer mandates that messages of a non-urgent nature must be passed onto detainees. While UNHCR recognizes that facility staff members have numerous responsibilities, certain telephone messages of a non-urgent nature should be relayed to asylum-seekers. Beyond the fact that asylum-seekers may have lost contact with friends and relatives during their travels to the United States or when they were apprehended and placed in detention, asylum-seekers may receive important calls about matters which cannot be handled through a routine letter. For example, a lawyer may call to try and schedule a visit, a family member who is detained may be trying to reach the detainee prior to a transfer or a person who does not have the capacity to write could be trying to contact the detainee. *In order to encourage staff to pass on important messages, UNHCR recommends ICE include in section V.I. language requiring staff to pass on all messages from a legal representative and other important, but not urgent, messages in those circumstances where writing a letter would not be feasible.*

Accordingly, UNHCR recommends additional language in this section such as, “All messages from a detainee’s legal representative shall be delivered to the detainee immediately and in no less than 24 hours. When other callers have messages which are not urgent in nature, but are not practical to relay through written correspondence, the telephone message shall be delivered to the detainees as soon as practicable. At a minimum, such message shall include the caller’s name, telephone number and the date and time of the call.”

Staff-Detainee Communication

The Staff-Detainee Communication Standard seeks to enhance security, safety and orderly facility operations by encouraging and requiring informal, direct and written contact among staff and detainees, as well as informal supervisory observation of living and working conditions. Under international law and standards, detained individuals have the

right to be promptly informed of the reason for their detention and their rights in connection with the order of detention in a language and in terms which they understand.³⁵ Detainees should be made aware of their rights and the procedures to avail themselves of these rights.³⁶ UNHCR notes that this standard is similar to the previous INS standard. *Given our observations, detailed below, that ICE/DRO staff did not fully comply with the language or the spirit of the previous standard, UNHCR encourages ICE to carefully monitor compliance with this standard*

V. Expected Practices

A. Staff and Detainee contact

This section states that detainees should have frequent, informal access to and interaction with key facility staff members, as well as key ICE/DRO staff, in a language they can understand. This section also states that “Often detainees in ICE/DRO custody are unaware of, or do not comprehend, the immigration removal process, and staff should explain the general process without providing specific legal advice on individual cases.”

In order to meaningfully participate in the asylum process, it is critical that asylum-seekers understand the court process, the immigration charges against them, their custody status and the removal process. As the standard recognizes, detainees may not be aware of or comprehend the immigration removal process. Because detained asylum-seekers often lack legal representation, access to DHS officials is critical to asylum-seekers' ability to present their claims in immigration court and to understand the immigration and asylum process.

The standard does not specify what information DRO staff should discuss with the detainees in terms of the “removal process,” which could refer to the process of actually removing someone from the United States or the immigration court and other administrative removal proceedings. In many facilities observed by UNHCR, asylum-seekers reported that when DHS officers visited, they did not provide case specific information in response to their questions. While we understand that ICE/DRO staff cannot provide legal advice on individual cases, these officials should provide asylum-seekers with information on all aspects of the removal process. This information should include an overview of the immigration court and administrative removal proceedings as appropriate. ICE/DRO officers should provide answers to case specific questions on topics within their purview such as parole requests, custody determinations, and for those with a final order of removal, securing travel documents and timeframes for removals from the country.

Accordingly, UNHCR suggests adding language to the end of this section such as, “Staff should provide general information to detainees pertaining to the immigration court process. At a minimum, this information should include the types of hearings such as master calendar and merits hearings. Staff should provide case-specific information on topics within its purview (e.g. administrative removal proceedings, parole procedures, custody determinations, securing travel documents and arranging removal).”

³⁵ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, Article 9(2); UNHCR Guidelines, *supra* note 1 at Guideline 5(i).

³⁶ Body of Principles, *supra* note 3, at Principle 13.

The standard requires weekly unannounced visits by ICE/DRO staff to each facility. The standard also requires that ICE/DRO staff arrange weekly scheduled visits to CDF and SPC facilities and visits every two weeks to IGSA facilities, although more frequent visits are encouraged. UNHCR appreciates that this standard continues to provide that DHS personnel should visit with ICE detainees on a regular basis; however, we note that under the previous standard which required weekly scheduled visits, UNHCR observed that most facilities did not comply with the standard. UNHCR observed that in many facilities, DRO/ICE officers did not visit with detainees on a weekly basis. In fact in many facilities, DHS officers reported to UNHCR that due to their heavy caseload, they were unable to visit facilities more than once a month. In many facilities, the number of detainees assigned to each officer would make it impossible for a DHS officer to respond meaningfully to individual case inquiries.

Accordingly, UNHCR recommends that the standard require weekly visits by DRO staff to all facilities and those facilities with large detainee populations, more than one DRO staff participate in the visits according to a prescribed staff to detainee ratio.

Additionally, the officers and asylum-seekers we spoke to indicated that officers did not avail themselves of telephonic interpretation services to facilitate communication during such visits. *Accordingly, UNHCR recommends that section V.A.2. require DRO staff to utilize interpreter services as needed and incorporate language in the first paragraph such as, “During visits, DRO/ICE officers must ensure detainees are aware that interpreter services are available and shall utilize such interpreter services with all detainees who wish to converse with the officer and do not speak English or another language fluently spoken by the DRO/ICE officer.”*

C. Monitoring Detainee Telephone Services

This section seeks to ensure that telephones are tested weekly and serviceability is verified. As commented on above in our comments on the Access to Telephone Services Standard, UNHCR has observed systemic problems with telephone service at all types of detention facilities housing ICE detainees. *UNHCR welcomes this additional requirement to help ensure detainees have access to working telephones, and would suggest adding a requirement that ICE/DRO officers shall also verify that existing rates for collect and calling card calls are reasonable as compared to the local market for such calls.*

Detainee Handbook

The Detainee Handbook Standard requires that, upon admission, every detainee be provided a standardized national ICE detainee handbook and that local written supplements to the handbook also be provided. The previous INS detention standard on this topic required each facility to develop its own site-specific handbook and provided a template.

The standard requires that the supplementary materials address such matters as the facility’s rules and sanctions, disciplinary system, mail and visiting procedures, grievance system, services, programs, and medical care in English, Spanish, and other languages spoken by significant numbers of detainees in that facility, and that detainees acknowledge receipt of those materials.

UNHCR welcomes the initiative to provide a standard handbook which covers topics which apply to all ICE detainees and that, at the same time, the standard requires each facility to supplement this with written information on procedures specific to that facility. UNHCR has observed that while most facilities provided asylum-seekers and other detainees in ICE custody with a facility handbook available in English and Spanish, often the handbook was developed for the general population in IGSA facilities and not for ICE detainees. It is important that asylum-seekers understand both the specific facility's rules and procedures as well as information relevant only to ICE detainees.³⁷

As discussed above, UNHCR has noted that the draft Detainee Handbook's discussion of Medical Care does not indicate that services will be provided to detainees at no cost to the detainee. UNHCR has observed facilities operated under an intergovernmental service agreement (IGSA) which charged their regular inmate population a fee for medical services, and, although the charges did not apply to ICE detainees, the orientation material provided by the facility to ICE detainees upon arrival indicated there was a cost for services. UNHCR observed that some asylum-seekers were deterred from seeking care because they believed they would be charged for it and could not afford the fee. *Accordingly, we reiterate here our recommendation that the first sentence of the Medical Care section of the Detainee Handbook at page 11 adopt language such as the following:* "The United States Public Health Service or contract medical staff provides medical care to all detainees staying in ICE approved facilities **at no charge to the detainee. If you are in a facility that charges its regular detention population a fee for medical services, this fee does not apply to you.**"

Expected Practices

Section V.2.

This section lists specific topics that local supplemental written materials must address. These topics include detainee rights and responsibilities; prohibited acts organized by severity and the disciplinary system to deal with those acts; the grievance system; and how to contact the local ICE field office. Given the importance of access to medical care, legal materials, telephones, DHS officers and interpreter services, *UNHCR suggests that section V.2 add the following to its list of topic addressed by local supplemental materials:*

- **Schedule and Purpose of DHS officer facility visits (see recommendations above regarding Staff Detainee Communication Standard),**
- **Law library – content, availability of interpreters and librarians (see recommendations above regarding Law Library and Legal Materials Standard.**
- **Access to telephones including required free calls,**
- **Requesting interpreter services for essential communication,**
- **Accessing medical care services at no cost.**

As previously discussed, UNHCR is pleased that the draft Admission and Release Standard requires facilities to provide a translator for the required orientation and scheduled meetings if a detainee does not understand the language in which the handbook is written. *Given the importance of this requirement for asylum-seekers who often do not*

³⁷ Standard Minimum Rules, *supra* note 6, at Rules 35 (it is the "right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations); Body of Principles, *supra* note 3, at Principle 14 (detainee has a right to "receive information about his rights in detention in a language he understands).

speak English, Spanish or the dominant language of detainees in a facility, UNHCR recommends that this requirement be repeated in this standard. UNHCR further recommends that DHS consider translating the national Detainee Handbook into other languages commonly spoken by asylum-seekers in the United States such as French, Haitian Creole, Mandarin and Arabic.

UNHCR also notes that it does not appear from our review than any of the draft standards address the issue of facility staff utilizing interpreters to facilitate essential communication with detainees. Throughout its extensive facility monitoring, UNHCR has not observed any facility that routinely used interpreters for daily communication between facility staff and detainees. In two facilities, however, Mandarin-speaking staff and volunteers were utilized specifically to address large numbers of Chinese detainees which was particularly helpful. UNHCR has observed that asylum-seekers held in detention are often isolated because of language barriers with many asylum-seekers spending months detained without speaking to anyone at the facility in their own language. Such isolation can cause anxiety and despair and impact one's ability to pursue their claim for protection. *UNHCR recommends that DHS incorporate a standard which requires facility staff to use interpreter services not only during orientation, medical care appointments, communications with law librarians and DHS officer meetings with detainees but during any other essential communications between facility staff and detainees. UNHCR also recommends that this standard require facilities to the extent practicable to place detainees of the same nationality together in the same housing unit when requested by a detainee.*



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR

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Tel.: 2022965191
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Email: usawa@unhcr.ch

2005 JAN 24 PM 12 05
13 January 2005

BY FIRST CLASS MAIL

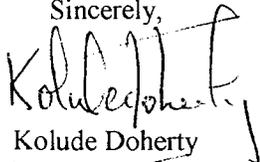
Mr. Michael Garcia
Assistant Secretary
United States Immigration and Customs Enforcement
Department of Homeland Security
425 I Street NW
Washington, DC 20536

Re: Suspension of Forced Returns to Areas Affected by the Tsunami

Dear Assistant Secretary Garcia,

Please find enclosed UNHCR's Information Note and accompanying letter from UN High Commissioner for Refugees Ruud Lubbers requesting a suspension of forced returns to areas affected by the recent tsunami. In light of the enormous loss of life and devastation in large regions of Asia and Africa, UNHCR is recommending that States suspend forced returns to these areas. As set forth in the Information Note, initially for three months, UNHCR currently recommends against such returns to Sri Lanka; Aceh, Indonesia; the Maldives, certain coastal areas of India; and coastal areas of Somalia.

UNHCR appreciates all the positive efforts that the US has taken to respond to the humanitarian crisis created by the tsunami, including the temporary suspension of removals to Sri Lanka and the Maldives. We hope that the US government will also incorporate UNHCR's guidance while implementing its removals program. Please do not hesitate to contact our Office if you have any questions or wish to discuss this matter further.

Sincerely,

Kolude Doherty
Regional Representative

cc:
Joseph Langlois, Director, Asylum Division, CIS
Molly Groom, Chief, Refugee and Asylum Law Division, Office of Chief Counsel, CIS



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

INFORMATION NOTE

REQUEST FOR THE SUSPENSION OF FORCED RETURNS TO AREAS AFFECTED BY THE TSUNAMI

The tsunami has left behind large-scale destruction and a serious risk of widespread epidemics. Access to many areas remains difficult, hindering the delivery of humanitarian assistance, and many of the regions affected lack any infrastructure.

Involuntary returns to the affected regions would put additional pressures on the local population, scarce resources and logistical channels, and would further complicate the efforts of humanitarian agencies. Forced returns would further hamper the restoration of public order and reconstruction efforts.

In view of these considerations, UNHCR would strongly recommend that States suspend, initially for a period of three months, all involuntary returns to the following areas, even in the case of persons found not to be in need of international protection:

- Sri Lanka – the whole of the country
- Indonesia - Aceh
- The Maldives – all of the islands
- India - the coastal areas of Tamil Nadu, Kerala, Pondicherry, Andhra Pradesh, as well as the Andaman and Nicobar Islands
- Somalia - the coastal areas (Note: This is in addition to UNHCR's current position on returns to Somalia¹ which remains valid.)

UNHCR will continuously review this position as conditions evolve.

6 January 2005

¹ UNHCR Position on Return of Rejected Asylum-Seekers to Somalia of 10 January 2004.

NATIONS UNIES
LE HAUT COMMISSAIRE
POUR LES RÉFUGIÉS



UNITED NATIONS
THE HIGH COMMISSIONER
FOR REFUGEES

Case postale 2500
1211 Genève 2
Suisse

7 January 2005

Dear Sir/Madam,

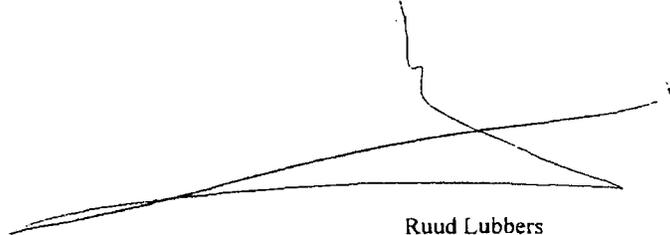
I would like to request your Government to give favourable consideration to suspending, initially for a period of three months, all forced returns to areas affected by the tsunami disaster, even in the case of persons not found to be in need of international protection, as per the attached information note.

The enormous loss of life and devastation caused by the earthquake and subsequent tsunami waves which have affected large regions of Asia and Africa have deeply shocked us all. Many States have reacted very quickly to this huge tragedy and UNHCR has mobilized its personnel and made available its stockpiles to support efforts to assist the populations in Sri Lanka and Indonesia. Many of the affected regions are completely destroyed, therefore the immediate focus of the international community is on trying to meet the basic needs of the populations concerned.

My request for suspension of returns is based on the awareness that the extent of the damage will require huge efforts to re-establish public order, and meet the basic needs of the affected populations.

UNHCR is aware that some States have already formally suspended forced returns to affected regions. I very much welcome such initiatives, and would be grateful if you could keep the Office informed of any measures taken in this regard by your Government.

Yours faithfully,



Ruud Lubbers

To all Permanent Representatives to the
United Nations Office at Geneva

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



**NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES**

*Regional Office
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*Bureau Régional
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Telephone: (202) 296-5191
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E-mail: USAWA@UNHCR.CH

FAX MESSAGE

TO: Mr. Victor Cerda

FROM: Kolude Doherty

DATE: 3/4/05 **PAGES:** 3

REFERENCE NO. : _____

SUBJECT: UNHCR Mission

MESSAGE:

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



*Regional Office
for the United States of America &
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**NATIONS UNIES
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E-mail: USAWA@UNHCR.CH

4 March 2005

BY FACSIMILE (202-307-9911) & FIRST CLASS MAIL

Mr. Victor Cerda
Acting Director
Office of Detention and Removals
US Immigration and Customs Enforcement
US Department of Homeland Security
801 "Eye" Street, NW
Washington, DC 20535

Rc: UNHCR Mission to Clinton County & Franklin County Jails

Dear Mr. Cerda,

I write to request ICE's assistance in facilitating a visit by the UNHCR Regional Office in Washington, DC, to the Clinton County Jail in Plattsburgh, NY on 18 March 2005, and the Franklin County Jail in St. Albans, VT on 19 March 2005. This visit would be undertaken within the context of UNHCR's monitoring role under Article 8(3) of the US-Canada "Safe Third Country" Agreement and UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

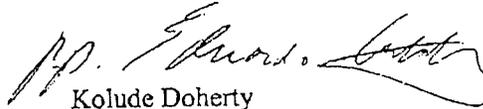
During our visit, we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained. We will provide you with the names and "A" numbers of these individuals, to the extent possible, in advance of our visit.

The UNHCR delegation to the Clinton County Jail will comprise two representatives from UNHCR's Regional Office for the United States and the Caribbean, located in Washington, DC: (b)(6) Senior Protection Officer, and (b)(6) Protection Consultant. The UNHCR delegation to the Franklin County Jail will comprise

of (b)(6) only. (b)(6) will be our Office's point of contact in arranging the visit. She can be reached at 202-296-(b)(6)

Thank you, as always, for your assistance in accommodating our site visit requests. We look forward to working with you and local ICE officials in arranging this visit.

Sincerely,


Kolude Doherty
Regional Representative

Cc: Joseph Langlois, Director, Asylum Division
US Citizenship and Immigration Services

Tim Ferry P.01/02

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



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POUR LES REFUGIES**

*Regional Office
for the United States of America &
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1775 K Street, NW
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Telephone: (202) 296-5191
Fax: (202) 296-5660
E-mail: USAWA@UNHCR.CH

15 March 2005

BY FACSIMILE (202-307-9911) & FIRST CLASS MAIL

Mr. Victor Cerda
Acting Director
Office of Detention and Removals
US Immigration and Customs Enforcement
US Department of Homeland Security
801 "Eye" Street, NW
Washington, DC 20535

Re: UNHCR Mission to Calhoun County & Monroe County Jails

Dear Mr. Cerda,

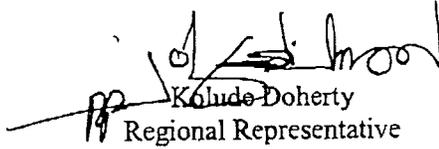
I write to request ICE's assistance in facilitating a visit by the UNHCR Regional Office in Washington, DC, to the Monroe County Jail in Monroe, MI on 31 March 2005, and the Calhoun County Jail in Battle Creek, MI on 1 April 2005. UNHCR's site visit to Monroe would include both the Monroe "Central" Jail and the Monroe "dormitory." This visit would be undertaken within the context of UNHCR's monitoring role under Article 8(3) of the US-Canada "Safe Third Country" Agreement and UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

During our visit, we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained. We will provide you with the names and "A" numbers of these individuals, to the extent possible, in advance of our visit.

(b)(6) Protection Consultant, UNHCR Washington will be the UNHCR delegate. (b)(6) will also be our Office's point of contact in arranging the visit. She can be reached at 202-296 (b)(6)

Thank you, as always, for your assistance in accommodating our site visit requests. We look forward to working with you and local ICE officials in arranging this visit.

Sincerely,



K. Doherty
Regional Representative

Cc: Joseph Langlois, Director, Asylum Division
US Citizenship and Immigration Services

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



*Regional Office
for the United States of America &
the Caribbean*

1775 K Street, NW
Suite 300
Washington DC 20006

**NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES**

*Bureau Régional
pour les Etats-Unis d'Amérique et
Caraïbes*

Telephone: (202) 296-5191
Fax: (202) 296-5660
E-mail: USAWA@UNHCR.CH

PM5:00 APR 13 2005

DRD

R

29 March 2005

BY FACSIMILE (202-307-9911) & FIRST CLASS MAIL

Mr. Victor Cerda
Acting Director
Office of Detention and Removals
US Immigration and Customs Enforcement
US Department of Homeland Security
801 "Eye" Street, NW
Washington, DC 20535

Re: UNHCR Mission to Northwest Detention Center

Dear Mr. Cerda,

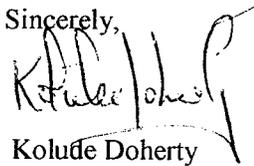
I write to request ICE's assistance in facilitating a visit by the UNHCR Regional Office in Washington, DC, to the Northwest Detention Center in Tacoma, WA on 14 April 2005. This visit would be undertaken within the context of UNHCR's monitoring role under Article 8(3) of the US-Canada "Safe Third Country" Agreement and UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

During our visit, we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained. We will provide you with the names and "A" numbers of these individuals, to the extent possible, in advance of our visit.

(b)(6) Protection Consultant and representative from UNHCR's Regional Office for the United States and the Caribbean, will be the UNHCR delegate. (b)(6) will also be our Office's point of contact in arranging the visit. She can be reached at 202-296-(b)(6)

Thank you, as always, for your assistance in accommodating our site visit requests. We look forward to working with you and local ICE officials in arranging this visit.

Sincerely,

A handwritten signature in black ink, appearing to read 'Koluđe Doherty', written over a horizontal line.

Koluđe Doherty
Regional Representative

Cc: Joseph Langlois, Director, Asylum Division
US Citizenship and Immigration Services



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés
1775 K Street, N.W., Suite 300
Washington, D.C. 20006



Mr. Victor Gerda
Acting Director
Office of Detention and Removals
US Immigration and Customs Enforcement
US Department of Homeland Security
801 "Eye" Street, N.W.
Washington, DC [redacted]



**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



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*Regional Office
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Fax: (202) 296-5660
E-mail: USAWA@UNHCR.CH

25 April 2005

BY FACSIMILE (202-307-9911) & FIRST CLASS MAIL

Mr. Victor Cerda
Acting Director
Office of Detention and Removals
US Immigration and Customs Enforcement
US Department of Homeland Security
801 "Eye" Street, NW
Washington, DC 20535

Re: UNHCR Mission to Buffalo Federal Detention Facility, NY;
Postponement of scheduled UNHCR mission to Franklin County Jail, NY

Dear Mr. Cerda,

I write to advise ICE of UNHCR's postponement of its previously scheduled 28 April 2005 mission to Franklin County Jail, N.Y., and to request ICE's assistance in facilitating a visit by the UNHCR Regional Office in Washington, DC, to the Buffalo Federal Detention Facility in Batavia, NY on 4 May 2005. This visit would be undertaken within the context of UNHCR's monitoring role under Article 8(3) of the US-Canada "Safe Third Country" Agreement and UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

During our visit, we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained. We will provide you with the names and "A" numbers of these individuals, to the extent possible, in advance of our visit.

(b)(6) Protection Consultant and representative from UNHCR's Regional Office for the United States and the Caribbean, will be the UNHCR delegate. (b)(6)

2005 MAY 4 PM 3 00

will also be our Office's point of contact in arranging the visit. She can be reached at 202-296-(b)(6)

Thank you, as always, for your assistance in accommodating our site visit requests. We look forward to working with you and local ICE officials in arranging this visit.

Sincerely,



Kolude Doherty
Regional Representative

Cc: Joseph Langlois, Director, Asylum Division
US Citizenship and Immigration Services

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



*Regional Office
for the United States of America &
the Caribbean*

1775 K Street, NW
Suite 300
Washington DC 20006

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Fax: (202) 296-5660
E-mail: USAWA@UNHCR.CH

8 June 2005

BY FACSIMILE (202-307-9911) & FIRST CLASS MAIL

Mr. Wesley Lee
Acting Director
Office of Detention and Removals
US Immigration and Customs Enforcement
US Department of Homeland Security
801 "Eye" Street, NW
Washington, DC 20535

Re: UNHCR Mission to Wayne County Jail, MI

Dear Mr. Lee,

I write to advise ICE of UNHCR's 22 June 2005 mission to Detroit, MI, and to request ICE's assistance in facilitating a visit by the UNHCR Regional Office in Washington, DC, to the Wayne County Jail in Detroit, MI on this same date. Our office may also be interested in visiting one other detention facility in the Detroit area during this visit, and we are currently verifying with DRO in Detroit whether this would be beneficial. This visit would be undertaken within the context of UNHCR's monitoring role under Article 8(3) of the US-Canada "Safe Third Country" Agreement and UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

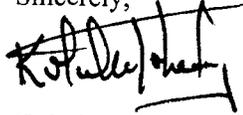
During our visit, we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained. We will provide you with the names and "A" numbers of these individuals, to the extent possible, in advance of our visit.

(b)(6) Protection Consultant and representative from UNHCR's Regional Office for the United States and the Caribbean, will be the UNHCR delegate. (b)(6)

will also be our Office's point of contact in arranging the visit. She can be reached at 202-296- (b)(6)

Thank you, as always, for your assistance in accommodating our site visit requests. We look forward to working with you and local ICE officials in arranging this visit.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kolude Doherty', written over a horizontal line.

Kolude Doherty
Regional Representative

Cc: Joseph Langlois, Director, Asylum Division
US Citizenship and Immigration Services



UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR

1775 K Street, NW
Suite 300
Washington, DC 20006

Tel.: (202) 296-5191
Fax: (202) 296-5595
Email: USAWA@unhcr.ch

22 July 2005

BY FACSIMILE (202-307-9911) & FIRST CLASS MAIL

Mr. Wesley Lee
Acting Director
Office of Detention and Removals
US Immigration and Customs Enforcement
US Department of Homeland Security
801 "Eye" Street, NW
Washington, DC 20535

Re: UNHCR Mission to Clinton County Jail, NY

Dear Mr. Lee:

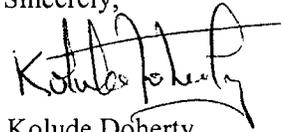
I write to advise ICE of UNHCR's 10 August 2005 mission to Champlain, NY, and to request ICE's assistance in facilitating a visit by the UNHCR Regional Office in Washington, DC, to the Clinton County Jail in Plattsburgh, NY on this same date. Our office may also be interested in visiting one other detention facility in the Champlain area during this visit, and we are currently verifying with DRO in Champlain whether this would be beneficial. This visit would be undertaken within the context of UNHCR's monitoring role under Article 8(3) of the US-Canada "Safe Third Country" Agreement and UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

During our visit, we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained. We will provide you with the names and "A" numbers of these individuals, to the extent possible, in advance of our visit.

(b)(6) Protection Consultant and representative from UNHCR's Regional Office for the United States and the Caribbean, will be the UNHCR delegate. (b)(6) will also be our Office's point of contact in arranging the visit. She can be reached at 202-296-(b)(6)

Thank you, as always, for your assistance in accommodating our site visit requests. We look forward to working with you and local ICE officials in arranging this visit.

Sincerely,



Kolude Doherty
Regional Representative

cc: Joseph Langlois, Director, Asylum Division
US Citizenship and Immigration Services

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



*Regional Office
for the United States of America &
the Caribbean*

1775 K Street, NW
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Telephone: (202) 296-5191
Fax: (202) 296-5660
E-mail: USAWA@UNHCR.CH

15 August 2005

BY FACSIMILE (202-307-9911) & FIRST CLASS MAIL

Mr. John Torres
Acting Director
Office of Detention and Removals
US Immigration and Customs Enforcement
US Department of Homeland Security
801 "Eye" Street, NW
Washington, DC 20535

Re: UNHCR Mission to Albany County Jail, NY and Elizabeth Detention
Facility, NJ.

Dear Mr. Torres,

I write to advise ICE of UNHCR's 31 August 2005 mission to Albany, NY and 1 September 2005 mission to Elizabeth, NJ. I am also writing to request ICE's assistance in facilitating a visit by the UNHCR Regional Office in Washington, DC, to the Albany County Jail in Albany, NY and the Elizabeth Detention Facility in Elizabeth, NJ on these same dates, respectively. This visit would be undertaken within the context of UNHCR's monitoring role under Article 8(3) of the US-Canada "Safe Third Country" Agreement and UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

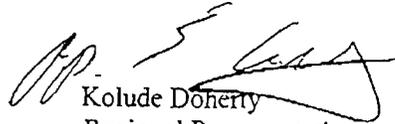
During our visit, we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained. We will provide you with the names and "A" numbers of these individuals, to the extent possible, in advance of our visit.

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Thank you, as always, for your assistance in accommodating our site visit requests. We look forward to working with you and local ICE officials in arranging this visit.

Sincerely,


Kolude Doherty
Regional Representative

Cc: Joseph Langlois, Director, Asylum Division
US Citizenship and Immigration Services



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Facsimile Message

UNHCR

1775 K Street, NW
Suite 300
Washington, DC 20006

2005 AUG 26 PM 12 10

Destination fax number/
N° fax du destinataire:

(202) 307-9911

To/A: Mr. Michael Garcia
Assistant Secretary
US Immigration & Customs Enforcement
DHS

Return fax number/
N° fax retour:

(202) 296-5660

From/De: Eduardo Arboleda, Deputy Regional
Representative

Tel:

Date: 25 August 2005

Email:

(b)(6)

Code:

No. of pages (including this one)/ 3
Nbre. de pages (celle-ci incluse):

Subject: UNHCR Visit to Laredo, Texas: 12-14 September 2005

Please see attached letter.

Best regards.

Eduardo Arboleda

#8537

**UNHCR**United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR

1775 K Street, NW
Suite 300
Washington, DC 20006Tel.: 2022965191
Fax: 2022905800
Email: (b)(6)

26 August 2005

BY FACSIMILE & FIRST CLASS MAIL

David Aguilar, Chief
Office of Border Patrol
Bureau of Customs and Border Protection
1300 Pennsylvania Avenue, Suite 6.5E
US Department of Homeland Security
Washington, DC 20229

John Torres, Acting Director
Office of Detention and Removals
Bureau of Immigration and Customs Enforcement
801 Eye Street, N.W., Suite 900
Department of Homeland Security
Washington, DC 20536

Re: UNHCR Visit to Laredo, Texas: 12-14 September 2005

Dear Chief Aguilar and Mr. Torres,

I am writing to request your assistance in facilitating a visit of the United Nations High Commissioner for Refugees (UNHCR) to Laredo, Texas, to observe the Border Patrol's implementation of its expedited removal authority within the Laredo, Texas Border Patrol sector and to visit the Laredo Detention Facility, where many of those apprehended by Border Patrol are detained. This visit would be undertaken within the context of UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

With regard to Border Patrol activities, we would appreciate the opportunity to observe all aspects of the expedited removal process, including apprehension, custody arrangements, and case processing. We would also appreciate the opportunity to meet separately with individual asylum-seekers whose cases are being processed. We hope to visit two Border Patrol stations in the Laredo sector during our trip if time allows.

In preparation of this visit, it would be quite helpful if we could receive from Border Patrol the following materials: (1) training materials for Border Patrol agents on the expedited removal process; (2) standard operating procedures for Border Patrol agents regarding the expedited removal process (similar to CBP's Inspector's Field Manual); and, (3) statistics regarding persons placed in expedited removal, broken down by Border Patrol sector. It is also our understanding that the DHS Expedited Removal Working



Group has undertaken field missions to the Laredo and Tucson Border Patrol sectors and has submitted reports to Border Patrol with its observations and recommendations. If possible, we would appreciate receiving copies (redacted as necessary) of these reports.

With regard to the Laredo Detention Facility, we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained.

The UNHCR delegation will comprise two representatives from UNHCR's Regional Office for the United States and the Caribbean, located in Washington, DC. Members of the delegation are (b)(6) Senior Protection Officer, and (b)(6) Protection Officer. (b)(6) will be our Office's point of contact in arranging the visit. She can be reached at 202-296-(b)(6)

Thank you for your assistance in accommodating our site visit requests. We will discuss our findings with you and provide a written report after our mission. We look forward to working with you and local DHS officials in arranging this visit.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eduardo Arboleda', written over a horizontal line.

Eduardo Arboleda
Deputy Regional Representative

Cc: Robert Bonner, Commissioner, CBP
Michael Garcia, Assistant Secretary, ICE
Joseph Langlois, Director, Asylum Division, CIS
Molly Groom, Chief, Refugee and Asylum Law Division, CIS
Rebekah Tosado, Office of Civil Rights and Civil Liberties, CIS

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**

*Regional Office
for the United States of America &
the Caribbean*

1775 K Street, NW
Suite 300
Washington DC 20006



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**NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES**

*Bureau Régional
pour les Etats-Unis d'Amérique et
Caraïbes*

Telephone: (202) 296-5191
Fax: (202) 296-5660
E-mail: USAWA@UNHCR.CH

9 September 2005

BY FACSIMILE (202-307-9911) & FIRST CLASS MAIL

Mr. John Torres
Acting Director
Office of Detention and Removals
US Immigration and Customs Enforcement
US Department of Homeland Security
801 "Eye" Street, NW
Washington, DC 20535

Re: UNHCR Mission to Monroe County Jail in Monroe, MI.

Dear Mr. Torres,

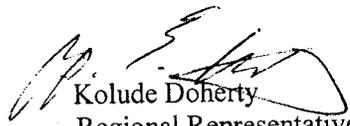
I write to advise ICE of UNHCR's 29 September 2005 mission to Detroit, MI. I am also writing to request ICE's assistance in facilitating visits by the UNHCR Regional Office in Washington, DC, to the Monroe County Jail in Monroe, MI on 29 September. This visit would take place within the context of UNHCR's monitoring role under Article 8(3) of the US-Canada "Safe Third Country" Agreement and UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

During our visit, we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained. We will provide you with the names and "A" numbers of these individuals, to the extent possible, in advance of our visit.

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Thank you, as always, for your assistance in accommodating our site visit requests. We look forward to working with you and local ICE officials in arranging this visit.

Sincerely,

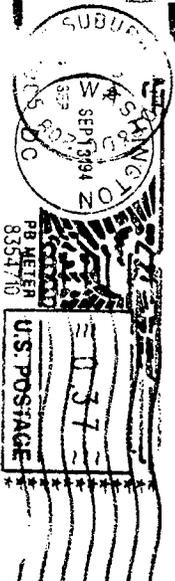

Kolude Doherty
Regional Representative

Cc: Joseph Langlois, Director, Asylum Division
US Citizenship and Immigration Services



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés
1775 K Street, N.W., Suite 300
Washington, D.C. 20006



Mr. John Torres
Acting Director
Office of Detention and Removals
US Immigration and Customs Enforcement
US Department of Homeland Security
801 "Eye" Street, N.W.
Washington, DC 20535



**UNITED NATIONS
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*Regional Office
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Telephone: (202) 296-5191
Fax: (202) 296-5660
E-mail: USAWA@UNHCR.CH

30 August 2005

BY FACSIMILE (202-307-9911) & FIRST CLASS MAIL

Mr. John Torres
Acting Director
Office of Detention and Removals
US Immigration and Customs Enforcement
US Department of Homeland Security
801 "Eye" Street, NW
Washington, DC 20535

Re: UNHCR Mission to Genesee County Jail and Buffalo Federal Detention Facility in Batavia, NY and Erie County Holding Center in Buffalo, NY.

Dear Mr. Torres,

I write to advise ICE of UNHCR's 12-16 September 2005 mission to Buffalo, NY. I am also writing to request ICE's assistance in facilitating visits by the UNHCR Regional Office in Washington, DC, to the Genesee County Jail in Batavia, NY on 12 September, the Erie County Holding Center in Buffalo, NY on 13 September, and the Buffalo Federal Detention Facility in Batavia, NY on 16 September. These visits would take place within the context of UNHCR's monitoring role under Article 8(3) of the US-Canada "Safe Third Country" Agreement and UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

During our visit, we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained. We will provide you with the names and "A" numbers of these individuals, to the extent possible, in advance of our visit.

UNHCR
REGIONAL OFFICE
WASHINGTON, DC



UNHCR
REGIONAL OFFICE
WASHINGTON, DC

(b)(6) Protection Consultant and representative from UNHCR's Regional Office for the United States and the Caribbean, will be the UNHCR delegate. (b)(6) will also be our Office's point of contact in arranging the visit. She can be reached at 202-296-(b)(6)

Thank you, as always, for your assistance in accommodating our site visit requests. We look forward to working with you and local ICE officials in arranging this visit.

Sincerely,



Kolude Doherty
Regional Representative

Cc: Joseph Langlois, Director, Asylum Division
US Citizenship and Immigration Services

UNHCR
The UN Refugee Agency



1775 K Street, N.W.
Suite 300
Washington, D.C. 20006

Mr. John Torres
Acting Director
Office of Detention and Removals
US Immigration and Customs Enforcement
US Dept. of Homeland Security
801 "Eye" Street, N.W.
Washington, D.C. [REDACTED]

Legal Mail



**UNHCR**United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR

1775 K Street, NW
Suite 300
Washington, DC 20006Tel.: 2022965191
Fax: 2022965660
Email: (b)(6)

29 September 2005

BY FACSIMILE (202-353-9435) & OVERNIGHT MAIL

Mr. John Torres
Acting Director, Office of Detention and Removal Operations
US Bureau of Immigration and Customs Enforcement
801 Eye Street, NW, Suite 900
Department of Homeland Security
Washington, DC 20536

Re: UNHCR Visits to Pamunkey Regional Jail, 22 August 2005

Dear Mr. Torres,

I wish to thank you and your staff for facilitating my visit to the Pamunkey Regional Jail on August 22, 2005. I found the DHS staff to be extremely courteous and accommodating during the visit. I very much appreciate both the time that they devoted to our visits and their full and forthright answers to our many questions about facility operations. The assistance of the Pamunkey regional jail staff was also very much appreciated.

A full report containing our observations, comments and recommendations is attached for your review. We highlight below, however, some of the report's specific findings and suggestions for each facility visited. Please note that we have included as an attachment to this report references to the international standards implicated by the conditions and procedures we observed. We hope that these international standards will be useful for you and your staff in assessing the adequacy of ICE detention conditions. Copies of the underlying international instruments and policy guidance materials were forwarded to your Office in September 2003.

At the outset, it is important to highlight that the Pamunkey facility was clean and its staff very professional. Immigration detainees interviewed by UNHCR acknowledged that the Pamunkey staff treated them with due respect, despite various complaints. However, as UNHCR has reiterated to DHS on numerous occasions, DHS does not appear to sufficiently emphasize its own standards to contracted county jails, which continues to be a concern for UNHCR. For example:

- **Lack of Adherence to DHS Standards.** UNHCR urges DHS to work with Pamunkey to ensure that DHS detention standards are followed, as DHS detention standards more closely approximate international standards for the treatment of civil detainees and asylum-seekers than do standards developed for a criminal and pre-trial population.



- **Phone Access.** A number of detainees commented that they were not aware that they could make free calls to certain legal service providers and other organizations. Some detainees also commented that their phone access codes did not function properly.
- **Access to Deportation Officers.** As UNHCR has pointed out in the past, there is no proactive effort on the part of DHS to inform the immigration detainees of their right to a deportation officer. As a result, most detainees are not clear the status of their respective cases, thus adding to their general frustration of being detained. DHS stated that an ICE officer visits Pamunkey once a week, but only one of the interviewed detainees knew of this officer.
- **Access to Legal Resource Materials.** The Pamunkey facility does not provide full access to legal resource materials. While all the necessary books were available, many were still in boxes and the computer was not functioning. Detainees interviewed by UNHCR stated that it was unclear when they had access to the library, and requests for access were not quickly processed. UNHCR encourages Pamunkey to include relevant immigration materials in the library and ensure that detainees have meaningful access to legal resource materials.

In closing, we reiterate our continued concerns about the detention of asylum-seekers in the United States. As you are aware, UNHCR's Executive Committee (see, e.g., Conclusion No. 44), has stated that asylum-seekers should normally not be detained. This principle is also found in UNHCR's Detention Guidelines. We encourage ICE to release individuals who should not be detained and to aggressively pursue alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Sincerely,

A handwritten signature in black ink, appearing to read "Eduardo Arboleda".

Eduardo Arboleda
Deputy Regional Representative

cc: Joseph Cuddihy, Director, Office of International Affairs, CIS
Molly Groom, Chief, Refugee and Asylum Law Division, CIS
Dan Sutherland, Director, Office of Civil Rights and Civil Liberties, DHS

UNHCR ROW MISSION
Pamunkey Regional Jail in Hanover, Virginia
22 August 2005

1. Introduction

On 22 August 2005, Eduardo Arboleda, Deputy Regional Representative of the UNHCR Regional Office in Washington, DC, along with (b)(6), Legal Protection Unit Intern, visited the Pamunkey Regional Jail (Pamunkey) in Hanover, Virginia. Pamunkey is a county jail that contracts bed space to Immigration and Customs Enforcement (ICE). Deputy Rep. Arboleda (hereinafter "UNHCR") was given a tour of the facility by Captain (b)(6), (b)(7) and Lieutenant (b)(6), (b)(7) of Pamunkey. They were accompanied by (b)(6), (b)(7)c and (b)(6), (b)(7)c of ICE.

This report is based on information received from DHS officials and facility staff, the observations of UNHCR staff during their tour of the facility, information received from detainees, both during individual interviews at the facility and from written correspondence received at the UNHCR Office in Washington, DC.

2. Facility Background and Housing Units

Pamunkey opened in 1998 and has a 400-bed capacity spread over 14 housing units. It is used as an overflow facility for immigration detainees when there is no bed space at the Piedmont Regional Jail in Farmville or the Hampton Roads Regional Jail in Portsmouth. DHS estimated that the average length of detention to be between two and three weeks. On average, the facility houses between 10 and 68 immigration detainees at a time. When UNHCR visited the facility, 21 immigration detainees were held there.

Unit K, where male detainees are held, is a dormitory-style detention area for low risk detainees, with a common area, toilet, shower, and bunks on the first floor, and additional bunks on the second floor. Detainees cannot see outside from the housing unit. The detention area appeared clean, although several of the detainees complained that the temperature was too cold.

Immigration detainees are processed into Pamunkey in the same manner as other detainees, and housed with the general population. Male and female detainees are housed in different units. Persons with behavior problems are housed separately in Units C or D.

The detainees generally commented that the Pamunkey staff is friendly, helpful, and professional. There were some reports that certain members of the Pamunkey staff used verbal threats or intimidation against detainees.

Comments & Recommendations: UNCHR recommends that asylum seekers in immigration proceedings not be commingled with inmates serving their criminal sentences.

3. Phones

In Housing Unit K, four phones are available for detainee use. Detainees can purchase phone cards from the commissary or can make collect calls. Instructions on how to use a phone card, call collect, or make a free call to onus's Embassy or Consulate are posted next to the phone.

Pamunkey has a speed dial system in place for making free calls to UNHCR, the immigration court and other organizations, but both DHS and Pamunkey officials were unaware of this until the UNHCR visit. Detainees were generally unaware of their ability to make free calls to these organizations. When a detainee attempted to call UNHCR collect from the phone system, the call could not be completed. According to DHS officials, immigration detainees can request to make a phone call to a legal service provider at DHS' expense; if the request is approved, they are taken to an interview room where a Pamunkey official places the call and hands the phone to the detainee. It is unclear if detainees are aware of this procedure.

Some of the detainees that UNHCR interviewed complained that the inmate code on their wristband IDs, which must be entered before dialing, did not allow them to use the phones, and that they often used another detainee's code. The detainees also complained that the calling card rates were too high.

Comments & Recommendations: UNHCR is concerned that detained asylum-seekers may be unable or unaware of their right to make free calls to legal service providers, immigration courts, DHS and UNHCR. Contact with these agencies can be critical to the preparation of an asylum claim. UNCHR recommends that Pamunkey place instructions to use the speed dial function to make free calls and to contact DHS if they are unable to place a call.

4. Access to Deportation Officers

ICE Officer (b)(6), (b)(7)c, who serves as a Deportation Officer for Pamunkey, stated that he visits Pamunkey four times a year. Officer (b)(6), (b)(7)c informed UNHCR that ICE Officer (b)(6), (b)(7)c of the Fairfax field office visits the facility once a week. If a detainee has a question about his or her individual case, they must request to speak to Officer (b)(6), (b)(7)c during his weekly visit. Officer (b)(6), (b)(7)c will then pass along the question to the Deportation Officer in the Fairfax field office. However, only one of the detainees interviewed had heard of Officer (b)(6), (b)(7)c and all detainees expressed frustration about not knowing what was going on with their cases.

Comments & Recommendations: UNCHR is concerned about the extent which detained asylum seekers have meaningful access to DHS. Detainees should be made aware of their right to speak with a deportation officer, and should be informed in advance of any visits by ICE officials.

5. Law Library

In general, Pamunkey's law library is well stocked with immigration materials, although many books were still in boxes and not accessible to detainees. Pamunkey officials explained that all immigration law materials are provided by DHS. When UNHCR arrived at the law library, a

Pamunkey staff member and an inmate were in the process of updating the immigration law materials. The materials contained in the library include: UNHCR Handbook on Procedures and Criteria for Determining Refugee Status; Section 8 of the U.S. Code; Administrative Decisions on immigration law (current through 1997); National Lawyers Guild—Immigration Law and Crimes; Bender's Immigration Case Reporter; Interpreter Releases (current through 2003); Guide for Immigration Advocates; Lexis Immigration Law and Procedure; Lexis guide on Writs of Habeas Corpus; Freedom House Reports from 2005; Human Rights Watch Report from 2005; Amnesty International Human Rights Reports; Black's Law Dictionary; and a Spanish language legal dictionary.

Pamunkey staff mentioned that DHS has provided them with a CD-ROM of legal materials, but the computer in the law library did not work and had no keyboard.

Pamunkey officials state that detainees must make a request to visit the law library. Such requests are usually processed within a few days. Detainees are typically allowed to visit the library for one-hour increments. Detainees interviewed by UNHCR stated that requests to visit the law library were not quickly processed. Detainees also stated that it was not always made clear to them when they would be allowed to visit the library.

Comments & Recommendations: UNCHR appreciates the fact that Pamunkey has an adequate collection of immigration law materials, albeit largely in boxes. UNCHR is concerned that detainees do not have meaningful access to the law library because of schedule restrictions, as well as the fact that many of the books were still in boxes and difficult to access. UNHCR recommends that Pamunkey allow more flexibility in granting detainees request for access to the library and provide a functioning computer for legal research.

6. Medical Care

Pamunkey officials stated that their medical unit is staffed twenty-four hours a day with certified nurses. A doctor visits twice a week and is constantly on call for emergencies. A mental health professional comes in once a week. Detainees with suicidal tendencies are placed on suicide watch. The degree of observation varies with the likelihood of self-inflicted harm. Detainees must make a request to see a doctor for non-emergency cases. Pamunkey officials stated that detainees taking medication have a twice daily "pill call." One detainee commented that at times the medical staff does not give him his pills on weekends. Detainees who are extremely ill are housed separately within the facility, and taken to the hospital in cases of emergency.

UNHCR received a report before this visit of a detainee who fell off a bunk and required stitches, but was only given a band-aid. Pamunkey officials assured UNHCR that if a detainees report a fall to a staff member, they are taken to the medical unit and treated appropriately. UNHCR also received reports from female detainees that were not being provided sanitary materials. Pamunkey officials stated that sanitary materials are kept in the detention area always available for free to female detainees upon request.

Comments & Recommendations: UNHCR was pleased with the diversity of medical services offered at Pamunkey. The availability of a mental health professional is especially welcomed.

UNCHR is concerned that some detainees may not be receiving their pills on the weekends. UNHCR is also concerned about reports that detainees are not receiving adequate medical care for serious wounds or adequate sanitary supplies.

7. Attorney Visitation/Access

If detainees wish to meet with their attorney, the detainee must contact their attorney, and the attorney must make a request to visit. Pamunkey officials reported that such requests are usually accommodated. Pamunkey provides two rooms for attorney/client meetings. None of the detainees interviewed by UNHCR complained of lack of access to attorneys. However, some did complain that they had difficulty calling their attorneys.

Detainees are subject to a strip search after a visit from their attorney, as they are after any outside visit. Pamunkey officials stated that this is pursuant to Department of Corrections regulations.

Comments & Recommendations: UNHCR is pleased that Pamunkey provides a private visitation area for attorney/client meetings. Private contact facilitates communication between attorneys and asylum-seekers so that the asylum-seekers' claim can be clearly presented in court. UNHCR is concerned about the practice of conducting a strip-search of detainees after they meet with their attorneys. This practice may dissuade asylum-seekers from meeting with their attorneys; UNCHR considers contact between asylum seekers and their attorneys to be crucial to the preparation of their case.

INDEX

International Instruments and Policy Guidance Materials

1. **1967 Protocol to the 1951 Refugee Convention** Protocol relating to the Status of Refugees, *adopted* 31 January 1967, *entered into force* 4 October 1967, 606 U.N.T.S. 267 (1967); Convention relating to the Status of Refugees, *adopted* 28 July 1951, *entered into force* 22 April 1954, 189 U.N.T.S. 137 (1951).

2. **Basic Principles** Basic Principles for the Treatment of Prisoners, *adopted* 14 December 1990, G.A. res. 45/111, annex, U.N. Doc. A/45/49 (1990).

3. **Body of Principles** Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, *adopted* 9 December 1988, G.A. res. 43/173, U.N. Doc. A/RES/43/173 (1988).

4. **ECRE, Position Paper on Detention of Asylum-Seekers** European Committee on Refugees and Exiles, *Position on Detention of Asylum Seekers* (April 1996).

5. **ICCPR** International Covenant on Civil and Political Rights, *adopted* 19 December 1966, *entered into force* 23 March 1976, G.A. res. 2200A (XXI), UN Doc. A/6316 (1966).

6. **Standard Minimum Rules** Standard Minimum Rules for the Treatment of Prisoners, *adopted* 1955, First U.N. Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva (1955), *approved* 31 July 1957, ECOSOC res. 663 C (XXIV) and 13 May 1977, ECOSOC res. 2076 (LXII).

7. **UNHCR Detention Guidelines** UNHCR Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers, Geneva (February 1999).

8. **UNHCR EXCOM Conclusions** Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme.

Relevant International Standards

Access to DHS Officials: Body of Principles, Principle 33 (right to make request or complaint about treatment to appropriate authorities); Standard Minimum Rules, Rule 36 (right to make request or complaint to director of institution or designated officer and to central prison administration or other proper authorities, and right to receive prompt reply); UNHCR Detention Guidelines, Guideline 10(x) (right of access to a complaints mechanism)

Co-mingling: Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from persons imprisoned by reason of a criminal offense); UNHCR Detention Guidelines, Guideline 10(iii) (asylum-seekers should not be co-mingled with convicted criminals); UNHCR EXCOM Conclusion No. 44, para. (f) ("refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as common criminals"); UNHCR EXCOM Conclusion No. 85, para. (ee) (noting concern that asylum-seekers are often held with common criminals); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from those imprisoned for criminal offenses); Body of Principles, Principle 8 (same); ICCPR, Article 10(2)(a) ("accused persons shall, save in exceptional circumstances, be segregated from convicted persons").

Confidential Attorney Consultations: Body of Principles, Principles 18(3) (right to be visited by and to consult and communicate with attorney in full confidentiality) and 18(4) (interviews between detained persons and legal counsel may be within sight, but not within hearing, of a law enforcement official).

Interpretation: UNHCR EXCOM Conclusion No. 8 (asylum-seekers to be given necessary facilities, including interpreter services, to submit claim to authorities); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints to be made available to detainees in different languages); ECRE Position Paper on Detention, paras. 20, 29 (right of asylum-seeker to information on detention in language s/he understands); Standard Minimum Rules, Rule 35 (right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations) and Rule 51(2) (whenever necessary, the services of an interpreter shall be used); Body of Principles, Principle 14 (right of detainee to receive information about his rights in detention in language he understands).

Legal Resources: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to the asylum-seekers' possibilities to pursue their asylum application).

Medical: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers shall have opportunity to receive appropriate medical treatment and psychological counselling); Body of Principles, Principle 24 (medical care shall be offered free of charge); Standard Minimum Rules, Rule 22(1) (services of medical officer with some knowledge of psychiatry should be available) and Rule 22(2) (sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals; if institution has hospital facilities, its resources shall be proper for necessary medical care); UNHCR Detention Guidelines, Guideline 10 (detention conditions

should be humane with respect shown for inherent dignity of person); Basic Principles, Principle 1 (same).

Orientation: UNHCR Detention Guidelines, Guideline 5(i)(asylum-seekers should receive prompt, full communication of detention order, reasons for order, rights in connection with order, in language they understand); Body of Principles, Principle 11(2) (detained person shall receive prompt and full communication of detention order and the reasons therefor); Principle 13 (upon detention, information on and explanation of rights and how to avail oneself of rights will be provided); Body of Principles, Principle 14 (entitled to receive information in Principle 11 and 13 through interpreter free of charge).

Programs: UNHCR Detention Guidelines, Guideline 10(vii) (detained asylum-seekers should have opportunity to continue further education or vocational training); ECRE Position Paper on Detention, para. 46 (during prolonged detention, adult education and training should be provided and it should attend to cultural and linguistic needs; it is crucial for detainees' mental health to not be deprived of access to constructive activities during prolonged detention); Basic Principles, Principle 6 (prisoners shall have right to take part in education aimed at full development of human personality).

Recreation: UNHCR Detention Guidelines, Guideline 10(vi) (asylum-seekers should have opportunity for daily indoor and outdoor recreational activities); Standard Minimum Rules, Rule 21(right to at least one hour suitable exercise in open air daily weather permitting).

Religion: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers should have the opportunity to exercise their religion); Standard Minimum Rules, Rule 41 (if institution contains sufficient number of prisoners of same religion, a qualified representative of that religion shall be appointed or approved and made available to hold regular services and pay private pastoral visits) and Rule 42 (as far as practicable, every prisoner shall be allowed to satisfy his religious needs by attending religious services).

Restraints: Standard Minimum Rules, Rules 33 (instruments of restraint never to be applied as punishment, only to be used as precaution during transfers, on medical grounds, or, by order of director, if other methods of control fail, to prevent prisoner from injuring himself, others or damaging property) and 34 (restraints not to be used for any longer than is strictly necessary).

Telephone Access: UNHCR EXCOM Conclusion No. 44, para. (g)(detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv)(asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (the means shall be made available for detained asylum-seekers to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate); Body of Principles, Principle 16(2) (detained foreigners have right to communicate by appropriate means with representative of competent organization); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons); ECRE Position Paper on Detention, para. 29 (asylum-seekers should have access to

telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counselors).

Temperature: Standard Minimum Rules, Rule 10 (sleeping conditions shall meet all health requirements, including necessary heating) & Rule 19 (every prisoner should be issued sufficient bedding).

Training: Standard Minimum Rules, Rule 47 (personnel shall receive on-going training to maintain and improve their knowledge and professional capacity); ECRE Position Paper on Detention, para. 51 (staff should receive proper training on asylum matters, causes of refugee movements, relevant cultural factors, and methods of recognizing and responding to stress-related illnesses).



UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Facsimile Message

UNHCR
United Nations High Commissioner for Refugees
Regional Representation in Washington

1775 K Street, NW
Suite 300
Washington, DC 20006

To/A: Ms. Julie L. Myers
Assistant Secretary
United States Immigration and Customs
Enforcement

Destination fax number/
N° fax du destinataire: 353 3726

From/De: Thomas Albrecht
Deputy Regional Representative

Return fax number/
N° fax retour: 2022965660

Date: 03 April 2006

Tel: 2022965191

Code:

Email: usawa@unhcr.org

No. of pages (including this one)/ 6
Nbre. de pages (celle-ci incluse):

Subject: Meeting with UNHCR Assistant High Commissioner for Protection

Please see attached letter.
Best regards.

**UNHCR**United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiésUNHCR
United Nations High Commissioner for Refugees
Regional Representation in Washington1775 K Street NW
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3 April 2006

Dear Assistant Secretary Myers,

Subject: Meeting with UNHCR Assistant High Commissioner for Protection

The Assistant High Commissioner for Protection of the United Nations High Commissioner for Refugees, Ms. Erika Feller, will be in Washington, D.C. next week and would welcome the opportunity to meet with you. A copy of Ms. Feller's resumé is attached for your reference.

Ms. Feller would appreciate the opportunity to discuss certain refugee protection matters in the United States related to the enforcement of immigration laws and to build on UNHCR's positive experiences with your office, including efforts to prevent and mitigate fraud through joint investigations. Among other issues of significant impact on individuals of concern to UNHCR would be the detention of asylum seekers, including parole policies and the detention of families, and the impact of the "material support to terrorist organizations" bar on UNHCR operations overseas. Ms. Feller would be happy to address any other particular concerns or interests you might have.

We would like to propose a meeting on Tuesday, April 11. (b)(6) in our office is available to assist your staff in facilitating an appointment; she can be reached at 202-243-(b)(6). Should you wish to speak with me directly, please do not hesitate to call me at 202-243-(b)(6).

Thank you for your continued cooperation and for your attention to this request.

Yours sincerely,

Thomas Albrecht
Deputy Regional Representative

Ms. Julie L. Myers
Assistant Secretary
United States Immigration and Customs Enforcement
Department of Homeland Security
20 Massachusetts Ave., N.W.
Washington, DC 20536

BIOGRAPHICAL NOTES

Name: Erika Elizabeth Feller
Nationality: Australian
Marital Status: Married (2 children)

University Studies

1968 – 1971 Melbourne University, Victoria, Australia
LL.B (Hons), Thesis in International Law
BA (Hons. Psychology with majors in Political
Science and History)

Languages: English - Mother tongue
French and German - competent

Previous Professional Activities:

1972 – 1973 Placement in Economic and Legal Sections,
Department of Foreign Affairs, Canberra, Australia.

1973 – 1976 Third Secretary/Second Secretary, Australian
Military Mission, Berlin.

1976 – 1980 Foreign Affairs Officer – Level 3, Legal Division.
Department of Foreign Affairs, Canberra, Australia.
Special Assistant to the Legal Advisor, Sir. Eli
Lauterpacht.

1980 First Secretary, Australian Embassy, Rome, Italy.
EU Presidency officer.

1980 – 1984 First Secretary, Australian Mission to the United
Nations, Geneva, Switzerland.
Humanitarian and Human Rights Officer.

1985 – 1986 Foreign Affairs Officer – Level 4 (Counsellor).
Head, Human Rights Section, Department of
Foreign Affairs, Canberra, Australia.

1986 Secondment to UNHCR.

Functions with UNHCR

1986 – 1990	Senior Legal Adviser, Office of the Director, Division of Refugee Law and Doctrine, UNHCR Headquarters, Geneva.
1990 – 1991	Special Adviser to the Director, Division of International Protection, UNHCR Headquarters, Geneva.
1991 – 1993	Chief of Section, General Legal Advice, Division of International Protection.
1993 – 1996	Representative, Branch Office for Malaysia, Brunei Darussalem and Singapore.
7/1997 – 4/1999	Deputy Director, Division of International Protection.
4/1999 – 2/2006	Director, Department of International Protection.
2/2006 – To date	Assistant High Commissioner for Protection.

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Summary of Professional Experience

Erika Feller, an Australian national, is currently Assistant High Commissioner for Protection with the Office of the United Nations High Commissioner for Refugees. Her professional career, now spanning some 34 years, has had as a constant thread working with the practice, as well as the theory and the drafting, of international human rights and refugee law. She is an acknowledged authority on international refugee law.

She graduated from Melbourne University in 1971 with an honours degree in Law, coupled with a Bachelor of Arts degree [LLB(hons)/BA], having written her thesis in international law and with a major also in honours psychology. Following graduation, she joined the Australian Diplomatic Service and served both in Canberra and three times abroad, largely on assignments with an international legal or multilateral focus. During her some 14 years as a diplomat, she gained extensive experience with multilateral and bilateral diplomacy, including on numerous occasions as a member of Australian Delegations to major UN, human rights, refugee and red cross/red crescent conferences. She served as Australia's representative for four years on the committee which drafted the UN Convention against Torture, as well as Rapporteur of UNHCR's Executive Committee. Her assignments also included a two-year appointment as the principal assistant to the Legal Advisor of the Australian Department of Foreign Affairs, the eminent international lawyer, Sir Elihu Lauterpacht. She went on to head the Department's Human Rights Section during its

early and formative years. In 1986, having reached the diplomatic rank of Counsellor, she went on secondment to UNHCR.

With UNHCR Ms Feller has served in a variety of different capacities in the Department of International Protection, but also in the field as the High Commissioner's Regional Representative for Malaysia, Brunei and Singapore. Concurrently with this appointment, she also performed the regional coordination function under the arrangement that became known as the Comprehensive Plan of Action (CPA) for Indochinese refugees in South East Asia. More generally, in her various capacities she has been closely following developments in asylum policy and practice globally. These have included the European harmonisation process, regional protection initiatives in Africa, Asia and the Middle East, migration/asylum nexus issues, sexual and gender violence problems and policy and practice on internal displacement. She has travelled extensively, in particular throughout Africa, Asia, Europe and North America, for the purposes of discussions or negotiations with senior government interlocutors on their asylum policies and practices.

The two year [2001 -2] Global Consultations on International Protection, a process which she was instrumental in conceptualising and managing, was the first in-depth analysis, undertaken by UNHCR with Government, non-government and inter-agency partners, on current asylum challenges, practices and deficits. It was designed to reinforce support for the basic principles and protection instruments, to promote an updated interpretation of their scope and their more resolute implementation, and to identify the gaps in protection coverage and how to fill them. The main document it generated, the Agenda for Protection, remains UNHCR's chief protection policy document and serves as an influential road map on protection policy for governments.

In the various capacities in which she has served in UNHCR, the protection dimensions of humanitarian operations have been a key, priority focus of her responsibilities. She has visited all the major recent operations, undertaking oversight or advocacy missions to major emergency situations [such as Kosovo], large-scale ongoing operations [e.g Darfur, West Africa, the Caucuses], protracted refugee situations [e.g in the CIS, Tanzania], returnee programs [e.g Myanmar, Vietnam], voluntary repatriation operations [e.g Sierra Leone, Tanzania], statelessness programs [e.g Kyrgystan], natural disaster/IDP mixed programs [Tsunami in Sri Lanka], problematic asylum situations [in Eastern Europe, southern Africa, Oceania and the Middle East], self reliance based programs [e.g Zambia, Uganda], cessation situations [such as Timor] and resettlement/integration focused programs in developed countries, as well as in new resettlement countries like Benin.

Ms Feller has also, on a number of occasions, been UNHCR's chief negotiator of protection agreements with Governments, as well as multilateral arrangements with agency partners. Internally she has served concurrently on a number of management boards and been responsible for a range of initiatives which have brought concrete improvements to the way UNHCR manages its protection responsibilities.

Ms Feller is co-editor of the book "Refugee Protection in International Law - UNHCR's Global Consultations on International Protection" [Cambridge University

Press, 2003]. She has also published extensively in many major refugee and international law Journals.

The Journals include:

- Australian Law Journal
- The Australian Year Book of International Law
- The Refugee Law Journal.
- Moscow Journal of International Law
- Georgetown Immigration Law Journal
- Washington University Journal of Law and Policy
- Forced Migration Review
- International Review of the Red Cross: Humanitarian Debate, Law, Policy, Action
- Kluwer Law International
- Refugee Survey Quarterly
- Georgetown Journal of International Affairs

Ms. Erika Feller is married, with two children.



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

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25 October 2006

Dear Mr. Torres,

Subject: UNHCR RefWorld

We are writing to thank you for your recent decision to make available to asylum-seekers and others who are in the custody of the Department of Homeland Security copies of UNHCR's RefWorld 2005. We understand that the RefWorld CD-ROMs will be made available to all DHS Service Processing Centers and Contract Detention Facilities, as well as to ten facilities with which DHS holds Inter-Governmental Service Agreements.

As you know, the detention of asylum-seekers in the United States has been an area of particular focus for UNHCR. We appreciate the constructive working relationship that our Office has maintained over the years with Immigration and Customs Enforcement (ICE), in particular the Detention and Removal Unit, in identifying effective alternatives to detention for asylum-seekers and ensuring that, for those who are detained, conditions of detention are humane and appropriate.

The inclusion of UNHCR's RefWorld at the detention facilities identified by ICE will greatly assist asylum-seekers who are held there in preparing their asylum claims for immigration court. Given that many detained asylum-seekers do not have legal assistance, access to current and reliable legal and country of origin information is of particular importance. We believe that access to UNHCR's RefWorld, in conjunction with the other legal materials required by DHS' detention standards, will help to meet this need.

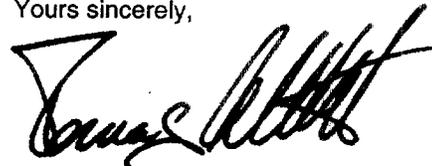
As discussed with Walter LeRoy, Chief of the Detention Standards Compliance Unit (DCMU), we will be forwarding 24 copies of the 2005 UNHCR RefWorld CD-ROM to DCMU under separate cover. We would also like to take this opportunity to request ICE review and approval for distribution of UNHCR's RefWorld 2006. I enclose a

Mr. John Torres, Director
Detention and Removal Operations
Immigration and Customs Enforcement
US Department of Homeland Security
801 I Street, NW
Washington, DC 20536

brochure and a copy of the DVD for your review. (We will send a separate copy in CD-ROM format once it is received from our Headquarters). The only significant differences between the 2005 and 2006 versions of RefWorld are the format (2006 RefWorld is now available on DVD, as well as CD-ROM by request) and the inclusion in the 2006 version of UNHCR maps, information on internal displacement and selected UNHCR guidelines. Otherwise, the various databases are essentially the same, with the inclusion of more recent documents in the 2006 version.

Please do not hesitate to contact me or my colleagues should you have any questions or wish to discuss this matter further. Please also know that our Information Technology Officer is available to ICE officials and to officials at the various detention facilities that will be receiving RefWorld 2005 to answer any questions regarding the installation of the CD-ROMSs.

Yours sincerely,



Thomas Albrecht
Deputy Regional Representative

cc: Mr. Joseph Langlois, Director, Asylum Division
Citizenship and Immigration Services
U.S. Department of Homeland Security

Ms. Molly Groom, Chief, Refugee and Asylum Law Division
Citizenship and Immigration Services
U.S. Department of Homeland Security

Mr. Daniel Sutherland, Officer for Civil Rights and Civil Liberties
Office of Civil Rights and Civil Liberties
U.S. Department of Homeland Security



UNHCR

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08/LG/112

14 November 2008

Dear Director Hayes:

UNHCR Mission to Louisiana

I am writing to request your office's assistance in facilitating a UNHCR visit to Louisiana prisons during the period of 2 to 4 December 2008. This visit would be undertaken within the context of UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

The purpose of our visit is to follow up on our missions to the area in April 2001 (Oakdale Federal Detention Center) and May 2004 (Tensas Detention Center) and to conduct one initial site visit (LaSalle Detention Facility). We would like to visit these facilities as follows: Tensas Parish Detention Center (2 December), Oakdale Federal Detention Center (3 December) and LaSalle Detention Facility (4 December).

During each of these visits we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. We would also appreciate the opportunity to meet with individual asylum-seekers and refugees who are detained, and will provide you with the names and "A" numbers of these individuals in advance of our visit. As in the past, we would appreciate the use of a private room for each of our officers equipped with a speaker phone in order to utilize the DHS interpreter line while interviewing these individuals.

The UNHCR delegation will be comprised of three officers from UNHCR's Regional Office for the United States and the Caribbean located in Washington, DC. Members of the delegation are Senior Protection Officer (b)(6) Protection Officer (b)(6) and Protection Assistant (b)(6) (b)(6) will be our office's point of contact in arranging the visit. She can be reached at 202-243 - (b)(6)

James T. Hayes, Director
Office of Detention and Removal Operations
U.S. Immigration and Customs Enforcement
500 12th SW
11th Floor
Washington, D.C. 20536

Thank you for your assistance in accommodating our site visit requests. As always, we will discuss our findings with you and provide a written report after our mission. We look forward to working with you and local DHS officials in arranging this visit.

Sincerely,



Thomas Albrecht
Deputy Regional Representative

- cc: Ms. Susan Cullen, Director of Policy, Office of Policy and Planning, Immigration and Customs Enforcement, United States Department of Homeland Security
- Mr. Joseph Greene, Chief of Policy and Communications, Office of Detention and Removal Operations, Immigration and Customs Enforcement, United States Department of Homeland Security
- Mr. George H. Lund III, Field Office Director, Immigration and Customs Enforcement, United States Department of Homeland Security
- Mr. Brandon Prelogar, Acting Special Advisor for Refugee and Asylum Affairs, United States Department of Homeland Security
- Mr. Andrew Strait, Acting Coordinator / Policy Analyst, Office of Policy, Immigration and Customs Enforcement, United States Department of Homeland Security



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

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09/LG/102

3 February 2009

Dear Director Hayes,

Subject: UNHCR Mission to Laredo Area Detention Facilities

Please find enclosed the report of the Office of the United Nations High Commissioner for Refugees (UNHCR) on its visits to the Laredo Processing Center (CCA Laredo) in Laredo, Texas on 12 September 2006 and the South Texas Detention Complex (STDC) in Pearsall, Texas on 13 September 2006. We wish to thank you and your staff for facilitating the visit of (b)(6) Senior Protection Officer, and (b)(6) Protection Officer, to these facilities.

These visits were undertaken as part of UNHCR's regular monitoring of detention conditions for asylum-seekers in the United States. A full report containing our observations, comments, and recommendations is attached for your review. We highlight below some of the report's specific findings for each facility visited. Please note that we have included as an attachment to this report references to the international standards implicated by the conditions and procedures we observed. We hope that these international standards will be useful for you and your staff in assessing the adequacy of Immigration and Customs Enforcement (ICE) detention conditions. Copies of the underlying international instruments and policy guidance materials were forwarded to your office in September 2003.

Laredo Processing Center (CCA Laredo): CCA Laredo has the capacity to hold 385 detainees. At the time of UNHCR's visit, it primarily housed detainees in expedited removal proceedings and functioned as a staging facility for detainees awaiting transfer to other facilities or removal aboard Justice Prisoner and Alien Transportation System flights. Ninety-five percent of the detainees were Central American and remained at the facility for an average of 15 to 16 days. Typically, about 80 to 85 of the detainees were asylum-seekers who have been served with Notices to Appear and were in removal proceedings.

James T. Hayes, Director
Office of Detention and Removal Operations
U.S. Immigration and Customs Enforcement
500 12th SW
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Washington, D.C. 20536

Positive aspects of the facility's operations included the designation of two ICE officers to assist asylum officers in processing credible fear cases.

Primary issues of concern included inadequately maintained legal resources; limited use of interpreters to communicate essential information to detainees; inadequate telephone access to non-governmental organizations (NGOs), consulates, and UNHCR; and limited access to outdoor recreation.

South Texas Detention Complex (STDC): STDC is one of the largest ICE contract facilities and was built exclusively to house immigration detainees. Its contract requires that it comply with DHS detention and American Correctional Association (ACA) standards. At the time of our visit, the facility had 1,700 beds available and housed mostly individuals in expedited removal proceedings. While the majority of the detainees were subject to removal, some were seeking asylum. Most of the population was from Central America; although, there were over 200 detainees originating from countries outside the Americas region.

Positive aspects of the facility's operations included an acute awareness of and commitment to meeting DHS detention standards; an ICE officer exclusively responsible for credible fear case management; a liberal outdoor recreation policy; a well-equipped law library; and the recruitment of Chinese-speaking staff to facilitate communication with Chinese detainees.

Primary issues of concern included problems with the functioning of the telephone system; unsatisfactory acoustics in interview rooms used for credible fear screenings; inconsistent use of interpreters to communicate essential information to detainees, and complaints regarding responses to detainee requests.

In closing, we reiterate our continued concerns about the detention of asylum-seekers in the United States. As you are aware, UNHCR's Executive Committee has stated that asylum-seekers normally should not be detained (*see, e.g.*, Conclusion No. 44). This principle is also found in UNHCR's Detention Guidelines. We encourage ICE to release individuals who should not be detained and to pursue appropriate alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Yours sincerely,



Thomas Albrecht
Deputy Regional Representative

**cc: Brandon Prelogar, Special Advisor for Refugee and Asylum Affairs
U.S. Department of Homeland Security**

**Lori Scialabba, Associate Director
Refugee, Asylum, and International Operations Directorate
Citizenship and Immigration Services
U.S. Department of Homeland Security**

**(b)(6), (b)(6), (b)(7)c Acting Field Office Director
San Antonio Field Office
Immigration and Customs Enforcement
U.S. Department of Homeland Security**

**Rebekah Tosado, Office of Civil Rights and Civil Liberties
U.S. Department of Homeland Security**

Report

**Laredo Processing Center
and
South Texas Detention Complex
Visited 12-13 September 2006**

**submitted by the Regional Representation for
the United States of America and the Caribbean
Office of the United Nations High Commissioner for Refugees**



UNHCR
The UN
Refugee Agency

**Laredo Processing Center
12 September 2006**

On 12 September 2006, (b)(6) Senior Protection Officer, and (b)(6) (b)(6) Protection Officer, visited the Laredo Processing Center. The Laredo Processing Center is operated by the Corrections Corporation of America (CCA) and will be referred to in this report as CCA Laredo. At the beginning of the visit, UNHCR met with (b)(6), (b)(7) (b)(6), (b)(7)c Immigration and Customs Enforcement (ICE) Officer-in-Charge (OIC) and (b)(6), (b)(7) (b)(6), (b)(7) Warden, CCA Laredo. (b)(6), (b)(7)c and Chief Security Officer (b)(6), (b)(7)c accompanied UNHCR staff on the tour of the facility. At the time of UNHCR's visit, the CCA Laredo's last inspection was in September 2005, and its next inspection was scheduled for late September 2006.

Background: CCA Laredo has been operating for 20 years, and was an Immigration and Naturalization Service (INS)/ICE contract facility until the South Texas Detention Center (STDC) opened in Pearsall, Texas in 2005. Since then, CCA Laredo has operated under an Inter-Governmental Service Agreement. Under the new agreement, ICE no longer guarantees payment for a particular number of beds. Rather, it maintains a contract for a specific number of beds but only pays for those beds filled. CCA Laredo has a population capacity of 385 detainees.

The facility is primarily used to hold detainees with expedited removal orders and as a staging facility for either transfer to another facility (STDC for extra-regional asylum-seekers, and the Port Isabel and Raymondville facilities for Salvadorans) or removal aboard Justice Prisoner and Alien Transportation System flights. Ninety-five percent of the detainees are from Central America and stay at the facility an average of 15 to 16 days. However, some of the detainees are asylum-seekers who have been issued notices to appear (NTAs) and will undergo full removal proceedings. CCA Laredo receives persons apprehended at three Laredo ports of entry (the Lincoln-Juarez Bridge, and Bridges One and Two) and generally does not house criminal detainees. Individuals who were apprehended and criminally prosecuted for unlawful entry in the Del Rio sector are also transferred to CCA Laredo after serving their sentences.

On the day of UNHCR's visit, ICE was holding 369 people at CCA Laredo and 100 people at the nearby CCA Webb facility. CCA Webb is a 500-bed facility which is used primarily by the United States Marshals Service. CCA Laredo had an unusually high number of Salvadoran female detainees (168), who were brought there because the facility in Port Isabel lacked available bed space. At the time of UNHCR's visit, some detainees were at the STDC visiting their consulates.

UNHCR Comments and Recommendations: *UNHCR appreciates the fact that, as a general rule, CCA Laredo does not house immigration detainees with criminal inmates. UNHCR objects to the commingling of asylum-seekers with any persons serving their criminal sentences.*

Intake/Booking: Upon arrival, detainees undergo a pat search, a metal search, and a property search. Staff also confirms whether detainees are in good health. If an interpreter is needed during the intake process, facility staff may call Texas A & M University. The OIC reported that facility staff could use the Department of Homeland Security (DHS) telephonic interpreter service if it is needed. However, several detainees who did not speak English or Spanish, the common languages spoken by facility staff, indicated that the only time an interpreter was used to speak with them was during their credible fear interview.

UNHCR Comments and Recommendations: UNHCR appreciates that detainees are not subject to strip-search upon entry because asylum-seekers, especially former victims of trauma, may suffer undue trauma when undergoing strip-searches. However, UNHCR is concerned that detainees may not understand essential information such as jail rules and recommends that the detention center take any necessary measures to ensure that CCA staff who do not speak the language of the detainee use interpreters when conveying such information.

Medical: Staff includes six licensed practical nurses, one registered nurse, a psychiatrist who is on site every weekend, a dentist who is on site every Monday and a doctor who is on site Monday, Wednesday, and Thursday. Full-time medical staff is on-site until 10:00 pm, with one nurse remaining on shift after that. Initial medical examinations, including screening for tuberculosis and a medical intake, occur within 24 hours of booking. Detainees are not charged for nurse/doctor visits, and medical records are available with a signed consent form. The facility has approved independent medical exams in the past, and ICE has provided transportation to these medical examinations.

Full physical examinations occur within two weeks of arrival. ICE indicated that it provides interpreters for medical staff to use when necessary. However, several detainees who did not speak English or Spanish reported that, during medical examinations or appointments, there was no interpreter used. They reported that, instead, information was communicated by the use of hand gestures, simple English, or fellow detainees.

UNHCR Comments and Recommendations: UNHCR appreciates CCA Laredo's facilitation of independent medical examinations, which can be useful to asylum-seekers in documenting their cases. However, UNHCR is concerned that asylum-seekers with language barriers may not be able to effectively communicate with medical staff during examinations or appointments and, as a result, may not receive proper medical treatment. To ensure effective communication, UNHCR recommends that necessary measures be taken to ensure that CCA medical staff uses interpreters during medical examinations and appointments whenever the staff does not speak the language of the detainee. To preserve doctor-patient confidentiality, UNHCR further recommends that medical staff require a patient's consent before another detainee is used to translate.

Telephones: According to CCA and ICE, detainees often complain about the telephones. Calls can be placed to national or international numbers either collect or with phone cards available for purchase. A list of pre-programmed phone numbers was posted in the living

recommends that CCA Laredo expand the immigration law resources available to detainees to include country of origin materials, including human rights reports from governmental and non-governmental sources.

Credible Fear Processing: CCA Laredo has a separate area for the processing of credible fear cases, with a small V-Tel interview room for credible fear and dissolution interviews with asylum officers in San Antonio. UNHCR was informed that asylum officers used to come to CCA Laredo to serve NTAs in person. However, due to a backlog of cases and processing delays of up to 90 days, the Officers have begun conducting credible fear interviews by V-Tel. Since the change, asylum officers have been conducting interviews regularly and the backlog has disappeared.

ICE has two officers, working on 30-day details, designated to assist asylum officers in processing credible fear cases.

UNHCR Comments and Recommendations: *UNHCR appreciates efforts by the Asylum Office to reduce delays in conducting credible fear interviews and that ICE officers have been designated to assist in facilitating the processing of asylum cases. It is in everyone's interest for asylum cases to be resolved in a timely manner.*

Outdoor Recreation: CCA Laredo's policy at the time of UNHCR's visit was to provide detainees one hour of outdoor recreation three days per week. The Inmate Orientation Handbook which was revised in January 2006 reflected this policy. The outdoor recreation area includes a basketball court and a small shaded area. Water jugs are available.

During its visit, UNHCR expressed surprise that detainees did not receive outdoor recreation five days per week as required by the DHS detention standards. OIC (b)(6), (b)(7)c indicated that the policy at CCA Laredo would be changed immediately to comply with the Standards.

UNHCR Comments and Recommendations: *UNHCR appreciated the OIC's assurance that CCA Laredo's outdoor recreation policy would be changed immediately. Access to the outdoors can be critical for asylum-seekers and refugees who often have experienced personal trauma and have particular difficulty with extended periods of confinement.*

South Texas Detention Complex
13 September 2006

On 13 September 2006, Senior Protection Officer (b)(6) and Protection Officer (b)(6) visited the South Texas Detention Complex (STDC) in Pearsall, Texas. The facility is operated and managed by the Geo Group, Inc. (GEO), a private contractor. UNHCR was accompanied by (b)(6), (b)(7)c Supervisory Detention Officer and Officer-in-Charge (OIC), and (b)(6), (b)(7)c Warden of STDC employed by GEO.

Background: Before the tour, UNHCR met with (b)(6), (b)(7)c Supervisory Detention and Deportation Officer/Acting Assistant OIC; OIC (b)(6), (b)(7)c and Warden (b)(6), (b)(7)c. STDC is the largest ICE contract facility to date (although the 2,000-bed Raymondville Texas facility will surpass it in size), and was built to house only immigration detainees. The facility took its first detainees on 29 June 2005, and (b)(6), (b)(7)c has been the OIC since 16 February 2005. The facility was built from the ground up to ensure compliance with DHS detention and American Correctional Association standards, and its contract with GEO specifically states that it must meet DHS detention standards. According to (b)(6), (b)(7)c, the facility has put into practice many lessons learned. For example, it is designed to minimize internal movements by concentrating functions in the living units and reducing contact between different classes of detainees.

At the time of UNHCR's visit, the facility had 1,700 beds and was utilizing 1,413 of them. ICE expected a flight of 100 additional detainees to arrive from Miami later that day. The facility has the capacity for up to 1,904 beds and can house adult men and women; however, because of the difficulty in obtaining qualified staff, the remaining 200 beds will be brought online when feasible. There are 23 dorms, of which two have fewer than 10 beds, twelve have a 100-bed capacity, and six have a 64-bed capacity. There are also three special management units, which have a 36-, 64-, and 66-bed capacity. The 100-bed dorms range in square footage from 120 to 200 square feet.

STDC was built to accommodate individuals subject to expedited removal but it still houses a number of individuals in regular removal proceedings as well as individuals going through credible fear interviews. Most detainees are apprehended in the jurisdiction of the San Antonio field office which includes Harlingen, Laredo, and Del Rio, Texas. STDC detainees also include those apprehended at the Laredo port-of-entry (POE) as well as individuals apprehended as a result of interior operations in Austin and San Antonio, Texas. Individuals who are subject to "reasonable fear" interviews are sent to the Port Isabel Processing Center. Flights leave twice a week to remove persons to Honduras, Guatemala, and El Salvador.

Planning for STDC began in 1996 at a time when INS had jurisdiction over the custody of juveniles. The facility includes a 21-bed juvenile wing separated entirely from the adult wing, and with its own entrance. The wing has also been used to "stage" cases before transfer to the Office of Refugee Resettlement (ORR).

In early August, ICE launched "Operation Reservation Guaranteed" to transfer detainees from overcrowded detention centers around the United States to facilities with available bed space. As STDC is large and fairly new, it receives a large number of detainees from other ICE districts. At the time of UNHCR's visit, the facility had approximately 300 detainees who were transferred from the East Coast. The average length of stay in STDC is 12-14 days for expedited removal cases. The length of stay for asylum-seekers is typically longer.

Asylum-Seekers: ICE officers indicated that the majority of asylum-seekers at the facility had been in expedited removal proceedings but expressed a fear of return. STDC has an asylum officer assigned to full-time detail. In addition, two ICE officers are specifically dedicated to help manage the asylum caseload. At the time of UNHCR's visit, there were 209 individuals from countries outside the Americas region detained in the facility. The asylum officer conducts credible fear interviews on site as well as via V-tel from Houston, Texas. STDC has two interview rooms used for credible fear interviews, and both have V-tel equipment. UNHCR used the rooms to conduct detainee interviews and found the acoustics to be unsatisfactory. It was very difficult both to hear the telephonic interpreter, and for the interpreter to hear as well. There were loud doors clanging constantly and much background noise. OIC (b)(6), (b)(7)(c) agreed with our assessment and indicated that he had already asked for modifications to be made to the interview rooms.

UNHCR Comments and Recommendations: *UNHCR is concerned that the design of the credible fear interview rooms does not allow for adequate communication. As a large number of asylum-seekers at STDC undergo credible fear interviews, it is essential that credible fear interviews be, at minimum, audible. UNHCR looks forward to completion of the modifications proposed by OIC Sparks.*

(b)(6), (b)(7)(c) explained the phenomenon of "runway" cases to UNHCR. He indicated that if someone has an expedited removal order but expresses a fear of returning to his or her home country, even while on the tarmac on the way to the plane for removal, ICE will bring the person back to the facility for a credible fear interview. In this situation, ICE informs the consulate that the detainee indicated a fear and, therefore, will not be on the plane.

UNHCR Comments and Recommendations: *UNHCR appreciates the DHS policy of allowing individuals the opportunity to have their claim assessed by an asylum officer even in those situations in which removal is about to take place. UNHCR, however, is concerned that consulates are notified that these individuals have sought asylum, which could result in the applicant or his or her family being placed at risk. This violates DHS's own regulation 8 CFR § 208.6 mandating that the fact someone has sought asylum be kept confidential from the government officials of the applicant's home country.*

Intake/Booking/Use of Interpreters: There is a large intake area with two rows of desks. One row is for ICE and the other is for GEO. There are several holding rooms

with various seating capacities, ranging from five to 40 individuals per room. Per DHS standards, officers must keep logs of how long detainees are held in holding rooms. While detainees are in the holding cells awaiting processing, medical staff does a walk through of the cells to look for any obvious medical issues. As part of the intake process, a detainee's photo is taken, and travel document requests are prepared for those who are not asylum-seekers and do not have NTAs. ICE will not start the travel document request process until there is a final order of removal. UNHCR was told that GEO and ICE use the telephonic interpreter line during the intake process.

STDC has a fairly large number of Chinese detainees. To facilitate communication, staff members use the telephonic interpreter line for intake, have translated the detainee handbook into Chinese, and have found Chinese-speaking ICE and GEO officers to be detailed to the facility. At the time of our visit, the Chinese consulate was scheduled to be on-site within a week to address any specific concerns and travel document questions raised by Chinese detainees. With regard to other populations not speaking English or Spanish, the dominant languages spoken by ICE officers and GEO staff, it is not clear that the telephonic interpreter line is regularly used during the intake process.

After intake procedures are completed, detainees shower and are given uniforms before undergoing a medical screening with a nurse. UNHCR was told that the nurse uses the telephonic interpreter line if s/he does not speak the detainee's language and that some of the medical staff speak Spanish. However, some detainees reported that interpreters were not used during intake or during medical screenings.

Detainees are not strip-searched upon entry. When they take a shower, they are observed but there is no full cavity search. Male detainees are observed by male officers and female detainees by female officers.

***UNHCR Comments and Recommendations:** UNHCR appreciates that detainees are not subject to strip-search upon entry because asylum-seekers, especially former victims of trauma, may suffer undue trauma when undergoing strip-searches. UNHCR appreciates STDC's efforts to improve communication by translating materials into Chinese and recruiting Chinese-speaking staff members to the facility. However, with regard to detainees who speak languages other than Chinese, English or Spanish, UNHCR is concerned that they may not understand essential information such as jail rules. UNHCR recommends that the detention center take any necessary measures to ensure that when conveying such information, STDC staff who do not speak the language of the detainee use interpreters.*

Commingling: The facility houses only ICE detainees and no criminal inmates. Asylum-seekers are not separated from the general population. Chinese detainees were placed in two dorms to maximize communication resources. However, non-Chinese speaking detainees reported they were not permitted to visit with other detainees from their countries who speak their language.

units visited by UNHCR. The numbers included those for UNHCR, consulates, the Executive Office for Immigration Review (EOIR) and local legal service providers. Unlike other facilities, the phone system did not use codes, but rather the phone numbers themselves. The telephone service provider is Inmate Calling Solutions (ICS). Calls attempted from one of the housing units (Dorm One) to UNHCR, the Ethiopian Embassy and a local legal services provider were unsuccessful.

Attempted calls from another housing unit (Dorm Five) were equally unsuccessful. When UNHCR attempted to call the toll-free ICS Assistance Line at 888-506-8407, the phone message stated that the number was blocked and could not be called from this facility. Calls to EOIR had some success. OIC (b)(6), (b)(7)c stated that the telephone system would be examined.

UNHCR Comments and Recommendations: UNHCR appreciates that CCA Laredo preprograms many essential telephone numbers, posts telephone lists for detainees, and makes calling cards available for purchase. Given the high cost of collect calls from detention centers, calling cards enable detainees to contact legal representatives and family members at lower cost. UNHCR is concerned, however, about the inadequate performance of the telephone system. UNHCR appreciates OIC (b)(6), (b)(7)c commitment to examining its operations. UNHCR recommends that measures be taken to ensure that all of the telephones are maintained in working order and that the ICS telephone assistance line is unblocked so that malfunctions can be reported.

Library: Detainees are allowed one hour per day in the library, seven days a week. Requests for library use are made to ICE officers and not CCA staff. One detainee reported she did not know how to make a request. The library is under the direction of the facility's Recreation Director, and has a capacity for 15 visitors at a time. CCA Laredo pays an immigration attorney to assist detainees in a manner similar to that of a librarian. The hard copy resources available to detainees included: The Immigration Procedures Handbook (2006); section 8 of the United States Code (1987); the Immigration and Nationality Act (2006); section 8 of the Code of Federal Regulations (2002); and self-help materials prepared by the Florence Immigrant & Refugee Rights Project (1999). The more up to date version of the self-help materials was kept in an administrator's office and was made available to detainees upon request. A LexisNexis CD-ROM was available but was the 2004 edition which had expired and could not be accessed. The OIC stated that the CD-ROM would be reactivated.

UNHCR Comments and Recommendations: Given that the majority of those detained do not have legal assistance and must prepare their own cases, UNHCR appreciates that the CCA Laredo library contains some immigration law materials and makes an attorney available to answer immigration questions. However, UNHCR is concerned that requests for library use must go through ICE officers rather than CCA staff, and that the majority of the materials are out of date or located out of immediate reach in the administrator's office. UNHCR appreciates the OIC's commitment to reactivate the LexisNexis CD-ROM and recommends that updated copies of the Florence Immigrant & Refugee Rights Project's self-help materials be made more accessible. UNHCR also

UNHCR Comments and Recommendations: *UNHCR appreciates the fact that STDC does not house ICE detainees with inmates who have criminal charges or convictions. UNHCR objects to the commingling of asylum-seekers with persons serving their criminal sentences. UNHCR is concerned, however, that detainees are not permitted to visit with other detainees who speak the same language. Lack of communication in one's mother tongue can contribute to feelings of isolation and depression which in turn can affect an asylum-seeker's ability to present his or her case.*

Medical: Prison Health Services (PHS) is in charge of medical services at STDC. UNHCR spoke with one of PHS's lead staff who provided the following information:

Staffing: STDC employs one doctor, five registered nurses, five licensed nurse practitioners, four mid-level providers, one dentist, one pharmacist, one social worker, and three technicians specializing in magnetic resonance imaging.

Transfers: Most detainees who are transferred from other federal facilities arrive with a medical transfer form. In turn, PHS completes medical transfer forms for all detainees transferred from STDC to another facility. The facility can deny acceptance of a transfer if the form is not provided. PHS provides detainees transferred from STDC with three days of any ongoing medication needed by the detainee. PHS provides 14 days of medication to those individuals being deported. For some time, PHS also gave 30 day supplies of TB medication to individuals being deported to countries that had run out of the medication.

Interpretation: PHS indicated that it regularly uses the telephonic interpreter line when needed and would only use another detainee as a last resort. However, detainees reported that interpreters were not always available at medical appointments, and they sometimes needed to use hand gestures to communicate. Detainees also noted that they have had to ask fellow detainees who are literate in Spanish or English to submit written requests for medical appointments on their behalf.

UNHCR Comments and Recommendations: *UNHCR appreciates STDC policies with regard to medical transfer forms and supplies of medication upon transfer or removal. Gaps in medical care affecting an asylum-seekers' health, particularly in acute cases, could impact an asylum-seeker's ability to pursue his or her claim. However, UNHCR is concerned that asylum-seekers with language barriers may not be able to effectively communicate with medical staff during examinations or appointments and, as a result, may not receive proper medical treatment. To ensure effective communication, UNHCR recommends that necessary measures be taken to ensure medical staff uses interpreters during medical examinations and appointments whenever the staff does not speak the language of the detainee. To preserve doctor-patient confidentiality, UNHCR further recommends that medical staff require a patient's consent before another detainee is used to translate.*

Juvenile Housing Unit: STDC staff said that they err on the side of caution and separate from the general population detainees suspected to be juveniles. At the time of

UNHCR's visit, the juvenile housing unit housed one child who had been sent to STDC because he initially lied about his age. The living unit included several bunk beds, a day room with several tables, a television, and a shower area. It was very similar to the adult housing unit, although smaller in size. One officer was assigned to monitor the unit. The recreation area was also similar to the area for adults but smaller in size.

According to the Acting Assistant OIC, the detained child would be returned to Laredo, where he was initially apprehended, as soon as his file arrived from the field office in San Antonio, Texas. The boy would then be placed in the custody of Border Patrol, reprocessed, and transferred to ORR. The child indicated that he had been alone in the wing for a period of four days or more without being given information on his case status or when he would be transferred to a youth facility.

UNHCR Comments and Recommendations: UNHCR appreciates that STDC houses juvenile detainees separately from the adult population, but is concerned that the accommodations are isolating, especially for juveniles who have experienced personal trauma and have particular difficulty with extended periods of confinement. The juvenile wing appeared very stark, and offered only a television as means of entertainment or distraction. UNHCR recommends that recreational activities be provided to detainees housed in the juvenile wing and they be informed of the status of their processing.

Telephones: The facility uses the Public Communications Services, Inc. pre-programmed telephone system, the same system used by DHS in its own facilities. Lists of the phone numbers programmed into the system were posted in the living units next to the telephones. Calls to EOIR and UNHCR were not successful. A call to a non-profit legal service provider listed on the free call list was successful.

UNHCR Comments and Recommendations: UNHCR appreciates that STDC preprograms many essential telephone numbers and posts telephone lists for detainees UNHCR is concerned, however, about the inadequate performance of the telephone system. UNHCR recommends that measures be taken to ensure that all of the telephones are maintained in working order.

Library: The facility's library is a separate medium-sized room which contains several computer terminals. The LexisNexis legal research CD-ROM was current and operating on the computers. There are also computers which are wheeled out on carts for use in the multi-purpose rooms attached to the living units. The computers are available in the dormitories three hours per day, four days per week. There was a schedule for computer use posted in the dormitory visited by UNHCR. Detainees can request to physically go to the law library through an officer, and five people can be in the library at a time. The library has one officer responsible for the library's maintenance who appeared knowledgeable on the use of the LexisNexis software and indicated that he assisted detainees with navigating the software. Detainees could also use computers to prepare their legal cases and were able to print legal documents as well as get necessary copies of legal documents. In addition to the computer software, the library contained a number of print resources, including primers on asylum law and procedure.

The librarian keeps a log of computer usage. He also updates the print resources as necessary. He indicated that detainees use the print resources more than the computers. He also said he could get a telephonic interpreter if he needed to in order to assist someone. UNHCR was told that an officer out of the San Antonio Field Office monitors the law library and checks once a week to make sure the correct resources are available.

The Florence Project Know Your Rights video is played every day in both English and Spanish inside the living units. One detainee interviewed was well-educated and spoke fluent English, but did not know about the law library and did not understand what was happening in her case.

UNHCR Comments and Recommendations: UNHCR appreciates that detained asylum-seekers have access to up to date legal materials in print and on the computer, and that capable library staff is available to assist those who are not computer literate. UNHCR also appreciates the availability of computers for detainees to use to prepare their cases. Many detained asylum-seekers are unrepresented and must prepare their cases by themselves. Access to immigration law materials and tools to prepare their cases is critical. At the time of UNHCR's visit, STDC's immigration law resources did not include specific country of origin materials, including human rights reports from governmental and non-governmental sources; however, UNHCR is pleased that in late 2006 a copy of UNHCR's RefWorld CD-ROM database was distributed to STDC for detainee use.

Outdoor Recreation: Each housing unit has an "outdoor" recreation area attached to it. Detainees are allowed recreation twice a day, two hours per session.

UNHCR Comments and Recommendations: UNCHR views the availability of outdoor recreation as a positive aspect of the detention center's operations, and appreciates the facility's willingness to offer outdoor time in excess of what the Detention Standards require.

Access to DHS: Two ICE officers liaise with the detainee population. According to facility staff, written requests are picked up daily, logged in, and then sorted by issue and provided to either GEO or ICE accordingly. Officers are required to respond in writing within 72 hours. In addition, ICE visits the dormitories once a week to answer questions. However, several detainees stated that their requests to ICE went unanswered even after several attempts. One detainee stated that although ICE officers sometimes visit the housing unit, they do not provide requested information.

UNHCR Comments and Recommendations: UNCHR appreciates STDC's policies regarding responding to detainee requests; however, we note that several detainees complained that they received little response to their questions and requests even after several attempts. To effectively represent their interests, access to case and custody status information is critical. Lack of information also fuels anxiety and a sense of isolation which in turn can impact an asylum-seeker's ability to pursue his or her claim.

UNHCR recommends that STDC review its quality assurance procedures to ensure that detainees receive responses to their questions and requests in line with the facility's policies.

Food: Food is prepared on-site. Pork is not served, although neither the STDC detainee handbook nor the menu specifies this. UNHCR met with two individuals who said they do not eat some items on the menu which they believed contained pork. These detainees did not know that those items actually did not contain pork.

UNHCR Comments and Recommendations: UNHCR is concerned about the limited dissemination of dietary information at STDC. Providing notice of the food content would alleviate anxiety and confusion on the part of detainees who do not eat pork for religious reasons. UNHCR recommends that detainees be informed that STDC is a no-pork facility at the time of admission and that this information be included in the detention center's detainee handbook.

International Instruments and Policy Guidance Materials

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1. **1967 Protocol to the 1951 Refugee Convention** Protocol relating to the Status of Refugees, *adopted* 31 January 1967, *entered into force* 4 October 1967, 606 U.N.T.S. 267 (1967); Convention relating to the Status of Refugees, *adopted* 28 July 1951, *entered into force* 22 April 1954, 189 U.N.T.S. 137 (1951).
2. **Basic Principles** Basic Principles for the Treatment of Prisoners, *adopted* 14 December 1990, G.A. res. 45/111, annex, U.N. Doc. A/45/49 (1990).
3. **Body of Principles** Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, *adopted* 9 December 1988, G.A. res. 43/173, U.N. Doc. A/RES/43/173 (1988).
4. **ECRE, Position Paper on Detention of Asylum-Seekers** European Committee on Refugees and Exiles, *Position on Detention of Asylum Seekers* (April 1996).
5. **ICCPR** International Covenant on Civil and Political Rights, *adopted* 19 December 1966, *entered into force* 23 March 1976, G.A. res. 2200A (XXI), UN Doc. A/6316 (1966).
6. **Standard Minimum Rules** Standard Minimum Rules for the Treatment of Prisoners, *adopted* 1955, First U.N. Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva (1955), *approved* 31 July 1957, ECOSOC res. 663 C (XXIV) and 13 May 1977, ECOSOC res. 2076 (LXII).
7. **UNHCR Detention Guidelines** UNHCR Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers, Geneva (February 1999).
8. **UNHCR EXCOM Conclusions** Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme.

Relevant International Standards

Access to ICE Officials: Body of Principles, Principle 33 (right to make request or complaint about treatment to appropriate authorities); Standard Minimum Rules, Rule 36 (right to make request or complaint to director of institution or designated officer and to central prison administration or other proper authorities, and right to receive prompt reply); UNHCR Detention Guidelines, Guideline 10(x) (right of access to a complaints mechanism)

Commingleing: Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from persons imprisoned by reason of a criminal offense); UNHCR Detention Guidelines, Guideline 10(iii) (asylum-seekers should not be commingled with convicted criminals); UNHCR EXCOM Conclusion No. 44, para. (f) ("refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as common criminals"); UNHCR EXCOM Conclusion No. 85, para. (ee) (noting concern that asylum-seekers are often held with common criminals); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from those imprisoned for criminal offenses); Body of Principles, Principle 8 (same); ICCPR, Article 10(2)(a) ("accused persons shall, save in exceptional circumstances, be segregated from convicted persons").

Diet: Standard Minimum Rules, Rule 20(1) (right to food at usual hours of nutritional value adequate for health and strength).

Interpretation: UNHCR EXCOM Conclusion No. 8 (asylum-seekers to be given necessary facilities, including interpreter services, to submit claim to authorities); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints to be made available to detainees in different languages); ECRE Position Paper on Detention, paras. 20, 29 (right of asylum-seeker to information on detention in language s/he understands); Standard Minimum Rules, Rule 35 (right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations) and Rule 51(2) (whenever necessary, the services of an interpreter shall be used); Body of Principles, Principle 14 (right of detainee to receive information about his rights in detention in language he understands).

Legal Resources: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to the asylum-seekers' possibilities to pursue their asylum application).

Medical: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers shall have opportunity to receive appropriate medical treatment and psychological counselling); Body of Principles, Principle 24 (medical care shall be offered free of charge); Standard Minimum Rules, Rule 22(1) (services of medical officer with some knowledge of psychiatry should be available) and Rule 22(2) (sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals; if institution

has hospital facilities, its resources shall be proper for necessary medical care); UNHCR Detention Guidelines, Guideline 10 (detention conditions should be humane with respect shown for inherent dignity of person); Basic Principles, Principle 1 (same).

Orientation: UNHCR Detention Guidelines, Guideline 5(i)(asylum-seekers should receive prompt, full communication of detention order, reasons for order, rights in connection with order, in language they understand); Body of Principles, Principle 11(2) (detained person shall receive prompt and full communication of detention order and the reasons therefor); Principle 13 (upon detention, information on and explanation of rights and how to avail oneself of rights will be provided); Body of Principles, Principle 14 (entitled to receive information in Principle 11 and 13 through interpreter free of charge).

Programs: UNHCR Detention Guidelines, Guideline 10(vii) (detained asylum-seekers should have opportunity to continue further education or vocational training); ECRE Position Paper on Detention, para. 46 (during prolonged detention, adult education and training should be provided and it should attend to cultural and linguistic needs; it is crucial for detainees' mental health to not be deprived of access to constructive activities during prolonged detention); Basic Principles, Principle 6 (prisoners shall have right to take part in education aimed at full development of human personality).

Recreation: UNHCR Detention Guidelines, Guideline 10(vi) (asylum-seekers should have opportunity for daily indoor and outdoor recreational activities); Standard Minimum Rules, Rule 21 (right to at least one hour suitable exercise in open air daily weather permitting).

Religion: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers should have the opportunity to exercise their religion); Standard Minimum Rules, Rule 41 (if institution contains sufficient number of prisoners of same religion, a qualified representative of that religion shall be appointed or approved and made available to hold regular services and pay private pastoral visits) and Rule 42 (as far as practicable, every prisoner shall be allowed to satisfy his religious needs by attending religious services).

Restraints: Standard Minimum Rules, Rules 33 (instruments of restraint never to be applied as punishment, only to be used as precaution during transfers, on medical grounds, or, by order of director, if other methods of control fail, to prevent prisoner from injuring himself, others or damaging property) and 34 (restraints not to be used for any longer than is strictly necessary).

Segregation: Basic Principles, Art. 7 ("efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction on its use, should be undertaken and encouraged."); ECRE Position Paper on Detention, para. 44 (Detained asylum-seekers "should...never be placed in isolation"); UN Human Rights Committee, Gen. Comment 20 (prolonged solitary confinement may amount to cruel, inhuman or degrading treatment or punishment).

Strip-searches: UNHCR Guidelines, Guideline 10 (detention conditions should be humane with respect shown for inherent dignity of person); Basic Principles, Principle 1 (same); Human Rights Committee, Gen. Comment 16, para. 8 (personal and body searches should be conducted "in a manner consistent with the dignity of the person who is being searched"); European Commission on Human Rights, *McFeeley v. United Kingdom*, App. No. 8317/78 (strip searches should be used only in limited circumstances).

Telephone Access: UNHCR EXCOM Conclusion No. 44, para. (g) (detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para.192(iv) (asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (the means shall be made available for detained asylum-seekers to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate); Body of Principles, Principle 16(2) (detained foreigners have right to communicate by appropriate means with representative of competent organization); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons); ECRE Position Paper on Detention, para. 29 (asylum-seekers should have access to telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counsellors).

Temperature: Standard Minimum Rules, Rule 10 (sleeping conditions shall meet all health requirements, including necessary heating) & Rule 19 (every prisoner should be issued sufficient bedding).

Training: Standard Minimum Rules, Rule 47 (personnel shall receive on-going training to maintain and improve their knowledge and professional capacity); ECRE Position Paper on Detention, para. 51 (staff should receive proper training on asylum matters, causes of refugee movements, relevant cultural factors, and methods of recognizing and responding to stress-related illnesses).

Women Asylum-Seekers: UNHCR Detention Guidelines, Guideline 8 ("Women asylum-seekers should receive the same access to legal and other services, without discrimination as to their gender...").

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



**NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES**

*Regional Office
for the United States of America &
the Caribbean*

*Bureau Régional
pour les Etats-Unis d'Amérique et
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1775 K Street, NW
Suite 300
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Telephone: (202) 296-5191
Fax: (202) 296-5660
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31 October 2005

VIA FACSIMILE (202-514-5065)

John Torres
Acting Director
Office of Detention and Removal Operations
Bureau of Immigration and Customs Enforcement
US Department of Homeland Security
425 I Street NW
Washington, DC 20536

Re: Request for Briefing

Dear Mr. Torres:

I am writing to kindly request a briefing from your office on your Bureau's current alternatives to detention programs, including the Intensive Supervision Appearance Program (ISAP). As you are aware, UNHCR has a keen interest in the use of alternatives to detention for asylum-seekers. Given that ISAP has been in operation for over a year, UNHCR is interested in learning more information on its progress to date and, in particular, the inclusion of asylum-seekers in the program.

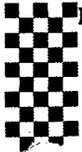
We look forward to hearing from you to find a mutually convenient time to meet. Please do not hesitate to contact my office should you need more information. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Albrecht".

Thomas Albrecht
Deputy Regional Representative

cc: Charles Ziethen, Deputy Assistant Director, ICE



UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Facsimile Message

UNHCR
United Nations High Commissioner for Refugees
Regional Representation in Washington

1775 K Street NW
Suite 300
Washington, DC 20008

To/A: **The Honorable Janet Napolitano**
Secretary of the United States Department of
Homeland Security

Destination fax number/ (202) 447-3221
N° fax du destinataire:

From/De: **Michel Gabaudan Regional Representative**

Return fax number / (202) 296-5660
N° fax retour:

Date: **18 February 2009**

Tel: (202) 243-7610

Code:

Email:

No. of pages (including this one)/ 36
Nbre. de pages (celle-ci incluse):

Subject: Request for a Meeting and UNHCR's Views for
Consideration during DHS's Internal Review

Please find attached letter.

Best regards.

2009 FEB 18 PM 2:46
COMMUNICATIONS SECTION


UNHCR

 United Nations High Commissioner for Refugees
 Haut Commissariat des Nations Unies pour les réfugiés

UNHCR

 United Nations High Commissioner for Refugees
 Regional Representation in Washington

 1775 K Street NW
 Suite 300
 Washington, DC 20006

 Tel: (202) 243-7610
 Fax: (202) 296-5660
 Email: (b)(6)

09/LG/103

18 February 2009

Dear Secretary Napolitano,

**Subject: Request for a Meeting and
 UNHCR's Views for Consideration during DHS's Internal Review**

I write to congratulate you on your recent appointment as the Secretary of the Department of Homeland Security (DHS) and to seek a meeting with you at your earliest convenience to discuss issues of mutual concern which affect refugees and asylum-seekers in the United States.

The Office of the United Nations High Commissioner for Refugees (UNHCR) has been formally mandated by the United Nations General Assembly to ensure international protection to refugees. UNHCR is also charged with assisting governments in identifying and implementing durable solutions on refugees' behalf. As a signatory to the 1967 Protocol relating to the Status of Refugees, the United States has agreed to uphold international refugee protection standards and to cooperate with UNHCR in the exercise of its functions with respect to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

UNHCR appreciates the leading role that the United States has historically played in refugee protection matters world-wide. Our office has long shared a cooperative and productive relationship with DHS and its predecessor agency, the Immigration and Naturalization Service (INS), in addressing refugee protection issues in the United States. We have worked closely with all immigration-related agencies at DHS and look forward to continuing these relationships.

We were encouraged to read your 30 January 2009 directive to your staff to review a number of immigration and border security plans and policies and, in particular, your questions regarding immigration detention facilities and the availability of community-

The Honorable Janet Napolitano
 Secretary of the United States Department of Homeland Security
 Washington, DC 20528

2009 FEB 18 PM 2:16

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based alternatives to detention. As you may know, individuals who seek asylum in the United States are often held by DHS in jails or jail-like institutions, an issue of longstanding concern to UNHCR. To assist you and your staff in conducting this internal review, UNHCR would like to share with you our recent correspondence to DHS on the topic of detention and our views on DHS alternatives to detention programs.

Accordingly, attached please find our letter to former Immigration and Customs Enforcement (ICE) Assistant Secretary Julie Myers and an accompanying report that summarize UNHCR's findings and views from 60 visits to 46 separate DHS detention facilities from 2001 to 2006. We would be happy to share with you any of the 60 detention reports on which our detention summary report is based. UNHCR's thorough review and analysis of the findings from these visits reveal several systemic issues regarding detention conditions which impede the ability of asylum-seekers to meaningfully exercise their right to seek asylum. The letter reiterates UNHCR's view, as expressed in its Guidelines on the Detention of Asylum-Seekers, which are enclosed for your easy reference, that DHS's policy of detaining asylum-seekers in jails and jail-like facilities is contrary to international legal standards and principles and should be revisited.

This view is also reflected in the enclosed letter to former DHS Secretary Michael Chertoff which discusses our concerns with the 6 November 2007 ICE parole guidelines. These guidelines set forth new, restrictive parole criteria for those asylum-seekers in the expedited removal process who have established a credible fear of persecution or torture. As demonstrated by ICE's preliminary data, only a small percentage of asylum-seekers who established a credible fear were paroled from detention under these new guidelines.

In addition, UNHCR submitted extensive comments to the Draft Performance-based Detention Standards and would be happy to provide you with a copy of them. We appreciate that ICE adopted some of our recommendations and that over the years we have enjoyed a very collaborative relationship with ICE colleagues who have been very receptive to our suggestions for improving conditions in specific facilities. However, I would like to emphasize that UNHCR's view remains that, regardless of these improvements and of the changes to the standards, jails or jail-like facilities are inherently inappropriate places to hold asylum-seekers.

With regard to the questions you raised in your directive about the use of community-based alternatives, we would like to share with you the following views which were formed over a number of years while closely monitoring INS's and ICE's alternatives programs, including the Vera Institute of Justice's Vera Appearance Assistance Project (VAAP) and the Intensive Supervision Appearance Program (ISAP). The VAAP successfully demonstrated that asylum-seekers were most likely to appear for immigration proceedings if provided referrals to legal and social services assistance. While ISAP includes a similar referral component, it adds the systematic use of electronic monitoring devices for all participants. It is UNHCR's view, as demonstrated by the VAAP, that electronic monitoring is not necessary to ensure asylum-seekers' appearance.

At the same time, UNHCR is aware that ICE plans to let contracts with ISAP sunset and to use a new contractor that continues the use of electronic monitoring devices but does not provide referrals to legal or social service providers. Given the positive results of the VAAP and ISAP, UNHCR would urge DHS to reconsider its plans and to consider returning to the VAAP model.



We recommend that DHS adopt policies that favor the release of asylum-seekers unless, after an individualized inquiry, detention is considered necessary because the asylum-seeker is a flight risk or a danger to the community. In those instances, we recommend that DHS use alternatives to detention that incorporate referrals to legal and social service providers. Given the stigma and restrictive nature of electronic monitoring devices, it is UNHCR's view that these should be used only when, after an individualized inquiry, they are deemed necessary and then for the least amount of time required.

Thank you for considering UNHCR's views on DHS's policies on detention as they affect asylum-seekers. Given the number of priorities you have as you begin your new position, we realize that scheduling a meeting may take some time. However, in the interim, if your senior staff would like to discuss any of the views in this letter as the internal review is conducted or on any other matter where we can be of assistance, we are at your disposal. I wish you well in your new position.

Sincerely yours,

A large, stylized handwritten signature in black ink, appearing to read "MG" or similar initials, written over the typed name and title.

Michel Gabaudan
Regional Representative

**UNHCR**United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiésUNHCR
United Nations High Commissioner for Refugees
Regional Representation in Washington1775 K Street NW
Suite 300
Washington, DC 20006Tel: (202) 243 7610
Fax: (202) 296 5660
Email: (b)(6)

07/LG/108

31 March 2008

Dear Assistant Secretary Myers,

**Subject: UNHCR's Findings regarding the Detention of Asylum-Seekers
in the United States**

I am writing to express the views of the Office of the United Nations High Commissioner for Refugees (UNHCR) regarding the detention of asylum-seekers in the United States. These views were formed in large part during a period of intense detention monitoring by UNHCR in its supervisory capacity.¹ From 2001 to 2006, UNHCR undertook over 60 visits to 46 separate detention facilities housing asylum-seekers. During this time, we were encouraged by the willingness of staff members at the United States Immigration and Customs Enforcement (ICE) as well as staff at your predecessor agency, the Immigration and Naturalization Service (INS), to consider, and in many instances implement, our recommendations for improving conditions at specific facilities.

After a thorough review and analysis of the findings from these visits, we have concluded that there are several systemic issues regarding detention conditions for asylum-seekers, which are of particular concern. UNHCR, therefore, continues to urge ICE to reconsider its policy of detaining asylum-seekers in jails and jail-like facilities, which is contrary to international legal standards and principles, and impedes the ability of asylum-seekers to meaningfully exercise the right to seek asylum as recognized under international law.

Ms. Julie Myers
Assistant Secretary
Immigration Customs Enforcement
United States Department of Homeland Security
425 I Street, N.W.
Washington, D.C. 20536

¹ UNHCR's role in monitoring detention facilities in the United States stems from its formal mandate by the United Nations General Assembly to ensure international protection to refugees, asylum-seekers, and other persons of concern and to assist governments in identifying and implementing durable solutions on their behalf. See Statute of the Office of the United Nations High Commissioner for Refugees, U.N.G.A. Res. 428(V), 14 Dec. 1950; Executive Committee Conclusion No. 46 (1987) (reiterating UNHCR's leading role in refugee protection, including detention issues). States Parties to the 1967 Protocol have undertaken to cooperate with UNHCR in the exercise of its functions and shall, in particular, facilitate its duty of supervising the application of its provisions.



In UNHCR's view, as a general principle, asylum-seekers should not be detained in view of the hardship which it involves and the specific and vulnerable situation in which asylum-seekers often find themselves. Detention of asylum-seekers may exceptionally be resorted to only on grounds prescribed by law and in conformity with general norms and principles of international law. Any restrictions on freedom of movement based on illegal entry or presence of asylum-seekers must be imposed only in cases of necessity and must be reasonable, proportionate to the objectives to be achieved, and non-discriminatory.² As with any other limitations on human rights, detention should be subject to adequate minimum procedural guarantees, including automatic and periodic reviews of the decision to detain and independent administrative or judicial review.

Detention can have a significant impact on an asylum-seeker's ability to access the host country's asylum process. With limited means to secure legal counsel, communicate with family members, access legal materials, and secure interpreters, detained asylum-seekers cannot be expected to be able to fully prepare their requests for asylum to government authorities. Many asylum-seekers have endured torture or trauma in their home countries and detention in a jail-like facility may cause additional mental suffering, which may also impede their ability to present their case.

Asylum-seekers should be provided with the necessary facilities to present their claims.³ Given the adversarial nature of the asylum system, and the complexity of the asylum law in the United States, once the claim goes before an immigration judge, quality legal representation is essential to ensure asylum-seekers are able to adequately present their cases. In fact, a recent United States Commission on International Religious Freedom (USCIRF) study of asylum-seekers in expedited removal proceedings found the likelihood of being granted asylum rose from 2% for unrepresented asylum-seekers to 25% for those asylum-seekers with legal representation.⁴ Because many asylum-seekers are detained in facilities in remote areas far from family, friends and an established legal community, many detained asylum-seekers lack the benefit of competent legal representation and family support. Most must rely on the resources provided to them by the detention facility to prepare and present their cases before an immigration judge or on appeal.

In order to assess the ability of detained asylum-seekers in the United States to access the resources necessary to adequately present their claims, UNHCR analyzed whether the 46 facilities that it visited provided access to resources critical for asylum-seekers to prepare their claims on their own. UNHCR visited certain detention facilities twice and some facilities multiple times. Its findings are based on only the most recent visit to each facility which often reflected improvements in the areas discussed below as compared to previous visits.⁵ The topics analyzed by UNHCR include:

² See UNHCR Executive Committee Conclusion No. 44, ¶ (b) (XXXVII) (1986). See also United Nations High Commissioner for Refugees, *Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers* (1999). In UNHCR's view, the detention of asylum-seekers may only be resorted to, if necessary: (i) to verify identity; (ii) to determine the elements on which the claim for refugee status or asylum is based; (iii) in cases where asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State, in which they intend to claim asylum; and (iv) to protect national security and public order. Detention that is applied for purposes other than those listed above would be contrary to international law.

³ UNHCR Executive Committee Conclusion No. 8, ¶ e(iv) (XXVIII) (1977).

⁴ United States Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal*, Volume I: Findings and Recommendations, 22 (Feb. 2005).

⁵ For example, UNHCR staff visited the Buffalo Detention Center in Buffalo, New York in February, May, September and November of 2005. During UNHCR's visits in February, May and September 2005, UNHCR found that the telephones did not work and raised this issue each time with DHS. Finally, in November 2005, UNHCR found appropriate access to telephones, and only this finding is reflected in the report.



- access to ICE detention and removal officers and their provision of information regarding asylum-seekers' cases and the immigration court process generally;
- access to a law library, appropriate legal materials, and appropriate support to prepare an asylum case;
- access to interpreter services for essential communications on such matters as detention facility rules and procedures, accessing medical care, accessing legal materials, and information from ICE officers about specific case information or the immigration process;
- access to functioning and appropriately priced telephones in order to contact legal representatives and family members for assistance in preparing and documenting the asylum claim.

Findings

UNHCR's study revealed that in an overwhelming majority of the detention facilities visited, asylum-seekers did not have meaningful access to DHS officers, telephones, legal resources and/or interpreter services such that they could be expected to effectively prepare and present their claims for asylum. Our key findings include:

Access to DHS Officers: At a majority of facilities, DHS staff did not regularly provide asylum-seekers with information related to their rights, specific case information or the immigration court system, either because they did not visit the facilities regularly or, when they did visit, they did not provide this type of information.

Access to a Law Library and Legal Materials: Few of the facilities monitored provided truly meaningful access to immigration-related legal materials that were both current and sufficient in content for asylum case preparation.⁶ In over half of the facilities, no or an insufficient number of current immigration legal materials were available. While some facilities had CD-ROMs loaded with all of the legal materials required under DHS detention standards, in a few, either the computer or the CD-ROM was nonfunctional. Furthermore, asylum-seekers' ability to fully navigate such a complex, computerized database is questionable, particularly given the general lack of staff available to assist them.

Interpretation: UNHCR found that staff in only a few facilities used interpreter services with non-English speaking detained asylum-seekers to explain basic jail rules and procedures, to facilitate communication during appointments with medical staff, to assist with legal resources, to assist with conversations with detention and removal officers, or as needed for other essential communications. While most facilities did provide detainees with a detainee handbook, and the majority of facilities translated the handbook into Spanish,⁷ few facilities translated their handbooks into other languages spoken by detained asylum-seekers or provided an orientation as to the topics in the handbook with the use of an interpreter.

⁶ These findings are inconsistent with the July 2007 United States General Accounting Office's (GAO) Report on Alien Detention Standards which found that, at most of the facilities it visited, detainees generally had access to legal materials. It is unclear whether the GAO evaluated the quality and subject-matter of these materials.

⁷ UNHCR's findings regarding the provision and interpretation of the Detainee Handbook were not consistent with the December 2006 report by DHS Office of the Inspector General. In that report, the Inspector General's office found that the majority of the facilities it monitored either did not provide a detainee handbook to detainees or did not translate the handbook into Spanish and other prevalent languages.



Access to Telephones: UNHCR found that in the majority of facilities, asylum-seekers did not have access, as required under DHS detention standards, to free telephone calls to legal service providers or the immigration courts. Likewise, asylum-seekers in most facilities were not able to place free or even collect calls to UNHCR. In those facilities using a pre-programmed system designed to ensure free calls to these numbers, the phones often did not function properly. In those facilities where pre-programming was unavailable, facilities often did not provide a mechanism to facilitate required free calls. For calls to family members, private attorneys or others, most facilities required calls be placed collect. These calls were often blocked. Collect calls were prohibitively expensive at almost every facility as were calls using prepaid phone cards.⁸

Conclusion

Based on these findings, UNHCR concludes that detained asylum-seekers with language barriers frequently face serious obstacles to meaningful access to the asylum system as they are not provided with the necessary resources to prepare their claims.

Resolving the issues presented in this letter is an essential starting point for ensuring that asylum-seekers can meaningfully access the United States asylum system. Even if detention conditions were to consistently meet the current DHS standards, the systematic detention of asylum-seekers in penal facilities would remain inappropriate.

Based on these findings, UNHCR urges that you consider reviewing your policies and procedures on detaining asylum-seekers in order to ensure their consistency with international law and standards. We look forward to working with you to achieve this result and are available to you and your staff at anytime to discuss this and any other issues of mutual concern.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Thomas Albrecht", written over a white background.

Thomas Albrecht
Deputy Regional Representative

cc: Ms. Susan Cullen, Director of Policy, Office of Policy and Planning, Immigration and Customs Enforcement, United States Department of Homeland Security

Mr. Igor Timofeyev, Director of Immigration Policy and Special Advisor for Refugee and Asylum Affairs, United States Department of Homeland Security

Mr. Gary Mead, Director, Detention and Removal Operations, Immigration and Customs Enforcement, United States Department of Homeland Security

⁸ These findings are consistent with the July 2007 GAO report. In that report, the GAO found a pattern of pervasive non-compliance with the telephone detention standards.

**DETENTION MONITORING REPORT
(2001- 2006)**

Report to the United States Department of Homeland Security

**UNITED NATIONS
HIGH COMMISSIONER FOR REFUGEES**

**WASHINGTON REGIONAL OFFICE
FOR THE UNITED STATES AND THE CARIBBEAN**



UNHCR
The UN
Refugee Agency

OCTOBER 2008

I. INTRODUCTION

Pursuant to its formal mandate by the United Nations General Assembly to ensure international protection to refugees, asylum-seekers, and other persons of concern and to assist governments in identifying and implementing durable solutions on their behalf, UNHCR independently monitors detention facilities housing asylum-seekers in the United States.¹ One of the main concerns of UNHCR is the ability of detained asylum-seekers to have access to the resources necessary to adequately present their asylum claims. Accordingly, from 2001 to 2006, UNHCR undertook over 60 visits to 45 separate detention facilities housing asylum-seekers. (Please see "List of Facilities," Appendix A). In this report, UNHCR analyzes asylum-seekers access to Department of Homeland Security (DHS) officers, interpreters, telephones, and legal materials and information.

UNHCR undertook these missions with the cooperation of the United States Immigration and Customs Enforcement (ICE), as well as its predecessor agency, the Immigration and Naturalization Service (INS). UNHCR visited certain detention facilities twice and some facilities multiple times. Its findings are based on only the most recent visit to each facility which often reflected improvements in the areas discussed below as compared to previous visits.²

II. OVERVIEW OF FINDINGS

UNHCR's study revealed that in an overwhelming majority of the detention facilities visited, asylum-seekers did not have meaningful access to DHS officers, telephones, legal resources and/or interpreter services such that they could be expected to effectively prepare and present their claims for asylum. Our key findings include:

Access to DHS Officers: At a majority of facilities, DHS staff did not regularly provide asylum-seekers with information related to their rights, specific case information or the immigration court system, either because they did not visit the facilities regularly or, when they did visit, they did not provide this type of information.

Interpretation: It is not DHS policy to provide interpreters for daily communication despite difficulties faced by many non-English speaking detainees. UNHCR found that staff in only a few facilities used interpreter services with non-English speaking detained asylum-seekers to explain basic jail rules and procedures, to facilitate communication during appointments with medical staff, to assist with legal resources, to assist with conversations with detention and removal officers, or as needed for other essential communications. While most facilities did provide detainees with a detainee handbook, and the majority of facilities translated the handbook into Spanish,³ few facilities translated their handbooks into other languages spoken by

¹ See Statute of the Office of the United Nations High Commissioner for Refugees, U.N.Doc. A/RES/428(V) (Dec. 14, 1950).

² For example, UNHCR staff visited the Buffalo Detention Center in Buffalo, New York in February, May, September and November of 2005. During UNHCR's visits in February, May and September 2005, UNHCR found that the telephones did not work and raised this issue each time with DHS. Finally, in November 2005, DHS resolved the issues raised in earlier reports and so those concerns are not reflected in the report.

³ UNHCR's findings regarding the provision and interpretation of the Detainee Handbook were not consistent with the December 2006 report by DHS Office of the Inspector General. In that report, the Inspector General's office

detained asylum-seekers or used interpreters during intake when the rules of the facility and other topics in the handbook might be explained.

Access to Telephones: UNHCR found that in the majority of facilities, asylum-seekers did not have access, as required under DHS detention standards, to free telephone calls to legal service providers or the immigration courts. At over half of the facilities, the pre-programmed system to ensure free calls can be placed had not been installed, nor was there another mechanism provided to place free calls. In those facilities using a pre-programmed system designed to ensure free calls to these numbers, the phones often did not function properly or the instructions on how to use the system was confusing. In those facilities where pre-programming was unavailable, only a few facilities attempted to provide a mechanism to facilitate required free calls. For calls to family members, private attorneys or others, most facilities required calls to be placed collect or with prepaid phone cards. These calls were typically prohibitively expensive.⁴

Access to a Law Library and Legal Materials: No facilities have a librarian in the traditional sense, trained to assist in legal research and writing. Few of the facilities monitored provided truly meaningful access to immigration-related legal materials that were both current and sufficient in content for asylum case preparation.⁵ In over half of the facilities, either no or an insufficient number of current immigration legal materials were available. While some facilities had CD-ROMs loaded with all of the legal materials required under DHS detention standards, in a few, either the computer or the CD-ROM was nonfunctional. Furthermore, asylum-seekers' ability to fully navigate such a complex, computerized database is questionable, particularly given the general lack of staff available to assist them.

UNHCR appreciates the purpose in providing legal materials and information to detained asylum-seekers. It is UNHCR's view, however, that even if all the DHS detention standards were met in each facility, asylum-seekers would still lack a *meaningful* opportunity to adequately prepare their claims. First, given the adversarial nature of the asylum system and the complexity of the asylum law in the United States, quality legal representation is essential to ensure asylum-seekers are able to adequately present their cases. Such quality legal representation cannot be replaced by legal resources alone. Second, most asylum-seekers do not understand English or have expertise in researching United States laws. Thus, it is difficult for them to understand and research United States legal materials without the assistance of a full-time librarian who has the appropriate background and training to assist them with legal research and who has access to an interpreter. Third, the present standards only allow five hours per week of access to the law library. Given that many asylum-seekers have experienced trauma and torture, do not speak English and lack a legal background, this amount of time is not sufficient for the adequate preparation of a complex asylum case.

found that the majority of the facilities it monitored either did not provide a detainee handbook to detainees or did not translate the handbook into Spanish and other prevalent languages.

⁴ These findings are consistent with the July 2007 United States General Accounting Office's (GAO) report on "Alien Detention Standards." In that report, the GAO found a pattern of pervasive non-compliance with the telephone detention standards.

⁵ These findings are inconsistent with the July 2007 GAO report which found that, at most of the facilities it visited, detainees generally had access to legal materials. It is unclear whether the GAO evaluated the quality and subject-matter of these materials.

III. LEGAL STANDARDS AND DETAILED FINDINGS

In general, UNHCR monitors the conditions at detention facilities based on international law and standards; however, we have noted the DHS detention standards in our monitoring as a basis for discussion.

1. Access to DHS Officers

In order to meaningfully participate in the asylum process, it is critical that asylum-seekers understand the court process, the immigration charges against them, their custody status and the removal process. Yet, as DHS has recognized "[o]ften detainees in ICE custody are unaware of or do not comprehend the immigration removal process."⁶ Because detained asylum-seekers often lack legal representation, access to DHS officials who have case information is critical to asylum-seekers' ability to present their claims in immigration court. Furthermore, information about the process can decrease asylum-seekers' anxiety enabling them to more fully present their claims.

Legal Standards

Under international standards, asylum-seekers should be provided with all necessary facilities to present their case.⁷ Detained individuals have the right to be promptly informed of the reason for their detention and their rights in connection with the order of detention in a language and in terms which they understand.⁸ Detainees should be made aware of their rights and the procedures to avail themselves of these rights.⁹

On 15 July 2003, DHS added a detention standard to the Detention Operations Manual to address the need for detainees to understand the immigration removal process. The standard states that DHS officials should ensure that detainees are advised of the general process and should conduct weekly visits with detainees.

Findings

UNHCR monitored detainee access to DHS officers at 20 detention facilities. Seven of the facilities were monitored after the detention standard was promulgated in July 2003.

Access to DHS officers

Of the 20 facilities monitored, five were either contract detention facilities (CDF) or service processing centers (SPC) where DHS officers were present on site. At two of these five facilities, it appears that both DHS and the detainees consistently agreed that DHS officers made

⁶ United States Immigration and Customs Enforcement Detention Standards, "Staff-Detainee Communication" 1 (July 11, 2003).

⁷ UNHCR Executive Committee Conclusion 8 (XXVIII), Determination of Refugee Status, ¶ e(iv) (1977).

⁸ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, Article 9(2) [hereinafter "ICCPR"]; UNHCR Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, Guideline 5(i) (February 1999) [hereinafter "UNHCR Guidelines"].

⁹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, U.N. Doc. A/RES/43/173, Principle 13 (Dec. 9, 1998) [hereinafter "Body of Principles"].

frequent rounds and provided responsive and sufficient information. At the other three facilities, detainees stated that DHS officers were not responsive to their requests for information.

At the remaining 15 facilities, UNHCR observed the following:

- At three facilities there were no reported problems from either detainees or DHS with regard to access to DHS officers and information.
- In eight facilities DHS confirmed that either their staff visited infrequently or reported a DHS officer to detainee ratio that would not allow for meaningful, weekly visits by the DHS officers.
- At one facility, DHS maintained that a DHS officer visited three to four times per week, yet reported a DHS officer to detainee ratio that would not allow for such frequent visits.
- At two facilities, DHS reported a regular presence, yet detainees consistently complained about a lack of information.
- At one facility, DHS did not comment about its visitation schedule, but detainees reported little access to DHS officers.

Rarely did DHS or a detainee mention the use of an interpreter to facilitate communication.

2. Access to Interpreters

Communication on a regular basis in one's own language either directly or through an interpreter is essential for detained asylum-seekers to effectively communicate with facility staff and outside parties. Effective interpretation allows asylum-seekers to understand the rules of the facility and communicate with detention and medical staff regarding issues related to their stay in the facility. It also helps ensure their understanding of available legal resources and aspects of the facility critical to preparing their cases, such as procedures for using the law library and telephones. Without this communication, asylum-seekers may experience feelings of isolation and depression, reducing their ability to present their claims and meaningfully participate in the asylum system.

Legal Standards:

Under international standards, an asylum-seeker should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned.¹⁰ Asylum-seekers should be informed, in a language they understand, of the reasons for their detention, their rights and how to exercise them, and grievance procedures.¹¹

¹⁰ UNHCR Executive Committee Conclusion 8, *supra* note 7.

¹¹ UNHCR Guidelines, *supra* note 8, Guideline 10(x); Body of Principles, *supra* note 9, Principles 13, 14; Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. E/5988 (1977), Rule 35 [hereinafter "Standard Minimum

There is no obligation under the Detention Operations Manual to provide general interpretation in the detention facilities for daily communication with facility staff. The medical care detention standard provides that if language difficulties prevent a complete medical screening, the medical care provider shall obtain translation assistance. Such assistance may be provided by another officer, a professional service (i.e. via telephone) or another detainee if the detainee being medically screened consents. The admission and release standard only requires SPCs and CDFs to provide the Detainee Handbook in English and Spanish, and, where appropriate, the next most prevalent language and only requires the use of an interpreter when necessary for orienting detainees upon admission.

On 9 March 2006, DHS issued a memo reminding detention staff of the availability of the DHS Interpreter's Pool, available for use when a detainee is encountered who speaks limited English. This was a positive development, but did not mandate the use of an interpreter for essential communications.

Findings

UNHCR monitored access to interpretation services at 28 detention facilities. Through this effort, UNHCR has made findings regarding the use of interpretation during medical examinations, intake, and daily communication. We note that in the "Access to DHS officers" section we found that use of an interpreter to facilitate communication was rarely reported.

Daily Communication:

No facility routinely used interpreters for daily communication between facility staff and detainees. In two facilities, however, Mandarin-speaking staff and volunteers were utilized to address influxes of Chinese detainees.

Intake Procedures:

Of the 14 facilities where UNHCR monitored the use of interpreters during intake procedures, staff at six facilities stated that they regularly used professional interpretation through either the local university or a telephonic service during the intake procedure. This was contradicted by detainees at two of the six facilities. Staff at two additional facilities stated that they do not use interpreters at intake, and at one of those facilities, staff was first informed of the telephonic interpreter's line during UNHCR's visit. At the six remaining facilities, intake practices varied. One facility did not accept detainees who could not answer the intake questions in English. One facility relied on Customs and Border Protection officers to provide information necessary for intake, while another facility relied on the transferring facility to provide this information. Of the final three facilities, one used detainees, one occasionally used volunteers, and the last used a combination of other detainees and, on a rare basis, the telephonic interpretation line.

Detainee Handbook:

Of the 15 facilities where UNHCR monitored compliance with translating the detainee handbook, 11 had translated the handbook from English into Spanish. At one facility, the handbook was translated into Chinese to accommodate newly arrived detainees from China, and

Rules for the Treatment of Prisoners"]; European Council on Refugees and Exiles, *Position Paper on the Detention of Asylum Seekers*, Paragraph 20 (Apr. 1986) [hereinafter "Position Paper"].

at a second facility, the handbook had been translated to several historically prevalent languages, including Swahili, Russian, Albanian, Tamil, French, Hindi and Arabic.

Medical care:

UNHCR monitored interpretation in the medical context in 23 facilities. Ten of those reported using volunteer interpreters from local universities or telephonic interpreters as often as necessary for medical screenings and appointments. This was contradicted by detainees at five of the ten facilities.

In eight facilities, staff reported never using telephonic interpretation services or other professional interpreters. In two additional facilities, medical staff only learned of the DHS telephonic interpreter service shortly before UNHCR's visit.

In two other facilities, staff reported using telephonic interpreter services sporadically and using staff or other detainees to translate. There were four reports of using sign language to communicate medical needs.

3. Access to Telephones

Due to the remote location of many detention facilities far from family and support networks, access to telephones is often the only way for detained asylum-seekers to communicate with the outside world. Such access allows asylum-seekers to maintain communication with friends, family, legal representatives, NGOs and UNHCR. Telephone access is critical to a detained asylum-seeker's ability to obtain information about the asylum process, find legal representation, prepare their asylum cases, understand the status of their case, and avoid feelings of isolation.

Legal Standards

Under international standards, an asylum-seeker should be provided with the necessary facilities to submit his case to the authorities concerned.¹² In the context of the United States, it is UNHCR's view that access to working telephones for meaningful contact with a lawyer and UNHCR is a necessary facility. Asylum-seekers also should be provided the opportunity for meaningful contact with friends and family.¹³ Restrictions on phone access should only be made in limited circumstances, according to reasonable written regulations made in the interest of "security and good order."¹⁴ Asylum-seeker's phone calls should be made in private, in the absence of compelling reasons to the contrary.¹⁵

¹² UNHCR Executive Committee Conclusion 8, *supra* note 7.

¹³ See also Executive Committee Conclusion 44 (XXXVII), Detention of Refugees and Asylum Seekers, ¶ g (1986) (detained asylum seekers should have the opportunity to contact UNHCR); Position Paper, *supra* note 11, ¶ 29 (detained asylum-seekers should have access to telephones to contact lawyers, NGOs and UNHCR); UNHCR Guidelines, *supra* note 8, Guideline 10 (iv) (detained asylum-seekers should have the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel).

¹⁴ Body of Principles, *supra* note 9, Principle 18(3).

¹⁵ UNHCR Guidelines, *supra* note 8, Guideline 10(iv).

The DHS Detention Operations Manual provides detainees with the right to "reasonable and equitable access to telephones during established facility waking hours"¹⁶ and details standards for compliance. Pertinent standards require that phones be kept in proper working order and that detainees be able to make direct calls to the immigration court, the Board of Immigration Appeals, local and state courts, consular officials, legal service providers, and at times, government officials.¹⁷ Indigent detainees should be able to make local calls to these parties free of charge, and all detainees should be able to call legal service providers and consulates on the official DHS list at no charge to the detainee or the receiving party.¹⁸ SPC and CDF must program the telephone system to enable detainees to make free calls to phone numbers on the official pro bono legal representation list and to consulates. As of 2001, all facilities without pre-programmed phones must provide another means for detainees to make free calls to these parties.

In 2004, the private firm contracted by DHS to provide pre-programming at its facilities, Public Communications Services (PCS), included UNHCR's toll free number on a global basis such that any facility providing free calls through PCS will have UNHCR's number.

Findings

UNHCR monitored telephone access in 39 facilities. Of those 39 facilities, five were SPC or CDF facilities. The remaining 34 facilities monitored by UNHCR were local and state facilities used by ICE through intergovernmental service agreements (IGSA).

Free Calls Required by the Detention Standards

Regarding the five SPC and CDF facilities, two of these facilities had pre-programmed phones as required by the detention standards. At one of those facilities, there were problems operating the pre-programmed system. Two of the facilities did not use the pre-programmed system; although, one allowed free calls at the discretion of the supervisor. It is unclear from UNHCR's monitoring report whether the fifth facility used the pre-programmed system for free calls to those parties listed in the detention standards, but, in any event, there were reports of several problems with operating the phones at that facility.

Pre-programmed services were installed in 15 of the 34 IGSA facilities. At one of the IGSA facilities it was unclear whether the pre-programming system had been installed, but, in any event, that facility had a liberal policy for facilitating free calls. Only three out of the remaining 18 facilities purported to facilitate free calls.

Of the 15 facilities where the pre-programmed system was installed, at ten of those facilities there were various problems operating the phones. At an additional two of the 15 facilities, the instructions on how to use the system were confusing or not posted.

¹⁶ United States Immigration and Customs Enforcement, Detention Operations Manual, Section III, Part A, "Telephone Access."

¹⁷ *Id.* at Section III, Part E.

¹⁸ *Id.*

Calls to family, lawyers and others

UNHCR observed the cost for detainees trying to contact parties who are not eligible for inclusion in the pre-paid system at 17 facilities. At 14 of these facilities, detainees stated that collect calls and/or phone cards were prohibitively expensive. In some facilities, the cost of a collect call was as high as \$5.31 for the first minute and 89 cents per additional minute. Calling cards were reported to cost as much as \$45 for 15 minutes. Detainees at three facilities stated that these calls were reasonable with the reported price at two of the facilities being approximately \$4.00 for a 15 minute call.

4. Access to Legal Materials and Information

The majority of asylum-seekers in detention do not have legal representation, in part due to the remote locations of many detention facilities. Consequently, many detained asylum-seekers must prepare their cases by themselves, and rely heavily on the resources available at the detention facility to establish their refugee claims. Although it is not a substitute for effective legal representation, legal orientation and research materials provide critical information to detained asylum-seekers about immigration removal proceedings, their rights in these proceedings, conditions in their country of origin, and the forms of protection that may be available to them under the law. Access to legal materials can also help to reduce the anxiety of dealing with an unfamiliar legal system. For such access to be meaningful, it would be ideal for facilities to provide a trained law librarian who is able to assist asylum-seekers in legal research, whether with paper-based legal resources or computer-based systems, and who has access to interpreters when needed. In addition, asylum-seekers should be provided as many hours a week as reasonably necessary to prepare their cases. We note that lawyers preparing asylum cases report spending at least 50-80 hours preparing an asylum case.

Legal Standards

Pursuant to international standards, asylum-seekers should be provided with all necessary facilities to present their case.¹⁹ In a complex system such as that in the United States, such facilities should include legal assistance and, for those who cannot secure a legal representative, meaningful access to those legal materials essential for preparing an asylum claim.

International standards governing the treatment of detained individuals also dictate that detained individuals shall have access to a diverse collection of library materials.²⁰ The library shall be for the use of all categories of detainees.²¹ Access to the library may be subject to reasonable restrictions for the purpose of security and good order.²²

The Detention Operations Manual states that all detention facilities shall provide detainees "reasonable" access to a law library.²³ The library should have sufficient space, in an area

¹⁹ UNHCR Executive Committee Conclusion 8, *supra* note 7.

²⁰ Standard Minimum Rules for the Treatment of Prisoners, *supra* note 11, Rule 40; Body of Principles, *supra* note 9, Principle 28.

²¹ Standard Minimum Rules for the Treatment of Prisoners, *supra* note 11, Rule 40.

²² Body of Principles, *supra* note 9, Principle 28.

²³ United States Immigration and Customs Enforcement, Detention Operations Manual, Section III, Part A, "Access to Legal Material."

reasonably isolated from noise, and resources for all detainees who wish to use it.²⁴ Each detainee should be able to access the library at least five hours a week, during convenient times.²⁵ Special priority should be given to detainees that are facing a court deadline.²⁶

The Manual includes a list of equipment and immigration and asylum law publications to be made available to detainees.²⁷ All legal materials should be updated by DHS at least once a year and damaged materials should be replaced promptly.²⁸ On 14 June 2007, DHS amended the detention standard to allow facilities with working computers and printers to provide this information through Lexis Nexis CD-ROMs.²⁹ This amendment was based on a May 2003 proposal.

The Detention Operations Manual also states that each facility shall play DHS-approved videotaped presentations on legal rights, at the request of outside organizations. The facility shall provide regular opportunities for detainees in the general population to view the videotape. Damaged tapes shall be promptly replaced.

In 2006, DHS agreed to distributed copies of UNHCR's Refworld DVD to be included in the legal materials in all DHS SPCs, CDFs, and major IGSA facilities. Refworld is a comprehensive research tool containing information on refugees and human rights.

Findings

Appropriate legal materials and resources

UNHCR monitored the availability of legal materials and resources at 29 facilities. Of these facilities, 18 purported to provide the complete set of legal immigration materials described in the DHS Manual through a computer-based system. At six of these facilities, however, the complete materials were not truly available to asylum-seekers for a variety of reasons such as: the facility did not have any computers; the computers were broken; and the CD-ROM was expired and therefore non-functional. Of the remaining 11 facilities, seven provided few immigration legal materials and resources, including three facilities where the available resources were out of date. The final four facilities provided no immigration legal resources to detainees.

Separate library space

UNHCR monitored the provision of a separate space for detainees to conduct legal research and writing in 29 facilities. Of these facilities, 24 provided a separate library to detainees. However, of these 24 facilities which provided a separate library, ten (as described above) provided no or few legal materials and resources for immigration detainees to access in the library. We note that in one additional facility, staff instituted a push cart system, rather than a separate library

²⁴*Id.* at Section III, Parts A and B.

²⁵*Id.* at Section III, Part G.

²⁶*Id.*

²⁷*Id.* at Attachment A, "List of Legal Reference Materials for Detention Facilities."

²⁸*Id.* at Section III, Part E.

²⁹ Memorandum from Gary E. Mead, Assistant Director, Management, United States Immigration and Customs Enforcement to Field Office Directors, "Change Notice - Access to Legal Reference Materials and Lexis Nexis CD-ROMs" (June 14, 2007).

space in order to improve detainee access to the legal resources because staff had observed that few detainees were using the library.

Time allotted for using the law library

UNHCR monitored whether detainees were allowed access to the law library for the five hours per week mandated by the DHS Manual in 22 facilities. Only 15 of the 22 facilities provided detainees with at least five hours per week of library time.

Librarian assistance

No facility, whether providing the required materials in paper form or through a computer-based system, had a dedicated librarian trained to assist detainees in accessing materials. Several facilities did allow detainees to assist each other in legal research, including computer-based research.

Video-taped legal rights presentations

Of the 10 facilities where UNHCR noted the use of video-taped legal rights presentations, four facilities showed the video; however, five of the six facilities, who did not show the video-taped legal rights presentations, expressed a willingness to do so upon receiving a copy of the video and/ or completing technological changes (which were already in process) that would make it possible to do so.

APPENDIX A**LIST OF FACILITIES VISITED**

1. **Albany County Jail, Albany, NY (August 2005*)**
2. **Aguadilla Service Processing Center, Aguadilla, PR (May 2005)**
3. **Ayovelles Parish Jail, Marksville, LA (April 2001)**
4. **Ayovelles Women's Correctional Facility, Cottonport, LA (April 2001, May 2004)**
5. **Berks County Family Shelter Care Facility, Wyomissing, PA (August 2001)**
6. **Broward County Detention Center, Broward, FL (December 2002)**
7. **Buffalo Federal Detention Center, Batavia, NY (February 2005*, May 2005*, September 2005*, November 2005*)**
8. **Calhoun County Jail, Battle Creek, MI (April 2005*)**
9. **Casa de San Juan, San Diego, CA (February 2001, October 2002)**
10. **CCA Otay Mesa Facility, Otay Mesa, CA (February 2001, October 2002)**
11. **Clinton County Jail, Plattsburgh, NY (March 2005*, August 2005*, October 2005*)**
12. **CSC, Inc. (Esmore), Seattle, WA (June 2000)**
13. **George Allen Jail, Dallas, TX (October 2001)**
14. **Denton County Detention Center, Denton, TX (October 2001)**
15. **Dodge County Detention Facility, Juneau, WI (September 2003)**
16. **Erie County Holding Center, Buffalo, NY (September 2005*)**
17. **Elizabeth Detention Facility, Elizabeth, NJ (September 2005*, June 2002)**
18. **Federal Detention Center Oakdale, Oakdale, LA (April 2001)**
19. **Franklin County Jail, Malone NY (May 2005*)**
20. **Grayson County Jail, Sherman, LA (October 2001)**
21. **Kenosha County Detention Center, Kenosha, WI (September 2003)**
22. **Krome Service Processing Center, Miami, FL (April 2001, April 2002)**
23. **Laredo Processing Center, Laredo, TX (September 2006)**
24. **Low Sterrett Facility, Dallas, TX (October 2001)**
25. **McHenry County Jail, Woodstock, IL (August 2001, September 2003)**
26. **Metropolitan Detention Center, Guaynabo, PR (May 2005)**

27. **Monroe County Jail, Monroe, MI (April 2003, March 2005*, June 2005*, September 2005*, November 2005*)**
28. **Navarro County Detention Center, Cosicana, TX (October 2001)**
29. **Northwest Detention Center, Tacoma, WA (April 2005*, November 2005*)**
30. **Oakdale Federal Detention Center, Oakdale, LA (April 2001)**
31. **Orleans Parish Prison Women's Facility, New Orleans, LA (May 2004)**
32. **Ozaukee County Justice Center, Port Washington, WI (September 2003)**
33. **Pamunkey Regional Jail, Hanover, VA (August 2005)**
34. **Piedmont Regional Jail, Farmville, VA (May 2000, July 2001)**
35. **Pine Prairie Correction Facility, Pine Prairie, LA (April 2001)**
36. **Racine County Jail, Racine WI, (August 2001)**
37. **Rolling Plains Detention Center, Haskell, TX (November 2003)**
38. **South Texas Detention Complex, Pearsall, TX (September 2006)**
39. **Suzanne L. Kays Detention Center, Dallas TX (November 2003)**
40. **Tangipahoa Parish Jail, Amite, LA (April 2001, May 2004)**
41. **Tensas Detention Center, Waterproof, LA (May 2004)**
42. **Turner Guilford Knight (TGK) Detention Center, Miami, FL (April 2002, April 2001)**
43. **Tri-County Detention Center, Ullin, IL (August 2001)**
44. **Wackenhut Detention Center, Jamaica, NY (June 2002)**
45. **Wayne County Jail, Detroit, MI (June 2005*)**

* denotes facilities monitored as part of UNHCR's monitoring of the Safe Third Country Agreement between the United States and Canada.

**UNHCR**United Nations High Commissioner for Refugees
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08/LG/109

31 March 2008

Dear Secretary Chertoff,

Subject: New Policy Guidelines on Parole of Asylum-Seekers

I am writing to share with you the concerns of the Office of the United Nations High Commissioner for Refugees (UNHCR) regarding the guidance issued by Immigration and Customs Enforcement (ICE) on 6 November 2007, which sets forth new parole criteria for those asylum-seekers in the expedited removal process who have established a credible fear of persecution or torture. Previously, UNHCR stated that the parole guidelines released on 30 December 1997 by the Immigration and Naturalization Service (INS) were consistent with international legal standards and principles, but had expressed its concern that they were not being implemented in a uniform manner. We expected that the new ICE guidelines would address this specific concern of consistency while maintaining the established criteria. Rather, the ICE guidelines appear to adopt new, restrictive criteria with a presumption against release of asylum-seekers in a manner inconsistent with general norms and principles of international law.

UNHCR has appreciated our longstanding collaboration with the Department of Homeland Security (DHS) and INS on issues of particular concern to asylum-seekers, such as conditions of detention in specific facilities, implementation of the Safe Third Country Agreement between the United States and Canada, and the expedited removal process. Thus, we very much regret that the new guidelines were released in finalized form without any advanced consultation with UNHCR.

The Honorable
Michael Chertoff
Secretary
United States Department of Homeland Security
Washington, DC 20528

cc: Mr. Stewart A. Baker, Assistant Secretary for Policy, United States Department of Homeland Security
Ms. Julie Myers, Assistant Secretary, Immigration and Customs Enforcement, United States Department of Homeland Security
Mr. Emilio Gonzalez, Director, United States Citizenship and Immigration Services, United States Department of Homeland Security



UNHCR's role in collaborating on issues affecting asylum-seekers in the United States stems from its formal mandate by the United Nations General Assembly to ensure international protection to refugees, asylum-seekers and other persons of concern and to assist governments in identifying and implementing durable solutions on their behalf.¹ UNHCR shares its concerns on the new ICE guidelines in the exercise of its supervisory responsibility, as provided for in Article II of the 1967 Protocol relating to the Status of Refugees. As a State Party to the 1967 Protocol, the United States undertakes to co-operate with UNHCR in the exercise of its functions and, in particular, to facilitate its duty of supervising the application of the Protocol's provisions.

In UNHCR's view, the detention of asylum-seekers is inherently undesirable and, as a general principle, should be avoided.² Any restrictions on freedom of movement based on illegal entry or presence of asylum-seekers must be imposed only in specific cases of necessity, and the restrictions must be reasonable, proportionate to the objectives to be achieved and non-discriminatory.³ These principles stem from the fundamentally different position of asylum-seekers as compared to ordinary immigrants. Asylum-seekers may not be in a position to comply with the legal formalities of entry and are often the victims of trauma and human rights abuses, and their detention can prove to be especially debilitating.

The new parole guidelines are not consistent with international standards and do not reflect an appreciation that these individuals have already demonstrated a substantial likelihood of establishing an asylum claim. Instead, the new guidelines as written represent a shift away from DHS's former position which established a presumption in favor of releasing asylum-seekers who had established a credible fear of persecution or torture. In a letter dated 10 May 2005 to the previous UNHCR Regional Representative Kolude Doherty, DHS Deputy Secretary Michael Jackson agreed with UNHCR's position stating:

I assure you that DHS unequivocally shares your belief that the United States must maintain its long tradition of protecting legitimate refugees who flee persecution. We are committed to maintaining the balance of our rich traditions of welcoming immigrants and being a nation of laws. As part of this policy, we do not detain unnecessarily any individuals, including legitimate asylum seekers, unless factors of flight risk, national security, or dangers to the community are involved.

In contrast, ICE's new parole guidance mandates detention for all asylum-seekers in expedited removal proceedings who have established a credible fear unless they establish both that they are not a flight risk, a danger to the community, or a national security risk, *and* that they also fall within a narrow category of particularly vulnerable individuals or that

¹ Statute of the Office of the United Nations High Commissioner for Refugees, U.N.Doc. A/RES/428(V), Annex, PP1, 6 (1950).

² See Executive Committee Conclusion No. 44 ¶ (b) (XXXVII) (1986). See also United Nations High Commissioner for Refugees, UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers (1999).

³ *Id.* In UNHCR's view, the detention of asylum-seekers may only be resorted to, if necessary: (i) to verify identity; (ii) to determine the elements on which the claim for refugee status or asylum is based; (iii) in cases where asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State, in which they intend to claim asylum; or (iv) to protect national security and public order. Detention that is applied for purposes other than those listed above would be contrary to international law.



release is in the "public interest" – a category that is not defined. UNHCR is particularly concerned by the fact that the new policy expands the permissible exceptions to detention of asylum-seekers beyond the "necessity requirement" and imposes an unnecessary burden on asylum-seekers, who may have to prove that "it is in the public interest" to be released from detention.

Furthermore, the guidelines direct officials only to determine parole for those who affirmatively request a determination and do so in writing. In UNHCR's view, asylum-seekers who are detained should be entitled to minimum procedural guarantees including the right to have the decision to detain them automatically reviewed by a judicial or administrative body independent of the detaining authorities. This should be followed by regular periodic reviews of the necessity for the continuation of detention, which the asylum-seeker or his representative would have the right to attend.⁴ The burden should not be on asylum-seekers to ensure this guarantee is met, particularly when the majority of those detained lack legal counsel, face language barriers and are not systematically provided with information on how to apply for parole.

UNHCR is concerned that ICE's new guidelines could lead to the prolonged detention of asylum-seekers which impacts their ability to meaningfully access the asylum system. Detained asylum-seekers are less likely to have legal counsel and must rely on the materials and resources provided by the detention facility to prepare and present their asylum application. In the majority of detention facilities monitored by UNHCR, asylum-seekers were not provided adequate access to legal materials, case information, telephones and interpreter services.⁵ These deficiencies make it difficult for asylum-seekers, particularly those with language barriers, to collect relevant documentation, fully fill out the appropriate forms in English and provide information to support their claims. Thus, adjudicators must often grapple with evidentiary gaps and omissions in a detained asylum-seeker's case, making it difficult to render a fully informed and correct decision in individual cases.

Detained asylum-seekers' ability to fully present their claims is also hampered by the psychological effects of detention. Many asylum-seekers who have demonstrated a credible fear have experienced rape, torture or other physical or emotion harm or witnessed a spouse, parent or child enduring similar abuse, often at the hands of uniformed individuals. Detaining such persons in jails and jail-like facilities with no or minimal psycho-social support can re-traumatize victims of abuse, resulting in depression, anxiety, and heightened post-traumatic stress. This additional trauma may further diminish an asylum-seeker's ability to relate his or her story in the reasonably consistent and detailed manner required for an adjudicator to assess the claim. This is especially true in cases of women, the elderly or asylum-seekers suffering from mental health issues who often need specialized care and counseling.

ICE has explained that the new guidelines were designed to establish consistency in the parole process and its view that they will result in the parole of a greater number of asylum-seekers. It is not clear to us how the inclusion of additional criteria without clear guidance favoring release and a lack of automatic consideration for parole and an independent appeal mechanism will achieve this result.

⁴ See UNHCR Revised Guidelines on the Detention of Asylum-Seekers, *supra* note 2 at Guideline 5.

⁵ See attached letter to Assistant Secretary Julie Myers of 31 March 2008 summarizing UNHCR's observations and findings from over 60 visits to 46 separate detention facilities housing asylum-seekers between 2001 and 2006.



Given the relatively small number of asylum-seekers who establish credible fear each year, just over 3,000 in FY07, with only 1,341 of these individuals arriving at a port-of-entry and thus eligible for release solely through the parole process, it should not be an undue burden for detention officials to automatically consider parole for each asylum-seeker who has established credible fear. In fact, the release of qualified asylum-seekers will save ICE valuable time and resources.

Finally, UNHCR is concerned that ICE's new guidelines rescind the previous DHS policy memorandum of 9 February 2004 favoring release of individuals who have been granted asylum, withholding of removal or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by an Immigration Judge and whose cases have been appealed to the Board of Immigration Appeals. That memorandum specified, similar to the previous parole guidelines, that it was "ICE policy to favor release of aliens who have been granted protection relief by an immigration judge, absent exceptional concerns such as national security issues or danger to the community and absent any requirement under law to detain."

UNHCR Washington is pleased to have been invited by ICE to participate in the initial training on these new guidelines in January 2008 and to share the international perspective on parole of asylum-seekers and UNHCR's concerns with these new guidelines. We believe this was an excellent opportunity for our organizations to build on our past working relationship. Despite this very positive opportunity, the training curriculum left the category of "public interest" undefined and emphasized that officers should use discretion when making parole determinations, yet provided no parameters within which to exercise such discretion.

We remain convinced that the new guidelines should be revised so that they reflect the spirit and approach of previous parole guidance and correspond to international law and standards. As an immediate measure, the new guidelines should be amended to make it clear that it is in the "public interest" to release those asylum-seekers whose identity has been established and who pose no threat to national security or public safety.

Thank you for your consideration of these issues. Please do not hesitate to contact me should you wish to discuss this matter further.

Yours sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Michel Gabaudan".

Michel Gabaudan
Regional Representative



OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR REFUGEES
GENEVA

**UNHCR's Guidelines on Applicable Criteria and Standards
relating to the Detention of Asylum-Seekers**
February 1999

Introduction

1. The detention of asylum-seekers is, in the view of UNHCR inherently undesirable. This is even more so in the case of vulnerable groups such as single women, children, unaccompanied minors and those with special medical or psychological needs. Freedom from arbitrary detention is a fundamental human right and the use of detention is, in many instances, contrary to the norms and principles of international law.
2. Of key significance to the issue of detention is Article 31 of the 1951 Convention.¹ Article 31 exempts refugees coming directly from a country of persecution from being punished on account of their illegal entry or presence, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. The Article also provides that Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary, and that any restrictions shall only be applied until such time as their status is regularised, or they obtain admission into another country.
3. Consistent with this Article, detention should only be resorted to in cases of necessity. The detention of asylum-seekers who come "directly" in an irregular manner should, therefore, not be automatic, or unduly prolonged. This provision applies not only to recognised refugees but also to asylum-seekers pending determination of their status, as recognition of refugee status does not make an individual a refugee but declares him to be one. Conclusion No. 44 (XXXVII) of the Executive Committee on the Detention of Refugees and Asylum-Seekers examines more concretely what is meant by the term "necessary". This Conclusion also provides guidelines to States on the use of detention and recommendations as to certain procedural guarantees to which detainees should be entitled.
4. The expression "coming directly" in Article 31(1), covers the situation of a person who enters the country in which asylum is sought directly from the country of origin,

¹ The Geneva Convention of 28 July 1951 Relating to the Status of Refugees.

or from another country where his protection, safety and security could not be assured. It is understood that this term also covers a person who transits an intermediate country for a short period of time without having applied for, or received, asylum there. No strict time limit can be applied to the concept "coming directly" and each case must be judged on its merits. Similarly, given the special situation of asylum-seekers, in particular the effects of trauma, language problems, lack of information, previous experiences which often result in a suspicion of those in authority, feelings of insecurity, and the fact that these and other circumstances may vary enormously from one asylum-seeker to another, there is no time limit which can be mechanically applied or associated with the expression "without delay". The expression "good cause", requires a consideration of the circumstances under which the asylum-seeker fled. The term "asylum-seeker" in these guidelines applies to those whose claims are being considered under an admissibility or pre-screening procedure as well as those who are being considered under refugee status determination procedures. It also includes those exercising their right to seek judicial and/or administrative review of their asylum request.

5. Asylum-seekers are entitled to benefit from the protection afforded by various International and Regional Human Rights instruments which set out the basic standards and norms of treatment. Whereas each State has a right to control those entering into their territory, these rights must be exercised in accordance with a prescribed law which is accessible and formulated with sufficient precision for the regulation of individual conduct. For detention of asylum-seekers to be lawful and not arbitrary, it must comply not only with the applicable national law, but with Article 31 of the Convention and international law. It must be exercised in a non-discriminatory manner and must be subject to judicial or administrative review to ensure that it continues to be necessary in the circumstances, with the possibility of release where no grounds for its continuation exist.²

6. Although these guidelines deal specifically with the detention of asylum-seekers the issue of the detention of stateless persons needs to be highlighted.³ While the majority of stateless persons are not asylum-seekers, a paragraph on the detention of stateless persons is included in these guidelines in recognition of UNHCR's formal responsibilities for this group and also because the basic standards and norms of treatment contained in international human rights instruments applicable to detainees generally should be applied to both asylum-seekers and stateless persons. The inability of stateless persons who have left their countries of habitual residence to return to them, has been a reason for unduly prolonged or arbitrary detention of these persons in third countries. Similarly, individuals whom the State of nationality refuses to accept back on the basis that nationality was withdrawn or lost while they were out of the country, or who are not acknowledged as nationals without proof of nationality, which in the circumstances is difficult to acquire, have also been held in prolonged or indefinite detention only because the question of where to send them remains unresolved.

² Views of the Human Rights Committee on Communication No. 560/1993, 59th Session, CCPR/C/D/560/1993.

³ UNHCR has been requested to provide technical and advisory services to states on nationality legislation or practice resulting in statelessness. EXCOM Conclusion No. 78(XLVI) (1995), General Assembly Resolution 50/152, 1996. See also Guidelines: Field Office Activities Concerning Statelessness (IOM/66/98 – FOM70/98).

Guideline 1: Scope of the Guidelines

These guidelines apply to all asylum-seekers who are being considered for, or who are in, detention or detention-like situations. For the purpose of these guidelines, UNHCR considers detention as: **confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory.** There is a qualitative difference between detention and other restrictions on freedom of movement.

Persons who are subject to limitations on domicile and residency are not generally considered to be in detention.

When considering whether an asylum-seeker is in detention, the cumulative impact of the restrictions as well as the degree and intensity of each of them should also be assessed.

Guideline 2: General Principle

As a general principle asylum-seekers should not be detained.

According to Article 14 of the Universal Declaration of Human Rights, the right to seek and enjoy asylum is recognised as a basic human right. In exercising this right asylum-seekers are often forced to arrive at, or enter, a territory illegally. However the position of asylum-seekers differs fundamentally from that of ordinary immigrants in that they may not be in a position to comply with the legal formalities for entry. This element, as well as the fact that asylum-seekers have often had traumatic experiences, should be taken into account in determining any restrictions on freedom of movement based on illegal entry or presence.

Guideline 3: Exceptional Grounds for Detention

Detention of asylum-seekers may exceptionally be resorted to for the reasons set out below as long as this is clearly prescribed by a national law which is in conformity with general norms and principles of international human rights law. These are contained in the main human rights instruments.⁴

There should be a presumption against detention. Where there are monitoring mechanisms which can be employed as viable alternatives to detention, (such as reporting obligations or guarantor requirements [see Guideline 4]), these should be applied **first** unless there is evidence to suggest that such an alternative will not be

⁴ Article 9(1) International Covenant on Civil and Political Rights (ICCPR); Article 37(b) UN Convention on the Rights of the Child (CRC); Article 5(1) European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); Article 7(2) American Convention on Human Rights 1969 (American Convention); Article 5 African Charter on Human and People's Rights (African Charter).

effective in the individual case. Detention should therefore only take place after a full consideration of all possible alternatives, or when monitoring mechanisms have been demonstrated not to have achieved the lawful and legitimate purpose.

In assessing whether detention of asylum-seekers is necessary, account should be taken of whether it is reasonable to do so and whether it is proportional to the objectives to be achieved. If judged necessary it should only be imposed in a non discriminatory manner for a minimal period.⁵

The permissible exceptions to the general rule that detention should normally be avoided must be prescribed by law. In conformity with EXCOM Conclusion No 44 (XXXVII) the detention of asylum-seekers may only be resorted to, if necessary:

(i) to verify identity.

This relates to those cases where identity may be undetermined or in dispute.

(ii) to determine the elements on which the claim for refugee status or asylum is based.

This statement means that the asylum-seeker may be detained exclusively for the purposes of a preliminary interview to identify the basis of the asylum claim.⁶ This would involve obtaining essential facts from the asylum-seeker as to why asylum is being sought and would not extend to a determination of the merits or otherwise of the claim. This exception to the general principle cannot be used to justify detention for the entire status determination procedure, or for an unlimited period of time.

(iii) in cases where asylum-seekers have destroyed their travel and /or identity documents or have used fraudulent documents in order to mislead the authorities of the State, in which they intend to claim asylum.

What must be established is the absence of good faith on the part of the applicant to comply with the verification of identity process. As regards asylum-seekers using fraudulent documents or travelling with no documents at all, detention is only permissible when there is an intention to mislead, or a refusal to co-operate with the authorities. Asylum-seekers who arrive without documentation because they are unable to obtain any in their country of origin should not be detained solely for that reason.

(iv) to protect national security and public order.

This relates to cases where there is evidence to show that the asylum-seeker has criminal antecedents and/or affiliations which are likely to pose a risk to public order or national security should he/she be allowed entry.

⁵ Article 9(1), Article 12 ICCPR, Article 37(b) CRC, Article 5(1)(f) ECHR, Article 7(3) American Convention, Article 6 African Charter, EXCOM Conclusion No. 44(XXXVII).

⁶ EXCOM Conclusion No. 44(XXXVII).

Detention of asylum-seekers which is applied for purposes other than those listed above, for example, as part of a policy to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them, is contrary to the norms of refugee law. It should not be used as a punitive or disciplinary measure for illegal entry or presence in the country. Detention should also be avoided for failure to comply with the administrative requirements or other institutional restrictions related residency at reception centres, or refugee camps. Escape from detention should not lead to the automatic discontinuation of the asylum procedure, or to return to the country of origin, having regard to the principle of non-refoulement.⁷

Guideline 4: Alternatives to Detention

Alternatives to the detention of an asylum-seeker until status is determined should be considered. The choice of an alternative would be influenced by an individual assessment of the personal circumstances of the asylum-seeker concerned and prevailing local conditions.

Alternatives to detention which may be considered are as follows:

(i) Monitoring Requirements.

Reporting Requirements: Whether an asylum-seeker stays out of detention may be conditional on compliance with periodic reporting requirements during the status determination procedures. Release could be on the asylum-seeker's own recognisance, and/or that of a family member, NGO or community group who would be expected to ensure the asylum-seeker reports to the authorities periodically, complies with status determination procedures, and appears at hearings and official appointments.

Residency Requirements: Asylum-seekers would not be detained on condition they reside at a specific address or within a particular administrative region until their status has been determined. Asylum-seekers would have to obtain prior approval to change their address or move out of the administrative region. However this would not be unreasonably withheld where the main purpose of the relocation was to facilitate family reunification or closeness to relatives.⁸

(ii) Provision of a Guarantor / Surety.

Asylum-seekers would be required to provide a guarantor who would be responsible for ensuring their attendance at official appointments and hearings, failure of which a penalty most likely the forfeiture of a sum of money, levied against the guarantor.

(iii) Release on Bail.

This alternative allows for asylum-seekers already in detention to apply for release on bail, subject to the provision of recognisance and surety. For this to be genuinely

⁷ Sub Committee of the Whole of International Protection, Note EC/SCP/44 Paragraph 51(c).

⁸ Article 16, Article 12 UDHR.

available to asylum-seekers they must be informed of its availability and the amount set must not be so high as to be prohibitive.

(iv) Open Centres.

Asylum-seekers may be released on condition that they reside at specific collective accommodation centres where they would be allowed permission to leave and return during stipulated times.

These alternatives are not exhaustive. They identify options which provide State authorities with a degree of control over the whereabouts of asylum-seekers while allowing asylum-seekers basic freedom of movement.

Guideline 5: Procedural Safeguards⁹

If detained, asylum-seekers should be entitled to the following minimum procedural guarantees:

(i) to receive prompt and full communication of any order of detention, together with the reasons for the order, and their rights in connection with the order, in a language and in terms which they understand;

(ii) to be informed of the right to legal counsel. Where possible, they should receive free legal assistance;

(iii) to have the decision subjected to an automatic review before a judicial or administrative body independent of the detaining authorities: This should be followed by regular periodic reviews of the necessity for the continuation of detention, which the asylum-seeker or his representative would have the right to attend;

(iv) either personally or through a representative, to challenge the necessity of the deprivation of liberty at the review hearing, and to rebut any findings made. Such a right should extend to all aspects of the case and not simply the executive discretion to detain;

(v) to contact and be contacted by the local UNHCR Office, available national refugee bodies or other agencies and an advocate. The right to communicate with these representatives in private, and the means to make such contact should be made available.

Detention should not constitute an obstacle to an asylum-seekers' possibilities to pursue their asylum application.

⁹ Article 9(2) and (4) ICCPR.

Guideline 6: Detention of Persons under the Age of 18 years¹⁰

In accordance with the general principle stated at Guideline 2 and the UNHCR Guidelines on Refugee Children, **minors who are asylum-seekers should not be detained.**

In this respect particular reference is made to the Convention on the Rights of the Child in particular:

- Article 2 which requires that States take all measures appropriate to ensure that children are protected from all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members;
- Article 3 which provides that in any action taken by States Parties concerning children, the best interests of the child shall be a primary consideration;
- Article 9 which grants children the right not to be separated from their parents against their will;
- Article 22 which requires that States Parties take appropriate measures to ensure that minors who are seeking refugee status or who are recognised refugees, whether accompanied or not, receive appropriate protection and assistance;
- Article 37 by which States Parties are required to ensure that the detention of minors be used only as a measure of last resort and for the shortest appropriate period of time.

Unaccompanied minors should not, as a general rule, be detained. Where possible they should be released into the care of family members who already have residency within the asylum country. Where this is not possible, alternative care arrangements should be made by the competent child care authorities for unaccompanied minors to receive adequate accommodation and appropriate supervision. Residential homes or foster care placements may provide the necessary facilities to ensure their proper development, (both physical and mental), is catered for while longer term solutions are being considered.

All appropriate alternatives to detention should be considered in the case of children accompanying their parents. Children and their primary caregivers should not be detained unless this is the only means of maintaining family unity.

If none of the alternatives can be applied and States do detain children, this should, in accordance with Article 37 of the Convention on the Rights of the Child, be as a measure of last resort, and for the shortest period of time.

¹⁰ See also UN Rules for the Protection of Juveniles Deprived of their Liberty 1990.

If children who are asylum-seekers are detained at airports, immigration-holding centres or prisons, they must not be held under prison-like conditions. All efforts must be made to have them released from detention and placed in other accommodation. If this proves impossible, special arrangements must be made for living quarters which are suitable for children and their families.

During detention, children have a right to education which should optimally take place outside the detention premises in order to facilitate the continuation of their education upon release. Provision should be made for their recreation and play which is essential to a child's mental development and will alleviate stress and trauma.

Children who are detained, benefit from the same minimum procedural guarantees (listed at Guideline 5) as adults. A legal guardian or adviser should be appointed for unaccompanied minors.¹¹

Guideline 7: Detention of Vulnerable Persons

Given the very negative effects of detention on the psychological well being of those detained, active consideration of possible alternatives should precede any order to detain asylum-seekers falling within the following vulnerable categories:¹²

Unaccompanied elderly persons.

Torture or trauma victims.

Persons with a mental or physical disability.

In the event that individuals falling within these categories are detained, it is advisable that this should only be on the certification of a qualified medical practitioner that detention will not adversely affect their health and well being. In addition there must be regular follow up and support by a relevant skilled professional. They must also have access to services, hospitalisation, medication counselling etc. should it become necessary.

Guideline 8: Detention of Women

Women asylum-seekers and adolescent girls, especially those who arrive unaccompanied, are particularly at risk when compelled to remain in detention centres. As a general rule the detention of pregnant women in their final months and nursing mothers, both of whom may have special needs, should be avoided.

¹¹ An adult who is familiar with the child's language and culture may also alleviate the stress and trauma of being alone in unfamiliar surroundings.

¹² Although it must be recognised that most individuals will be able to articulate their claims, this may not be the case in those who are victims of trauma. Care must be taken when dealing with these individuals as their particular problems may not be apparent, and it will require care and skill to assess the situation of a person with mental disability or a disoriented older refugee who is alone.

Where women asylum-seekers are detained they should be accommodated separately from male asylum-seekers, unless these are close family relatives. In order to respect cultural values and improve the physical protection of women in detention centres, the use of female staff is recommended.

Women asylum-seekers should be granted access to legal and other services without discrimination as to their gender,¹³ and specific services in response to their special needs.¹⁴ In particular they should have access to gynaecological and obstetrical services.

Guideline 9: Detention of Stateless Persons

Everyone has the right to a nationality and the right not to be arbitrarily deprived of their nationality.¹⁵

Stateless persons, those who are not considered to be nationals by any State under the operation of its law, are entitled to benefit from the same standards of treatment as those in detention generally.¹⁶ Being stateless and therefore not having a country to which automatic claim might be made for the issue of a travel document should not lead to indefinite detention. Statelessness cannot be a bar to release. The detaining authorities should make every effort to resolve such cases in a timely manner, including through practical steps to identify and confirm the individual's nationality status in order to determine which State they may be returned to, or through negotiations with the country of habitual residence to arrange for their re-admission.

In the event of serious difficulties in this regard, UNHCR's technical and advisory service pursuant to its mandated responsibilities for stateless persons may, as appropriate, be sought.

Guideline 10: Conditions of Detention¹⁷

Conditions of detention for asylum-seekers should be humane with respect shown for the inherent dignity of the person. They should be prescribed by law.

¹³ See UNHCR Guidelines on the Protection of Refugee Women.

¹⁴ Women particularly those who have travelled alone may have been exposed to violence and exploitation prior to and during their flight and will require counselling.

¹⁵ Article 15 UDHR. See EXCOM Conclusion No. 78(XLVI).

¹⁶ Article 10(1) ICCPR; 1988 UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment; 1955 UN Standard Minimum Rules for the Treatment of Prisoners; 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.

¹⁷ Article 10(1) ICCPR; 1988 UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment; 1955 UN Standard Minimum Rules for the Treatment of Prisoners; 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.

Reference is made to the applicable norms and principles of international law and standards on the treatment of such persons. Of particular relevance are the 1988 UN Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment, 1955 UN Standard Minimum Rules for the Treatment of Prisoners, and the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.

The following points in particular should be emphasised:

- (i) the initial screening of all asylum-seekers at the outset of detention to identify trauma or torture victims, for treatment in accordance with Guideline 7.
- (ii) the segregation within facilities of men and women; children from adults (unless these are relatives);
- (iii) the use of separate detention facilities to accommodate asylum-seekers. The use of prisons should be avoided. If separate detention facilities are not used, asylum-seekers should be accommodated separately from convicted criminals or prisoners on remand. There should be no co-mingling of the two groups;
- (iv) the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel. Facilities should be made available to enable such visits. Where possible such visits should take place in private unless there are compelling reasons to warrant the contrary;
- (v) the opportunity to receive appropriate medical treatment, and psychological counselling where appropriate;
- (vi) the opportunity to conduct some form of physical exercise through daily indoor and outdoor recreational activities;
- (vii) the opportunity to continue further education or vocational training;
- (viii) the opportunity to exercise their religion and to receive a diet in keeping with their religion;
- (ix) the opportunity to have access to basic necessities i.e. beds, shower facilities, basic toiletries etc.;
- (x) access to a complaints mechanism, (grievance procedures) where complaints may be submitted either directly or confidentially to the detaining authority. Procedures for lodging complaints, including time limits and appeal procedures, should be displayed and made available to detainees in different languages.

Conclusion

The increasing use of detention as a restriction on the freedom of movement of asylum-seekers on the grounds of their illegal entry is a matter of major concern to UNHCR, NGOs, other agencies as well as Governments. The issue is not a straightforward one and these guidelines have addressed the legal standards and norms applicable to the use of detention. Detention as a mechanism which seeks to address the particular concerns of States related to illegal entry requires the exercise of great caution in its use to ensure that it does not serve to undermine the fundamental principles upon which the regime of international protection is based.



UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Facsimile Message

UNHCR

1775 K Street, NW
Suite 300
Washington, DC 20006

To/A: (b)(6), (b)(7)c
Detention and Deportation Officer
Detention Standards Compliance Unit
Headquarters/DRO
US Department of Homeland Security

Destination fax number/
N° fax du destinataire: (202) 732-2110

From/De: Michel Gabaudan, Regional Representative

Return fax number/
N° fax retour: (202) 296-5660

Date: 24 August 2006

Tel: (202) 296-5191

Code:

Email: (b)(6)

No. of pages (including this one)/ 3
Nbre. de pages (celle-ci incluse):

Subject: UNHCR Mission to Laredo, TX: 11-15 September 2006

Please see attached letter.

Best regards.

**UNHCR**United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés**UNHCR**
United Nations High Commissioner for Refugees
Regional Representation in Washington1775 K Street NW
Suite 300
Washington, DC 20006Tel: (202) 296.5191
Fax: (202) 296.5660
Email: usawa@unhcr.org

23 August 2006

Subject: UNHCR Visit to Laredo, Texas: 11-15 September 2006

Dear Chief Aguilar and Mr. Torres,

I am writing to request your assistance in facilitating a visit of the United Nations High Commissioner for Refugees (UNHCR) to Laredo, Texas, to observe the Border Patrol's implementation of its expedited removal authority within the Laredo, Texas Border Patrol sector and to visit the Laredo Detention Facility and the South Texas Detention Center in Pearsall where we understand many of those apprehended by Border Patrol are detained. This visit would be undertaken within the context of UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

With regard to Border Patrol activities, we would appreciate the opportunity to observe all aspects of the expedited removal process, including apprehension, custody arrangements, and case processing. We would also appreciate the opportunity to meet separately with individual asylum-seekers whose cases are being processed. We hope to visit two Border Patrol substations in the Laredo sector during our trip.

David Aguilar, Chief
Office of Border Patrol
Bureau of Customs and Border Protection
1300 Pennsylvania Avenue, Suite 6.5E
US Department of Homeland Security
Washington, DC 20229

John Torres, Acting Director
Office of Detention and Removal
Bureau of Immigration and Customs Enforcement
801 Eye Street, N.W., Suite 900
Department of Homeland Security
Washington, DC 20536

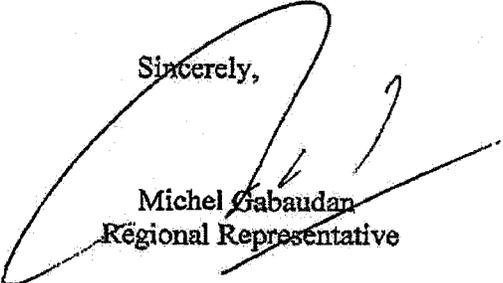


With regard to the Laredo Detention Facility, we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained.

The UNHCR delegation will comprise two representatives from UNHCR's Regional Office for the United States and the Caribbean, located in Washington, DC. Members of the delegation are (b)(6) Senior Protection Officer, and (b)(6) Protection Officer. (b)(6) will be our Office's point of contact in arranging the visit. She can be reached at 202-243 (b)(6)

Thank you for your assistance in accommodating our site visit requests. We will discuss our findings with you and provide a written report after our mission. We look forward to working with you and local DHS officials in arranging this visit.

Sincerely,


Michel Gabaudan
Regional Representative

cc: Joseph Langlois, Director, Asylum Division, CIS
Molly Groom, Chief, Refugee and Asylum Law Division, CIS
Rebekah Tosado, Office of Civil Rights and Civil Liberties, CIS

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



**NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES**

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12 August 2005

BY FACSIMILE (202-307-9911)

Mr. John Torres, Acting Director
Office of Detention and Removal
801 Eye Street, N.W., Suite 900
Department of Homeland Security
Washington, DC 20536

Re: UNHCR Mission to Pamunkey Regional Jail

Dear Mr. Torres:

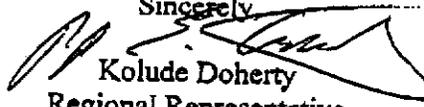
I write to request your office's assistance in facilitating a UNHCR visit to the Pamunkey Regional Jail in Hanover, Virginia on 23 August 2005. This visit would be undertaken within the context of UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

At the jail, we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. To better document conditions at the facilities, we would also like to bring cameras with us during our visit if possible. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained, and will provide you with the names and "A" numbers of these individuals in advance of our visit.

The UNHCR delegation will comprise two representatives from UNHCR's Regional Office for the United States and the Caribbean, located in Washington, DC. Members of the delegation are Eduardo Arboleda, Deputy Regional Representative, and (b)(6) Legal Intern. (b)(6) will be our Office's point of contact in arranging the visit. He can be reached at 202-296-

Thank you, as always, for your assistance in accommodating our site visit requests. We will discuss our findings with you and provide a written report after our mission. We look forward to working with you and local DHS officials in arranging this visit.

Sincerely,


Kolude Doherty
Regional Representative

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



**NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES**

*Regional Office
for the United States of America &
the Caribbean*

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*Bureau Régional
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Caralbes*

Telephone: (202) 296-5191
Fax: (202) 296-5660
E-mail: USAWA@UNHCR.CH

3 November 2005

BY FACSIMILE (202-307-9911) & FIRST CLASS MAIL

Mr. John Torres
Acting Director
Office of Detention and Removals
US Immigration and Customs Enforcement
US Department of Homeland Security
801 "Eye" Street, NW
Washington, DC 20535

Re: UNHCR Missions to the Monroe County Jail in Monroe, MI, the
Northwest Detention Center in Tacoma, WA, and the Buffalo Federal
Detention Center in Batavia, NY.

Dear Mr. Torres,

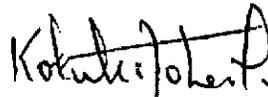
I write to advise ICE of the UNHCR Regional Office in Washington, D.C.'s November 2005 missions to various detention facilities, and to request ICE's assistance in facilitating visits by UNHCR to the following facilities: visit to Monroe County Jail in Monroe, MI on 18 November; visit to Northwest Detention Center in Tacoma, WA on 22 November; and a visit to the Buffalo Federal Detention Facility in Batavia, NY on 28 November. These visits would take place within the context of UNHCR's monitoring role under Article 8(3) of the US-Canada "Safe Third Country" Agreement and UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

During our visit, we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained. We will provide you with the names and "A" numbers of these individuals, to the extent possible, in advance of our visit.

(b)(6) Protection Consultant and representative from UNHCR's Regional Office for the United States and the Caribbean, will be the UNHCR delegate. (b)(6) will also be our Office's point of contact in arranging the visit. She can be reached at 202-296-(b)(6)

Thank you, as always, for your assistance in accommodating our site visit requests. We look forward to working with you and local ICE officials in arranging this visit.

Sincerely,



Kolude Doherty
Regional Representative

Cc: Joseph Langlois, Director, Asylum Division
US Citizenship and Immigration Services

**UNHCR**United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés**Facsimile Message**

UNHCR

1775 K Street, NW
Suite 300
Washington, DC 20006

To/A: Mr. John Torres, Director
Office of Detention and Removal
Bureau of Immigration and Customs
Enforcement
Department of Homeland Security

Destination fax number/
N° fax du destinataire: (202) 514-5065

From/De: Thomas Albrecht, Deputy Regional
Representative

Return fax number/
N° fax retour: (202) 296-5660

Date: 27 September 2007

Tel: (202) 296-5191

Code:

Email:

(b)(6)

No. of pages (including this one)/ 3
Nbre. de pages (celle-ci incluse):

**Subject: UNHCR Visit to Atlanta, GA
15-16 October 2007**

Please find attached letter.

Best regards,

**UNHCR**United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés**UNHCR**United Nations High Commissioner for Refugees
Regional Representation in Washington1775 K Street NW
Suite 300
Washington, DC 20006Tel: (202) 243-7610
Fax: (202) 296-5660
Email: (b)(6)

27 September 2007

Dear Mr. Torres,

Subject: UNHCR Visit to Atlanta, Georgia 15 – 16 October 2007

I am writing to request your assistance in facilitating a visit of the Representation of the United Nations High Commissioner for Refugees (UNHCR) in Washington, D.C. to the Atlanta City Detention Center in Atlanta, Georgia, where we understand many of those in Immigration and Customs Enforcement custody are detained, pending adjudication of their requests for asylum or other applications. This visit would be undertaken within the context of UNHCR's advisory relationship with the United States Government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees. The purpose of our visit is to meet with Department of Homeland Security (DHS) officers working in the field to gain a deeper appreciation of the challenges they face in the Georgia area.

We would be interested in meeting with the appropriate jail and DHS officials, having a tour of the facility, and meeting with individual asylum-seekers detained at the facility, perhaps four in total.

The UNHCR delegation will include myself and (b)(6) Protection Officer. (b)(6) will be our point of contact in arranging the visit. She can be reached at 202-243 (b)(6)

John Torres, Director
Office of Detention and Removal
Bureau of Immigration and Customs Enforcement
Department of Homeland Security
801 Eye Street, N.W., Suite 900
Washington, DC 20536



Thank you for your kind assistance in accommodating our site visit requests. We look forward to working with you and local DHS officials in arranging this visit.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Albrecht", written over a horizontal line.

Thomas Albrecht
Deputy Regional Representative

cc: Mr. Igor V. Timofeyev, Senior Advisor for Refugee and Asylum Policy
Citizenship and Immigration Services
U.S. Department of Homeland Security

Mr. Joseph Langlois, Director, Asylum Division
Citizenship and Immigration Services
U.S. Department of Homeland Security

Mr. Ronald Whitney, Acting Chief, Refugee and Asylum Law Division
Citizenship and Immigration Services

Ms. Rebekah Tosado, Director of Review and Compliance
Office of Civil Rights and Civil Liberties
U.S. Department of Homeland Security

**UNITED NATIONS
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11 April 2005

BY FACSIMILE (202-307-9911) & FIRST CLASS MAIL

Mr. Victor Cerda
Acting Director
Office of Detention and Removals
US Immigration and Customs Enforcement
US Department of Homeland Security
801 "Eye" Street, NW
Washington, DC 20535

Re: UNHCR Mission to Franklin County Jail, NY

Dear Mr. Cerda,

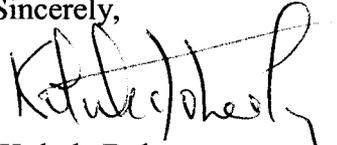
I write to request ICE's assistance in facilitating a visit by the UNHCR Regional Office in Washington, DC, to the Franklin County Jail in Malone, NY on 28 April 2005. This visit would be undertaken within the context of UNHCR's monitoring role under Article 8(3) of the US-Canada "Safe Third Country" Agreement and UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

During our visit, we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained. We will provide you with the names and "A" numbers of these individuals, to the extent possible, in advance of our visit.

(b)(6) Protection Consultant and representative from UNHCR's Regional Office for the United States and the Caribbean, will be the UNHCR delegate. (b)(6) will also be our Office's point of contact in arranging the visit. She can be reached at 202-296-(b)(6)

Thank you, as always, for your assistance in accommodating our site visit requests. We look forward to working with you and local ICE officials in arranging this visit.

Sincerely,

A handwritten signature in black ink, appearing to read "Kolude Doherty". The signature is written in a cursive style with a large, sweeping flourish at the end.

Kolude Doherty
Regional Representative

Cc: Joseph Langlois, Director, Asylum Division
US Citizenship and Immigration Services

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



*Regional Office
for the United States of America &
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Telephone: (202) 296-5191
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E-mail: USAWA@UNHCR.CH

2 May 2005

BY FACSIMILE (202-307-9911)

Mr. Victor Cerda, Acting Director
Office of Detention and Removal
801 Eye Street, N.W., Suite 900
Department of Homeland Security
Washington, DC 20536

Re: UNHCR Mission to Puerto Rico and the US Virgin Islands

Dear Mr. Cerda:

I write to request your office's assistance in facilitating a UNHCR visit to detention facilities in Puerto Rico during the period from 16 to 18 May 2005. This visit would be undertaken within the context of UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

During the visit, we are interested in visiting both the Metropolitan Detention Center in San Juan and the Service Processing Center in Aguadilla. At each facility we would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. To better document conditions at the facilities, we would also like to bring cameras with us during our visit if possible. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained, and will provide you with the names and "A" numbers of these individuals in advance of our visit.

As part of the visit, we hope to gain further information on expedited removal processing in the US Virgin Islands as well as prosecutions for illegal entry and document fraud and the consistency of any such prosecutions with Article 31(1) of the 1951 Convention relating to the Status of Refugees. We would like the opportunity to meet with local DHS officials in the US Virgin Islands on either the 19th or 20th of May to discuss both of these issues.

The UNHCR delegation will comprise two representatives from UNHCR's Regional Office for the United States and the Caribbean, located in Washington, DC.

Members of the delegation are (b)(6) Senior Protection Officer, and (b)(6) (b)(6) Protection Officer. (b)(6) will be our Office's point of contact in arranging the visit. She can be reached at 202-296 (b)(6)

Thank you, as always, for your assistance in accommodating our site visit requests. We will discuss our findings with you and provide a written report after our mission. We look forward to working with you and local DHS officials in arranging this visit.

Sincerely,



Kolude Doherty

Regional Representative

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES



NATIONS UNIES
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21 May 2004

BY FIRST CLASS MAIL

Mr. Victor Cerda
Acting Director, Office of Detention and Removal Operations
US Bureau of Immigration and Customs Enforcement
801 Eye Street, NW, Suite 900
Department of Homeland Security
Washington, DC 20536

Re: **Initial Observations of Conditions in Louisiana Parish Prisons – Avoyelles
Women's Correctional Center in Cottonport and Tangipahoa Parish Prison
in Amite**

Dear Mr. Cerda:

I would like to thank you and your colleagues for your assistance in facilitating our visit earlier this month to detention sites in Louisiana. I would like to acknowledge the assistance from both your Washington offices and DHS Field Offices in Louisiana, which is indicative of the continuing collaboration UNHCR enjoys with DHS.

While we will be submitting a full report on our recent visits to Louisiana, I would like to take this opportunity to inform you briefly of some of our most pressing concerns regarding conditions in two of the Louisiana parish prisons that UNHCR visited during the first week of May: the Avoyelles Women's Correctional Center in Cottonport (Cottonport facility) and Tangipahoa Parish Prison in Amite (Amite Facility). Individuals of concern to UNHCR, including detained asylum-seekers or refugees seeking withholding of removal, as well as stateless individuals, may be detained in these prisons under conditions that fall below minimum international standards and minimum DHS/ICE standards. In some instances, these conditions violate commonly accepted human rights norms.

As you are aware, UNHCR reported to former INS on its concerns regarding Louisiana parish prisons in April 2001, when UNHCR's site visits revealed below standard conditions. At that time UNHCR recommended that INS cease using the Avoyelles Parish Prison in Marksville

and the Amite facility. UNHCR understands that the Marksville facility is no longer being used for DHS detainees, and we appreciate this decision. The Amite facility, however, continues to hold DHS detainees and, based on what we observed during our recent visit, conditions have not improved. At the Cottonport facility, conditions appear to have deteriorated. A summary list of concerns at these two facilities follows:

- Both facilities were extremely dirty;
- Personnel have received no training in refugee or human rights issues and acted in an unprofessional manner;
- Medical staffing was inadequate;
- Living areas were smoke-filled, with no non-smoking sleeping areas; the health of detainees was affected by this environment;
- ICE detainees were co-mingled with inmates serving criminal sentences, apparently regardless of severity of crime;
- Libraries were inadequate and lacked country of origin information;

Specific to the Cottonport facility

- We received many complaints of verbal abuse and a report of physical abuse by a guard; individuals were fearful of reprisals for speaking to us;

Specific to the Amite facility

- Holding or segregation areas were abysmal – e.g., a small bare concrete cell, empty except for a small grate in the floor that served as a toilet, was used to hold individuals who were on “suicide watch”; individuals of concern to UNHCR do not appear to be exempt from these segregation areas;
- Collect calls to UNHCR were not possible.

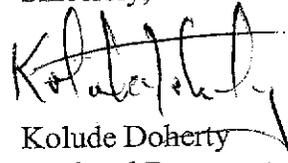
As you well know, detention of refugees and asylum-seekers, as well as stateless individuals, is an issue of great concern to UNHCR. UNHCR's Executive Committee (*see, e.g.*, Conclusion No. 44), has stated that asylum-seekers should normally not be detained. This principle is also found in UNHCR's Detention Guidelines. We encourage DHS to use alternatives to detention. To the extent that detention is utilized, however, treatment of detainees should be humane, with respect shown for the inherent dignity of the person, and must meet the basic standards and norms contained in international human rights instruments. The conditions of detention we have described above are inappropriate for individuals of concern to UNHCR, many of whom may have suffered torture or other trauma in their own countries.

Given these observations, UNHCR strongly recommends that DHS cease to hold detainees in the Cottonport and Amite facilities. Of particular concern is that despite our recommendations in 2001 that the Amite facility not be used by INS to hold detainees and our recommendations regarding specific areas of concern with the Cottonport facility, the sub-standard conditions we noted at that time continue today. We hope that this letter will prompt action on an urgent basis.

Due to the urgency of the concerns noted above, this letter sets forth only a summary of key observations. UNHCR will provide DHS with a full report of our May visits to Louisiana

parish prisons, as well as our recommendations, in the coming month. Once again, I wish to thank you for your continued assistance and I look forward to hearing from you soon regarding any action you have taken on the recommendations set forth in this letter.

Sincerely,



Kolude Doherty
Regional Representative

cc:

Joseph Cuddihy, Director, Office of International Affairs, CIS
Dan Sutherland, Director, Office of Civil Rights and Civil Liberties, DHS
(b)(6), (b)(7)c Field Officer Director, New Orleans Field Office, ICE
(b)(6), (b)(7)c Chief, Detention Compliance Branch, ICE


UNHCR

 United Nations High Commissioner for Refugees
 Haut Commissariat des Nations Unies pour les réfugiés

UNHCR

 2004 NOV 5 PM 11 03
 1775 K Street, NW
 Suite 300
 Washington, DC 20006

 Tel.: 2022965191
 Fax: 2022965060
 Email: (b)(6)

3 December 2004

BY FACSIMILE (202-307-9911) & FIRST CLASS MAIL.

Mr. Victor Cerda
 Acting Director
 Office of Detention and Removals
 Bureau of Immigration and Customs Enforcement
 US Department of Homeland Security
 801 "Eye" Street, NW
 Washington, DC 20535

Re: Implementation of US-Canada "Safe Third Country" Agreement and Possible Pre-Implementation Surge of Asylum-Seekers at Land Border POEs

Dear Mr. Cerda,

As you are likely aware, on 29 November 2004, the Department of Homeland Security (DHS) and the Department of Justice (DOJ) issued final regulations implementing the US-Canada "Safe Third Country" Agreement ("Agreement"). The Agreement is now scheduled to go into effect on 29 December 2004. I write to you given the possibility of a surge of foreign nationals seeking to enter Canada from the US to claim asylum in Canada before the Agreement goes into effect and the implications of such a surge on US immigration enforcement activities.

Since the Agreement was signed in December 2001, there have been two occasions of large numbers of foreign nationals seeking to enter Canada to apply for asylum from the US. The first occasion was in May / June 2002, when there were rumours that the Agreement was to go into effect on 28 June 2002. The second occasion was in January / February 2003, when large numbers of individuals sought to leave the US in response to the US National Entry Exit Registration System (NSEERS) program. On both occasions, Citizenship and Immigration Canada (CIC) lacked the necessary resources to immediately process the refugee claims being presented. As a result, CIC directed individuals back to the US with re-scheduled interview dates at the POE. During the 2002 surge, CIC only "directed-back" those individuals with legal status in the US. During the 2003 rush, however, individuals were directed-back regardless of legal status in the US. For the 2003 caseload, the INS then detained many of the individuals in unlawful status, such that they were unable to return to the POE for their re-scheduled CIC interview absent payment of a significant bond.



I am attaching for your reference a report that UNHCR submitted to INS and CIC in August 2002 regarding the May / June 2002 border surge, with recommendations on how both governments might respond to similar situations in the future. You will note that UNHCR recommended that CIC ensure that it has adequate staffing at the POEs to respond to any surge in refugee claimants and that it direct claimants back to the US only on an exceptional basis. UNHCR recommended to INS that, should direct-backs occur, it abstain from detaining individuals absent criminal and/or other security concerns.

We take this opportunity to reiterate these recommendations in light of a possible "rush to the border" this month. UNHCR fully recognizes the right of the US government to enforce its immigration laws with regard to persons unlawfully in the US. Given the exceptional nature of this situation, however, we would urge DHS to abstain from detaining refugee claimants "directed-back" to the US absent criminal and/or security concerns. As noted in the attached report, and not surprisingly, persons directed-back to the US with re-scheduled CIC interviews have an extremely high appearance rate for their CIC interviews. This will perhaps alleviate any DHS concerns that these refugee claimants would seek to remain in the US unlawfully.

We appreciate your consideration of this request, which is made on humanitarian grounds. Please do not hesitate to contact me should you wish to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eduardo Arboleda', written over a horizontal line.

Eduardo Arboleda
Officer-in-Charge

Cc: Joseph Langlois, Director, Asylum Division, CIS
Linda Lovelcss, Director, Office of Policy and Planning, CBP
Molly Groom, Chief, Refugee and Asylum Law Division, CIS
Rebekah Tosado, Senior Attorney, Office for Civil Rights and Civil Liberties

**UNHCR**United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés**UNHCR**1775 K Street, NW
Suite 300
Washington, DC 20006Tel.: 2022965191
Fax: 2022966880
Email: (b)(6)

29 August 2002

BY HAND DELIVERY

Renee Harris, Director, Office of International Affairs
William Yates, Acting Deputy Associate Commissioner for Enforcement
Joseph Langlois, Director, Asylum Division
Bo Cooper, General Counsel, Office of General Counsel
Immigration and Naturalization Service
425 Eye Street, NW
Washington, DC 20536

Re: Report on UNHCR Missions to US-Canada Border

Dear Ms. Harris, Mr. Yates, Mr. Langlois, and Mr. Cooper,

Please find enclosed a joint report prepared by UNHCR Washington, DC and UNHCR Ottawa regarding two missions undertaken by UNHCR to the US-Canada border in July 2002. These visits were undertaken within the context of UNHCR's advisory relationship with the United States and Canadian government with respect to their obligations under the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol.

UNHCR's missions to the border were prompted by a significant increase in the number of asylum-seekers approaching the Buffalo/Ft. Erie and the Champlain/Lacolle Port of Entries (POEs) during May and June 2002. The purpose of the missions was to observe border conditions as they affect asylum-seekers and to observe POE asylum procedures. To this end, UNHCR met with officials of the US government (INS, Border Patrol and Customs), the Canadian government (CIC), and area NGOS.

The enclosed report provides background and statistics on the border situation during the May-July 2002 period, observations on INS and CIC processing, and concludes with recommendations for resolving certain cases of concern and in preparing for a possible future influx of refugee claimants to the border once a US-Canada "Safe Third Country" agreement is signed, but before it is implemented.



Please be informed that our colleagues at UNHCR Ottawa have shared this same report with their Canadian government counterparts. We would appreciate it if you would share it with your colleagues at the US Border Patrol and US Customs.

We look forward to discussing with you the observations and recommendations made in this report. We hope that you will find it useful.

Sincerely,

A handwritten signature in black ink, appearing to read "Guenet Guebre-Christos".

Guenet Guebre-Christos
Regional Representative

Cc: Kelly Ryan, Deputy Assistant Secretary, Bureau of Population, Refugees and Migration, Department of State
Michael Creppy, Chief Immigration Judge, Executive Office for Immigration Review

Report on UNHCR Missions to US-Canada Border

I. Introduction

In July 2002, UNHCR undertook two missions to the US-Canada border, to the Buffalo/Ft. Erie Port of Entry (POE) and the Champlain/Lacolle POE, in order to assess border conditions and review POE procedures. The missions were undertaken jointly by the UNHCR Offices in Canada and the United States in response to reports of increased numbers of asylum-seekers requesting protection in Canada in June 2002. This increase in numbers strained local NGO and CIC operations capacities at the two ports and resulted in precarious living conditions for those arriving at the border. UNHCR was also made aware of cases of persons who were directed back from Canada to the US and detained by the INS.

We hope that the following comments will serve to provide an overview of the border situation during the May-July 2002 period and assist the two governments in establishing procedures to respond to another possible surge in refugee claimants following the signature but prior to implementation of the "Safe Third Country" Agreement currently being negotiated. UNHCR seeks to ensure that those who request asylum in Canada have meaningful access to the Canadian procedure during this interim period. Consistent with this goal, UNHCR encourages the US government to facilitate CIC processing in emergency situations by ensuring that asylum seekers who are directed-back to the US are not unduly detained.

The mission to Buffalo, NY and the Buffalo/Ft. Erie POE was undertaken by (b)(6) Legal Counselor, UNHCR Washington, and (b)(6) Regional Legal Officer, UNHCR Toronto on 2-3 July.¹ The mission to Plattsburgh, NY and the Champlain/Lacolle POE was undertaken by (b)(6) Legal Counselor, UNHCR Washington, and (b)(6) Regional Legal Officer, UNHCR Montreal on 25-26 July.²

II. Background & Statistics

The majority of asylum-seekers approaching the US/Canada land border POEs are seeking asylum in Canada and not the United States. In 2001, 14,132 asylum applications were lodged in Canada at the US-Canada border. This compares to a few hundred claims lodged at the US border by claimants coming from Canada.

Given this north-bound movement of refugee claimants, the capacity of CIC to process claims has been of critical importance in ensuring smooth border operations. At the Ft. Erie POE, CIC has relied heavily on the assistance of a Buffalo-based

¹ During the mission, UNHCR met with: (1) Officials with the INS ((b)(6), (b)(7)c), Port Director, and (b)(6), (b)(7)c Inspections Supervisor) and US Customs ((b)(6), (b)(7)c Supervisory Customs Inspector, and (b)(6), (b)(7)c Customs Inspector); (2) Officials with CIC ((b)(6), (b)(7)c Supervisor of Refugee Processing Unit, (b)(6), (b)(7)c Acting Port Manager, and (b)(6), (b)(7)c Regional Manager); and, (3) Representatives of VIVE La Casa, a refugee shelter in Buffalo.

² During the mission, UNHCR met with: (1) Officials with the INS ((b)(6), (b)(7)c Area Port Director, and (b)(6), (b)(7)c Supervisory Inspector), US Customs ((b)(6), (b)(7)c Chief Inspector), and Border Patrol ((b)(6), (b)(7)c Assistant Chief Patrol Agent, and (b)(6), (b)(7)c Border Patrol Agent); (2) Officials with CIC ((b)(6), (b)(7)c Port Director); and, (3) Representatives of Vermont Refugee Assistance/Vermont Immigration Project and the Plattsburgh Salvation Army.

refugee shelter, VIVE la Casa. Asylum-seekers will generally contact VIVE before approaching the border and VIVE will then schedule the initial CIC appointment. In this manner, CIC has been able to regulate the number of asylum interviews each day, allowing for the additional processing of "spontaneous arrivals" (those who have not stopped at VIVE and arrive at the POE without pre-scheduled interviews) as necessary.

Processing at Ft. Erie began to come under strain soon after September 11, 2001. After September 11, CIC increased its security measures by implementing a front-end security screening process for asylum-seekers. As a result, CIC Officers at the POE spent a longer amount of time screening each applicant for admission, thereby reducing the total number of cases that could be completed each day. This slow-down began to create a back-log of cases at VIVE, where asylum-seekers were maintained as they awaited their interviews. The co-operation between VIVE and CIC was strained in late September 2001, when VIVE brought 36 asylum-seekers to the border without pre-scheduled interviews, to protest CIC processing delays. Before the end of September, CIC Ft. Erie received instructions from CIC Ottawa to direct refugee claimants back to the US if the need arose. Despite the processing delays, however, and through co-ordination with VIVE, CIC was largely able to avoid direct-backs to the US of spontaneous arrivals.

In May and June 2002 the number of asylum-seekers approaching the border increased significantly. This was largely due to two events. The first was the imminent coming into force of the new Canadian immigration law, the Immigration and Refugee Protection Act (IRPA) on 28 June, and the desire of many previously rejected refugee claimants to re-submit their claims prior to this date.³ The second factor was unfounded rumors that the US-Canada "Safe Third Country" Agreement was due to go into effect on 28 June. This rumor led many asylum-seekers to believe that the US-Canada border would effectively "close" on that day.

The Ft. Erie POE was relatively insulated from the physical crush of applicants during the June 2002 rush because, for the most part, applicants were stopping at VIVE first and remaining there until their CIC interviews were scheduled. VIVE was not so insulated, however, and by the last week in June was operating at over twice its capacity, at about 270 persons. Citing health and fire regulations, the city of Buffalo forced the shelter to find alternative accommodations for many of them, and, for the first time in VIVE's history, asylum-seekers had to be refused assistance.

The Lacolle POE, not having a US refugee shelter to absorb the rising numbers, was confronted with an influx of claimants approaching the POE, primarily between 22 May and 28 June 2002. Part of this influx comprised applicants directed to the Lacolle POE by VIVE while others were spontaneous arrivals. In May and

³ Prior to 28 June, asylum-seekers who had been rejected by Canada and allowed to re-enter the US, were able to re-apply in Canada after 90 days. Under IRPA, second claims are allowed if six months have passed since leaving Canada and are examined on the basis of new evidence only in the pre-removal risk assessment procedure. Consequently, many asylum-seekers who wanted to re-apply in Canada may have felt compelled to present themselves at the Canadian border before 28 June.

June 2002, Lacolle saw an increase in the number of applicants of 83% and 341% respectively, compared to the same months in 2001.⁴

III. Observations

A. CIC Processing

The increase in numbers was addressed differently by the two Canadian POEs visited by UNHCR. Both POEs sought to process as many cases as possible with the available resources, generally exhausting staff. At the Ft. Erie POE, CIC relied heavily on VIVE to alleviate the pressure. Spontaneous arrivals were directed back to VIVE to schedule appointments, including those without lawful status in the US who could be subject to detention. At the same time, however, CIC's capacity to adjudicate claims decreased due to a shortage of available staff (many CIC officers were absent for training on the new immigration law). As the number of asylum-seekers seeking assistance at VIVE rose, as compared to the previous year (81% in May; 35% in June),⁵ the number of CIC interviews conducted at the POE during this same period actually fell, as compared to the previous year (47% in May; 26% in June).⁶ During the first three weeks of June, CIC Ft. Erie was only able to adjudicate between 15-20 cases a day. This number appeared to double, however, during the last week in June when CIC staffing increased to 12 officers.

As noted, the Lacolle POE did not have an established US NGO to help regulate its number of arrivals and to accommodate persons pending their interviews. Asylum applicants at the Lacolle POE waited for interviews at the CIC offices, typically spending two or three nights sleeping on the floor of the waiting room. The Port Director at Lacolle called on all available local staff and "borrowed" other staff to help process cases. Despite the fact that the POE was processing about 35 persons a day (up from the usual average of 15 to 20), arrivals continued to increase. By 19 June, CIC was housing 150 claimants in its offices and in a mobile dwelling unit and was compelled to begin directing claimants back to the US. Only those with lawful status in the US were directed-back so as to avoid possible detention by the INS.⁷ Even though the number of personnel was limited, by the end of June, the POE had processed almost three times (290%) as many cases as the previous year.⁸

On 10 July, CIC reported that seven (7) CIC officials and an undisclosed number of Canadian Customs officials who work at the Lacolle POE had tested positive for tuberculosis (TB). It is believed that this may have resulted from contact with a claimant who had spent three days waiting for an interview at CIC offices in June.

⁴ CIC Lacolle Intake Numbers: 353 (May 2001) compared to 647 (May 2002); 366 (June 2001) compared to 1250 (June 2002).

⁵ VIVE Intake Numbers: 395 (May 2001) compared to 717 (May 2002); 455 (June 2001) compared to 705 (June 2002).

⁶ CIC Ft. Erie Processing Numbers: 802 (May 2001) compared to 423 (May 2002); 890 (June 2001) compared to 653 (June 2002).

⁷ In Plattsburgh, NY, near the Champlain/Lacolle POEs, the Salvation Army established a make-shift shelter at its offices to respond to the large number of asylum-seekers being directed-back by CIC (discussed below). At its peak, it was accommodating about 84 people at one time.

⁸ CIC Lacolle Processing Numbers: 353 (May 2001) compared to 341 (May 2002); 366 (June 2001) compared to 1060, excluding direct-backs (June 2002).

In responding to the influx, neither the Ft. Erie nor the Lacolle POE permitted applicants to proceed inland in any significant numbers while they awaited the initial adjudication of their claims at the border. Accommodation and shelters in the immediate vicinity were scarce (the Port Director at Lacolle did utilize a community center in the town of Lacolle which could accommodate 65 people, but this proved insufficient) and CIC appeared reluctant to allow claimants to travel further inland for fear that this would defeat the purpose of POE processing and also prove to be a magnet for more arrivals.

B. Direct-Backs

1. CIC

During this period, when there was a significant increase in the number of asylum-seekers coming to the border, a primary concern was the consequences of a CIC direct back policy. Direct-backs of any person not clearly in lawful status in the US raised the possibility of apprehension and detention by the INS. CIC guidelines require that, before directing a refugee claimant back to the US, assurances must be obtained from the US that the claimant "will be made available for further examination on the date and time specified in the appointment letter." Absent such confirmation, "return to the US cannot be effected."⁹ Direct-backs and detention by the INS, without INS guarantees of release to appear for the scheduled CIC interview, would contravene these guidelines.

The ability of CIC to conduct direct-backs in compliance with its policy directive of assuring return to Canada required a significant amount of co-operation with INS counterparts on the other side of the border. UNHCR noted during its visits that such co-operation appeared to exist, in varying degrees, between the INS and CIC.

The Ft. Erie POE has been utilizing direct-backs to the US since September 2001, although it appears that the numbers have generally been small. In May and June 2002, CIC Ft. Erie directed-back only about 12 refugee claimants a month, including persons without lawful status in the US. For each case directed-back, CIC Ft. Erie sought an "understanding" from the US INS that the INS would not detain the claimant upon return. CIC officers called INS officers on each case to determine whether the possibility of detention on return existed. While INS would never guarantee that a person would not be detained absent an in-person INS inspection with checks on various US databases (such as (b)(2)High), a person with lawful status in the US generally would not face detention. After the CIC-INS telephone conversation, the applicant would re-cross the Peace Bridge to the US POE on his/her own. If found inadmissible and subject to detention, the INS would not necessarily return him/her to Canada.

CIC Lacolle was under greater strain because it did not have a US NGO to regulate its arrivals. CIC Lacolle did not begin direct-backs until 19 June and then

⁹ See "CIC Refugee Claimant Deferral and Temporary Return Policy" (October 2001).

only for those with lawful status in the US¹⁰. By 28 June, CIC had directed 189 refugee claimants back to the US with scheduled interviews at a later date. Of note were the extra steps taken by CIC Lacolle to ensure that a person directed-back was not detained by the INS. On at least a few occasions, CIC would physically accompany the refugee claimant to the US POE, where the INS would do the necessary computer checks. If the person was found to be in lawful status in the US, the CIC would release him/her to INS custody, which would then inspect and admit the person into the US. If the person was found to be in unlawful status, the person could remain in CIC custody and be accompanied back to the Canadian POE. This person would not be directed-back to the US, but would rather be processed by CIC at Lacolle.

To UNHCR's knowledge, these extra steps were not taken at the Ft. Erie POE. The reason is likely attributable, at least in part, to the mere geography of the two POEs. The Champlain and Lacolle POEs are separated by a stretch of grass and highway that can be traversed in only about 10 minutes. The Buffalo and Ft. Erie POEs, in contrast, are separated by a lengthy bridge with a high volume of traffic. The efforts of the Lacolle Port Director, (b)(6), (b)(7)c, however, merit recognition. It appears that (b)(6), (b)(7)c took extra steps to ensure that refugee claimants were not detained if directed-back to the US, even if requiring the use of limited CIC staff to physically accompany a refugee claimant to the US POE.

2. INS

a. *INS Procedures*

Except in limited cases (e.g., criminal convictions; persons "certified" on terrorism and/or security grounds), INS has the discretion whether to detain someone directed-back from Canada.¹¹ INS at both the Buffalo and Champlain POEs seemed to agree that, absent unusual circumstances, persons directed-back who had lawful status in the US would not be detained or placed in US removal proceedings.

For those in unlawful status, different processing options appeared available. For the vast majority of cases at the Peace Bridge POE (which received direct-backs who were in unlawful status), it appears that INS issued a Notice to Appear (NTA) and placed the person in removal proceedings. For some cases, however, INS issued a Voluntary Departure order, simply requiring the person to leave the US within a certain amount of time (usually some days after the scheduled CIC interview).¹²

For those issued NTAs and placed in US proceedings, the INS generally has the discretion to decide whether to detain him/her. Factors considered include danger

¹⁰ One person in unlawful status was directed back from the Philipsburg POE, discussed below under "(b) INS Statistics."

¹¹ The INS has taken the position that persons directed-back from the Canadian POE are not subject to expedited removal proceedings and mandatory detention. This is based on the legal fiction that the persons had never "left" the US in the first place and therefore would not be "arriving aliens" subject to expedited removal.

¹² INS Champlain did not consider Voluntary Departure orders to be an option, but also had not received any direct-backs from Lacolle who were in unlawful status. Processing decisions for both the Peace Bridge and Champlain POEs are made at the INS district level in Buffalo, NY, which confirmed that Voluntary Departure orders, while not often used, are considered a processing option.

to the community, criminal convictions, extended unlawful stay in the US, and flight risk. For those detained, INS would generally impose a bond from US\$5,000 up, which could later be reduced by an Immigration Judge at a bond re-determination hearing. UNHCR is aware of INS setting bonds as high as US\$25,000.

It is UNHCR's understanding that immigration courts in the Buffalo area adjudicate the cases of Canada-bound asylum-seekers differently. Many of those released from US detention on bond would still travel to Canada to pursue their claims. At least one Immigration Judge in the Buffalo area will terminate the proceedings in the US upon proof that the Canadian claim has been made, such that the claimant can regain his/her bond money. It is UNHCR's understanding, however, that at least one other Immigration Judge will order such claimants deported *in absentia* if they fail to re-cross the Canadian border to appear at their US hearing. These claimants would lose their bond money and would be barred from re-entering the US for at least five years.

b. *INS Statistics*

To date, UNHCR is aware of three cases where INS detained a refugee claimant directed back to the US by CIC in May-June 2002, but believes this number to be low. One claimant arrived spontaneously at the Ft. Erie POE in mid-June and was directed back to the US where he was detained by the INS. He was released on a US\$10,000 bond and is currently in Canada. His master calendar hearing in Buffalo is scheduled for late September. A second claimant arrived spontaneously at the CIC POE at the Rainbow Bridge in late-June. He was directed back to the US with instructions to enter at the Peace Bridge. He was placed in proceedings by the INS and remains detained in the US with a US\$25,000 bond. Finally, another refugee claimant sought entry at the Philipsburg, Quebec POE. He was directed to enter at the Champlain/Lacolle POE but was apprehended by the INS. He remains detained by the INS with a bond set by the immigration court at US\$25,000.

UNHCR is currently seeking additional information about these cases, which will be transmitted to CIC and INS, subject to the consent of the asylum seekers. UNHCR is also seeking information on other cases of possible INS detention arising from CIC direct-backs and will inform both INS and CIC of these cases as information becomes available.

c. *Care and Maintenance of Asylum-Seekers Directed Back to the US*

As noted above, VIVE provides care and maintenance for Canada-bound asylum-seekers seeking to enter Canada, primarily at the Peace Bridge. During the May-June 2002 influx, VIVE accommodated not only those who arrived at the shelter directly, but also those directed-back to the US by CIC at Ft. Erie.

At the Champlain POE, there was no established shelter to accommodate those directed-back by CIC Lacolle nor was there US government planning for their return. It appears that it was only through the initiative of an officer with the Federal Protective Services (FPS) (part of the General Services Administration (GSA) that owns the Champlain POE land) that those directed-back were assisted in finding accommodations. On 19 June, Lacolle began directing claimants back to the US.

That evening, an FPS officer who worked at the POE called the Salvation Army in Plattsburgh to inform them that 12 people had been directed-back and asked if the Salvation Army could accommodate them. The FPS officer knew of the Salvation Army through his work as a board member for his local church. While the Salvation Army was not a shelter, it agreed to attempt to accommodate the asylum-seekers.

This began an impressive degree of co-ordination between CIC, the USG, and US-based NGOs in meeting the needs of these asylum-seekers. CIC informed the FPS officer of the number of persons to be directed-back to the US POE. The FPS officer, in turn, contacted the Salvation Army so that transportation by the Salvation Army to Plattsburgh could be arranged. All parties were in constant contact with each other. The Salvation Army and the Vermont based NGO, Vermont Refugee Assistance, were in constant contact with CIC and sought to keep US Border Patrol and INS informed of developments.

C. US Government Outbound Inspections

Another aspect to the processing of Canada-bound asylum claims is the impact of US outbound inspections. Following the events of September 11, the US government established outbound inspections at certain US POEs. At the Peace Bridge, US Customs began 24/7 outbound inspections, inspecting all vehicles and pedestrians departing the US for Canada, and maintains this level of inspections to date. At the Champlain POE, US Customs initially had 24/7 outbound inspections post-9/11, but later scaled them back to about one day a month due to limited resources. US Customs at Champlain expects to increase its outbound inspections to 2-3 days/week in the near future.

In conducting outbound inspections, US Customs is primarily looking for the movement of large amounts of money (over US\$10,000), narcotics, and persons suspected of being involved in terrorist activities. If US Customs encounters someone who is not a US citizen and does not appear to have proper travel documents, it will refer the person to either INS (Buffalo POE) or Border Patrol (Champlain POE) for further inspection.

As with direct-backs, different processing options appear available for those intercepted who are in unlawful status. At the Peace Bridge POE, where outbound inspections regularly occur, for the majority of cases intercepted by INS, the Service would issue an NTA and place the person in removal proceedings. In some cases, however, INS would issue a Voluntary Departure order, or, if the case was clearly not of concern (e.g., a family with children), allow the claimant to continue on to the Ft. Erie POE. Most of the Canada-bound asylum-seekers inspected at the Peace Bridge had been staying at VIVE and had their documents in order (to the extent possible) along with scheduled CIC interviews. Statistics provided by INS at the POE, however, indicated that INS had detained eight Canada-bound individuals between mid-April and end June 2002. The nationalities of these individuals (Colombia, Nepal, Pakistan, Sudan) suggest that most, if not all, of them were asylum-seekers.

In contrast to INS at the Peace Bridge, Border Patrol at Champlain considered issuance of NTAs to be the only option available for those in unlawful status who

were intercepted while outbound.¹³ This appears to be standard operating procedure for Border Patrol as part of its interior enforcement activities. As noted earlier, however, US Customs only conducts outbound inspections at the Champlain POE about once a month. To UNHCR's knowledge, Border Patrol has not apprehended as a result of outbound inspections any persons in unlawful status between at least March and July 2002.¹⁴

Both the INS at the Buffalo POE and Border Patrol at the Champlain POE agreed that the US had to detain any unaccompanied minors intercepted while outbound. One of the eight out-bound individuals detained by the INS at the Buffalo POE between April and June 2002 was an unaccompanied minor from Tibet.

IV. Recommended Action

A. June 2002 Cases of Concern

As noted above, UNHCR is aware of various cases arising out of the May-July 2002 crisis where Canada-bound asylum-seekers were either directed-back to the US and detained by the INS, or detained by the INS during outbound inspections. Some of these individuals were released from detention on bond and are currently seeking asylum in Canada while their proceedings in the US continue. Others remain in detention in the US.

UNHCR encourages the US and Canada to resolve these cases in a humanitarian manner, and consistent with refugee protection principles. The direct-back of an asylum-seeker from Canada that results in detention in the US and prevents the individual from attending his/her CIC interview limits the individual's right to seek asylum. CIC Guidelines require that the CIC not direct a refugee claimant back to the US where s/he may be detained and consequently unable to present himself/herself at the pre-scheduled CIC interview. Additionally, UNHCR is concerned that those who are released in the US and must forfeit bond money to continue on to Canada, imposes undue hardship on asylum-seekers.

UNHCR also affirms that states should not detain asylum-seekers, absent exceptional circumstances. While UNHCR recognizes that the US has no international obligation to facilitate the travel of asylum-seekers to Canada, and that the US has legitimate reasons to detain individuals who pose a real threat to US security, UNHCR encourages the US to co-operate as much as possible in the facilitation of Canadian refugee processing efforts. Likewise, while UNHCR recognizes that Canada has no international obligation to accept asylum-seekers detained by the US during outbound inspections, UNHCR encourages Canada to work with the US in facilitating the travel of these individuals to Canada, pending implementation of the "Safe Third Country" Agreement.

To this end, UNHCR makes the following requests and recommendations:

¹³ The only foreseen exceptions were Canadian citizens or persons with landing in Canada.

¹⁴ Border Patrol at Champlain had intercepted ten individuals as part of its interior enforcement activities during this period. These persons were either referred from the State Police (likely for walking along the highway to the POE), apprehended near the Plattsburgh bus station, or apprehended near the POE. Of these ten, seven were detained and three (a Pakistani family) were released.

To the INS, Border Patrol, and the Executive Office of Immigration Review:

- Provide UNHCR with information (nationalities, ages, legal status, and date and location of detention) on asylum-seekers detained in the US as a result of direct-backs from Canada or outbound inspections to Canada from all US-Canada land border POEs since September 2001.
- For those cases brought to the attention of INS by UNHCR, CIC or NGOs of asylum-seekers directed back and detained in the US or detained during outbound inspections, review these cases sympathetically with a view to release and allow onward travel to Canada, absent any criminal or security reasons for detention. UNHCR notes that CIC generally issues to claimants directed-back to the US a letter acknowledging their Canadian claims. This should alleviate US concerns that Canada may not re-admit them.
- For those asylum-seekers who were detained by the INS while seeking to make a claim in Canada (either outbound or as a result of direct-backs) and who were released on bond and are now in Canada, terminate their US removal proceedings upon proof of arrival in Canada and facilitate the return of any bond money paid. UNHCR notes in this regard the unnecessary and undesirable duplication of asylum claims in both the US and Canada.

To the CIC:

- Ensure compliance with the CIC policy directive prohibiting direct-backs if detention in the US will occur.
- Facilitate the release from INS detention of Canada-bound refugee claimants intercepted and detained during US outbound inspections. To this end, provide INS with all available information about those asylum-seekers currently detained by the INS and, as necessary, assurances that these individuals would not be directed-back to the US if presented at the Canada POE.

B. Potential Future Influx of Asylum-Seekers

Given the border experience from May-July 2002, and taking into consideration limited staffing at the POEs and increased time and resource requirements for eligibility determinations under IRPA, UNHCR is concerned about the effect of an influx at the US/Canada borders after signature but before implementation of the "Safe Third Country" Agreement. The US and Canadian governments have indicated that the Agreement could be signed as early as September with possible implementation in January 2003.

UNHCR seeks to ensure the fair and efficient processing of asylum-seekers at the US-Canada border. UNHCR is especially concerned that an increased influx may occur in the middle of the winter, with harsh weather conditions at the border. The health and safety of refugee claimants, especially families with children, is of great concern. UNHCR is aware, for example, of the practice at the Champlain/Lacolle POE of taxis dropping off asylum-seekers as much as two miles from the POE. This

is done to avoid CIC impounding their vehicles for transporting illegal aliens to Canada. As a result, it has not been uncommon for asylum-seekers, including families with children, to walk along the highway to the POE, at times in inclement weather.

UNHCR believes that much can be learned from the May-July 2002 experience and encourages both the CIC and the INS, in consultation with area NGOs, to plan for a possible rush to the border once the Agreement is announced. UNHCR remains willing to provide any assistance possible in facilitating planning efforts, as well as implementation of any co-ordination proposals.

To this end, UNHCR makes the following recommendations:

To CIC and INS/Border Patrol:

- Meet jointly, and with NGO counterparts, at the national and local levels to discuss and establish a strategy for responding to an influx of asylum seekers at the land border POEs. UNHCR would be willing to participate if requested. Availability of resources for NGO operations, in particular, should be discussed.

To CIC:

- Make contingency plans to ensure that adequate staff is promptly deployed at POEs to assist with processing of asylum claims as necessary. For example, CIC may wish to establish an "Emergency Roster" of CIC officers available for POE deployments.
- Apply the direct back policy exceptionally and with all available safeguards to ensure that detention in the US does not occur. INS-CIC co-operation models used at the Champlain/Lacolle POEs merit particular attention.
- Maintain close co-ordination with NGOs assisting asylum applicants as they await their CIC interviews. If NGO capacity is under strain, take necessary measures to process additional claimants, including allowing entry to Canada through deferred examination provisions.
- Follow-up regularly with INS on detained cases to get updates on their status in the US. For those detained, provide INS with the necessary assurances that, if released, the person will be allowed to approach the POE and that the case will be processed without direct-backs to the US.
- Maintain an intake log with full information on any asylum-seekers directed-back to the US, including names, ages, nationalities, gender, legal status, and any particular vulnerabilities (e.g., elderly, juvenile, mental health, etc.) and to provide same information to INS and UNHCR upon its request.
- To ensure the safety of refugee claimants, consider modification of the policy of impounding taxis that transport refugee claimants without proper documents to the border. Both the Lacolle and Ft. Erie POEs currently allow certain vehicles

associated with VIVE or the Salvation Army to approach the border. An extension of this policy to other vehicles may be appropriate.

To the INS & Border Patrol:

- Co-operate fully with CIC efforts to ascertain the legal status of any person who may be directed-back to the US. Provide CIC with all available information over the telephone. If questions remain, either allow CIC to accompany the claimant to the US POE to access available databases or provide assurances that, absent serious security concerns, the claimant would be allowed to return to the Canadian POE if it appeared upon physical inspection that the INS would likely issue an NTA and/or detain.
- Should direct-backs occur, facilitate return to the Canadian POE to the extent possible. Abstain from issuing NTAs and detaining those in unlawful status absent criminal and/or other security concerns. Provide documentation for those intercepted, either by means of paroling the individual into the US or issuing voluntary departure orders. UNHCR notes in this regard the extremely high appearance rate at the Lacolle POE for those directed-back with scheduled CIC interview dates, which should alleviate INS concerns of individuals absconding in the US.¹⁵
- For Canada-bound asylum-seekers intercepted during outbound inspections who lack legal status in the US, allow them to proceed to Canada unless there are criminal and/or other security reasons to place them in proceedings and/or detain. If the US considers it necessary to document the person's presence in the US, issue voluntary departure orders rather than NTAs.
- Co-ordinate interior enforcement activities with NGOs to facilitate NGO efforts to maintain refugee shelters for those awaiting CIC interview.
- For any Canada-bound unaccompanied minors intercepted by the INS, ensure that access to the Canadian border is allowed. UNHCR understands the unwillingness of INS to allow an unaccompanied minor (UAM) to cross the border alone without assurances that appropriate care will be provided in Canada. In this regard, UNHCR recommends that INS identify the case and specifically report it to CIC to ensure that proper follow-up is made once the UAM reaches Canada.

UNHCR Washington, DC
UNHCR Ottawa
29 August 2002

¹⁵ All but five of the 189 refugee claimants directed-back to the US from the Lacolle POE later appeared for their scheduled CIC interview.

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Mandate of the Special Rapporteur on violence against women its causes and consequences

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(b)(6)

4 December 2008

Excellency,

I have the honour of addressing you in my capacity as United Nations Special Rapporteur on Violence against Women, its Causes and Consequences, pursuant to Commission on Human Rights Resolution 1994/45, General Assembly Resolution 60/251 and Human Rights Council resolution 7/24.

My forthcoming annual report to the 9th session of the United Nations Human Rights Council will focus on the political economy of women's rights and its implications for violence against women. The report aims to elucidate the aspects of global and local political economic environments that serve to both constrain and enable efforts to end violence against women. To guide me in this regard, especially in obtaining baseline information, I have prepared the attached questionnaire on questions pertaining to political economy and violence against women which I am now transmitting to all UN Member States.

This questionnaire, which represents a positive contribution to constructive engagement between States and my mandate, will contribute greatly to the future work of my mandate, enabling appropriate, informed and effective cooperation and assistance to be made available with respect to political economy and violence against women.

I would therefore be grateful to your Excellency's Government for its attention and assistance in completing the attached questionnaire as comprehensively as possible. I and my support staff at OHCHR remain available to provide practical assistance and explanation regarding the completion of this survey. Should you have any questions or require any clarifications concerning this request, Ms. Rosa da Costa, who provides assistance to my mandate at the Office of the High Commissioner for Human Rights, can be contacted at (b)(6) or +41 (b)(6)

I wish to thank your Excellency's Government in advance for its cooperation and I hope to continue a constructive dialogue on issues related to my mandate.

Please accept, Excellency, the assurances of my highest consideration

Yakin Ertürk
 Special Rapporteur on violence against women,
 its causes and consequences

1/4

GVA 1126

**Questionnaire addressed to Governments for the preparation of the thematic report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Yakin Ertürk, on
“Political Economy and Violence against Women”**

Following on the Special Rapporteur's reports to the United Nations Commission on Human Rights on the “Due Diligence Standard” (E/CN.4/2006/61) and to the United Nations Human Rights Council on the “Intersections between Culture and Violence Against Women” (A/HRC/4/34), where she referred to the effects of global political and economic environment as being among the constraints to combating violence against women, her forthcoming annual report to the United Nations Human Rights Council will focus on the political economy of women's rights and its implications for violence against women. This report aims to elucidate the aspects of global and local political economic environments that serve to both constrain and enable efforts to end violence against women.

Violence against women represents a violation of women's civil and political rights but it also affects and is intimately related to their social and economic rights, including in the areas of work, land, water, housing, food, health and social security. Women's lack of social and economic rights makes them vulnerable to violence, while violence prevents women from realising and claiming their full human rights, including their social and economic rights.

This questionnaire is designed to consult member states on both general concepts as well as experiences they may wish to contribute to the process of developing both a better understanding and better strategies regarding the political economy of violence against women. The Special Rapporteur would like to specifically receive information on how local and global economic conditions may affect both women's ability to claim their full human rights and on how government efforts to address violence against women are consistent with their human rights obligations, including the due diligence standard.

Kindly submit your responses to the Special Rapporteur on Violence against Women, its Causes and Consequences; c/o UNOG-OHCHR; CH-1211 Geneva, Switzerland. Responses can also be submitted electronically to vawpoliticeconomy@ohchr.org or by fax at + 41 22 917 9006. Please provide references, addresses (including email addresses and internet links) to enable identification of relevant materials. While responses can be submitted in all official languages of the United Nations, responses in English, the working language of the Special Rapporteur, are preferable.

Please submit your response no later than 26 January 2009

Thank you for your time and cooperation

GVA 1126 1

Information and Data Collection

Economic vulnerability is a factor condoning violence against women.

- 1) Have there been any initiatives in your country to analyse the relationship between poverty or the economic status of women or girls and violence against women? Has your Government collected data, developed indicators or produced any information on this issue?
- 2) Have there been any initiatives in your country to quantify the economic cost of violence against women – such as to the health care system, the criminal justice system, employers, the social services sectors, or families?

Monitoring the Political Economy of Violence against Women

- 3) Have you observed or analysed the impact of particular economic or labour policies on the prevalence of violence against women, including domestic violence?

For example, such government policies might include poverty reduction strategies, unemployment and social assistance policies, privatisation and trade liberalisation policies, policies to address economic crises and recessions, or economic restructuring involving cuts to social expenditures.

- 4) Have you observed or analysed the impact of international bilateral or multilateral agreements on women's economic and social rights and their effect on violence against women?
- 5) Does your Government take into account violence against women in particular sectors of the economy, especially but not limited to:
 - special economic or "free trade" zones
 - the sex industry
 - the tourism industry

Please give details of any general information or research-based reports here, as well as on programmes or activities carried out by your Government to combat violence against women in these sectors.

- 6) What measures and programmes are in place to monitor the impact of large economic developments projects (e.g. extractive industries, agro-business, dams, etc) on women's socio-economic rights and their protection from violence in communities affected by those development projects?

GVA 1126

Enabling Environment: Legislation, Policies and Programmes

Violence against women is often a barrier to women's access to education, employment, productive resources - such as land, water, credit-, and public goods- such as social security (contribution-based schemes such as social insurance and non-contributory schemes).

- 7) Does your Government have any policies or programmes that recognise and seek to redress violence against women as a constraint on women's economic participation, empowerment, and access to services/ benefits (e.g. education, employment)? If yes, please give details on the impact of those policies or programmes on women's economic status, empowerment, participation in public life, or access to services / benefits.
- 8) Does your Government have any policies or programmes to address the impact, especially on women, of poverty or important changes in the economy (e.g. economic crises) which may result in the loss of jobs, personal income or social security benefits for families and communities? Are women especially affected by such circumstances?
- 9) Does your Government provide access to adequate social security (through contributory or non-contributory schemes) for women outside the formal labour market, including women working in the informal sector, migrant workers, and women engaged in unpaid care work in families and communities? Has your Government made specific budgetary allocations in that respect?
- 10) What efforts have been made to ensure that national legislation protects the social and economic rights of women regardless of their civil or personal status? More specifically, has your government analysed how women's enjoyment - or lack thereof - of property and inheritance rights (both within and outside marriage) and their right to child alimony impact on their economic security and their protection from violence?
- 11) Has your government undertaken any analysis on how the division of labour between men and women in the household (e.g. who is the major breadwinner) affects violence against women and the economic welfare of women? If so, please provide details of findings, or of any measures undertaken to improve conditions for women in this respect.
- 12) Have you undertaken any initiatives aimed at reducing the vulnerability (e.g. to violence) and economic impact on women resulting from conflict, natural disasters or displacement situations (such as through gender-sensitive situation/ impact assessments, early warning systems, emergency response plans, or contingency plans)? Have there been initiatives to analyse the consequences to women, in the aftermath of these events, and to remedy them?

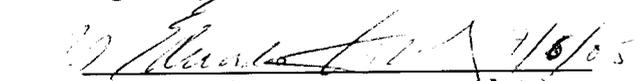
**UNHCR/United States Exchange of Letters for
Monitoring Safe-Third Country Agreement Implementation**

On December 5, 2002, the governments of the United States and Canada entered into the *Agreement between the Government of the United States and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries* ("Agreement"). The Agreement became effective on December 29, 2004.

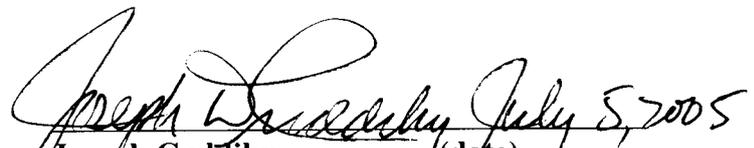
To ensure that the implementation of the Agreement is consistent with its terms and principles, and with international refugee law, the United Nation High Commissioner for Refugees (UNHCR) will contribute by monitoring the process of the implementation. As a result of a series of meetings and discussions between the United States, Canada and UNHCR, the three parties agreed on a monitoring plan proposal, which is attached as Annex 1.

By this exchange of letters, the United States and UNHCR United States wish to confirm their full commitment to the implementation of the monitoring plan.

Signed by:



Kolude Doherty, (date)
Regional Representative
UNHCR United States



Joseph Cuddihy (date)
Director
Office of Refugee, Asylum, and International
Operations
U.S. Citizenship and Immigration Services



Michael Hrinjak (date)
Acting Executive Director
Immigration Policy and Programs
U.S. Customs and Border Protection

Wesley Lee (date)
Acting Director
Detention and Removal Operations
U.S. Immigration and Customs Enforcement

**UNHCR/Canada Exchange of Letters for
Monitoring Safe-Third Country Agreement Implementation**

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To ensure that the implementation of the Agreement is consistent with its terms and principles, and with international refugee law, the United Nation High Commissioner for Refugees (UNHCR) will contribute by monitoring the process of the implementation. As a result of a series of meetings and discussions between the United States, Canada and UNHCR, the three parties agreed on a monitoring plan proposal, which is attached as Annex 1.

By this exchange of letters, Canada and UNHCR Canada wish to confirm their full commitment to the implementation of the monitoring plan.

Signed by:

Jahanshah Assadi, (date)
Representative
UNHCR Canada

Robert Orr (date)
Director
Refugee Branch
Citizenship and Immigration Canada

UNHCR MONITORING PLAN
US-CANADA "SAFE THIRD COUNTRY" AGREEMENT
(Subject to final exchange of letters between the Parties and UNHCR)

The Safe Third Country agreement (hereinafter "the Agreement") notes, in keeping with the advice of UNHCR and its Executive Committee, that agreements among states may enhance international protection of refugees by promotion of orderly handling of asylum applications by the responsible party and the principle of burden sharing.

The Agreement acknowledges the international legal obligations of the Government of Canada and the Government of the United States (the "Parties") under the principle of *non-refoulement* outlined in the 1951 Convention and its 1967 Protocol, as well as the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture).

The Agreement notes the Parties' determination to safeguard for each eligible refugee claimant on its territory access to a full and fair refugee status determination procedure as a means to afford the protections of the 1951 Convention, its Protocol and the Convention Against Torture.

Article 8(3) of the Agreement further provides that the parties to the Agreement will invite UNHCR to participate in the first review of the Agreement and its implementation. Under the Agreement, this review is to take place not later than twelve months from the date of the Agreement's entry into force. Under Article 8(3) "Parties shall cooperate with UNHCR in the monitoring of this Agreement and seek input from non-governmental organizations."

Objectives of UNHCR Monitoring

Pursuant to Article 8(3) of the Agreement, and further to its mandate under the 1951 Refugees Convention and Protocol, UNHCR will monitor the Agreement to assess whether implementation is consistent with its terms and principles, and with international refugee law.

Policy & Operating Guidelines

Before the commencement of monitoring activities, UNHCR will receive copies of all American and Canadian policy and operating guidelines for the Agreement. These will include any guidelines or instructions specific to each of the five major ports of entry (POEs) to be visited by UNHCR on a regular basis.

Methodology

Before Agreement Enters into Force

- One tripartite meeting (US, Canada, and UNHCR) to discuss the monitoring plan, on 6 August 2004, to be followed by any subsequent meetings deemed necessary by the parties;

- To the extent the data are reliable and may reasonably be obtained, US and Canada supply the latest statistics on the number of persons who presented refugee claims at a US-Canada land border POE and, of those, the number who were then detained;
- An “introductory” UNHCR visit to one designated land border POE after the monitoring plan is finalized and prior to entry into force of the Agreement;
- “Exchange of Letters” between US, Canada and UNHCR.

After Agreement Enters Into Force

- UNHCR visits to US-Canada designated land border POEs, in accordance with existing field visit protocols;
- UNHCR visits to detention centers in Canada and the US which hold asylum claimants referred by border officials, in accordance with existing practice or field visit protocols;
- Analysis of DHS/DOJ and CIC statistics, policies, case files, and other relevant documents;
- Analysis of information received from NGOs, including statistics, case files, and other relevant documents;
- Ongoing discussions with governmental and non-governmental counterparts;
- Interviews with individual asylum-seekers subject to the Agreement;
- Two tri-partite meetings (US, Canada and UNHCR) to discuss findings, after 6 months and 12 months of monitoring, as part of the first annual review (see also "Reporting" below).

Reporting

- General: UNHCR will formally report to the Parties its findings on the Agreement's implementation approximately six months and twelve months after the Agreement has entered into force. UNHCR expects that these reports will assist the Parties both in their implementation of the Agreement during the first year, and in their twelve-month review of the Agreements' implementation.
- UNHCR Six-Month Briefing: UNHCR will report orally to the Parties its interim observations regarding the implementation of the Agreement approximately six months after its entry into force.
- UNHCR Twelve-Month Review: UNHCR will report orally to the Parties its observations on the implementation of the Agreement approximately twelve months from the date of entry into force, focusing primarily on the last six months of implementation. The Parties and UNHCR will also discuss UNHCR's draft written monitoring report at this time. The final written monitoring report will be submitted to the Parties prior to their final review of the Agreement's implementation.
- Parties' Twelve-Month Report: The Parties will prepare, and share with UNHCR, their twelve-month implementation report, for review and comments. Following tripartite discussions on the Parties' draft report, the Parties and UNHCR will adopt a final report, provided UNHCR is satisfied that its credibility and

independence would be properly maintained. The joint tripartite report will be made public upon agreement of the Parties and UNHCR.

- UNHCR may report on, and/or request additional tripartite meetings to discuss emergent issues as necessary. This would not affect any ongoing and regular bilateral dialogue between UNHCR and the respective host Government on the Agreement.

Site Visits: Ports of Entry (POE) and Detention Facilities

In accordance with existing field visit protocols, UNHCR will conduct site visits to US/Canada POEs during the twelve months following the entry into force of the Agreement. The focus of the site visits will be to the major ports of entry, namely:

- Detroit/Windsor
- Buffalo/Fort Erie, coupled with
- Niagara/Rainbow Bridge
- Champlain/LaColle
- Blaine/Douglas

Some visits may be extended over a period of days. UNHCR visits to other land-border POEs may also be undertaken.

UNHCR staff in the US and in Canada may visit area detention facilities in connection with the scheduled monitoring visits; each office may visit detention centres on other occasions, scheduled separately by each office.

Prior to and/or during visits to ports of entry and detention facilities, the Parties will make individual case files available to UNHCR upon request, either with applicant's consent or redacted as necessary, and will enable UNHCR to have access to individual applicants detained either at the POE or at a detention facility (for purposes of confidential interviews, with applicants' consent).

Assumptions / Constraints

- UNHCR human and financial resources;
- UNHCR access to all aspects of border procedures, including to individuals seeking asylum subject to the Agreement and related documentation; Availability of reliable statistical data.

Statistics

The following statistical information from the Parties may assist the UNHCR in its monitoring objectives, once the Agreement comes into force. The following list is not exhaustive and may be supplemented at any time. In keeping with Article 8(3) of the Agreement, UNHCR will also seek input, to the extent available, from non-governmental organizations. For statistics originating from agencies other than the US Department of Homeland Security (DHS) or the Canadian Citizenship and Immigration Canada (CIC), the Parties will make best efforts to ensure that the requested information is made available to UNHCR. With respect to the statistics

described below, the Parties will provide them to the extent that they are reliable and reasonably available. The Parties will inform UNHCR if requested data is not being provided for reasons of reliability or availability.

1. General

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

- a) Total number of persons requesting asylum in the US and Canada at a US-Canada land border POE;
- b) Total number of persons found not to meet an exception and returned to country of last presence under the Agreement, and total number found to meet an exception.

2. Exceptions under Article 4 (2) (a) and (b) - Family Unity

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

- a) Number of persons deemed eligible to lodge refugee protection claims in the receiving country under Article 4(2)(a) and (b), and number of persons found to be ineligible under this exception.

3. Exceptions under Article 4 (2) (c) Unaccompanied Minors

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

- a) Number of persons considered "unaccompanied minors" subject to Article 4(2)(c);
- b) Number of unaccompanied minors (persons under the age of 18 not accompanied by a parent/guardian) who have parents, guardians, or close family members in the receiving country, but do not fall under Article 4(2)(a) or (b) of the Agreement, and who are returned to the country of last presence under the Agreement;
- c) To facilitate UNHCR access to these statistics in the US, UNHCR requests that the DHS Bureau of Customs and Border Protection provide Alien Registration Numbers and names of unaccompanied minors placed in removal proceedings at US-Canada land border POEs to the Executive Office for

Immigration Review so that appropriate cases may be identified and case-files made available for review by UNHCR.

4. Detention

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately *vis a vis* where the application was initially lodged. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

Total number of persons detained for more than 48 hours in the US or Canada while their cases are being examined under the Agreement. Data should include: (a) names and locations of detention centers; (b) reasons for detention; (c) dates of detention; and (d) for those detained while their cases are being examined under the Agreement, whether the person was deemed eligible to lodge a refugee claim in the receiving country under the Agreement.

5. Processing time

(The Parties will provide statistical data in this category on a monthly basis, broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually.)

The length of time it takes the Parties to make a decision regarding eligibility to apply for refugee protection in the receiving country under the Agreement for each application for refugee protection received, as well as the average length of time.

6. Expedited Removal

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

- a) Number of persons seeking refugee protection in the US at a US-Canada land border POE who were placed in: (1) expedited removal proceedings, and, (2) regular (INA 240) removal proceedings.
- b) Of those persons identified in (a)(1) and (a)(2) above, the number of persons deemed eligible to lodge an asylum claim in the US under the Agreement.

7. Removal through Territory of Other Party (Article 5)

(The Parties will provide statistical data in this category on a quarterly basis, which will be broken down to reflect gender, age and country of origin.)

- a) Total number of persons removed from Canada via the US and the number returned to Canada under Article 5(a);

- b) Total number of persons removed from the US via Canada, who are subject to Article 5(b)(i);
- c) Total number of persons removed from the US via Canada, who are returned to the United States under Article 5(b)(ii).

8. Effective Review Procedures

(The Parties will provide statistical data in this category on a monthly basis. Data will also be broken down to reflect gender, age and country of origin.)

- a) For the US, the total number of persons placed in regular (INA § 240) removal proceedings who appealed the decision of the Immigration Judge regarding their eligibility to apply for asylum in the US under the Agreement, and the decisions of the Board of Immigration Appeals on those appeals;
- b) For the US, total number of applicants placed in regular (INA § 240) removal proceedings who sought reconsideration of a determination that they do not fall under any of the exceptions to the Agreement. Information should also include: (i) the exception of the Agreement at issue (e.g., Article 4(2)(a)), and (ii) final decision rendered. For Canada, and to the extent possible, the number of persons who sought the review of the negative decision before the Federal Court;
- c) To facilitate UNHCR access to the requested statistics under (a) and (b) above in the US, UNHCR requests that the DHS Bureau of Customs and Border Protection provide Alien Registration Numbers and names of unaccompanied minors placed in removal proceedings at US-Canada land border POEs to the Executive Office for Immigration Review so that appropriate cases may be identified and case-files made available for review by UNHCR;
- d) The total number of cases reconsidered by each Party under the bilateral dispute resolution mechanism, the substantive provision of the Agreement at issue, and the outcome of such reconsiderations/decisions.

9. Use of Discretion (Article 6)

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

Total number of cases considered under Article 6 of the Agreement and total number deemed eligible to lodge a refugee protection claim in the receiving country under Article 6.

10. Resettlement provision (Article 9)

(The Parties will provide statistical data in this category once before the six-month review and as available thereafter.)

Total number of persons resettled to either the US or Canada, including information on first country of asylum, dates of resettlement and country of resettlement pursuant to Article 9 of the Agreement.

11. Other information on asylum applications

(The Parties will provide statistical data in this category on a monthly basis.)

Total number of refugee claims lodged inland in either country (*i.e.*, not at a POE). Total number for the same period of claims lodged in either country during the previous year, broken down by month, should also be provided.

Estimated UNHCR Monitoring Costs (in US\$)

The estimated costs (both UNHCR Canada and UNHCR USA) for the proposed UNHCR monitoring plan is approximately \$200,000, covering costs of staff travel, vehicle rental and daily subsistence allowances while on mission. The cost could be higher, depending on the number of site visits undertaken. Given UNHCR's current financial constraints, UNHCR encourages both governments to underwrite these costs to the extent possible.

14 December 2004

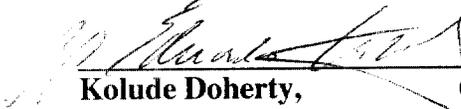
**UNHCR/United States Exchange of Letters for
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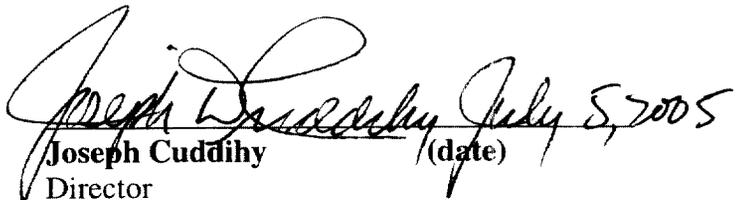
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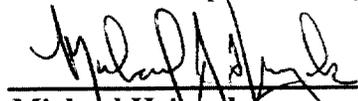
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By this exchange of letters, the United States and UNHCR United States wish to confirm their full commitment to the implementation of the monitoring plan.

Signed by:

 7/5/05
Kolude Doherty, (date)
Regional Representative
UNHCR United States

 July 5, 2005
Joseph Cuddihy (date)
Director
Office of Refugee, Asylum, and International
Operations
U.S. Citizenship and Immigration Services

 7/5/05
Michael Hrinivak (date)
Acting Executive Director
Immigration Policy and Programs
U.S. Customs and Border Protection

 11/8/05
John P. Torres (date)
Acting Director
Detention and Removal Operations
U.S. Immigration and Customs Enforcement

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UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

ASSISTANT HIGH COMMISSIONER - PROTECTION

UNHCR

Case postale 2500
CH-1211 Genève 2

Tel.: +41 22 739 8949
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10 July 2006

Dear Mr. Chertoff,

I am pleased to provide you with the attached final UNHCR monitoring report of the first year of implementation of the "Agreement between the Government of the United States and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries" (also known as the "Canada-United States 'Safe Third Country' Agreement"). A draft of this report was provided to the Canadian and United States Governments in December 2005 and January 2006 respectively for their review and comment. A series of technical meetings were held between the UNHCR offices in Canada and the United States with their government counterparts after the initial submission to discuss the report's specific findings and recommendations.

UNHCR appreciates the invitation of the United States and Canadian Governments to participate in the monitoring of the Agreement's first year of implementation. UNHCR also appreciates the cooperation and assistance that both governments extended to the UNHCR Offices in Ottawa and Washington, DC, throughout the monitoring period. With the report now finalized, UNHCR would request that the governments attach UNHCR's monitoring report to the Parties' report, either as an annex or as a separate section.

UNHCR looks forward to a continued dialogue on the recommendations contained in this report. In this context, the UNHCR offices in Ottawa and Washington DC will continue to work together with you and they stand ready to offer their full support and cooperation towards the implementation of the recommendations. Please do not hesitate to also contact me should you wish to discuss this matter further.

Yours sincerely,

Erika Feller

The Honorable
Michael Chertoff
Secretary of Homeland Security
Department of Homeland Security
Naval Security Station
Nebraska and Massachusetts Avenues, NW
Washington, DC 20528

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Monitoring Report

Canada - United States “Safe Third Country” Agreement

29 December 2004 – 28 December 2005

United Nations High Commissioner for Refugees

June 2006

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EXECUTIVE SUMMARY

A. Background

On 3 December 2001, the United States and Canadian Governments formalized their intention to negotiate a "Safe Third Country" Agreement in a joint "Statement on Common Security Priorities." Discussions regarding the text of the Agreement, entitled the "*Agreement Between the Government of the United States and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries*" (Agreement), were undertaken in 2002 with comments submitted by UNHCR, United States and Canadian NGOs, and academic institutions. The final text of the Agreement was initialed by the United States and Canadian Governments on 30 August 2002, and signed by the Parties on 5 December 2002.

Canada issued its final regulations relating to the Agreement on 26 October 2002. The United States published its final implementing regulations on 29 November 2004. Both Governments also issued procedural guidance (e.g. handbooks and manuals) with more specific information on the implementation. The Agreement entered into force on 29 December 2004.

B. UNHCR Participation in Review of Agreement's Implementation

Article 8(3) of the Agreement provides that the Governments will invite UNHCR to participate in a review of the Agreement and its implementation, to take place no later than twelve months from the date of the Agreement's entry into force. Pursuant to Article 8(3) of the Agreement, and further to its mandate under the 1951 Refugee Convention and general supervisory responsibility under Article II of the 1967 Protocol, UNHCR agreed to a monitoring role to assess whether the Agreement's implementation was consistent with the terms and principles of the Agreement, and with international refugee law. UNHCR and the Governments agreed that, for purposes of Article 8(3) of the Agreement, UNHCR would not review the overall impact of the Agreement on U.S.-Canada cross-border movements nor the post-eligibility processing of asylum claims. UNHCR did, however, inform the two Governments that it reserved the right to consider these issues under its general mandate.

In January 2003, UNHCR presented a draft Monitoring Plan to the United States and Canadian Governments, which was subsequently discussed at a tripartite meeting held on 6 August 2004, and finalized on 14 December 2004. The Plan details the commitments made by both UNHCR and the Governments with regard to UNHCR's monitoring activities. The Monitoring Plan states that UNHCR will formally report its findings to the Parties after six months and submit a written report to the Parties after twelve months, to be considered in conjunction with the Parties' first review of the Agreement.

UNHCR monitored the Governments' first year of implementation of the Agreement from 29 December 2004 to 28 December 2005. UNHCR hired two Protection

Consultants for this purpose, which were supervised and supported by office staff in both Washington, D.C. and Ottawa. To facilitate its monitoring activities, UNHCR established monitoring objectives that were provided to the United States and Canadian Governments and to NGOs for comment.

UNHCR's monitoring has been guided by applicable international refugee law, the text of the Agreement and its procedural Statement of Principles, supplementary Rules and Regulations, and Standard Operating Procedures as published in agency manuals and training materials. Relevant sources of international refugee law include the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (in particular Article 33), the Statute of UNHCR, UNHCR's Executive Committee Conclusions, and other applicable human rights principles and standards.

UNHCR's monitoring activities comprised the following: (1) missions to United States-Canada land border ports-of-entry (POEs); (2) visits to detention facilities where Safe Third applicants may be detained; (3) observation of eligibility determination interviews; (4) meetings/discussions with government officials at both the local and headquarters level; (5) meetings with NGOs operating on the United States-Canada border; (6) interviews with refugee claimants subject to the Agreement, as well as with their family-members and/or lawyers; (7) individual case file review; (8) review of government policy guidance; and, (9) statistical analysis.

UNHCR conducted regular monitoring missions to all major United States-Canada land border POEs, as well as to several less-frequented land border POEs. Four of these missions were jointly undertaken by UNHCR Washington and UNHCR Ottawa. During each mission, UNHCR met with local government officials and regional NGOs, conducted interviews with individual asylum-seekers, and observed eligibility determination interviews conducted by government officials when possible. During these missions, UNHCR also visited area detention facilities where Safe Third applicants have been held and were likely to be held in the future.

UNHCR regularly met with Department of Homeland Security /Department of Justice and Citizenship and Immigration Canada/Canada Border Services Agency government representatives throughout the monitoring period in order to brief them on its monitoring activities, to review the implementation of the Agreement, and to make recommendations when appropriate.

C. Cooperation Mechanisms

In the lead up to the entry into force of the Agreement, the Governments of Canada and the U.S. convened a quadripartite meeting (the two Parties, UNHCR Ottawa and UNHCR Washington as well as NGOs from both Canada and the U.S.) on 16 December 2004, at Niagara Falls, Ontario, to provide information to NGO stakeholders and listen to their concerns regarding the implementation of the Agreement. Another quadripartite meeting

was held on 16 November 2005, in London, Ontario, to apprise relevant Canadian and U.S. NGOs of developments on the implementation of the Agreement.

As per UNHCR's Monitoring Plan, a tripartite meeting (the two Parties and UNHCR Washington and UNHCR Ottawa) was held on 6 July 2005, in Washington DC, whereby UNHCR provided the Parties a mid-term evaluation of the implementation of the Agreement and presented a number of recommendations to the Parties.

Throughout the first year of implementation, UNHCR Offices in Ottawa and Washington DC met regularly, through different bilateral structures, with officials from the Governments of Canada and the U.S. to discuss and endeavour to resolve issues, as and when they emerged, relating to the implementation of the Agreement.

D. Report Format

This report details UNHCR's assessment of the first twelve months of the Agreement's implementation, and is submitted in accordance with the UNHCR Monitoring Plan. It is hoped that this report will assist the Parties in their review of the first year of the Agreement's implementation. This report consists of two country chapters; the first chapter presents UNHCR's assessment of the Agreement's implementation in Canada, and the second chapter presents UNHCR's assessment of the Agreement's implementation in the United States. This two-part structure has allowed UNHCR to tailor its findings and recommendations to each country, given that both governments implemented the Agreement in a manner consistent with existing national immigration procedures. While UNHCR's monitoring activities in Canada and the United States were similar in scope and coordinated in practice, UNHCR's monitoring was adapted as necessary to accommodate each country's specific statutory and procedural differences.

E. Summary of Statistics

According to official statistics, there were 4,041 reported individuals who requested refugee status at Canadian land-border POEs between 29 December 2004 and 28 December 2005. Of these 4,041 claimants, more than 3,000, i.e. approximately 74% were found eligible to lodge a refugee claim in Canada.

As of 29 December 2005, there were 66 reported individuals who requested asylum at United States northern land-border POEs, none of whom were unaccompanied minors. Of the 43 claimants whose cases had been adjudicated as of 28 December 2005, 27, i.e. approximately 63% were deemed eligible to lodge an asylum application in the United States.

F. Joint Summary of Findings and Recommendations

It is UNHCR's overall assessment that the Agreement has generally been implemented by the Parties according to its terms, and, with regard to those terms, international refugee law. The Agreement appears to be functioning relatively smoothly. Individuals who request protection are generally given an adequate opportunity to lodge refugee claims at the ports of entry and eligibility determination decisions under the Agreement have generally been made correctly.

UNHCR notes, however, its particular concern with respect to the Parties' continued use of the direct back policy.¹ This has been especially problematic for asylum-seekers directed back from Canada to the United States, as a number were detained in the United States and unable to attend their scheduled interviews. UNHCR is aware of six asylum-seekers who were directed-back to the United States and subsequently removed to their country of origin without having their claims processed by the Canadian Government under the Agreement.

According to the Parties, the purpose of the Agreement is, *inter alia*, to share refugee status determination responsibility, identify persons in need of protection, and avoid *refoulement*.² During the period under review, the UNHCR expressed concern that the use of the direct back policy undermined the letter and spirit of the Agreement, and recommended that CBSA discontinue its use. While the vast majority of claimants affected by the direct back policy did gain access to the Canadian refugee protection system, the UNHCR is aware of 6 cases in which a claimant was directed back to the U.S., detained and removed without having had an opportunity to pursue a refugee claim in Canada, illustrating their concerns. Responsibility for the processing of direct-back cases is shared by both Parties. The Government of Canada has informed the UNHCR that the use of the direct back policy will end as of August 31, 2006, except in extraordinary circumstances.

Other primary areas of concern for UNHCR include: (1) lack of communication between the two Governments on cases of concern; (2) adequacy of existing reconsideration procedures; (3) delayed adjudication of eligibility under the Agreement in the United States; (4) in some respects, lack of training in interviewing techniques; (5) inadequacy of detention conditions in the United States as they affect asylum-seekers subject to the

¹ "Direct back" is the term used, particularly in Canada, when an asylum-seeker approaches a port of entry at a time when officials at the port are unable to process his/her asylum claim. The claimant is given a scheduled interview and returned to the United States to wait for his/her appointment with Canadian authorities and the eventual processing of the claim at the port of entry.

² The last paragraph of the Preamble states that the Parties are: "Aware that such sharing of responsibility must ensure in practice that persons in need of international protection are identified and that the possibility of indirect breaches of the fundamental principle of *non-refoulement* are avoided, and therefore determined to safeguard for each refugee status claimant eligible to pursue a refugee status claim who comes within their jurisdiction, access to full and fair refugee status determination procedure as a means to guarantee that the protections of the Convention, the Protocol, and the Torture Convention are effectively afforded."

Agreement; (6) insufficient and/or inaccessible public information on the Agreement; and (7) inadequate number of staff dealing with refugee claimants in Canada.

UNHCR Offices in Canada and the United States have mainstreamed the monitoring of the Agreement's implementation into their regular supervisory and protection activities as of 29 December 2005. UNHCR recommends that the Parties maintain many of the structures put in place to facilitate the monitoring and implementation of the Agreement and that the Parties continue to provide UNHCR with information and statistics regarding the Agreement's implementation on a regular and timely basis.

UNHCR extends its gratitude to the Parties for the excellent cooperation received from the relevant government officials of Canada and the U.S., at all administrative levels. UNHCR would also like to thank NGOs on the two sides of the border for the excellent collaboration UNHCR staff received from them throughout the monitoring period.

CANADA
COUNTRY CHAPTER

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A. EXECUTIVE SUMMARY

On 6 August 2004, the Parties to the Safe Third Country Agreement (hereinafter “the Agreement”) between Canada and the United States of America (U.S.) met with the United Nations High Commissioner for Refugees (UNHCR) and agreed upon a Monitoring Plan proposed by UNHCR Pursuant to Article 8 (3) of the Agreement, and further to its mandate under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. UNHCR undertook to monitor the Agreement to assess whether implementation is consistent with the terms and principles of the Agreement as well as with international refugee law. The Monitoring Plan, *inter alia*, states that UNHCR will provide an oral monitoring report after six months and a final written report approximately one year after implementation of the Agreement.

This report details UNHCR’s assessment of the first 12 months of implementation of the Agreement (29 December 2004 – 28 December 2005). It includes recommendations made at the time of the six month review and details progress made on those recommendations. There are some recommendations from the mid-term review that have been acted upon and therefore the recommendations no longer apply. On some issues, there has been little or no progress and therefore the recommendations remain valid.

Overall, UNHCR’s assessment of the implementation of the agreement is positive. The Safe Third Country Agreement is being implemented in keeping with both the terms of the Agreement and with international refugee law. In other words, most persons who request international protection in Canada are given the opportunity to lodge a refugee claim. Refugee claimants are treated fairly and with respect.

UNHCR is, however, very concerned with respect to the use by Canada of the direct back¹ policy. According to the Canada Border Services Agency (CBSA), approximately 129 claimants who presented themselves at Canadian ports of entry (POEs) were directed back to the U.S. during the period under review. Approximately twenty-five of these claimants were detained by U.S. authorities and six were subsequently removed to their country of origin. From among those claimants directed back and detained UNHCR is aware of six who were unable to appear at their scheduled appointment with Canadian border officials and did not have an eligibility determination made on their case in Canada. Following its expression of serious concern, UNHCR has been informed by the Government of Canada that direct backs will be discontinued as of 31 August 2006, except in extraordinary circumstances.

UNHCR has enjoyed excellent co-operation with Citizenship and Immigration Canada (CIC) and Canada Border Services Agency (CBSA) with respect to its monitoring activities. There has been regular, open and transparent communication between CIC,

¹ Direct back is the term used when an asylum seeker approaches a port of entry at a time when officials at the port are unable to deal with the asylum claim. The claimant is given a scheduled interview and returned to the U.S. to wait for his/her appointment with Canadian authorities and the eventual processing of the claim at the port of entry.

CBSA and UNHCR. In addition, UNHCR is grateful to the Government of Canada for the financial support provided for the recruitment of a Protection Consultant to assist with the monitoring of the implementation of the Agreement and reporting thereon. UNHCR is also highly appreciative of the collaboration, support and input received from non-governmental organisations (NGOs), especially those who work closely with claimants at POEs.

Statistics

According to statistics received from CIC/CBSA, there were 4,041² refugee claims made at the Canada-United States land border ports of entry during the period 29 December 2004 to 28 December 2005. Of those, more than 3,000 (approximately 74%) fell within one of the exceptions to the Agreement, and were allowed to make a refugee claim in Canada. During the above period, most refugee claimants (3,810 or 94%)³ have approached one of three ports of entry: Fort Erie, Windsor and Lacolle. Fort Erie, Ontario processed 2,462⁴ claims, while Windsor, Ontario processed 709⁵ claims, followed by Lacolle, Quebec, which processed 639 claims. Of the 4,041 refugee claimants who presented themselves at the land border, 2,156 were male and 1,885 were female. From December 2004 to December 2005, there were 190 claimants younger than 18 years old who sought refugee protection as a principal applicant at the Canada-U.S. land border, 48 of whom were unaccompanied minors⁶.

Summary of recommendations

In this report, UNHCR makes a number of positive comments. Also included are details of recommendations made at the time of the mid-term report and details of progress since July, if applicable. In addition, there are new recommendations arising out of observations during the second half of the year. The recommendations are based on UNHCR monitoring of the Agreement. They are not presented in order of importance. Instead, UNHCR has followed the order in which our monitoring objectives are presented (see attached Monitoring Objectives).

² Statistical report produced by CIC dated March 20, 2006.

³ Figure includes claims processed at Fort Erie, Niagara Falls Rainbow Bridge, Queenston-Lewiston Bridge, Windsor International Tunnel and Windsor Ambassador Bridge.

⁴ Figure includes claims processed at Fort Erie, Niagara Falls Rainbow Bridge and Queenston-Lewiston Bridge

⁵ Figure includes claims processed at Windsor International Tunnel and Ambassador Bridge

⁶ Under the Safe Third Country Regulations an unaccompanied minor is a person who has not attained the age of 18 years and is not accompanied by a mother, father or legal guardian, has neither a spouse nor a common-law partner; and does not have a mother or father or a legal guardian in Canada or the U.S.

The following is a summary of new recommendations and those that are outstanding at the time of the final report:

- During the immediate pre-implementation period (22-24 December 2004), hundreds of claimants rushed to the Fort Erie border crossing to make a refugee claim before the Agreement entered into force. It is the view of UNHCR that this situation could have been avoided. UNHCR recommends that in the future careful consideration be given to the timing of the implementation of new legislation or international agreements. In addition, to the extent possible, POE officials should prepare and put in place contingency plans to be used in the event of a surge in asylum requests.
- As a result of discussions with POEs and NGOs, UNHCR recommended in the mid-term report that CIC/CBSA National HQs provide additional clarification on the issues of statelessness, habitual residents, unaccompanied minors, vulnerable and spousal abuse cases. UNHCR is aware that CIC and CBSA have been working on changes to the manual chapter (PP1) with respect to statelessness and habitual residents. UNHCR encourages CIC and CBSA to continue work on the PP1 to enhance other sections.
- UNHCR recommends that CIC/CBSA enhance the guidelines in the manual (PP1) for reconsideration of cases determined to be ineligible.
- During the period under review, the UNHCR expressed concern that the use of the direct back policy undermined the letter and spirit of the Agreement, and recommended that CBSA discontinue its use. While the vast majority of claimants affected by the direct back policy did gain access to the Canadian refugee protection system, the UNHCR is aware of 6 cases in which a claimant was directed back to the U.S., detained and removed without having had an opportunity to pursue a refugee claim in Canada. The Government of Canada has informed the UNHCR that the use of the direct back policy will end as of August 31, 2006, except in extraordinary circumstances.
- At the Lacolle POE, in particular, UNHCR observed that during each of its monitoring missions at least one family or individual claimant had waited all day or overnight for the processing of their case to begin. While acknowledging that there are many competing priorities at POEs, UNHCR urges CBSA to process refugee claimants in as timely a manner as possible.
- UNHCR observers have noted that some officers working at land border POEs may not have received training specific to interviewing refugee claimants. As a result, UNHCR recommended in the mid-term report that officers receive training in interviewing techniques for refugee claimants. In addition, the manual chapter for POE officers should contain information on this subject.

- Although UNHCR has been advised that the PP1 manual chapter is being reviewed, UNHCR urges CIC and CBSA to modify the manual and provide relevant training as soon as possible.
- Although for the most part, POEs are sensitive to the needs of vulnerable individuals, UNHCR recommends that CBSA impress upon POE officials the need to provide, to the extent possible, priority processing to vulnerable individuals and include training and instructions on how to identify vulnerable cases.
- CIC/CBSA should create a transparent administrative mechanism for the review of cases that may have been erroneously found ineligible or in which new information in support of eligibility becomes available after the initial determination of ineligibility. CIC and CBSA should also agree with U.S. Customs and Border Patrol (CBP) and other relevant U.S. authorities to a temporary suspension of removal from the U.S. pending the timely review of such cases.
- CBSA should provide monthly data on detentions of persons to whom the Agreement applies, as per the Monitoring Plan.
- Article 6 of the Agreement permits the Parties to allow entry of certain categories of persons on the basis of public interest. In Canada, this means 1) persons who have been charged or convicted of an offence that is punishable with the death penalty in the country in which the conviction or charge takes place, and 2) nationals of a country to which Canada does not remove persons because the Minister has imposed a stay on removals. UNHCR recommends that the Government of Canada consider broadening the interpretation of Article 6 to include, for example, vulnerable persons who do not fall under any of the exceptions to the Agreement.
- UNHCR has observed that there is not a great deal of communication between the Canadian and U.S. officials who are counterparts at some POEs. UNHCR recommends that CBSA and appropriate U.S. officials communicate more frequently on issues relevant to the Agreement.
- Information on UNHCR's mid-term report of July 2005 was not sent to the CBSA regions until October. As of December the information had not reached some POEs. Therefore, UNHCR recommends that CBSA HQ ensure that when appropriate, information with respect to concerns expressed by UNHCR about activities at the POEs, be shared with the field in a timely manner.
- UNHCR recommends that both CIC and CBSA ensure that information on the Agreement, including the exceptions, is readily available on the departmental

websites. In addition, the Government should explore other means to provide relevant public information.

- The monitoring of the Agreement will no longer be considered a “special” project but will be mainstreamed into UNHCR’s regular supervisory responsibilities pursuant to Article 35 of the Convention and Paragraph 8 of the UNHCR Statute. UNHCR recommends that the *modus operandi* established between CIC/CBSA and UNHCR to facilitate the monitoring functions of UNHCR with respect to the Agreement, be maintained. This relates in particular to the Working Group⁷ and regular and timely supply of statistics.

B. PRE-IMPLEMENTATION – OVERVIEW

Positive: The POE officials processed cases until the early hours of 24 December 2004. Whilst Canadian POE officers expedited the processing of cases, it was reported that officers in the U.S. were initially taking 3 hours to process one case. Eventually, communication between managers of the Canadian and U.S. ports of entry at Fort Erie/Buffalo broke the logjam and processing from the two sides of the border was expedited.

Issue: The Agreement between Canada and the U.S. came into effect on 29 December 2004. There were problems with both the timing of the implementation and the way in which the anticipated surge in claims at the Canadian border was handled.

The date of implementation was conditional upon finalization of relevant regulations by both Canada and the U.S. Final regulations were published in Part II of the Canada Gazette on 3 November 2004. The U.S. regulations were approved and published on 29 November 2004. U.S. regulations are subject to a 30-day statutory waiting period making the effective date of implementation of the Agreement 29 December 2004.

The implementation date was problematic because it was at the end of the year during the winter festive period. With the implementation date in the winter, it was imperative to provide shelter and warm clothing to refugee claimants. This presented challenges because there was no facility at the border that could accommodate such a large group. Also, the Refugee Processing Unit at Fort Erie, the busiest POE in Canada for processing refugees, is traditionally closed on 25 and 26 December. The rush to the border in Fort Erie in particular meant that the holiday season was disrupted for employees of CBSA/CIC, NGOs, the municipality and many others.

Experience has shown that changes to refugee/immigration policy or legislation in either Canada or the U.S. that are perceived as more restrictive, result in a rush of persons applying to enter before the new regime comes into effect. Thus, it was anticipated that

⁷ The Working Group was established in October 2003. It is comprised of officials from CIC/CBSA and UNHCR Canada. It is an informal forum to discuss details of the Agreement, results of UNHCR monitoring and emergent issues.

during the transitional period leading up to the implementation of the Agreement a significant number of individuals who were already in the U.S. would come forward to make a refugee claim in Canada. The issue of preparedness was also discussed on numerous occasions between the senior management of CIC and UNHCR in the lead-up to the entry into force of the Agreement. UNHCR sought and received assurances from the Canadian authorities that a contingency plan was in place to handle any surge in refugee claims. Canada's preparedness to deal with a surge was also discussed at the Working Group. Several joint meetings were held with representatives of CIC, CBSA, UNHCR and local NGOs to assess the anticipated impact of the transitional period, particularly at the Fort Erie POE. The shared concern of all parties was that claimants be dealt with appropriately and be assured full and fair access to an eligibility determination, which is the entry point to Canada's refugee protection system.

At these meetings, the U.S. NGOs made CIC and CBSA aware of the number of individuals waiting in the U.S. and the need to provide appropriate processing and shelter to a large volume of claimants. Specifically, the Canadian authorities were advised that 700 asylum seekers who were housed temporarily by VIVE, an NGO based in Buffalo, NY, planned to approach the border before 29 December 2004. However, government officials were not receptive to suggestions of alternate methods to deal with this group of claimants. Rather, the situation was exacerbated by the authorities' insistence that in order to qualify under the pre-implementation provisions, asylum seekers must present themselves at the land border POE because CBSA no longer scheduled interview appointments by telephone.

CIC and CBSA anticipated that the direct back policy would be sufficient to manage the surge in claimants. In the days immediately preceding implementation of the Agreement, after directing back over 400 refugee claimants to the U.S., it became apparent that the direct back policy alone would not adequately manage the surge of claims being received. The POE staff was overwhelmed. The Canadian Red Cross and the Salvation Army provided food and shelter to asylum seekers and other assistance was given by other local NGOs. Ultimately, additional steps were taken by CBSA and CIC to ensure the orderly handling of these claims. These steps included using administrative measures to facilitate the processing of claims under the rules in place prior to the Agreement coming into force, calling in additional staff on overtime to manage the high volume of claimants, temporarily providing shelter in the basement of a CBSA facility and providing transportation for claimants temporarily directed back to the U.S. Finally, in order to cope with a large group of claimants who had been housed temporarily by VIVE, an alternative approach using temporary resident permits (TRP) was developed. This approach required CBSA and CIC officers to schedule appointments on-site at VIVE and make arrangements through the Canadian Consulate General in Buffalo to have TRPs granted to these claimants to facilitate their entry to Canada for their scheduled eligibility interviews. Of those directed back, 12 were detained upon return to the U.S.

It should be noted that other major land border crossings were not overwhelmed by asylum-seekers as a result of the imminent entry into force of the Agreement.

Although UNHCR observed serious problems during the pre-implementation phase, the Canadian authorities did respond by making a concerted effort to ensure that access to protection was not denied. By mid-March 2005 all claimants who appeared for their eligibility interviews as transitional cases had been fully processed. UNHCR is not aware of any persons directed back during the pre-implementation period who were not able to return for an interview at the POE.

Recommendation: In future, the timing of the implementation of legislation or Agreements affecting the border should be carefully considered. All parties should plan for a surge of refugee claimants and develop an effective contingency plan accordingly that does not involve the use of the direct back policy.

C. IMPLEMENTATION - OVERVIEW

UNHCR monitoring activities

Prior to the entry into force of the Agreement, the Parties and UNHCR agreed on a Monitoring Plan. The Plan details the commitments of the Parties and UNHCR, made with a view to facilitating the monitoring role of UNHCR.

In its role as monitor, UNHCR made frequent visits to the major POEs. In addition, UNHCR monitors visited other POEs that receive few refugee claimants. Four visits to POEs were made in conjunction with UNHCR Washington, allowing monitors to visit both the Canadian and U.S. POEs in Fort Erie/Buffalo, Lacolle/Champlain and Windsor/Detroit. Six (6) officials of UNHCR Branch Office Canada, including the Representative, conducted monitoring visits to land border crossings throughout Canada. Furthermore, UNHCR invited CBSA and CIC NHQ representatives to accompany UNHCR Protection Consultants from Ottawa and Washington on a visit to Fort Erie/Buffalo in September. The Protection Consultant and officials from CBSA HQ visited Lacolle in December 2005. From January to December 2005, UNHCR Ottawa visited the following POEs:

Douglas, BC	2 visits
Emerson, MB	2 visits
Windsor, ON	6 visits, including one joint mission with UNHCR Washington
Fort Erie/Niagara, ON	6 visits, including one joint mission with UNHCR Washington and one with officials from CBSA and CIC Headquarters and UNHCR Washington
Cornwall, ON	2 visits
Lacolle, PQ	6 visits including one joint mission with UNHCR Washington and one mission with officials from CBSA HQ
St. Armand, PQ	1 visit
St. Stephen, NB	1 visit

UNHCR also maintained contact with POEs by telephone and e-mail, as necessary.

UNHCR officials met with government officials on a regular basis in the context of the Working Group to provide feedback on UNHCR's monitoring activities, to review the implementation of the Agreement and to make recommendations for changes to procedures. UNHCR periodically provided details of UNHCR's observations following visits to some of the major POEs, to CBSA and CIC officials at the monthly UNHCR/CIC/CBSA meetings. A separate meeting was also attended by Foreign Affairs Canada and the Canadian International Development Agency during the course of 2005. During monitoring visits at POEs, UNHCR conducted interviews with asylum-seekers awaiting processing of their cases. UNHCR monitors also observed eligibility interviews carried out by CBSA officials.

Co-ordination/Consultation

UNHCR staff and the Protection Consultant held meetings with CBSA regional officials as well as with POE officials during each POE monitoring mission.

In February, the UNHCR Representative, the Protection Consultant and some senior UNHCR staff held a meeting with the CCR Executive Committee members to, *inter alia*, discuss the newly-drafted UNHCR monitoring guidelines.

In addition, UNHCR met with "border" NGOs during monitoring visits. The purpose of the meetings with NGOs was to get their views and observations on the implementation of the Agreement. In April, UNHCR hosted a conference call to discuss the Agreement with NGOs on both sides of the border. Approximately 21 individuals took part in the teleconference. UNHCR also maintains contact with border NGOs by phone and e-mail, as appropriate.

Two quadripartite meetings were held with U.S. and Canadian Government officials, UNHCR officials from Washington and Ottawa and NGO representatives from both the U.S. and Canada. The first meeting was held in Niagara Falls, Ontario, on 16 December 2004 and the second in London, Ontario, on 16 November 2005.

Statistics

The statistics for the first 3 months of 2005 include transitional cases. This means either that the person approached a POE before 29 December 2004 and was directed back to the U.S. or, at the Fort Erie/Buffalo POE, that CIC/CBSA and Foreign Affairs Canada at the Canadian Consulate in Buffalo, facilitated the entry of the person by issuing a visitor document. Such documents were issued to persons at VIVE who intended to approach the POE before 29 December 2004 and who could not be processed prior to implementation of the agreement. In both cases the persons concerned were given an appointment date

for an interview at the appropriate POE after 29 December 2004. The transitional cases were completed by mid-March 2005. UNHCR is not aware of any persons directed back during the pre-implementation period who were not able to return for an interview at the POE.

From 29 December 2004 to 28 December 2005 there were 4,041⁸ refugee status claims made at Canadian land border POEs. By comparison, during the same period in 2003-2004 there were 8,892, and in 2002-2003 there were 11,091 such claims. The overall number of refugee protection claims, including those made at airports and inland offices, is also down from previous years. The year 2004 saw a decrease from 2003 of 20% and the difference between 2004 and 2005 was a further decrease of 23%. The Government of Canada has acknowledged that the decline in claims at the land border in 2005 is in part attributable to the Agreement.

Since implementation of the Agreement, most refugee claimants have approached one of three POEs. Of the 4,041 refugee claims made at land border ports of entry from 29 December 2004 to 28 December 2005, 3,810⁹ (94%) were made at Fort Erie, Windsor or Lacolle. Fort Erie, Ontario received 2,462¹⁰ claims (61%); Windsor, Ontario received 709¹¹ claims (18%); and Lacolle, Quebec received 639 claims (16%).

Of the 4,041 claims made at land border POEs, more than 3,000 (approximately 74%) fell under one of the exceptions to the Safe-Third Country Agreement. After the transitional cases were completed the exceptions that were most frequently used were that the applicant had an eligible relative in Canada (for example, 38% used this exception in October and 33% in November) or that the applicant is from a moratoria country (32% used this exception in October and 60% in November). From 29 December 2004 to 28 December 2005, there were 48 claimants who were granted an exception based on the fact that they were an unaccompanied minor as defined in the Agreement.

UNHCR has not been able to obtain reliable statistics on direct backs because the numbers were not gathered at the CBSA NHQ level until October. UNHCR is aware that Fort Erie continues to use direct backs on a regular basis. According to CBSA, the Fort Erie POE directed back some 55 refugee claimants during the first 6 months of the year. Another 74 claimants were directed back from August through December 2005; 69 of those from Fort Erie, 4 from POEs in the Prairies and 1 from Windsor. UNHCR is aware of at least 10 asylum seekers who were detained by U.S. authorities after being directed back from Canada. Of the ten, UNHCR knows of 6 asylum seekers who were deported to their countries of origin before an eligibility decision was made on their refugee claim in

⁸ Statistical report produced by CIC dated March 20, 2006

⁹ Figure includes claims processed at Fort Erie, Niagara Falls Rainbow Bridge, Queenston-Lewiston Bridge, Windsor International Tunnel and Windsor Ambassador Bridge.

¹⁰ Figure includes claims processed at Fort Erie, Niagara Falls Rainbow Bridge and Queenston-Lewiston Bridge

¹¹ Figure includes claims processed at Windsor International Tunnel and Ambassador Bridge

Canada. The majority of asylum seekers arriving at Fort Erie are referred through VIVE and therefore have scheduled appointments.

As of the end of October 2005, there were 14 arrivals in Canada of persons resettled under Article 9 of the Agreement (referred to Canada for resettlement by U.S. officials). All fourteen were Haitians resettled from Guantanamo Bay.

D. ANALYSIS

UNHCR monitors were guided by standards and principles derived from the Agreement, accompanying Rules and Regulations and Standard Operating Procedures (or Safe Third Manuals).

UNHCR developed objectives to guide its monitoring activities. The objectives have been shared extensively with the government (CIC/CBSA) and NGOs.

UNHCR staff also applied international refugee law standards and principles in the development of the monitoring objectives and while carrying out their monitoring responsibilities. The sources of international refugee law that are relevant in the context of the Safe Third Country Agreement between Canada and the U.S. include the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (in particular Article 33), the Statute of UNHCR, UNHCR Executive Committee Conclusions and other applicable human rights principles and standards.

In the mid-term oral report to the Governments of Canada and the U.S., presented in Washington DC on 6 July 2005, UNHCR gave an overview of its findings which comprised positive aspects as well as a number of recommendations for change. The report was well received by the Parties. With respect to Canada, both CIC and CBSA agreed to begin work on the recommendations. At a meeting of the Working Group on 19 July 2005, CIC, CBSA and UNHCR agreed on a course of action to implement some of the recommendations.

UNHCR continued to work closely with the government on the implementation of the recommendations as well as on pressing emergent issues. A follow-up meeting of the Working Group was held on 29 September 2005 to discuss progress on the recommendations.

While the government has made significant progress or has conclusively dealt with some of UNHCR's recommendations, there remain a number of outstanding issues. In this report, UNHCR details the recommendations made in the mid-term report in July, provides a report of developments on each issue since that time and details some revised or new recommendations which have been added based on observations during the second half of the year. As already stated, the recommendations do not appear in any order of priority but rather follow the order used in the objectives that guide UNHCR

monitoring. The outline of the monitoring objectives follows the flow of the eligibility determination process.

1. Objective: Asylum-seekers have access to appropriate border and adjudicating officers

Mid-term

Positive: From UNHCR observations, asylum seekers do have access to appropriate border and adjudicating officers at POEs and are provided with information and necessary forms without undue delay. UNHCR has noted that at POEs where the process is facilitated by NGOs in the U.S., applicants have had the process explained and in some cases have completed some of the necessary documentation in advance. Given that appointments are scheduled and that claimants are expected at POEs, access to CBSA officers is not an issue. This facilitates the process and helps to make asylum seekers aware of what to expect. In addition, the services provided by the Peace Bridge Newcomer Centre at the Refugee Processing Unit in Fort Erie help to make the process less intimidating. The long waiting period before the eligibility determination is made, is rendered less difficult for some claimants by the reception accorded claimants at the Centre.

Issue 1.1: Not all POEs use the services of NGOs to assist refugee claimants prepare for the interview and other procedures (see also Objective 6). UNHCR has observed that “spontaneous” arrivals at POEs are usually disoriented and anxious, especially those who have to wait for long periods of time before their cases are processed.

Recommendation 1.1: Where possible, POEs should use U.S.-based NGOs to assist refugee claimants prepare for the pre-processing as well as the processing phases. The major POE at Lacolle should be encouraged to enlist the co-operation of, for example, Vermont Refugee Assistance (VRA).

Post mid-term

At the Working Group meeting in July 2005, CIC and CBSA agreed to explore the use of U.S. - based NGOs to assist claimants. CBSA has reported that, for a variety of reasons, officials at the Lacolle POE are not convinced of the advantage of instituting an appointment system.

Each time that UNHCR has gone on mission to the Lacolle POE, monitors have observed that waiting and processing times at Lacolle are too long in many cases. However, after discussions with officials at the Lacolle POE, UNHCR is of the view that the use of the VRA may not be sufficient to significantly reduce the length of time that claimants spend

at the POE, since VRA deals with a relatively small proportion of cases that make claims at Lacolle.

New recommendation 1.1: UNHCR recommends that, to the extent possible, POEs adhere to the guidelines for processing cases found in the section 17.9 of the PP1 manual (Processing Refugee Claims) which states “Officers should generally make eligibility decisions on the day of application or the next day in the case of late arrivals,” (see also New recommendation 4.2.) In addition, officers should identify and deal expeditiously with claims from vulnerable individuals (see also Recommendation 7.1).

2. Objective: Asylum-seekers have the opportunity for third party presence during proceedings.

Mid-term

Positive: The policy of CIC/CBSA permits third party presence at interviews. UNHCR was permitted free access to observe interviews. In addition, at the Windsor Ambassador Bridge a representative of the NGO Freedom House was permitted to observe interviews.

Issue 2.1: In general, applicants are not informed of the fact that they may avail themselves of the opportunity to contact a third party (e.g. UNHCR, NGO) to request a third party presence at their interview. The POEs advise that in principle, if an applicant indicates that he/she wants a third party to attend the interview, it is permitted provided it does not unduly delay the interview.

While this is clearly stated in the Manual and CBSA/CIC reiterated the principle to NGO representatives at the quadripartite meeting (Canadian government, U.S. government, UNHCR Canada and U.S., as well as NGO representatives from Canada and the U.S.) on 16 December 2004 at Niagara Falls, some “border” NGO officials in Canada seemed unaware of this opportunity.

Recommendation 2.1: There is a need for those who arrive spontaneously at POEs to be advised of the opportunity for third party presence. It can be safely assumed that those who present themselves to a POE through U.S.-based NGOs are informed of the process.

Post mid-term

At the Working Group meeting in July 2005, CIC and CBSA agreed to prepare a handout for refugee claimants to include information about the possibility to have an observer at an interview. UNHCR was advised in early November that this handout was sent to POEs in late October. It was in use at Fort Erie during a monitoring visit the week of

21 November 2005 but had not yet been received by Lacolle in early December 2005. CBSA has advised UNHCR that the handout was in use nation-wide by the end of December 2005.

3. Objective: Asylum-seekers not subject to the Agreement are effectively identified.

Mid-term

Positive: Asylum seekers who approached the border prior to the implementation of the Agreement on 29 December 2004, and were given a scheduled appointment after 28 December 2004, were not subject to the Agreement.

Another group who received scheduled appointments even though the claimants had not physically approached the border was considered under the Agreement and found eligible. As already stated, they were granted Canadian temporary resident permits to facilitate their entry to Canada to make a refugee claim.

In UNHCR's observations and conversations with CBSA officers, the officers make an exemplary effort to determine whether an applicant qualifies for an exception under the Agreement.

In accordance with the manual PP1 (Processing Refugee Claims), land border officers seek to establish whether or not a claimant has an eligible relative in Canada, including by contacting the claimed relative. Applicants may be requested to draw a family tree and officers use other measures with a view to assisting claimants to establish family links, in the absence of reliable documentation. Affidavits are generally accepted as valid documentary evidence. In this regard, CBSA officers at POEs make every effort to adhere to the required standard of proof – i.e. the “balance of probabilities” - (see PP1 Section 17.7, 17.9).

UNHCR is aware of one case in which a common-law, same-sex couple was permitted to make a refugee claim in Canada based on the fact that one was a U.S. citizen and therefore, exempt from the Agreement.

Issue 3.1: : UNHCR has been advised by officers at the POEs and by NGOs that they would like additional guidance on statelessness, habitual residents, unaccompanied minors subject to an exception and spousal abuse cases. There have been at least two cases in which a woman claimed refugee status in Canada on the basis that her spouse was abusing her. Subsequently the abusive spouse made a refugee claim at a POE and claimed an exemption under the Agreement because of the presence of his wife in Canada. The abusive spouses were deemed eligible to make a refugee claim in Canada. The POEs are in ongoing consultation with CIC and CBSA headquarters for functional guidance on this issue.

UNHCR action 3.1: At the Working Group meeting in May 2005, UNHCR advised CIC/CBSA of the need for further clarification of these issues. Assistance was offered in areas in which UNHCR has expertise. At the time of the mid-term report, there were no additional guidelines provided on these issues aside from those requested for specific cases.

Recommendation 3.1: UNHCR recommends that CBSA and CIC provide written clarification to POEs on the issues of statelessness, habitual residents, unaccompanied minors, and the handling of spousal abuse cases. POEs should be encouraged to seek guidance on complex individual cases from HQs, should the need arise.

Post mid-term

UNHCR continued to observe confusion regarding the identification of persons who are stateless and habitual residents of the U.S. At the 19 July 2005 Working Group meeting, UNHCR offered to train CBSA officers on statelessness and habitual residence concepts during UNHCR staff members' monitoring missions at POEs. This training has yet to be facilitated. UNHCR provided comments on CIC draft guidelines on statelessness and habitual residents. These guidelines, which will appear in the manual chapter PP1, will provide more detailed information to decision-makers. UNHCR is advised that the revisions will appear in the manual by the end of March 2006.

In the interim, a case came to the attention of UNHCR in which a claimant, who stated that he was a stateless habitual resident of the U.S., was found not eligible to make a refugee claim in Canada. UNHCR is of the view that in the complex case in question, the decision that the claimant was not stateless was made before a thorough investigation of the case could be completed. The consequence is that the claimant was detained by U.S. authorities and remained in detention at the end of the period under review. The additional guidelines on statelessness should assist POEs to make informed decisions on such cases.

UNHCR is aware that in October 2005 CIC HQ asked POEs for their recommendations as to how the manual chapter PP1 could be improved. UNHCR is not aware of any recent amendments to the manual with respect to dealing with unaccompanied minors and spousal abuse cases. Comments from a meeting with NGO stakeholders in November 2005, along with other consultations and legal advice, are expected to be taken into consideration in the revision of the manual chapters.

New issue

Positive: UNHCR is aware of four requests for reconsideration that have been sent to U.S. Port Directors. Three of those requests were sent on to Canadian POEs for review. UNHCR is also aware of a reconsideration that was initiated by a POE (they requested that claimant appear for a second interview).

Issue 3.2: In the manual chapter PP1 "Processing Claims for Protection in Canada" section 17.18, there is a brief description of the process for submitting a request for reconsideration. UNHCR has observed confusion about when and how a reconsideration request may be made, both on the part of NGOs and Canadian and U.S. POEs. This is the case in spite of the fact that this issue was discussed and clarified at the 16 December 2004 quadripartite meeting. A senior officer at one U.S. POE expressed the opinion to UNHCR observers that they do not believe it is incumbent upon them to determine whether or not a request will be forwarded to Canadian authorities.

Recommendation 3.2: UNHCR recommends that sections 17.18 and 17.20 in the manual chapter PP1 be enhanced to provide clearer guidelines on the process to be followed for the submission and review of reconsideration requests.

4. Objective: *Asylum-seekers' claims are determined and finalised expeditiously.*

Mid-term

Positive: At major POEs, asylum seekers are given contact information for U.S. - based NGOs when they are directed back to the U.S.

Issue 4.1: The continued use of direct back procedures is of serious concern to UNHCR. As of 27 January 2003, there has been no requirement for CBSA officers to determine whether or not a person risks detention if returned to the U.S. Some POEs check with U.S. border officials before directing a claimant back but this is not always done. In some cases, in particular those of persons without status in the U.S., the asylum seeker risks being detained upon return to the U.S. If detained, the claimant may be unable to appear for the scheduled interview with CBSA (e.g. a person directed back from Fort Erie on 29 December 2004, detained by U.S. officials because of an outstanding removal order was deported from the U.S. to his home country on 20 January 2005.)

UNHCR has been advised that upon release from detention in the U.S., a claimant may contact CBSA to be given a new eligibility interview date in Canada. Such appointments have indeed been given in a number of cases.

The issue of direct backs was discussed at length during the 16 December 2004 quadripartite meeting at Niagara Falls, Ontario. In response to questions from NGO representatives, U.S. officials stated that direct back claimants will “be dealt with on a case-by-case basis” and that the decision to detain will be determined by the personal status of the claimant and detention bed space.

Most, if not all, of the direct backs occur at Fort Erie, Peace Bridge. In some cases claimants are directed back because of the need for an interpreter and in other cases because the RPU is closed (it is open Monday-Friday 8-5pm), or staff at the RPU are fully occupied dealing with scheduled interviews. In contrast, telephone interpretation is used routinely at the Lacolle POE.

Recommendation 4.1: UNHCR strongly recommends that CBSA find an alternative to direct backs, particularly for claimants who are without legal status in the U.S. and who therefore risk being detained upon return. In cases in which an interpreter is not available locally, telephone interpretation should be used instead of resorting to direct back.

Post mid-term

In spite of the fact that UNHCR included this issue in the mid-term report and had repeated discussions with CIC and CBSA at all levels, the practice of direct backs continued until the end of the reporting period. With close to 50 % reduction in the number of asylum seekers at land border POEs, and no significant surge of claimants since the third week of December 2004, UNHCR is of the view that CBSA border officials should not be directing back because of a lack of capacity to deal with cases.

As of October 2005, CBSA HQ advised that they started to collect statistics on direct backs, which had not been done at that level in the past. As no formal statistics have been collected up until that time, UNHCR does not know how many persons have been directed back and how many of those have not appeared for their scheduled interview over the course of the reporting period. UNHCR has been told by CBSA that in the first 6 months of the year, 55 claimants were directed back at Fort Erie. Of those, CBSA believes that 5 persons failed to return for their interview, for unknown reasons.

However, in a 4-week period from mid-September to mid-October 2005, UNHCR is aware of 7 persons directed back at Fort Erie and who subsequently did not appear for their scheduled interviews. (UNHCR does not know the total number of claimants directed back during that 4 week period who were able to appear for their interviews and therefore did not come to the attention of monitors). UNHCR was able to obtain information that 3 of the 7 persons were detained by U.S. authorities when they were directed back. One of the 3 was eventually released on an Order of Supervision. A fourth apparently crossed the Canadian border illegally and made an inland refugee claim in

Canada. UNHCR was unable to find out what happened to the other 3 refugee claimants. It is often not possible for persons detained in the U.S. to contact CBSA from detention due to restrictions on international calls from detention centres.

In another case an applicant was directed back at the Fort Erie POE in August 2005, was detained by U.S. authorities and was not able to attend a scheduled interview at Fort Erie. Fortunately the claimant had close family in Canada who contacted UNHCR. UNHCR notified CIC and CBSA of the situation. Eventually the claimant was released from detention in order to return to the Canadian border but this happened only after extensive negotiations between Canadian and U.S. officials. The claimant was found eligible to make a refugee claim in Canada. It was brought to the attention of UNHCR that in December 2005 a second direct back case was released from detention in the U.S. and allowed to proceed to Canada.

UNHCR is also aware that during the reporting period, six asylum seekers who were directed back at Fort Erie, were detained by U.S. officials and removed to their countries of origin without having had eligibility determinations made by Canadian officials.

On a positive note, UNHCR is aware of at least two major POEs that do not direct back as a matter of policy. In addition, some POEs have deferred claimants into Canada following front-end security screening. That is, the POEs have allowed claimants to enter Canada with a direction to return to the POE the following day to complete processing of the refugee claim, where the POE was unable to complete processing of a claim within a reasonable time.

Many direct back cases do not come to the attention of UNHCR. UNHCR does know that because persons are directed back to the U.S. before a determination with respect to their eligibility to make a refugee claim in Canada is made, claimants may, as a result of the direct back process, be improperly denied access to the Canadian refugee determination system if they are unable to return to Canada for their scheduled interview.

Mid-term

Issue 4.2: At some POEs that do not accept appointments, or where there is no NGO present to facilitate the process, waiting times at the POE before processing of the case begins can be lengthy (more than 24 hours). At Lacolle, for example, in some cases a claimant may wait 20-24 hours from the time they arrive at the POE until processing of the case begins (interview, fingerprinting, photographs etc.). This means that an overnight stay in the waiting area is often required. Long delays at the POE create hardship for applicants, particularly vulnerable cases and applicants with young children. It is also evident that POEs with little experience dealing with asylum seekers take longer to complete the necessary processing.

UNHCR Action 4.2: UNHCR brought the issue of lengthy waiting times to the attention of CIC/CBSA both at the regional and national levels. UNHCR also brought it to the attention of the Working Group.

Recommendation 4.2: [superseded by New recommendation 4.2] Given that the role played by U.S.-based NGOs is undeniably positive in reducing the waiting and processing time for refugee claimants, UNHCR recommends that, where possible, an appointment be given prior to arrival at other major Canadian POEs, particularly Lacolle. Vermont Refugee Assistance, which provided scheduling assistance to Lacolle and Phillipsburg/St. Armand in the past, should be requested to do so again. See also Recommendation 5.1. Training on proper interview techniques may also reduce the time required for interviews. [See New recommendation 4.2 below]

Post mid-term

CIC/CBSA officials participating in the Working Group were of the view that variances in processing times should be expected due to each POE's particularities. On a positive note, it was pointed out that Lacolle does not use direct back procedures but prefers that claimants wait until an officer is available to conduct the interview and other procedures. At the 19 July 2005 meeting of the Working Group, CBSA noted that it was difficult to ensure adequate staffing given that there are fluctuations in requirements at POEs. CBSA members of the Working Group agreed to look into lengthy waiting and processing times at Lacolle and report to the Working Group.

In spite of this, UNHCR's monitoring confirms that waits in excess of 20 hours before processing begins appear not to be unusual at Lacolle. In fact, in July 2005, UNHCR spoke to a claimant during a monitoring visit to the Lacolle POE who waited more than 48 hours before processing of her case began and another 6 hours for the interview and other procedures. The explanation given was that there was heavy traffic due to a special event (a punk rock concert tour). During an October 2005 monitoring visit, UNHCR observed an interview with a woman who had arrived at the POE at noon on 16 October 2005. Her interview began just after noon on 17 October 2005. When the UNHCR observer departed the POE at 17:00 the claimant, who was found eligible, was still waiting for documentation. On 17 October 2005, 2 claimants arrived in the morning – one at 06:00 and another at 10:00. Neither interview had commenced when the UNHCR observer left the POE at 17:00. During a monitoring visit to Lacolle conducted in December 2005, a UNHCR monitor observed an interview of a claimant who spent almost 30 hours at the POE before his interview began. In addition, an elderly couple had arrived the previous evening, spent the night in the waiting room and had not yet been interviewed by early afternoon the following day.

UNHCR believes that a claimant, who has waited overnight without a comfortable place to sleep, may have difficulty being alert and coherent during the lengthy interview and processing that follow.

It is noteworthy that some claimants with scheduled interviews at Fort Erie may spend the better part of the day waiting for their interview and finalisation of processing because all claimants scheduled for interview for the day are asked to appear at 8 am at the Refugee Processing Unit. This is due, in part, to the fact that VIVE makes transportation arrangements for the claimants who have used their services and prefers to transport everyone at the same time. In addition, it frees accommodation space at VIVE for new arrivals.

The long waiting time is alleviated by the fact that the Peace Bridge Newcomer Centre provides counselling, assists claimants to find shelter, and provides other services, including snacks, to claimants while they wait for processing. Young children have access to a play room equipped with toys and books.

New recommendation 4.2: There should be adequate staffing devoted to immigration processing at POEs to ensure that refugee claimants are processed within a reasonable time after arrival at the POE. In addition, all immigration officers should receive training in refugee claimant interview techniques, which should help reduce the time required to conduct interviews (see also Recommendation 5.1).

5. Objective: Asylum-seekers are subject to eligibility determination interviews that are carried out in accordance with recognised international standards.

Mid-term

Positive: For the most part, interviews are carried out in accordance with international standards. In general, officers make an effort to put the asylum seeker at ease and the interview is carried out in a professional, polite and sensitive manner.

From UNHCR's observations, interpreters are both qualified and neutral. Many are experienced interpreters used by CBSA, CIC and the Immigration and Refugee Board (IRB).

Issue 5.1: There are exceptions, most notably a case in St. Stephen N.B. In this particular case, which was observed by UNHCR, the interviewing officer left the room and, having given the interpreter a list of questions, allowed the interpreter to continue with the interview. It was evident that a lack of experience and training in dealing with refugee claim cases led to some errors in approach and resulted in an unnecessarily long processing time. The woman had a sister who is Canadian citizen and the sister was with the applicant. By the end of the interview the refugee claimant appeared to be both exhausted and upset.

Although the interviewing officer usually explains the purpose of the interview to the asylum seeker, it is evident that due to the complexity of the process, asylum seekers frequently do not understand. This view is supported by the confusion expressed by asylum seekers found ineligible under the Agreement, returned to the U.S., detained and subsequently interviewed by the Protection Consultant from UNHCR Washington.

It has also been observed that some officers may not have received training specific to interviewing refugee claimants. Notable is the fact that the manual chapter for dealing with asylum seekers at Canadian ports of entry does not contain any information on interview techniques or how to structure an interview.

Recommendation 5.1: UNHCR recommends that officers working at land border POEs receive training in interviewing techniques for refugee claimants. In addition, the manual chapter (Processing Claims for Protection in Canada – PP1) should contain information on interview techniques and on how to communicate the necessary information in such a way that it is better understood by the claimant.

Post mid-term

UNHCR understands that CIC and CBSA are in the process of reviewing the manual chapter (PP1) and have requested POEs' views on areas that could be improved. It is, however, evident that little progress has yet been made with respect to training of POE officers on refugee claimant interview techniques. It appears that the division of responsibility between the two departments after the transfer of some CIC functions to CBSA has continued to cause confusion. Training for POE officers doing immigration work is one of those functions.

UNHCR observes that the quality of interviewing techniques varies greatly. At Fort Erie for example, where officers are dedicated specifically to refugee processing and therefore have extensive experience doing refugee claimant interviews, the officers do a very good job of interviewing. On the other hand, at many POEs where there are no officers dedicated specifically to refugee processing, the quality of interviewing skills is inconsistent. For example, UNHCR has observed interviews in which the officers do not introduce themselves and fail to explain the purpose of the interview.

UNHCR urges CIC and CBSA to work together to ensure that training for POE immigration staff includes interview techniques for refugee claimants.

6. Objective: Asylum-seekers are treated fairly and humanely, in accordance with international human rights standards.

Positive: UNHCR observers in Canada have not received complaints of unfair and/or inhumane treatment from claimants or from NGOs.

UNHCR observes that in most instances, the waiting areas at POEs are clean and comfortable and food and drink are made available to those required to wait long periods.

Persons found ineligible are returned promptly to the U.S.

It is clear that the work done by U.S. based NGOs (VIVE and Freedom House) assists asylum seekers to understand the process at the POEs and, as a result, to feel more at ease during the interview and other procedures. In addition, the services provided by the Peace Bridge Newcomer Centre at the Refugee Processing Unit in Fort Erie help to make the process less intimidating.

7. Objective: Vulnerable individuals are treated in a sensitive manner.

Mid-term

Positive: For the most part, POEs are sensitive to the special needs of vulnerable individuals.

Issue 7.1: UNHCR is concerned that lengthy waiting and processing times at some POEs may result in hardship for vulnerable cases. UNHCR had a report from an NGO of an obviously pregnant woman who spent almost 24 hours at Lacolle while her case was processed.

UNHCR Action 7.1: The matter was reported to the members of the Working Group and CBSA promised to follow up with POEs.

Recommendation 7.1: UNHCR recommends that CBSA impress upon POE officials the need to provide, to the extent possible, processing priority to vulnerable individuals.

Post mid-term

At the 19 July 2005 meeting of the Working Group CIC and CBSA agreed to review the manual chapter (PP1) and other instructions as they relate to vulnerable cases. There was agreement that POEs should provide priority processing to vulnerable individuals and that guidance on how to identify a vulnerable case is required. UNHCR pointed out that although no clear definition of vulnerable individuals exists; some categories of persons (e.g. unaccompanied minors, pregnant women, the elderly, persons in need of urgent

medical attention, physically and mentally challenged persons, victims of torture, etc.) should be regarded as vulnerable.

UNHCR is aware that at POEs where U.S.-based NGOs provide services to refugee claimants destined to Canada, the POE is often advised in advance of the arrival of a vulnerable individual and is therefore better able to provide appropriate assistance. For example, Freedom House in Detroit advised the Windsor Ambassador Bridge that a refugee claimant used sign language. When the claimant arrived at the POE for a scheduled appointment, a sign language interpreter was available. In another case at Fort Erie, a claimant with active tuberculosis was interviewed with the assistance of medical personnel. The claimant, who was found eligible, was then referred for appropriate medical treatment.

To the knowledge of UNHCR, CBSA/CIC has not yet provided guidance to POEs on identifying and dealing with vulnerable cases.

8. Objective: Asylum-seekers benefit from the principle of family unity.

Mid-term

Positive: Immediate family members (spouse and dependant children) are allowed to accompany a family member who has been found eligible to make a refugee claim in Canada, including common-law and same sex partners.

Issue 8.1: UNHCR notes with interest a case in Fort Erie in which a child was allowed to make a refugee claim in Canada based on an assessment of the best interest of the child, in spite of the fact that the child's mother was in the U.S. It is the understanding of UNHCR that the mother would like to join her child in Canada.

Recommendation 8.1: If the parent in such a case makes a refugee claim at a Canadian land border POE, UNHCR urges that the best interest of the family be taken into consideration when determining eligibility of the parent to make a refugee claim in Canada.

Post mid-term

This issue was discussed at the Working Group meeting in July 2005. At that time, CIC and CBSA stated that it is their policy to take into consideration the best interest of the family. They suggested that if there is a parent in this situation, they should approach either a Canadian Consulate in the U.S. or a Canadian POE to make a request to join their child in Canada.

Since that time, UNHCR was made aware of a case in which an unaccompanied minor made a refugee claim at the Fort Erie POE in September 2005. The child's mother was in Canada but had been found not to be a refugee by the IRB. The mother was pursuing a humanitarian and compassionate application. Although the child was found not eligible to make a refugee claim, she was admitted to Canada to be with her mother pending the determination of the mother's humanitarian and compassionate application.

9. Objective: Asylum-seekers subject to the Agreement are aware of their rights.

Mid-term

Positive: For the most part, officers explain the interview process and the reason for the interview to applicants. UNHCR has observed that POE officials usually give ineligible claimants a detailed explanation of the basis for the decision.

UNHCR understands that all negative decisions are reviewed by a separate decision maker (called a Minister's Delegate in the Canadian context). UNHCR is aware that at least one POE gives a copy of the officer's interview notes along with other documentation to persons found ineligible. Although it is policy to provide copies of forms, relevant documents and the officer's interview notes to refugee claimants, at least one POE does not provide POE notes. The officers at Lacolle state that the notes are not finalized at the time that the claimant leaves the POE.

Issue 9.1: UNHCR has observed that officers do not always review the Schedule 1 and IMM 5500 forms with the applicant to ensure the accuracy of the information. This may result in inaccurate information and may cause difficulties for claimants at a later date (e.g. at the Immigration and Refugee Board or upon application to sponsor family members).

Recommendation 9.1: Schedule 1, IMM 5500 and any other forms should be reviewed by the officer directly with the applicant and, if necessary, an interpreter.

Post mid-term

CBSA promised to remind POEs of the necessity to review all documents with the claimant. UNHCR has observed during monitoring visits subsequent to the mid-term report that officers are reviewing both the Schedule 1 and the IMM5500 with claimants, although with varying degrees of thoroughness. (See also Recommendation 5.1).

Mid-term

Issue 9.2: As explained in Issue 5.1, asylum seekers often do not understand the process because it is complex and the explanation given by officers is often legalistic.

***Recommendation 9.2:* CBSA should ensure that the refugee claimant process is explained in clear, comprehensible language to the claimants. (See also Recommendation 5.1 regarding additional guidance and training on interview techniques.)**

Post mid-term

CIC and CBSA prepared a handout to be given to all refugee claimants. The purpose of the handout is to explain in plain language, the process for claiming refugee status in Canada so that claimants have a better understanding of what to expect. UNHCR has been advised that the handout was provided to POEs in mid-October and is now in use at some POEs. (During a monitoring visit to Lacolle in December, POE staff advised UNHCR and CBSA HQ officials that the handout had not yet been received by that POE.) UNHCR understands that the handout will be amended as required based on comments received from the POEs.

The handout will assist to explain the process to claimants and help to create a comfortable environment before and during the interview.

***Recommendation 9.2.1:* UNHCR recommends that the handout be shared with U.S.-based NGOs that assist Canada-bound claimants.**

Mid-term

Issue 9.3: During the first quarter, UNHCR observed that some POEs, including Fort Erie were notifying U.S. border officials by telephone of the return of ineligible claimants but were not sending a copy of the IMM 5569 by fax. All other formalities seem to have been carried out according to the guidelines (e.g. claimant was provided with copies of the decision, legitimate documents returned to the claimant).

***UNHCR Action 9.3:* UNHCR advised CIC/CBSA (at the Fort Erie POE and the Working Group) that procedures were not always being followed with respect to fax notification to the U.S. POE of the return of an individual. After this omission was pointed out, POEs began sending all documentation and notifying the U.S. POE by fax of persons returned under the terms of the Agreement. This has been beneficial in assisting UNHCR to locate ineligible cases once they are returned to the U.S.**

Post mid-term

Since UNHCR advised CIC/CBSA of the need to notify the U.S. POE in writing of the imminent return of a claimant found ineligible, UNHCR is not aware of any POEs that are not following this procedure.

New Issue

Issue 9.4: Among claimants who are determined ineligible under the Agreement, UNHCR is concerned about two sub-groups: those who believe that the decision was not correct, and those to whom new information becomes available to support eligibility under an exception. In one case that came to the attention of the UNHCR, a Palestinian claimant approached a POE in August and stated that he was both stateless and a habitual resident of the U.S. The claimant was found not eligible to have his claim referred to the Immigration and Refugee Board because the officer determined that he did not establish that he was stateless. However, as he was leaving the POE, the claimant produced additional information in support of his claim. He was given a direct back form (in addition to a removal order) and asked to return the following day. The claimant, however, was detained on the U.S. side and was unable to return with additional information in support of his claim. The case is now before the Federal Court of Canada and awaiting a court date. In addition, a request for reconsideration was submitted to the Detroit POE. The U.S. Port Director determined that the new evidence submitted did not provide conclusive proof that IC was stateless and therefore the request was not forwarded to the Windsor POE for reconsideration.

Recommendation 9.4: CIC/CBSA should create an administrative mechanism for the review of cases that may have been erroneously found ineligible or where new evidence may have come to light. This review mechanism would, at the instance of the claimant, look into situations where new information relevant to the eligibility determination becomes available only after the completion of the eligibility process. Such a review mechanism should not be discretionary as is the case with the present reconsideration procedures (PP1 17.18 and 17.20). CIC and CBSA should also agree with CBP and other relevant U.S. authorities on suspension of removal from the U.S. pending the timely review of such cases.

10. Objective: *Asylum-seekers are not subject to unwarranted detention.*

Mid-term

Positive: Visits to the POEs and information from CBSA indicate that there have been relatively few instances detention of claimants to whom the Agreement applied. POE staff has attributed this to the fact that applicants often have identification documents in support of their claimed relationship or source country.

Issue 10.1: UNHCR has not received detention statistics as per the Monitoring Plan. The Plan states that CBSA will provide a monthly detention report. It is difficult for UNHCR to monitor detention rights, conditions and trends in the absence of reliable statistics.

Recommendation 10.1: CBSA should provide monthly data on detention of cases to which the Agreement applies, as per the Monitoring Plan.

Post mid-term

CBSA has advised that they are unable to separate other immigration detainees from those who claim refugee status at a land border. They agreed to investigate how best to provide the statistics required under the Monitoring Plan. UNHCR was advised that a manual reporting system had been instituted in September 2005 and that, as of October 2005, POEs started to collect statistics on detentions longer than 48 hours, of refugee claimants subject to the Agreement.

11. Objective: UNHCR has access to individual files.

Mid-term

Positive: CBSA has been helpful in terms of providing information on individual files.

Issue 11.1: CIC has not provided statistical reports on a regular basis, which has made it difficult for UNHCR to monitor some aspects of the Agreement as effectively as UNHCR would like. It was the understanding of UNHCR that when the Monitoring Plan was discussed, the Parties committed to give only those statistics they would be in a position to provide.

It should be noted that the National HQ of CBSA and CIC discourage POEs from directly providing UNHCR with statistical information. CIC and CBSA National Headquarters inform that they provide UNHCR with centralized statistics in order to ensure accuracy and consistency.

UNHCR Action 11.1: On numerous occasions, UNHCR urged CBSA/CIC to provide statistics as required under the Monitoring Plan. Due to technical difficulties the government was not able to provide UNHCR with the requested statistics for the first quarter and preliminary April statistics until June 2005.

Post mid-term

Since the mid-term report, CIC has provided timely statistical reports to UNHCR on a monthly basis.

12. Objective: UNHCR staff has access to designated land border ports of entry and “border” detention facilities.

Positive: UNHCR has enjoyed excellent cooperation with CBSA and CIC in terms of access to land border ports of entry and detention facilities. CBSA and CIC officials at all levels (POE, regional, national) have spared no effort to ensure free access for UNHCR monitors to POEs and detention facilities for the purpose of monitoring the implementation of the Agreement.

Post mid-term

UNHCR has continued to enjoy excellent cooperation from CBSA and CIC with respect to access to land border POEs and detention centres.

13. Other issues

- **Public interest cases**

Mid-term

Positive: The public interest provision (Article 6 of the Agreement), which gives the Government the discretion to exempt certain individuals/categories of individuals from the application of the Agreement is being effectively implemented.

Issue 13.0: UNHCR is not aware of any public interest cases apart from applicants from the moratoria countries, which is a frequently used exception. The public interest provision in Article 6 is interpreted in a way that leaves little room for discretion. On a monitoring visit, UNHCR observed a situation that serves as an example of a case that may warrant exceptional consideration. A mother and her minor son made a refugee claim at a land border POE. The son had a paternal aunt in Canada and would therefore be eligible to make a refugee claim in Canada. However, his mother was not eligible to make a claim as she did not fall under any exception. In this case, the mother indicated that she was a victim of domestic violence and feared that her husband would find her if she was returned to the U.S.

Recommendation 13.0: There are cases that fall outside the Agreement but that would otherwise warrant exceptional consideration. The interpretation of Article 6 should permit sufficient flexibility to allow for the consideration of certain cases based on the public interest provision of the Agreement. For example, vulnerable individuals who would not normally be eligible under an exception but who nevertheless warrant special consideration because of their vulnerability (e.g. victims of torture, disabled claimants, the elderly, etc.) should be deemed eligible for consideration under Article 6.

Post mid-term

The issue of broadening the application of the public interest exception was discussed again at the 19 July 2005 meeting of the Working Group. CIC indicated that it wanted to keep a clearly delineated definition of public interest case (Regulation 159.6) and that, to that point, no discrete category had been identified that would justify expansion of the exception. CIC also indicated that the review after the Agreement had been in force for one year would present a good opportunity to consider changes to the public interest exception. UNHCR urges CIC to give serious consideration to including vulnerable individuals under the public interest exception.

- **NGOs participation in monitoring**

Mid-term

Issue 13.1: UNHCR has been advised that some border NGOs would like training with a view to participating in the monitoring of the Agreement. The Agreement states that the governments will seek input from NGOs with respect to monitoring. However, it is not clear that border NGOs understand their role in this respect, which situation potentially deprives the Parties of NGO input.

UNHCR action 13.1: UNHCR advised the Working Group of this issue at the May 2005 meeting. CIC/CBSA advised that they planned to attend the May meeting of the Canadian Council for Refugees and would solicit NGO input on the Agreement at that time.

Post mid-term

This issue was discussed at the July 2005 meeting of the Working Group. CIC and CBSA stated that NGOs working in the field should contact local offices of CIC or CBSA if they require more information about the Agreement. UNHCR along with representatives of CIC and CBSA HQs met with NGOs in Fort Erie in September 2005. In addition, CIC hosted a quadripartite meeting (U.S. and Canadian governments, UNHCR and NGOs from both Canada and the U.S.) in November 2005 to discuss the Agreement.

- **Communication between Canadian and U.S. port officials**

Mid-term

Issue 13.2: UNHCR has observed and has been told by CBSA border officials that there is not a great deal of contact between some Canadian and U.S. POEs. UNHCR monitors noted that contact between some Canadian and U.S. POEs continues to be minimal.

UNHCR Action 13.2: This issue was mentioned to CIC/CBSA at an informal monthly meeting in April 2005. It was also raised at the mid-term oral report in Washington DC in July 2005, and on other occasions.

Recommendation 13.2: UNHCR recommends that CBSA border officials and their counterparts in the U.S. communicate more regularly on issues relevant to the Agreement.

Post mid-term

It is the view of UNHCR that lack of communication between counterparts on either side of the border continues to be an issue at some POEs.

A factor that compounds the situation at POEs is that in Canada, cases are processed by front-line officers at the POE, i.e. CBSA, but in the U.S., eligibility interviews (called “threshold screenings”) are done by Asylum Officers who are not based at the land border crossings.

New Issues

- **Communication of UNHCR’s mid-term findings to CBSA land border officers**

Issue 13.3: During the mid-term review in Washington DC in July 2005, CBSA HQ undertook to advise all land border POEs of UNHCR’s recommendations. As of mid-October 2005, POEs advised that they had not yet received any information from CBSA headquarters with respect to the mid-term report. UNHCR has been advised by CBSA officials that the necessary information was eventually sent in late October, nearly four months after the mid-term report was shared with the Canadian authorities. However, during a December monitoring visit, the Lacolle POE staff advised that they had not yet received this information.

Recommendation 13.3: UNHCR recommends that CBSA HQ ensure that, when appropriate, information regarding concerns expressed by UNHCR about activities at the POEs be shared with the field in a timely manner.

- **Public information on the Agreement**

Issue 13.4: UNHCR notes that there is still some confusion on the part of the public and immigration practitioners with respect to the Agreement. UNHCR monitors have been told by lawyers based in the U.S. that it is the belief of many legal practitioners in that country that there are no exceptions to the Agreement. A review of the CIC and CBSA websites highlights the need for more and better information about the Agreement. On the CIC website, information on the Agreement is difficult to find. The CBSA website

does not appear to include any references to the Agreement, and the word “refugee” does not feature in the alphabetic index for the website.

Recommendation 13.4: It is recommended that both CIC and CBSA ensure that information on the Agreement, including the exceptions, is readily available on the websites of both departments. Moreover, other methods of providing public information should also be explored (e.g. fact sheets on the Agreement).

- **Maintenance of “acquis”**

Issue 13.5: The monitoring of the Agreement will no longer be considered a “special” project but will be mainstreamed into UNHCR’s regular supervisory responsibilities pursuant to Article 35 of the Convention and Paragraph 8 of the UNHCR Statute.

Recommendation 13.5: UNHCR recommends that the *modus operandi* established between CIC/CBSA and UNHCR to facilitate the monitoring functions of UNHCR be maintained. This relates in particular to the Working Group and the regular and timely provision of statistics.

E. CONCLUSION

In general, the Agreement is being implemented in keeping with its own terms and with international refugee law.

For the most part, it may be said that the Agreement is being implemented by Canadian border officials not only in line with the letter, but also with the object and purpose of the Agreement. Refugee claimants are treated fairly and with respect. Those who meet an exception to the Agreement are effectively identified and interviews are generally carried out in accordance with international standards.

UNHCR has enjoyed excellent co-operation with both CIC and CBSA at all levels and there has been regular, open and transparent communication between CIC/CBSA and UNHCR.

Since the mid-term report was delivered in July, CIC and CBSA have made progress on a number of recommendations. This includes the preparation of a handout to explain the process at POEs to refugee claimants, the timely provision of statistics to UNHCR and the collection of statistics on direct backs and detentions of cases subject to the Agreement. In addition, considerable progress has been made on amendments to the PP1 manual to expand the section on statelessness and habitual residents.

During the period under review, the UNHCR expressed concern that the use of the direct back policy undermined the letter and spirit of the Agreement, and recommended that CBSA discontinue its use. The Government of Canada has informed the UNHCR that the

use of the direct back policy will end as of August 31, 2006, except in extraordinary circumstances.

Lengthy waiting and processing times continue to be of concern at some POEs. There is still a need for additional information and training on conducting refugee claimant interviews. In addition, UNHCR believes that the relatively narrow definition of Article 6 should be reviewed and expanded to include vulnerable claimants. Furthermore, information on the Agreement should be more readily available to the public.

UNHCR is pleased with the progress made to date on many issues relating to the implementation of the Agreement. It is the hope of UNHCR that CIC/CBSA will act promptly on the recommendations that have not yet been implemented, as well as the new ones contained in this document.

UNITED STATES of AMERICA
COUNTRY CHAPTER

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I. Executive Summary

On 6 August 2004, the Parties to the *“Agreement Between the Government of the United States and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries”* (Agreement) and UNHCR agreed upon a UNHCR Monitoring Plan detailing UNHCR’s monitoring role pursuant to Article 8(3) of the Agreement and further to UNHCR’s mandate under the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol. The objective of UNHCR’s monitoring was to assess whether the Parties’ implementation of the Agreement was consistent with its terms and with international refugee law. This Chapter details UNHCR’s evaluation of the first year of the Agreement’s implementation in the United States.

UNHCR’s overall assessment of the Agreement’s implementation in the United States is that it has generally been implemented appropriately and in keeping with the terms of the Agreement and, with regard to those terms, international refugee law. Individuals who request protection are given an adequate opportunity to lodge a refugee claim in the United States; however the timely determination of their eligibility to do so has been an issue. Detention conditions in the United States are of concern to UNCHR to the extent that they affect detained asylum-seekers throughout the Safe Third process. Asylum-seekers’ ability to establish their eligibility under the Agreement may also be compromised by inadequacies with the reconsideration mechanism and a lack of coordination between the Parties.

II. Introduction

A. United States Safe Third Country Process

The Agreement went into effect in the United States on 29 December 2004 pursuant to Department of Homeland Security (DHS) and Department of Justice (DOJ) regulations that were published one month earlier.¹ The Immigration and Nationality Act (INA), Section 208(a)(2)(A), allows for the use of such bi-lateral or multi-lateral agreements to restrict the eligibility of individuals to apply for asylum in the United States, although this provision of the INA had not been exercised until the Agreement went into effect. Since issuance of the DHS and DOJ regulations, agencies within DHS and DOJ have issued more specific guidance on the Agreement's implementation.² United States procedures implementing the Agreement were largely folded into existing procedures for asylum-seekers who are processed at United States ports-of-entry (POEs), in particular the expedited removal procedures under INA Section 235.

1. Port-of-Entry Processing

Asylum-seekers who request admission to the United States at a United States-Canada land border POE are initially inspected by officers with the DHS Bureau of Customs and Border Protection (CBP). If the asylum-seeker is inadmissible, he/she will generally be placed in either expedited removal proceedings, regular removal proceedings under INA Section 240, or "asylum-only" proceedings under the Visa Waiver Program (VWP).³

CBP provides asylum-seekers who are placed in expedited removal at United States-Canada land border POEs with an "*Information about Threshold Screening Interview*" Form (TSI Form) and the Executive Office for Immigration Review (EOIR) local legal service provider list. Asylum-seekers attempting entry under the VWP are also provided with a copy of the TSI Form. Asylum-seekers placed in regular removal proceedings (separated children, Cuban nationals, and others subject to certain charges of inadmissibility) do not impose any additional procedural obligations on CBP officers under the Agreement. They are processed as would any applicant for admission who is referred to immigration court.

¹ 69480 Federal Register Vol. 69, No. 228, 29 November 2004.

² Such internal guidance includes: Revisions to Chapter 17.11 and 17.15 of the Customs and Border Patrol (CBP) Inspector's Field Manual (IFM); Revisions to Section IV of the Citizenship and Immigration Service (CIS) Credible Fear Procedures Manual; and, the Executive Office for Immigration Review (EOIR) Interim OPPM dated 28 December 2004.

³ Other options also exist for those seeking admission, such as withdrawal of the request for admission or placement in reinstatement of removal proceedings, but these are less common in the case of asylum-seekers.

2. Threshold Screening Interview

Those asylum-seekers placed in expedited removal or VWP “asylum-only” proceedings are referred by CBP to the DHS Bureau of Citizenship and Immigration Services (CIS) for a “Threshold Screening Interview.” Once referred, CIS Asylum Officers must confirm that each applicant has received and understood the contents of the TSI Form. If the applicant did not receive and/or understand this Form, CIS must provide and/or explain its contents, with translation if necessary. A CIS Asylum Officer is then charged with conducting the threshold screening interview. During this interview, the Asylum Officer will question the asylum-seeker to determine whether he/she meets one of the Agreement's exceptions.

If the Asylum Officer determines that the asylum-seeker qualifies for an exception to the Agreement, the Asylum Officer will then proceed to a consideration of whether the asylum-seeker has a credible fear of persecution or torture if returned to his or her country. Asylum-seekers found to have a credible fear of persecution are then allowed to submit their asylum claim before an Immigration Judge. If the Asylum Officer determines that an asylum-seeker does not meet an exception to the Agreement, the asylum-seeker will be returned to Canada and is not eligible to apply for asylum in the United States. While all Safe Third eligibility decisions are reviewed by CIS Headquarters, there is no appeal mechanism for negative eligibility decisions. Either Government, may, however, request the reconsideration of a negative eligibility decision if there is new material evidence to be considered, if all available evidence was not initially considered, or if an asylum-seeker's true identity is later established.

3. Regular Removal Proceedings

Unaccompanied minors, Cuban nationals, and any other asylum-seekers not placed in expedited removal proceedings due to the nature of their charges of inadmissibility are generally placed into removal proceedings under INA Section 240. In these cases, an Immigration Judge will apply the terms of the Agreement with respect to the asylum-seeker's claim and will determine whether the Agreement is applicable and, if so, whether the asylum-seeker is eligible for any exceptions under the Agreement or should be returned to Canada. Negative eligibility decisions can be appealed to the Board of Immigration Appeals (BIA).

4. Detention

Those asylum-seekers placed in expedited removal proceedings are mandatorily detained by the DHS Bureau of Immigration and Customs Enforcement (ICE). Asylum-seekers placed into removal proceedings under INA Section 240 are detained at the discretion of the local ICE office. Detained asylum-seekers may be held at a Service Processing Center (SPC) owned and operated by DHS, a “contract facility” owned and operated by a private company, or a local/county jail. All facilities holding DHS detainees are to meet DHS detention standards.

B. Training of DHS Officials

Formal Safe Third training for DHS consisted of a one-day session held by DHS HQ in early December 2004 in Washington, D.C. All CIS Asylum Division Directors were invited, along with one or two representatives from each CBP Field Office and each ICE Detention and Removal Field Office. The training consisted of a Safe Third powerpoint overview in the morning for all participants, and breakout sessions for each separate bureau in the afternoon. This one-day event was intended as a “train the trainer” session, with those in attendance expected to disseminate the training information locally, although no formal training sessions at the local level were ever envisioned.⁴

C. Methodology / Monitoring Activities

Pursuant to UNHCR’s monitoring mandate under Article 8(3) of the Agreement and its general supervisory responsibility under Article II of the 1967 Protocol, UNHCR monitored the first year of implementation of the Agreement by the United States. UNHCR Washington hired a Protection Consultant, funded by the United States government, who was supervised and supported by office staff. UNHCR focused its monitoring on three types of Safe Third cases: (1) U.S.-bound asylum seekers; (2) Canada-bound asylum-seekers who were directed-back to the United States to await scheduled interviews in Canada; and, to a limited degree, (3) Canada-bound asylum-seekers who were found ineligible to lodge refugee claims in Canada and were returned to the United States.⁵ To facilitate its monitoring, UNHCR established monitoring objectives that were provided to DHS and NGOs for comment. For purposes of this report, some of these objectives have been consolidated and/or reformulated for ease of presentation.

UNHCR Washington’s monitoring activities comprised the following: (1) missions to United States-Canada land border POEs; (2) missions to detention facilities where Safe Third applicants were detained; (3) observation of CIS orientations and Threshold Screening Interviews; (4) observation of immigration court proceedings; (4) meetings/discussions with DHS and EOIR officials at both the local and HQ level; (5) meetings with United States NGOs operating on the United States-Canada border; (6) interviews with asylum-seekers subject to the Agreement, as well as with their family-members and/or lawyers; (7) individual case file review; (8) review of DHS/DOJ policy guidance; and, (9) statistics review.

⁴ CBP HQ followed-up the session by forwarding CBP attendees and CBP Field Offices the following: 22 December Memorandum from CBP Assistant Commissioner Jayson Ahern; Safe-Third related amendments to the CIS Procedures Manual; 26 December Safe Third Weekly Muster to the CBP Field Offices; a copy of the training packet; the Threshold Screening Information Form, and a list of ENFORCE actions. CIS HQ has trained Asylum Officers locally using updated information to the Asylum Officer basic training course.

⁵ UNHCR monitored this group of applicants only with regard to the transfer of documents from Canadian to United States authorities and the processing of any requests for reconsideration of a negative Canadian eligibility decision.

With regard to monitoring missions, ROW conducted 16 monitoring missions to four major United States-Canada ports-of-entry (POEs) and area detention facilities between January and December 2005.⁶ During each mission, UNHCR Washington met with local DHS officials, local NGOs, and individual asylum-seekers. The four POEs visited were Buffalo, NY; Champlain, NY; Detroit, MI; and, Blaine, WA.⁷ Four of these missions were joint missions by UNHCR Washington and UNHCR Ottawa. During these missions, UNHCR Washington made 18 visits to ten separate detention facilities where Safe Third applicants had been held and were likely to be held in the future. These detention facilities included: the Buffalo Federal Detention Facility (Batavia, NY); Northwest Detention Center (Tacoma, WA); Clinton County Jail (Plattsburgh, NY); Franklin County Jail (Malone, NY); Monroe County Jail - main and dormitory facilities (Monroe, MI); Calhoun County Jail (Battle Creek, MI); Wayne County Jail - Division III facility (Detroit, MI); Erie County Holding Center (Buffalo, NY); Albany County Jail (Albany, NY); and, the Elizabeth Detention Facility (Elizabeth, NJ).

ROW observed 10 CIS threshold screening interviews⁸ and two CIS Safe Third orientations. These interviews and orientations were conducted by CIS Asylum Officers with the Buffalo, Newark, Chicago, and San Francisco Asylum Offices. Due to the timing of immigration court hearings, ROW was able to observe only one master calendar hearing in immigration court.

ROW reviewed redacted CIS case files for 44 U.S.-bound asylum-seekers and seven case files of persons directed-back or returned to the United States from Canada. CIS and CBP also provided statistics and case information on a regular basis.

UNHCR notes that there were certain limitations on its monitoring activities, including: (1) UNHCR's inability to observe secondary inspection at the POEs due to the limited number of U.S.-bound cases and the spontaneous nature of their arrivals; (2) UNHCR's inability to identify and interview all U.S.-bound applicants due to the confidentiality of their claims; (3) lack of individual hearings scheduled in immigration court during the monitoring period (all such hearings have been continued until 2006); (4) difficulties in identifying asylum-seekers directed-back or returned to the United States from Canada; and, (5) certain limitations on case file information due to the redacted nature of the documents contained therein. These limitations have, at times, required UNHCR to qualify its findings.

D. Statistics

As of 28 December 2005 there were 66 reported U.S.-bound asylum applicants; 62 of them were subject to the Agreement. Of these, 43 cases were adjudicated by DHS, 18 were referred to EOIR (17 by CBP, 1 by CIS), and five were either abandoned or dissolved. DHS found that of the 43 DHS-adjudicated cases, 27 (63%) were deemed

⁶ Two of these missions included visits to detention facilities only.

⁷ UNHCR visited the Buffalo, Champlain, and Detroit POEs four times each and the Blaine POE twice.

⁸ Three of these interviews were observed in person and seven were observed telephonically.

eligible to lodge an asylum application in the United States, either under an exception to the Agreement (23 cases) or because the Agreement was not applicable to them (i.e. Canadian citizens or stateless/habitual residents of Canada) (4 cases). Of the 39 applicants subject to the Agreement, 23 (59%) qualified for an exception under the Agreement. Twenty-two of these 26 applicants were found eligible under a family-based exception. Thirty-five total applicants (46%) were Cuban nationals. There were no unaccompanied minors.

Of the 66 U.S.-bound cases, 47 were placed in expedited removal proceedings, two were placed in VWP “asylum-only” proceedings, and 18 (all Cuban but for one Argentinean whose safe third adjudication had been pending for over 90 days such that he could not be returned to Canada under the Agreement as a matter of right) were placed in regular removal proceedings. All of the positive eligibility determinations were based on one of the Agreement’s family-based exceptions. DHS did not determine eligibility in any case based on the Agreement’s public interest exception.

E. UNHCR Cooperation with DHS and EOIR

UNHCR notes that it generally enjoyed excellent cooperation with DHS and EOIR at both the Headquarters and the local level. Local CBP, CIS, and ICE Officers at the various POEs and detention facilities were particularly accommodating with respect to UNHCR’s site visits and the provision of Safe Third-related information. CIS HQ, CBP HQ and ICE HQ, in particular the ICE Detention Standards Compliance Unit, all participated in regular meetings and other communication with UNHCR to discuss implementation issues. CIS HQ was helpful in its regular provision of case files and statistics, as well as its facilitation of UNHCR’s observation of threshold screening interviews. ICE HQ cooperated UNHCR’s monitoring of Safe-Third related detention conditions and consistently provided UNHCR with reports on ICE’s follow-up actions. CBP HQ provided statistics to UNHCR when available, and although UNHCR had difficulty obtaining information on returnee and direct-back cases from CBP HQ, CBP Officers at the Champlain and Buffalo POEs made significant efforts to gather and track this information at the local level as the year progressed.

III. Summary of Findings and Recommendations

UNHCR found that the Safe Third Agreement has generally been implemented appropriately in the United States and appears to be functioning relatively well. Asylum-seekers have been given the opportunity to establish their eligibility and those eligibility decisions have generally been made correctly under the Agreement. UNHCR found that detained asylum-seekers' ability to establish their eligibility under the Agreement may be compromised, however, by detention conditions in the United States. Procedurally, the folding of Safe Third procedures into the expedited removal/credible fear process appears to have been relatively well executed. This is likely due in part to the fact that trained Asylum Officers are responsible for Safe Third adjudications and in part a result of DHS' use of the Threshold Screening Information Form and other efforts to orient asylum-seekers. UNHCR has found, however, that the process could be much enhanced by more timely adjudication, improved applicant comprehension of the process, and improved reconsideration procedures.

While UNHCR Regional Office Washington has found that in the United States the Safe Third Agreement has generally been implemented appropriately, it has identified certain areas of concern.

A. Primary Areas of Concern

1. Timely Adjudication

UNHCR found that the processing time for Safe Third cases was significantly prolonged in many cases. Some U.S.-bound Safe Third cases took months to adjudicate. Almost half of the U.S.-bound asylum-seekers waited over one month for their Safe Third eligibility decisions.

Recommendation One: To ensure efficient processing, UNHCR recommends that DHS establish timeframes for the adjudicative phase of the Safe Third process, with some flexibility for a more thorough consideration of public interest cases. UNHCR also recommends that, as a matter of practice and in line with Principle Two of the Parties' Statement of Principles, credible testimony alone be considered sufficient to prove eligibility under one of the Agreements' exceptions, especially if efforts to obtain documentary proof would unnecessarily prolong detention.

Detention Conditions

UNHCR found that conditions of detention varied widely at detention facilities despite the requirement that all facilities meet DHS' Detention Standards. As most U.S.-bound Safe Third applicants are mandatorily detained pending their eligibility decisions, UNHCR is particularly concerned about those detention conditions which could affect an applicant's ability to establish their eligibility under the Agreement. Detention conditions of primary concern include: Telephone Access, DHS Access, and Interpretation.

Recommendation Two: UNHCR recommends that DHS ensure adequate detention conditions for Safe Third applicants. In particular, UNHCR recommends that ICE: (a) Provide adequate telephone access for detained asylum-seekers subject to the Agreement; (b) Ensure that detained asylum-seekers have free telephone access to local CBP and CIS officials, and to Canadian officials when necessary; (c) Ensure free telephone calls to legal service providers and UNHCR from all detention facilities where Safe Third applicants may be held, and post telephone use instructions and relevant contact information; (d) ICE ensure that detained asylum-seekers have meaningful access to DHS Deportation Officers; and, (e) Issue guidance ensuring that all detention facilities have access to the ICE interpreter service and advise detention facility staff to use it whenever necessary to communicate with detainees.

3. Reconsideration Procedures

UNHCR has expressed concern that the Agreement's reconsideration procedures are inadequate in cases where new evidence is later obtained or there has been a flawed adjudication process, particularly for detainees and those in removal proceedings.

Recommendation Three: UNHCR recommends that the reconsideration mechanism be revised to allow for direct referral of timely reconsideration requests to the Party issuing the negative eligibility decision. In the alternative, UNHCR recommends that DHS re-assign the responsibility of reviewing reconsideration requests from CBP to CIS given CIS' expertise in the adjudication of Safe Third cases, and that in considering such requests, DHS obtain relevant case information from CIC/CBSA.

UNHCR also recommends that the Parties stay any asylum-seeker's deportation pending a final decision on his/her request for reconsideration, and facilitate the return of a detained asylum-seeker to the border should his/her reconsideration be granted.

Direct-Back Policy

UNHCR remains concerned about the Parties' continued use of direct-back procedures. This has been particularly problematic for asylum-seekers directed back from Canada to the United States, as at least ten asylum-seekers directed-back from Canada were detained in the United States and unable to attend their interviews, and six were also deported to their countries of origin without having their claims processed under the Agreement. There were some asylum-seekers who were directed-back from the United States who also appear to have been at risk of deportation from Canada at the time they were directed-back.

Recommendation Four: *In order to ensure access to the refugee status determination process in the receiving country for applicants who would otherwise be eligible to lodge refugee claims under the Agreement, UNHCR recommends that the Parties discontinue direct-backs. If an asylum-seeker is directed-back, UNHCR recommends that the Parties confirm the asylum-seeker's valid legal status in the country to which he/she is being directed-back and ability to appear for his/her scheduled interview/hearing.*

B. Secondary Areas of Concern

Included is a brief overview of some of UNHCR's secondary issues of concern. Please refer to Appendix 7 for a more complete listing of these issues.

Department of Homeland Security

- Simplification, translation, and distribution of the TSI Form (CBP/CIS)
- Advisal to asylum-seekers directed-back to Canada (CBP/CIS)
- Detention of direct-backs from Canada in the United States (CBP/ICE)
- Detention of asylum-seekers with mental health issues (CBP/ICE)

Customs and Border Protection

- Use of restraints at ports-of-entry

Citizenship and Immigration Services

- Applicants' comprehension of the Safe Third process
- Adjudication of applicants' eligibility under the public interest exception
- Sufficiency of credible testimony as evidence of eligibility under the Agreement
- Facilitation of telephone calls by detained asylum-seekers to establish eligibility under the Agreement

Immigration and Customs Enforcement

- Provision of mental health care to detained asylum-seekers

Executive Office for Immigration Review

- Additional procedures for processing Safe Third cases and ensuring applicants' comprehension of the Safe Third process

IV. Findings and Recommendations

A. Objective One: Asylum-seekers have access to appropriate border and adjudicating officers.

Safe Third applicants in the United States may require access to border or adjudicating officers at various stages of the Safe Third process. As applicants may either be paroled, detained, or directed-back to Canada, they may have distinctly different needs for accessing border and adjudicating officers. UNHCR identified three areas of inquiry with regard to access to DHS officials: (1) ensuring that U.S.-bound asylum-seekers are identified and referred to the appropriate adjudicating agency; (2) ensuring that U.S.-bound asylum-seekers who are directed-back to Canada are able to return to the United States for their eligibility interviews/hearings; and, (3) ensuring that detained Safe Third applicants are able to communicate with relevant DHS officials throughout the Safe Third process.

1. Identification and Referral at Ports-of-Entry

Given the limited number of U.S.-bound Safe Third cases and the spontaneous nature of their arrivals, UNHCR was unable to observe any secondary inspection interviews during its monitoring visits to the POEs. As a result, UNHCR cannot comment on whether CBP Officers at POEs along the United States-Canada border correctly identified individuals seeking asylum in the United States and subject to the Agreement. UNHCR was able to verify through personal interviews with Safe Third applicants that asylum-seekers have had adequate access to CBP officers upon their arrival and identification at the POE. CBP officers were available and accessible for the duration of asylum-seekers' custody at the POE. Translation services were available and used as necessary at the POEs that UNHCR visited. CBP appropriately referred Safe Third applicants to CIS or EOIR for an eligibility determination.⁹

2. Applicants Directed-Back to Canada

a. Background

INA Section 235(b)(2)(C) states that applicants for admission to the United States who arrive on land from a foreign contiguous territory (*e.g.*, Mexico or Canada) - including those subject to expedited removal - may be returned to that territory pending their removal proceedings under INA Section 240.¹⁰ In March 1997, INS issued guidance stating that in the event of insufficient detention space, INS could return individuals placed in expedited removal proceedings at land border POEs to foreign contiguous territory pending their credible fear determinations.

⁹ UNHCR notes, however, that adherence to referral procedures was not always consistent. See discussion under Objective Two.

¹⁰ See also 8 C.F.R. § 235.3(d).

This “direct-back” option was rescinded in February 2002 amidst concerns that asylum-seekers returned to Mexico or Canada risked removal from that country before their claims were adjudicated by the INS. Under the 2002 policy guidance, all individuals arriving at a land border POE who were subject to expedited removal were to be placed in expedited removal proceedings and detained in the United States in accordance with INA Section 235(b).¹¹ Only those asylum-seekers who voluntarily withdrew their applications for admission and indicated that they had no concerns about returning to Mexico or Canada could be returned to a foreign contiguous territory. Prior to an asylum-seeker’s return, INS officers were to ascertain his/her legal status in the country of return.

The INS February 2002 policy was modified in June 2005 with respect to Cuban nationals. Under the June 2005 guidance, Cuban asylum-seekers arriving at land border POEs were no longer to be placed in expedited removal proceedings, but rather referred directly for regular removal hearings under INA Section 240.¹² The guidance also allowed CBP to return these Cuban asylum-seekers to either Mexico or Canada while awaiting their removal hearings under certain conditions. These conditions included: (1) ineligibility for parole; (2) valid immigration status in Canada or Mexico; (3) agreement by the Canadian or Mexican border officials to accept the individual’s return; and, (4) that the asylum-seeker’s claim of fear of persecution or torture did not relate to Canada or Mexico.¹³

b. Findings

UNHCR was able to monitor 11 of the cases where asylum-seekers had been directed-back from the United States to Canada. All direct-backs from the United States known to UNHCR occurred at the Buffalo POE. Before CBP’s change of policy regarding Cuban nationals in June 2005, twelve Cuban nationals were detained in the United States and nine were directed-back to Canada.¹⁴ The direct-back of these individuals appears to have been contrary to the February 2002 INS/DHS policy in effect at that time. After CBP’s change of policy regarding Cuban nationals, at least two Cuban nationals were initially directed-back to Canada and fifteen were paroled into the United States.¹⁵

To UNHCR’s knowledge, all asylum-seekers directed-back to Canada were able to physically return to the United States POE and meet with United States authorities when required. However, several asylum-seekers who were directed-back to Canada appear to have been *at risk* of detention in and/or deportation from Canada at the time they were

¹¹ *Id.*

¹² Memorandum from Jayson Ahern, Assistant Commissioner, Office of Field Operations, United States Customs and Border Patrol, “*Treatment of Cuban Asylum Seekers at Land Border Ports of Entry*” (June 10, 2005).

¹³ See also, CBP Inspector’s Field Manual (IFM) Chapter 15.15(a)(6).

¹⁴ There were 38 total Cuban U.S.-bound asylum-seekers - 21 of them were placed in expedited removal before the June 2005 change in policy.

¹⁵ These numbers reflect information and statistics officially reported by DHS.

directed-back.¹⁶ UNHCR is aware of at least two instances when asylum-seekers with temporary Canadian visas were directed-back to Canada to await immigration hearings that were scheduled *after* their temporary visa status in Canada would expire.¹⁷ It is UNHCR's view that, due to the risk of subsequent detention in and/or deportation from Canada, asylum-seekers should not be directed-back to Canada.¹⁸

Once asylum-seekers are directed-back to Canada from the United States, United States government officials need to maintain contact with them in order to schedule interviews/hearings and to coordinate their re-entry into the United States and any advance submission of evidence. UNHCR found that while asylum-seekers who were directed-back to Canada were generally able to maintain communication with CBP and, during the period they were subject to expedited removal, CIS officers *via* telephone and in person, there were difficulties in doing so. These difficulties were often the result of asylum-seekers' lack of a personal phone number in Canada, inability to communicate in English *via* telephone, and CIS' not uncommon need to re-schedule interviews. These issues seemed to be exacerbated by unclear agency responsibility for communication with the asylum-seeker. These difficulties resulted in increased anxiety, travel costs, delays, and other inconveniences for asylum-seekers who had to return to the POE multiple times.¹⁹ Given that Cuban asylum-seekers are no longer subject to expedited removal, but rather placed directly in INA section 240 removal proceedings, coordination for those who are directed-back to Canada now falls with CBP and EOIR, rather than CIS.

¹⁶ For example, UNHCR interviewed one applicant who was directed-back to Canada from the Buffalo POE four times between 23 May and late July. The applicant's refugee claim in Canada had been denied in May 2005, and Canada had sent him a 30-day warning letter ordering him to leave Canada. The second time the applicant was directed-back to Canada, Canadian officials requested his United States immigration documents and threatened that they were "processing" his deportation order. The third time he was directed-back, the CBSA Supervisor at the Fort Erie POE told him that he did not have "much time left in Canada," as applicant's deportation order would be executed. During his CIS threshold screening interview, the applicant explained to the CIS Asylum Officer that he had a Canadian deportation order and expressed concern that he would be detained and/or deported from Canada if he continued to be directed-back there. The CIS Asylum Officer assured him that he would be allowed to return to the United States, although the basis for this assurance is unclear.

¹⁷ After UNHCR and NGO intervention, the two applicants directed-back to Canada after the June 2005 change in CBP policy were subsequently paroled into the United States.

¹⁸ See e.g. Universal Declaration of Human Rights, Article 14 (1) (adopted and proclaimed by the U.N. General Assembly resolution 217 A(III) on December 10, 1948) ("[e]veryone has the right to seek and to enjoy in other countries asylum from persecution."). See also UNHCR Executive Committee, *Conclusions on the Determination of Refugee Status*, No. 8, para. (e)(vii) (1977) ("The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in para. (iii) above, unless it has been established by that authority that his request is clearly abusive."). Article 4(3) of the Agreement also states that the Party of the country of last presence "shall not be required to accept the return of a refugee status claimant until a final determination with respect to this Agreement is made by the receiving Party."

¹⁹ For example, UNHCR interviewed one applicant who was directed-back from the Buffalo POE and told by CBP that it would call him with an interview date. After several re-scheduled appointments by CIS, applicant was finally given an interview date one month after his initial arrival at the POE. This applicant's case was not completed until more than five months after his initial arrival at the POE.

3. Detained Safe Third Applicants

For Safe Third applicants detained in the United States, adequate access to CBP or CIS officials, often accomplished through ICE Deportation Officers, can be critical. U.S.-bound asylum-seekers may require access to CIS Asylum Officers in order to submit additional evidence supporting their eligibility to apply for asylum in the United States and to obtain case status information. Canada-bound asylum-seekers who are returned to the United States under the Agreement may require access to CBP Port Directors to submit a request for reconsideration of their eligibility decision. Canada-bound asylum-seekers who are directed-back to the United States may need to contact Canadian border officials to inform them of their detention in the United States and to reschedule their eligibility interviews.

a. Telephone Access

As discussed in greater detail under Objective Eight, UNHCR visited ten United States detention facilities where Safe Third applicants had been held during the period of Safe Third processing/adjudication. The majority of these facilities had telephone issues that affected or could affect the ability of asylum-seekers to contact CBP, CIS or CBSA officials. A primary obstacle to adequate communication with adjudicating officials was the restriction at some facilities to collect telephone calls only, as government offices do not generally accept collect calls.²⁰ Another obstacle was that international calls were often either prohibited altogether or allowed on a collect-call basis only, making it difficult if not impossible to contact Canadian adjudicating officers when necessary.²¹

b. Access to Deportation Officers

Access to ICE Deportation Officers can also be critical in facilitating communication with border and adjudicating officers. Half of the detention facilities that UNHCR visited during its Safe Third monitoring did not provide adequate detainee access to DHS Deportation Officers.²² Access to Deportation Officers was a particular problem in

²⁰ Half of the facilities visited were collect-call only facilities (Clinton County Jail, Franklin County Jail, Wayne County Jail, Erie County Holding Center, and Albany County Jail). UNHCR found that asylum-seekers were unable to call CBP or CIS offices directly for free. Indeed, on a few occasions, although CIS Asylum Officers provided asylum-seekers with their phone numbers for follow-up contact, asylum-seekers were unable to place these calls from the detention facilities where they were held.

²¹ These restrictions affected asylum-seekers' ability to contact Canadian border officials when such asylum-seekers had been directed-back or returned to the United States from Canada under the Agreement. One applicant who was directed-back to the United States was detained at the Batavia Facility and was unable to attend his scheduled interview with CBSA. He was unable to contact CBSA to inform them of his detention because he did not have the money to make the required international direct-dial call, and was scheduled for imminent deportation to his home country from the United States.

²² Wayne County Jail, Monroe County Jail, Calhoun County Jail, Erie County Holding Center, and Albany County Jail.

Detroit, where there were two to three Deportation Officers for eight detention facilities.²³

UNHCR is aware of several detained U.S.-bound asylum-seekers who were unable to contact CIS to submit additional case information or to obtain case status information.²⁴ UNHCR is also aware of detained asylum-seekers who were returned from Canada under the Agreement or directed-back from Canada who wished to contact CBSA officials regarding their cases but were unable to.²⁵ In some cases, detainees' efforts to contact ICE Deportation Officers to facilitate communication with CIS or CBSA were unsuccessful, and in others, detainees were unaware that Deportation Officers might be able to make special arrangements to assist them with telephone calls.

Recommendations:

- 1.1 In order to ensure access to the refugee status determination process in the receiving country for applicants who would otherwise be eligible to lodge refugee claims under the Agreement, UNHCR recommends that the Parties discontinue direct-backs. If an asylum-seeker is directed-back, confirm the asylum-seeker's valid legal status in the country to which he/she is being directed-back and ability to appear for his/her scheduled interview/hearing. (CBP/ICE)*
- 1.2 Stay any asylum-seeker's deportation pending a final decision on his/her request for reconsideration, and facilitate the return of a detained asylum-seeker to the border should his/her reconsideration be granted. (ICE)*

- 1.3 Ensure that detained asylum-seekers have free telephone access to local CBP and CIS officials, and to Canadian officials when necessary. Ensure that detained asylum-seekers have meaningful weekly access to DHS Deportation Officers. Increase staffing of Deportation Officers at the ICE Detroit Field*

²³ ICE HQ has informed UNHCR that it is aware of staffing shortages in the Detroit Field Office and plans to hire more deportation officers for that field office.

²⁴ For example, UNHCR interviewed an applicant at the Buffalo Federal Detention Center who had received a threshold screening interview on 11 May. He stated that he was not given a CIS contact number and did not receive any case status information, however, until 8 August, almost three months after his interview and three weeks after CIS finalized its decision on his case. Applicant stated that he submitted 15 written requests to speak to an officer about his case, and that he was not been able to speak to a deportation officer for three months. UNHCR also interviewed several asylum-seekers who stated that they had not seen a Deportation Officer for the duration of their detention at the Calhoun County Jail, over nine months. Applicants generally reported that they were sometimes given the Asylum Office phone number but were unable to call due to collect-call only telephone systems and language barriers.

²⁵ For example, UNHCR interviewed two applicants at the Buffalo Federal Detention Center (one direct-back and one returnee) who wished to call CBSA but were unable to do so because of telephone restrictions.

B. Objective Two: Safe Third procedures are followed according to the Agreement and international refugee law.

This objective refers to the process by which eligibility determinations are made and assesses whether such decisions are made consistent with established procedures under the Agreement and with international refugee law.

1. U.S.-Bound Applicants

Eligibility under the Agreement can be adjudicated either by CIS Asylum Officers or by Immigration Judges. CIS Asylum Officers adjudicate the cases of asylum-seekers placed in expedited removal proceedings (under INA Section 235) and of asylum-seekers attempting entry under the Visa Waiver Program (VWP). The immigration courts adjudicate the cases of those asylum-seekers placed in regular removal proceedings (under INA Section 240), such as unaccompanied minors, Cuban nationals (as of June 2005), and any other asylum-seeker not placed in expedited removal due to the nature of their inadmissibility charges.

a. CBP

Procedures

CBP officers are responsible for determining both the inadmissibility charges lodged against asylum-seekers applying for admission to the United States and the proceedings into which they will be placed (*e.g.*, expedited removal, VWP “asylum-only” proceedings, or regular removal proceedings).

For asylum-seekers who are placed in expedited removal, CBP Officers are to provide the TSI Form, in addition to the “*Information about Credible Fear*” Form (“M-444 Form”), and the legal service provider list.²⁶ They are required to have the TSI Form read to the applicant by an interpreter in his/her native language if the applicant does not read English and to have it signed by the asylum-seeker. CBP then refers the asylum-seeker to the CIS Asylum Office for a threshold screening interview. CBP Officers must also provide a copy of the TSI Form to those asylum-seekers seeking entry under the VWP prior to referral to a CIS Asylum Officer.²⁷ Under CBP referral procedures, CBP officers are required to fax relevant case documents to CIS.²⁸ Copies of the TSI Form, M-444 Form, and legal service provider list are to be provided to the asylum-seeker.

²⁶ CBP IFM Chapter 17.11(d)(1).

²⁷ CBP IFM Chapter 17.11(d)(8)(e).

²⁸ For those placed in expedited removal, these include the Notice and Order of Expedited Removal Form (I-860 Form), Sworn Statement and Jurat (I-867A & B Form), M-444, TSI Form, legal service provider list, and any other relevant information that is available. IFM Chapter 17.11(d)(1). For those placed in VWP asylum-only hearings, these include the TSI form, the sworn statement, and the I-275 Form (indicating that applicant is being referred for a Safe Third threshold screening). IFM Chapter 17.11(d)(8)(f).

The Agreement imposes no additional procedural obligations on CBP officers who are placing asylum-seekers in regular removal proceedings (*i.e.*, separated children, Cuban nationals, and others based on charges of inadmissibility). These asylum-seekers are processed as would any applicant for admission who is referred to immigration court.

Findings

As noted in Objective One, UNHCR was unable to observe CBP processing of Safe Third applicants at the time of their arrival at the POE. However, based on UNHCR's review of case files and personal interviews with applicants, UNHCR is concerned that CBP Officers may not have consistently provided applicants with copies of all of the Safe Third related forms, most notably the TSI Form. Of the thirteen Safe Third applicants UNHCR interviewed who were placed in expedited removal or VWP "asylum-only" proceedings, three claimed that CBP did not provide them with personal copies of the TSI Form and two claimed that CBP did not provide them with a legal service provider list.²⁹ UNHCR's review of redacted case files indicated that in all of these cases such documents from the POE were missing from applicants' case files. In total, 10 redacted case files were missing TSI Forms completely and 17 files had TSI Forms with orientation or interview dates instead of their date of arrival at the POE. UNHCR notes that, in its discussions with CBP Officers, Officers generally appeared to understand their obligation to distribute, sign, and translate if necessary all of the required forms to Safe Third applicants placed in expedited removal or VWP "asylum-only" proceedings. It is unclear, therefore, whether the absence of these forms indicates that they were not provided to Safe Third applicants or, if provided, that copies were simply not included in the case files.

With regard to VWP cases, while UNHCR is aware of only two Safe Third asylum-seekers who sought admission to the United States under the VWP, there appeared to be some confusion regarding the procedures for their referral to CIS. While these applicants were appropriately *not* placed in expedited removal, it appears that TSI Forms were not provided to the asylum-seekers and/or forwarded to CIS in these cases.³⁰

²⁹ Two applicants confirmed that they had received all of the forms. Six applicants were unable to confirm whether or not they received all of these forms.

³⁰ One VWP Safe Third applicant's redacted case file as received by UNHCR contained his sworn statement, but did not include an I-275 or a TSI form issued at the POE.

b. CIS

Procedures

For those individuals referred to CIS for Safe Third eligibility adjudication, CIS Asylum Officers must confirm that each applicant received and understood the TSI Form. If the applicant did not receive and/or understand this form, CIS must provide and/or explain its contents, with translation if necessary.³¹ The Asylum Officer is to complete a Threshold Screening Adjudication Worksheet, which contains a written summary of his/her findings, a copy of which the asylum-seeker is to receive.³² The Asylum Officer is to complete the applicant's sworn statement, reading the sworn statement back to the applicant and making any necessary corrections.³³ In the event that an applicant is found ineligible to apply for asylum under the Agreement, he/she should also receive his/her sworn statement and the Notice and Order of Expedited Removal (I-860 Form).³⁴ Copies of all documents are to be included in the asylum-seeker's immigration "A" file.

Findings

Based on a review of redacted case files, UNHCR found that the above CIS procedures were generally followed and all of the required forms were included in an applicant's "A" file, with the exception of the CIS-distributed TSI Form, which was not included in ten files, and the TSI worksheet, which was not included in two redacted case files. It is unclear whether the absence of these forms indicates that they were not provided to Safe Third applicants or, if provided, that copies were simply not included in the case files.³⁵ UNHCR was unable to confirm whether applicants found ineligible to apply for asylum in the United States received copies of their sworn statements and expedited removal orders.³⁶

³¹ CIS Credible Fear Procedures Manual, Section III(J)(2)(a), as amended December 2004. This is consistent with UNHCR Executive Committee, *Conclusions on the Determination of Refugee Status*, No. 8, para. (e)(ii) (1977) ("The applicant should receive the necessary guidance as to the procedure to be followed.").

³² *Id.* at Sections III(J)(2)(a), III(J)(6), and II(J)(7).

³³ *Id.* at Section III(J)(2)(a).

³⁴ *Id.* at Section III(J)(7).

³⁵ At least three of these applicants reported not receiving the TSI Form.

³⁶ UNHCR also noted a few instances where Asylum Officers failed to follow procedures regarding the review of statements. In some cases, the Asylum Officer offered to print out an applicant's sworn statement and have the applicant read it over him/herself rather than reading the sworn statement back to the applicant and making corrections where necessary.

c. EOIR

Under the final regulations implementing the Agreement, Immigration Judges are responsible for determining whether asylum-seekers placed in INA Section 240 proceedings are eligible to apply for asylum in the United States.³⁷ EOIR, however, has issued little procedural guidance on how these cases are to be adjudicated.³⁸ In the three cases for which UNHCR has been able to obtain first-hand information, all have been continued by Immigration Judges for later hearings in 2006 to allow applicants the opportunity to apply for legal permanent residency under the Cuban Adjustment Act. To UNHCR's knowledge, none of the seventeen Safe Third applicants referred to immigration court for Section 240 removal proceedings had received a Safe Third adjudication hearing in immigration court as of 28 December 2005. As a result, UNHCR has been unable to monitor EOIR's Safe Third eligibility determination procedures.

2. Applicants Directed-Back to Canada

Under guidance issued by CBP in June 2005, DHS may detain, parole, or direct Cuban nationals back to Canada who seek asylum at a land border POE. Under this guidance, CBP is to exercise its direct-back authority only if the option of parole is not available. There appeared to be some confusion at the Buffalo POE as to whether the parole option was to be considered in the first instance or whether direct-back and parole were to be given equal weight. This may have resulted in the inappropriate direct-back of two Cuban asylum-seekers to Canada on four separate occasions in June, July, August, and October.³⁹ According to UNHCR's latest discussions with Buffalo CBP however, its direct-back practices have since been regularized and appear to reflect CBP's priorities as described in the June 2005 guidance.

3. Applicants Returned from Canada

Under the Statement of Principles accompanying the Agreement, the Parties agreed that each has the discretion to request the reconsideration of the other's negative eligibility decision should new information, or information that had not been previously considered,

³⁷ 8 C.F.R. § 1240.11(g)

³⁸ An EOIR Memorandum issued on 28 December 2004 on the processing of Safe Third applicants offers very little procedural guidance. It introduces the Agreement and notes DHS' implementation, but limits its discussion of EOIR's implementation to a review of the Agreement's terms, EOIR's jurisdiction, and administrative procedures regarding case tracking. EOIR Interim Operating Policies and Procedures Memorandum 2004 – 09 from Michael J. Creppy, Chief Immigration Judge, Office of the Chief Immigration Judge, "U.S.-Canada Agreement Regarding Cooperation in the Examination of Refugee Status Claims – 'Safe Third Country'" (December 28, 2004).

³⁹ These two asylum-seekers were not initially paroled although they presented identification and had clear background checks. They also had temporary Canadian visas that were expiring before their scheduled return to the United States. CBP Buffalo later informed UNHCR that at least one of these direct-backs was done in error under the 10 June 2005 memorandum. These two asylum seekers were subsequently paroled into the United States after their counsel wrote letters to the CBP authorities requesting parole on their behalf.

come to light.⁴⁰ CBP procedures implementing this reconsideration mechanism provide that the United States may, *via* the CBP Port Director, request of the Canadian Government a reconsideration of an ineligibility decision. The CBP Port Director would contact the CIC manager in writing and provide the name and FOSS ID number of the applicant and a summary of the new material evidence to be considered along with any supporting documentation.⁴¹ If it were determined that the applicant was eligible to make a refugee claim in Canada, the CIC manager would request the return of the applicant.⁴²

UNHCR found that some CBP officials were unfamiliar with the reconsideration mechanism and procedures,⁴³ resulting in long delays and inconsistencies in implementation.⁴⁴ Lack of familiarity with procedures may improve with time and more experience working with reconsideration requests.

As a result of its monitoring, UNHCR is of the view that the current reconsideration procedures are inadequate. CBP's lack of resources and specialized training make it an inappropriate agency for reviewing reconsideration requests which may require substantive legal analysis.⁴⁵ Also, in those cases where CIC/CBSA has agreed to reconsider a case, applicants detained in the United States have had great difficulty securing their release from detention to travel to the Canadian border for their re-scheduled interviews. This is largely due to DHS insistence that CIC/CBSA "admit" the claimants to Canada with no possibility of return to the United States should the underlying refugee claim ultimately be rejected, and CIC/CBSA insistence that the possibility of return to the United States remain available. In addition, DHS has been unwilling to ensure a meaningful stay of removal while a request for reconsideration is under consideration, even if CIC/CBSA agrees to re-interview the individual. For these reasons, the existing reconsideration mechanism lacks fundamental safeguards, especially for those applicants who are detained in the United States upon return and subject to removal.

⁴⁰ Statement of Principles, *Procedural Issues Associated with Implementing the Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries*, para. 6, (August 30, 2002) ("Each Party will have the discretion to request the reconsideration of a decision by either Party to deny an applicant's request for an exception under the Agreement should new information, or information that has not been previously been considered, come to light.").

⁴¹ CBP IFM Chapter 17.11(e).

⁴² *Id.*

⁴³ CBP Officers in Detroit stated that they were unclear about what the reconsideration procedures were and whether CBP had the authority to consider such requests. UNHCR also received an NGO report that CBP Buffalo's initial response to a request for reconsideration was that it was not its responsibility to forward such requests to the Canadian government.

⁴⁴ For example, CBP has taken anywhere from several weeks to several months to decide requests for reconsideration. In some cases requests were automatically forwarded to the Canadian authorities and in others they were provided more thorough consideration by CBP. In the one case in which CBP refused to forward the request to the Canadian authorities, CBP provided a written reasoned decision regarding the applicant's request. CBP's decision notification procedures for asylum-seekers whose requests had been denied by the Canadian authorities varied among POEs.

⁴⁵ For example, one reconsideration request required CBP to conduct an analysis of whether an individual had presented sufficient evidence to establish his status as a "stateless" person.

A streamlined reconsideration procedure should be instituted allowing for the submission of reconsideration requests directly to the Government that rendered the negative eligibility decision.⁴⁶ Should the Parties choose to maintain the present “screening” procedure by the country of return, however, then the DHS agency with expertise and training in adjudicating such requests would be more appropriate to conduct such case review, *i.e.*, the CIS Asylum Division.⁴⁷ A procedure should also be instituted whereby asylum-seekers returned from one country to the other would have their deportation stayed while their request for reconsideration is pending.⁴⁸

Recommendations:

- 2.1 *In order to ensure access to the refugee status determination process in the United States for applicants who would otherwise be eligible to lodge refugee claims under the Agreement, asylum-seekers should not be directed-back to Canada. If an asylum-seeker is directed-back, confirm valid legal status in Canada and ability to appear for scheduled interview/hearing. (CBP/ICE)*
- 2.2 *Revise the reconsideration mechanism to allow for direct referral of timely reconsideration requests to the government issuing the negative eligibility decision. In the alternative, UNHCR recommends that DHS re-assign the responsibility of reviewing reconsideration requests from CBP to CIS given CIS' expertise in the adjudication of Safe Third cases, and that in considering such requests, DHS obtain relevant case information from CIC/CBSA. UNHCR recommends that the Parties stay any asylum-seeker's deportation pending a final decision on his/her request for reconsideration, and facilitate the return of a detained asylum-seeker to the border should the reconsideration request be granted. (CBP/CIS/ICE)*
- 2.3 *Ensure compliance with established guidelines on the distribution of the TSI Form. (CBP/CIS)*

⁴⁶ See Global Consultations on International Protection, Second Meeting, *Asylum Processes: Fair and Efficient Asylum Procedures*, EC/GC/01/12, para. 50(p) (May 31, 2001) “All applicants should have the right to an independent appeal or review against a negative decision, including a negative admissibility decision...”. See also Executive Committee, *Conclusions on the Determination of Refugee Status*, No. 8, paras. (e)(vi) and (vii) (1977) (“If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing stem.”).

⁴⁷ See Global Consultations on International Protection, Second Meeting, *Asylum Processes: Fair and Efficient Asylum Procedures*, EC/GC/01/12, para. 50(j) (May 31, 2001) (“Decision-makers should...have requisite knowledge of refugee and asylum matters.”). CBP Officers at several POEs also expressed the view that due to CBP’s lack of resources and specialized training, it was not the appropriate agency for the review of reconsideration requests.

⁴⁸ Executive Committee, *Conclusions on the Determination of Refugee Status*, No. 8, para. (e)(vii) (1977) (“...[The applicant] should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.”).

2.4 *Adopt further guidance regarding Safe Third eligibility adjudications for asylum-seekers placed in 240 removal proceedings. (EOIR)*

C. Objective Three: Substantive eligibility decisions are made consistent with the terms of the Agreement and international refugee law.

Under the Agreement, individuals seeking to lodge asylum claims in the United States at a United States-Canada land border POE are ineligible to do so unless they fall within certain exceptions. These exceptions include persons with eligible “anchor relatives” in the United States,⁴⁹ unaccompanied minors (as defined by the Agreement),⁵⁰ and those who either possess a validly issued United States visa or admission document (other than a transit visa) or who are not required to obtain a United States visa.⁵¹ The Agreement also allows for a category of persons for whom the United States may determine, in its discretion, that it is in the “public interest” to except from the Agreement.⁵² The Agreement does not apply to citizens of Canada or the United States or to those who, not having a country of nationality, are habitual residents of the United States or Canada.⁵³

DHS issued regulations which provide some additional guidance regarding the definition of these categories of individuals.⁵⁴ CIS also amended the Credible Fear Process section of its Procedures Manual to include further guidance to its Asylum Officers on Safe Third eligibility adjudications. To UNHCR’s knowledge, EOIR has not provided similar guidance to its Immigration Judges.

Of the 43 individuals whose cases were adjudicated by CIS Asylum Officers between 29 December 2004 and 28 December 2005, four were found to be Canadian citizens not subject to the Agreement, 16 were deemed ineligible to apply for asylum in the United States under the Agreement,⁵⁵ and 23 were deemed eligible to apply for asylum under one of the Agreement’s exceptions. Of those deemed eligible to apply, all fell under the Agreement’s family-based exceptions. No applicant established eligibility under the public interest exception. No applicant claimed to be either stateless or was determined to

⁴⁹ Agreement, Art. 4(2)(a) and (b).

⁵⁰ *Id.* at Art. 4(2)(c).

⁵¹ *Id.* at Art. 4(2)(d).

⁵² *Id.* at Art. 6.

⁵³ *Id.* at Art. 2.

⁵⁴ For example, with regard to the public interest exception, the Supplementary Information included in DHS’ regulations state that “issues of minor anchor relatives, past torture, and health needs, are some of the factors that may be considered” and that “humanitarian concerns” is an “important consideration.” 69483 F.R. Vol. 29, No. 228 (29 November 2004). Likewise, with regard to validly issued visas, the Supplementary Information notes that the term “validly issued visas” refers to visas that are “genuine (i.e., not counterfeit) and were issued to the alien by the United States government.” 69484 F.R. Vol. 29, No. 228 (29 November 2004).

⁵⁵ Of these 16 individuals, the majority (seven) did not have any known family members in the United States. Three applicants had family members who were of more distant relation than allowed under the Agreement, four applicants had family members who lacked or could not establish the required legal status in the United States to qualify as “anchor relatives, and one applicant could not establish *bona fide* relationships with potential “anchor relatives.”

be an unaccompanied minor. Please refer to Appendix 8 for a statistical breakdown of all U.S.-bound Safe Third applicants by date of entry.

1. Family-Based Eligibility

Through case file review, threshold screening interview observation, and personal interviews with Safe Third applicants, UNHCR found that eligibility decisions made by CIS Asylum Officers were, in general, correctly made. UNHCR found that Canadian citizens were correctly identified and exempted from the Agreement's application, and that the criteria for family-based eligibility were correctly applied.

2. Public Interest Eligibility

UNHCR considers the public interest provision to be of critical importance in ensuring that asylum-seekers who merit consideration of their refugee claims in the United States yet who fall outside the scope of the Agreement's other exceptions, are able to access the United States asylum system. This provision is particularly important in situations where an asylum-seeker may not be able to establish eligibility for a family-based exception under the Agreement, yet family unity principles would still support the consideration of his/her claim in the United States.

UNHCR appreciates CIS' policy of exploring asylum-seekers' eligibility for the public interest exception in cases where they do not clearly establish eligibility under the other exceptions to the Agreement. UNHCR also appreciates CIS' stated willingness to consider a variety of humanitarian factors when deciding eligibility under the public interest exception.

While UNHCR acknowledges the need for a certain margin of government discretion in adjudicating public interest cases, UNHCR disagrees with CIS' decisions not to exercise the public interest exception in two cases – both of which raised family unity principles. While CIS considered these cases under the public interest exception, it decided that there were “insufficient humanitarian factors” to support their eligibility. One of these cases involved same-sex partners⁵⁶ and the other involved a close family member who did not have the required legal status in the United States to qualify as an “anchor relative.”⁵⁷

⁵⁶ In one case, the applicant was a 32-year old Filipino man who sought entry at the Blaine POE on 12 July 2005. The applicant was in a committed relationship with his United States citizen partner of four years. As applicant's family had disowned him and persecuted him on account of his homosexuality, the applicant considered his partner to be his only family. The applicant submitted a declaration; a psychological evaluation diagnosing him with chronic post-traumatic stress disorder, recurrent major depressive disorder, and baseline dysthymic disorder; and various letters of support from his partner and his partner's friends. UNHCR has not received the case file for the other case involving a same-sex partner.

⁵⁷ The case involved a 45-year old Cuban man who sought entry to the United States at the Champlain POE on 30 May 2005 to seek asylum in the United States and to join his 21-year old daughter who resided in the country. When the daughter entered the United States in 2004, she was placed in

UNHCR notes that in its comments to the Agreement and the United States regulations, UNHCR urged DHS to consider the presence of *de facto* family members (including same-sex partners) in determining eligibility under the Agreement - be it under the family-based or public interest exceptions.

Recommendation:

3.1 *Amend the CIS Procedures Manual to provide for the consideration of family unity principles in exercising the Agreement's public interest exception, e.g., "de facto" family members, family members with pending legal status, and same-sex partners. (CIS)*

D. Objective Four: Asylum-seekers' claims are timely adjudicated.

The timely adjudication of Safe Third cases is of particular importance in the United States given that the majority of Safe Third applicants are mandatorily detained throughout the eligibility determination process. UNHCR recognizes that in adjudicating a claim, a balance must be struck between affording sufficient time for the applicant to prepare his/her case and ensuring that the process is not unduly prolonged. As "public interest" cases tend to be more complicated than those raising exceptions under Article 4 of the Agreement, additional time might also be necessary for a full consideration of these cases.

UNHCR has noted three distinct phases for the processing of U.S.-bound Safe Third cases:⁵⁸

- 1) Time from an asylum-seeker's appearance at the POE to an asylum-seeker's threshold screening interview/hearing;
- 2) Time from an asylum-seeker's threshold screening interview/hearing to the issuance of a final eligibility decision;

expedited removal proceedings and was found to have a credible fear of persecution. She did not file an application for asylum, which would have made her an eligible anchor relative under the Agreement, because she was advised by the immigration court not to do so. Rather, the court advised her to seek adjustment to lawful permanent resident status under the Cuban Adjustment Act (CAA). The court continued her case until 18 August 2005, two months after her father's appearance at the POE, so that she would acquire the twelve months of physical presence in the United States required for adjustment of status under the CAA and be eligible for adjustment at the time of her hearing date. The daughter's mother (applicant's wife) was deceased, such that the applicant was the daughter's only surviving parent.

⁵⁸ In principle, a fourth stage would exist for those denied eligibility under the Agreement who seek a reconsideration of this decision. UNHCR is unaware, however, of any requests for reconsideration that were submitted by persons deemed ineligible to apply for asylum in the United States under the Agreement.

- 3) For those found ineligible to apply for asylum in the United States under the Agreement, time from the final eligibility decision to the asylum-seeker's return to Canada.

1. CIS Adjudications

For cases considered by CIS Asylum Officers, there is a minimum 48 hour waiting period (unless waived by the asylum-seeker) between the asylum-seeker's arrival/detention in the United States and his/her Threshold Screening Interview.⁵⁹ DHS has not issued a deadline, however, as to when a decision must be rendered.

UNHCR has monitored both the overall Safe Third processing time for cases adjudicated by CIS as well as the processing time for each of the above three stages. The average overall processing time from appearance at the POE or, for those cases referred for criminal prosecution, from date of referral to CIS, to issuance of a final eligibility decision was 42 days, with times ranging from two days to seven months (221 days).⁶⁰ The processing times for each phase is discussed below and in more detail in the adjudication timeline chart attached as Appendix 9.

Stage 1 - Time from an asylum-seeker's appearance at the POE to the threshold screening interview:

The average time for completion of this stage was 15 days, with times ranging from the same day to 35 days. It should be noted that the average time for completion of this stage for those cases that were referred and accepted for criminal prosecution by the United States Attorney's Office for use of false documents was more than two months (69 days), with times ranging 24 days to six and a half months.⁶¹

Stage 2 - Time from an asylum-seeker's threshold screening interview to issuance of a final eligibility decision:

The average time for completion of this stage was 25 days, with times ranging from the same day to six and a half months (194 days). Adjudication time of possible public interest cases was particularly long, with an average time of 72 days, ranging from 16 days to six and a half months. UNHCR is concerned about the lengthy delays in some cases during this phase of the Safe Third process given asylum-seekers'

⁵⁹ See TSI Form ("You have the right to wait 48 hours after arrival at a detention center before your interview. You also have the right to waive this waiting period if you would like to have the interview sooner."). This is consistent with CIS policy with regard to credible fear interviews in expedited removal proceedings. See CIS Credible Fear Procedures Manual, Section III(D)(1)(a).

⁶⁰ Statistics are reported in cases. For statistics by individuals, see Appendix 9. Statistics do not include cases that were dissolved or abandoned.

⁶¹ UNHCR is aware of seven cases referred for criminal prosecution for use of invalid documents and other related charges, largely from the Champlain POE. See Appendix 9.

continued detention.⁶² As discussed in detail under Objective Seven, adjudication time could perhaps be reduced if DHS were to relax its documentary evidence requirements in cases where credible testimony alone might be sufficient to establish eligibility under the Agreement.

Stage 3 - Time from issuance of a final negative eligibility decision to asylum-seeker's return to Canada:

While UNHCR was unable to monitor this stage of the process for the majority of cases, UNHCR confirmed one case in which an ineligible applicant was not returned to Canada for two months after his ineligibility decision, and only then due to UNHCR intervention. This delay, however, occurred early in the Agreement's implementation, and return times may have since been reduced.

2. EOIR Adjudications

EOIR has not issued any policies or guidelines regarding the timing of Safe Third adjudications, either for detained or non-detained cases.

As noted above in Objective Two, UNHCR is aware of 18 Safe Third cases to date that have been placed in Section 240 removal proceedings and referred to immigration court for a determination of eligibility under the Agreement. All of these individuals except one (Argentinian national discussed above) were Cuban nationals and to UNHCR's knowledge, none were detained. While some have had their initial master calendar hearings, none have yet had their eligibility under the Agreement adjudicated. As a result, it has not been possible to estimate the length of time for each of the above three stages of the Safe Third process.

UNHCR considers the timely adjudication of Safe Third cases to be of primary importance in the context of detained cases. UNHCR understands that EOIR already has a system in place to prioritize processing of detained cases, and encourages compliance with this system.⁶³ Consistent with existing law and procedures, it would seem most logical to adjudicate Safe Third eligibility during the relief stage of removal proceedings, *i.e.*, after removability has been determined and concurrent with the adjudication of a request for asylum as a form of relief from removal.

⁶² UNHCR Executive Committee, *Conclusion on Detention of Refugees and Asylum-Seekers*, No. 44, para. (c) ("Recognize[s] the importance of fair and expeditious procedures for determining refugee status or granting asylum in protecting refugees and asylum-seekers from unjustified or unduly prolonged detention.").

⁶³ See EOIR Interim Operating Policies and Procedures Memorandum 84-1 from William R. Robie, Chief Immigration Judge, "Case Policies and Processing", para. 1 (February 6, 1984) (the completion of detained cases and detained bond redetermination hearings should be the highest priority relative to all other cases and calendared at the earliest possible date consistent with the Uniform Docketing System. All efforts should be made to complete these cases expeditiously.).

Recommendations:

- 4.1 *To ensure efficient processing, establish timeframes for the adjudicative phase of the Safe Third process, with flexibility for more thorough consideration of possible public interest cases. (CIS)*
- 4.2 *Consistent with CIS training materials and Principle Two of the Parties' Statement of Principles, amend the CIS Procedures Manual to ensure that credible testimony alone may be considered sufficient to prove eligibility under one of the Agreement's exceptions. (CIS)*

E. Objective Five: Asylum-seekers are aware of their rights and understand the Safe Third process.

UNHCR found that asylum-seekers often have questions about the Safe Third process and may rely on DHS officials to explain the process to them either at the POE, while in detention, during adjudication of their claim, and - for those who wish to submit a request for reconsideration - after an eligibility decision has been rendered.

1. DHS Processing

a. TSI Form/Orientations

DHS has employed several mechanisms to ensure that Safe Third applicants are aware of their rights and understand the Safe Third eligibility determination process. As noted earlier, CBP Officers are to give asylum-seekers who are subject to the Agreement and placed in expedited removal proceedings a Threshold Screening Information (TSI) Form, which explains the Safe Third process.⁶⁴ Individuals seeking admission under the VWP who request asylum or indicate a fear of persecution are to be provided a copy of the TSI Form as well. CBP Officers are required to have the Form read to the applicant by an interpreter in his/her native language if the applicant does not read English. (The TSI Form is currently available only in English). CIS Asylum Officers are to confirm that each asylum-seeker received and understood the contents of the TSI Form. If the asylum-seeker has not received or has not understood the TSI Form, the Asylum Officer must provide the asylum-seeker with a copy of the TSI Form as well as a verbal orientation.⁶⁵

As noted above in Objective Two, numerous case files did not contact TSI Forms, raising concerns that CBP and/or CIS did not systematically provide them to Safe Third applicants. Safe Third applicants interviewed by UNHCR stated that Asylum Officer's orientations were generally conducted either telephonically in advance of the threshold screening interview or in person just before the threshold screening interview. UNHCR was able to observe only two orientations. One of these orientations consisted of the Asylum Officer simply reading the TSI Form to the asylum-seeker. The other orientation was more thorough, and included an explanation of what types of evidence the asylum-

⁶⁴ CBP IFM, Chapter 17.11(d).

⁶⁵ CIS Procedures Manual, Section III(D)(I)(b).

seeker may be required to present. During the 12 threshold screening interviews that UNHCR observed, Asylum Officers consistently offered asylum-seekers the opportunity to ask questions. Asylum Officers were courteous, patient, and generally utilized appropriate interview techniques.⁶⁶

UNHCR supports DHS' provision of the TSI Form to asylum-seekers, as well as DHS' policy of providing verbal orientations as needed, as this information has proven to be a valuable resource.⁶⁷ UNHCR found, however, that despite the provision of the Form and the orientation, a number of asylum-seekers interviewed by UNHCR remained confused about the Safe Third process and/or their rights under the Agreement. Many applicants did not understand that they had to prove their eligibility under the Agreement in order to proceed with their asylum claim. Of those who did not understand the process, most did also not comprehend the family based exceptions under the Agreement.⁶⁸ UNHCR also found that many Safe Third applicants remained confused about the threshold screening interview *vis-à-vis* the credible fear interview, and were uncertain whether or not they had already received an "asylum" interview. UNHCR has encouraged DHS to minimize this confusion by delineating the Safe Third and Credible Fear portions of the Asylum Officer interviews as much as possible. UNHCR understands that in response to this recommendation, CIS issued informal guidance to its Asylum Officers which instructed them to clearly explain when they are ending a Threshold Screening Interview and beginning a Credible Fear Interview.⁶⁹ UNHCR has since observed some improvements in the delineation of the Safe Third/credible fear interviews as well as in comprehension of the interview process by asylum-seekers.

While UNHCR understands that it is impossible to ensure that all asylum-seekers fully understand the Safe Third process, the current safeguards nonetheless can be improved. In particular, UNHCR notes that the TSI Form often uses legalistic terminology that might be confusing even for highly literate asylum-seekers. The simple recitation of the TSI Form during a telephonic orientation, to the extent this occurs, does little to improve its accessibility. Asylum-seekers may understand the process better were the TSI Form re-drafted in more simplified language, or were a flowchart attached that explains the Safe Third process more visually. UNHCR has drafted a flowchart as an example of supplementary explanatory material, attached at Appendix 10. The TSI Form should also be translated into other frequently encountered languages, such as Spanish and Mandarin.

⁶⁶ UNHCR noted a few instances where Asylum Officers failed to follow procedures regarding the review of statements. As discussed *supra* in fn. 38, on several occasions Asylum Officers instructed the asylum-seeker to read their sworn statement him/herself rather than reading the sworn statement back to the asylum-seeker and making corrections where necessary.

⁶⁷ See UNHCR Executive Committee, *Conclusions on the Determination of Refugee Status*, No. 8, para. (e)(ii) (1977) ("The applicant should receive the necessary guidance as to the procedure to be followed.").

⁶⁸ For example, many applicants stated that while they remembered being asked questions about their family members, they did not understand the purpose of the questions.

⁶⁹ On 30 June, CIS Headquarters issued guidance by e-mail to Supervisory Asylum Officers instructing them to remind Asylum Officers to clarify when they are switching from the threshold screening interview to the credible fear interview and to encourage asylum-seekers to ask questions when they do not understand the process.

b. Direct-Backs to Canada

As noted earlier, UNHCR is aware of 11 Cuban asylum-seekers who were directed-back to Canada to await either their Threshold Screening Interview or their immigration court hearings. Several of these asylum-seekers stated in interviews with UNHCR that they were confused and concerned about why they had been directed-back to Canada, how the eligibility determination process would operate given their presence outside of the country, the amount of time they were required to wait for a decision, and the possibility of deportation from Canada to their home country. Neither CBP nor CIS adequately responded to these concerns. Given that Cuban nationals are no longer subject to expedited removal, but rather are placed in regular removal proceedings, this issue will need to be addressed in the future for this caseload by CBP and EOIR.

2. EOIR Processing

To UNHCR's knowledge, there are no specific orientation procedures or materials for Safe Third applicants placed directly into INA Section 240 removal proceedings. CBP Officers do not provide an information sheet comparable to the TSI Form to these applicants and EOIR has not created any comparable information form to be provided during court proceedings. No such immigration court removal proceedings have progressed beyond initial master calendar hearings to date.

Recommendations:

- 5.1 Simplify the TSI Form and/or distribute a flowchart to asylum-seekers at the POEs. Translate the TSI Form into other languages, particularly Spanish and other frequently-encountered languages. (CBP/CIS)*
- 5.2 Revise the CIS Procedures Manual and/or training materials to advise Asylum Officers on how to clearly explain the Safe Third process to asylum-seekers and to adequately delineate the threshold screening interview from the credible fear interview. (CIS)*
- 5.3 Inform asylum-seekers who are directed-back to Canada of DHS direct-back procedures and explain how DHS will ensure their return for a scheduled interview/hearing. (CBP/EOIR)*
- 5.4 Establish orientation procedures and forms for those placed in 240 removal proceedings comparable to those created by DHS regarding the Safe Third eligibility process. (EOIR)*

F. Objective Six: Asylum-seekers have the opportunity for third party assistance throughout the process.

Access to third party assistance is of significant importance for asylum-seekers under the Agreement.⁷⁰ Third parties - including asylum-seekers' attorneys, family members, NGOs, and UNHCR - help explain relevant procedures to the asylum-seeker, facilitate communication with DHS officials, prepare submissions to adjudicating officials, and advocate for the asylum-seeker at interviews and/or hearings.

Access to third party assistance is especially important for U.S.-bound asylum-seekers, as UNHCR has found that they are generally unaware of the Agreement and its procedures upon arrival at the United States POE. This in contrast to Canada-bound asylum-seekers, many of whom receive legal counselling and assistance from United States border NGOs before submitting their refugee claim to Canadian authorities. As a result of their detention and frequent need to submit documentary evidence, U.S.-bound asylum-seekers are also often more reliant on third party assistance. Asylum-seekers returned to the United States from Canada under the Agreement may also require third party assistance to understand the reconsideration mechanism and how to submit a reconsideration request to United States POE officials.

Third party assistance is predicated on an awareness of the opportunity for assistance; the ability of the third party to be present, either in person or telephonically, at relevant interviews and hearings; and the ability to contact and communicate with the third party.

1. Advisal of Opportunity for Assistance

As noted earlier, the CBP Field Inspector's Manual requires CBP Officers to distribute the Threshold Screening Information (TSI) Form and a legal service provider list to all Safe Third asylum-seekers placed in expedited removal proceedings.⁷¹ The TSI Form includes an advisal of the right to counsel (at no expense to the government).⁷² The CBP Field Inspector's Manual also requires that Safe Third applicants subject to the VWP be given the TSI Form,⁷³ although there is no mention of the legal service providers list. While CBP officers have stated that they provide the legal service provider list to VWP applicants as a matter of practice, it was not included in the one redacted case file UNHCR received regarding a VWP applicant. Asylum-seekers placed in Section 240 removal proceedings are advised of their right to representation at their initial master

⁷⁰ See Global Consultations on International Protection, Second Meeting, *Asylum Processes: Fair and Efficient Asylum Procedures*, EC/GC/01/12, para. 50(g) (May 31, 2001) ("At all stages of the procedure, including the admissibility stage, asylum-seekers should receive guidance and advice on the procedure and have access to legal counsel.")

⁷¹ CBP IFM, Chapters. 17.11(d)(2) and (3).

⁷² Paragraph 5 of the Form states that "during the threshold screening" applicants may "consult with a person or persons of [their] choosing, at no expense to the United States government."

⁷³ CBP IFM, Chapter 17.11(d)(8).

calendar hearing in immigration court and are provided a list of legal service providers at that time.⁷⁴

UNHCR found that U.S.-bound asylum-seekers placed in expedited removal generally understood that they had a right to third party assistance. The distribution of the TSI Form and the legal service provider list was likely to have been helpful in this regard. Due to privacy concerns and a lack of identifying information, UNHCR was unable to verify with Cuban asylum-seekers placed in Section 240 proceedings whether they were aware of their right to counsel. However, UNHCR is aware that several Cuban asylum-seekers placed in Section 240 proceedings did obtain legal assistance from local NGOs.

2. Third Party Presence at Interviews / Hearings

Under DHS regulations, Safe Third applicants are permitted to bring a “consultant” with them to their Threshold Screening Interviews before CIS Asylum Officers.⁷⁵ INA Section 292 and accompanying regulations ensure the right to representation by counsel and accredited representatives during Section 240 removal proceedings.⁷⁶

During interviews monitored by UNHCR, attorneys were allowed to attend such interviews, to present evidence on behalf of their clients, and to make arguments regarding their clients’ eligibility to apply for asylum in the United States under the Agreement. Several of the Cuban asylum-seekers placed in Section 240 removal proceedings also reported that they had legal representatives who attended their master calendar hearings.

3. Ability to Contact / Communicate with Third Parties

UNHCR is concerned about the ability of detained asylum-seekers to contact and communicate with third parties for assistance during the Safe Third process.⁷⁷ As discussed earlier, many border detention facilities provided no access to free telephone calls to local legal service providers and had other telephone access issues which impeded detainees’ access to third party assistance.⁷⁸ These restrictions on telephone access affected asylum-seekers’ ability to communicate not only with legal service providers, but also to family members and other third parties who may be providing similar assistance.

⁷⁴ 8 C.F.R. § 1240.10(a).

⁷⁵ 8 C.F.R. § 208.30(d)(4) and (e)(6).

⁷⁶ 8 C.F.R. § 208.30(d)(4) and 8 C.F.R. § 1240.10(a).

⁷⁷ UNHCR Guidelines on Detention of Asylum Seekers, Guideline 5, Geneva (February 10, 1999) (“If detained, asylum-seekers should be entitled to the following minimum procedural guarantees: (v) to contact and be contacted by the local UNHCR Office, available national refugee bodies or other agencies and an advocate. The right to communicate with these representatives in private, and the means to make such contact should be made available. Detention should in no way constitute an obstacle to the asylum-seekers’ possibilities to pursue their asylum application.”).

⁷⁸ See Objective Eight for a fuller discussion of these issues.

Recommendation:

6.1 Provide adequate telephone access for detained asylum-seekers subject to the Agreement. Ensure free telephone calls to legal service providers and UNHCR from all detention facilities where Safe Third applicants may be held, and post telephone use instructions and relevant contact information. (ICE)

G. Objective Seven: Asylum-seekers have a meaningful opportunity to present evidence in their cases.

DHS and DOJ regulations state that Safe Third applicants bear the burden of establishing by a “preponderance of the evidence” that they qualify for an exception under the Agreement to apply for asylum in the United States.⁷⁹ Other DHS guidance, as detailed in the CIS Asylum Manual, instructs Asylum Officers to “elicit testimony and evaluate it with other available evidence” to determine applicants’ eligibility under the Agreement.⁸⁰ While a lack of documentary evidence does not preclude asylum-seekers from establishing eligibility under the Agreement, it is expected that evidence will be provided unless there is a satisfactory explanation of why corroborative evidence is not reasonably available.⁸¹ Under international refugee law and as specifically noted in the Parties’ Statement of Principles, credible testimony may be sufficient to satisfy a decision-maker in the absence of documentary evidence or computer records.⁸² To UNHCR’s knowledge, EOIR has not issued any specific guidance to Immigration Judges on the consideration of evidence in Safe Third cases.⁸³

UNHCR examined two issues related to the opportunity to present evidence in individual Safe Third cases: (1) the ability of detained asylum-seekers to access and submit evidence; and (2) the consideration of evidence by United States adjudicators.

⁷⁹ 8 C.F.R. § 208.30(e)(6)(ii) and 8 C.F.R. § 1240.11(g).

⁸⁰ CIS Procedures Manual, Credible Fear Process, Section IV(J)(3).

⁸¹ DHS also provides in its CIS Safe Third Country Instructor Guide that credible testimony may be sufficient to establish that an exception applies if there. CIS Instructor Guide, *Asylum Officer Basic Training Course on Safe Third Country Threshold Screening*, Section IV.

⁸² Statement of Principles, *Procedural Issues Associated with Implementing the Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries*, para. 2, (August 30, 2002) See also UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, paras. 196 and 197 (iv) (Jan. 1992) (“...where the applicant’s account appears credible...he should, unless there are good reasons to the contrary, be given the benefit of the doubt.”) (“The requirement of evidence should thus not be too strictly applied in view of the difficulty of proof inherent in the special situation in which a refugee claimant finds himself.”).

⁸³ As noted earlier in fn. 40, EOIR has issued a memorandum explaining administrative procedures as well as a Safe Third Worksheet to assist immigration judges in their adjudication of Safe Third cases. None of this guidance, however, refers specifically to the specific type or weight of evidence to consider in Safe Third cases.

1. Access to Evidence

UNHCR has been particularly concerned with the ability of detained asylum-seekers to access evidence to prove their eligibility under one of the Agreement's exceptions. Unlike credible fear determinations where an asylum-seeker's testimony is usually considered sufficient to determine eligibility to apply for asylum, UNHCR has found that in order to establish eligibility under one of the Agreement's exceptions, asylum-seekers have generally been expected to provide some documentation in support of their claim, be it copies of birth/marriage certificates or third party affidavits.

Given that the ability of asylum-seekers to obtain evidence while in detention depends in large part on their ability to communicate with persons outside of the detention facility, telephone access to legal representatives, family members, and other third parties is critical. However, as noted earlier, UNHCR found serious problems with phone access in most of the detention facilities that it visited during its Safe Third monitoring. Many of the facilities provided no access to free telephone calls to local legal service providers and/or had other phone access issues.⁸⁴ Detainees frequently stated that they were unable to call family members, attorneys, or other third parties as a result of phone access problems.⁸⁵ UNHCR found that while CIS Asylum Officers were at times willing to facilitate detainee phone calls in order to obtain evidence, they were unclear about how to do so.⁸⁶ On 30 June 2005, CIS issued informal guidance to Asylum Officers on the facilitation of detainee phone calls.⁸⁷ UNHCR has observed some improvement in Asylum Officers' facilitation of telephone calls since the issuance of this guidance.⁸⁸

⁸⁴ As noted in Objective Eight, the most serious additional issues of concern included problems with: collect calls (particularly at collect-call only facilities) and functionality issues (such as the necessity to program phone numbers into the system and/or the delay/lack of response to requests to "add" numbers or activate PIN numbers in order to make calls).

⁸⁵ For a fuller discussion of phone access issues, see Objective 8 and Appendix 11.

⁸⁶ For example, in one case, an Asylum Officer appeared unclear about whether she was authorized to use the CBP phone at the POE to facilitate a phone call. In other cases, Asylum Officers asked detained applicants whether they could make a phone call to obtain the required evidence, and when the applicants responded that they could not due to a lack of phone access at their detention center, the Asylum Officers were unclear about how to proceed.

⁸⁷ This guidance instructed Asylum Officers, pursuant to a request by CBP HQ, to check with authorities at local POEs to ensure that asylum-seekers are able to make phone calls to third parties at the POEs. This guidance also instructed Asylum Officers to inform CIS HQ of any telephone access issues at particular detention centers.

⁸⁸ For example, during an orientation on 14 November, an Asylum Officer from the Newark Field Office asked a detained asylum-seeker if it would be easier to have the Asylum Officer call relatives in order to obtain evidence of their legal status rather than attempting to personally telephone them from the detention facility. The Asylum Officer then asked a Deportation Officer for permission to allow the asylum-seeker access to his previously unavailable luggage in order to allow him to access his telephone numbers and make the necessary calls to his relatives.

2. Consideration of Evidence

In its observation of interviews and its review of case files, UNHCR found that CIS Asylum Officers, in general, properly elicited testimony, made reasonable efforts to confirm family relationships, and applied the correct standard of proof in evaluating Safe Third eligibility.

In particular, UNHCR found that CIS accommodated asylum-seekers for whom certain types of documentation were not reasonably available. For example, several applicants told Asylum Officers during their threshold screening interviews that it would be extremely difficult, if not impossible, to obtain birth or marriage certificates from their home countries in order to establish a family relationship. In these cases, Asylum Officers were prepared to accept affidavits and other forms of evidence in lieu of government-issued documentation. Asylum Officers also generally gave asylum-seekers the necessary time to gather and present evidence after their threshold screening interviews.

As a result of the above policies and practice, no asylum-seekers were denied eligibility under one of the Agreement's exceptions due to their failure to produce documentation in support of their claims. Regrettably, while the additional time provided by CIS to obtain evidence enabled asylum-seekers to prove the required family relationships, it also resulted in longer periods of detention. To UNHCR's knowledge, CIS has required the submission of documentary evidence in all cases to date to establish eligibility to apply for asylum under the Agreement, and has not determined eligibility based on credible testimony alone. An easing of documentary requirements in certain cases may result in shorter periods of detention.

Recommendations:

- 7.1 *Provide adequate telephone access for detained asylum-seekers subject to the Agreement. Ensure free telephone calls to legal service providers and UNHCR from all detention facilities where Safe Third applicants may be held, and post telephone use instructions and relevant contact information. (ICE)*
- 7.2 *To ensure detainees' ability to submit evidence, develop inter-agency DHS procedures to authorize Asylum Officers to facilitate telephone calls between detained asylum-seekers and third parties while physically present at POEs and detention facilities. (CBP/CIS/ICE)*
- 7.3 *Consistent with CIS training materials and Principle Two of the Parties' Statement of Principles, amend the CIS Procedures Manual to ensure that credible testimony alone may be sufficient to prove eligibility under one of the Agreement's exceptions. (CIS)*

H. Objective Eight: Asylum-seekers are treated fairly and humanely, and are not subject to unwarranted detention. If detained, conditions of detention are appropriate.

1. Treatment at Ports-of-Entry

In personal interviews with Safe Third applicants, UNHCR received relatively few complaints from asylum-seekers about their treatment at United States POEs. Safe Third applicants generally reported that CBP officers treated them fairly and humanely, although two Safe Third applicants commented on a lack of access to basic services at the Detroit POE.⁸⁹

UNHCR has some concerns, however, regarding CBP's varying use of restraints and holding cells at different POEs. According to CBP policy, all decisions to use restraints are to be based on an individualized assessment of the danger and/or flight risk posed by the individual.⁹⁰ CBP's restraint policy enumerates certain categories of people according to "priority of detention." Persons who attempt to enter with fraudulent documents or who have committed fraud are on this list, but are of the lowest detention priority. The policy also excepts certain categories of vulnerable populations from detention, and directs that asylum applicants not be placed in a detention cell unless otherwise indicated by their behavior.⁹¹ CBP officers at the Champlain POE, however, informed UNHCR that CBP's general policy was to restrain and/or detain in holding cells all individuals, including asylum-seekers, who attempt to enter the United States using false documents. Several Safe Third applicants complained that they were handcuffed for extended periods of time at the Champlain POE, sometimes to chairs or benches.⁹² CBP officers at the Blaine POE stated that CBP's general policy is to similarly restrain and/or detain anyone who will be transferred into ICE custody, although they noted that practices at the smaller

⁸⁹ One U.S.-bound asylum-seeker stated that she was kept in a cold cell in a tank top and without a blanket for four hours, was not allowed to make a call to her brother, and was not provided with food overnight until the next afternoon. Another south-bound asylum-seeker stated that he was not allowed food overnight.

⁹⁰ See Memorandum from Assistant Commissioner Jayson Ahern on "Discretionary Use of Restraints" (July 19, 2004), as incorporated in the CBP IFM, Chapter 17.8(i) (November 2004) (when restraints are used, "the officer must have reasonable articulable facts to support the decision. Officers should employ only the amount of restraint needed to ensure the safety of the detainee or others, and to prevent escape. Officers should take into account known criminal activity, observed dangerous or violent behavior, verbal threats, and/or the nature of the inadmissibility of the individual in determining whether to use restraints, continue their use, or remove the restraints.").

⁹¹ *Id.*

⁹² Two U.S.-bound asylum seekers stated that they were kept handcuffed either to a chair or in a "small room" for the duration of their time at the Champlain POE – up to 24 hours. UNHCR is also aware of at least one other south-bound at the Champlain POE who was handcuffed to a bench for over an hour because he attempted entry with false documents and was subsequently placed in a wet cell.

POEs within the Blaine District may differ.⁹³ Buffalo CBP stated that restraints would be used on a case-by-case basis.⁹⁴

UNHCR recognizes that the use of restraints and holding cells at POEs may be necessary and appropriate in particular situations, such as when there is a genuine flight risk or potential harm to officers or to the asylum-seeker. UNHCR is concerned, however, that at certain POEs, such as Champlain and Blaine, CBP may be using restraints and holding cells for general categories of individuals, without an individualized assessment of the person's flight risk or danger.

2. Decisions to Detain Safe Third Applicants

All U.S.-bound asylum-seekers who are placed in expedited removal proceedings are mandatorily detained, including those subject to the Agreement.⁹⁵ Subject to certain exceptions,⁹⁶ DHS retains the discretion to detain or release asylum-seekers who are not subject to expedited removal; for example, those who are applying for admission under the VWP, those placed in Section 240 removal proceedings (such as unaccompanied minors and Cuban nationals), and those who were Canada-bound and directed-back to the United States from Canada with scheduled interview dates. In such cases, local DHS officials have indicated that the primary criteria for determining eligibility for parole include danger to the community, establishment of identity, and flight risk. The availability of bed-space in local detention facilities also appears to be a factor. With regard to direct-backs from Canada, DHS officials from at least one POE noted that a scheduled interview in Canada is not a "mitigating factor" warranting an asylum-seeker's release.

To UNHCR's knowledge, DHS did not detain any of the 17 U.S.-bound asylum-seekers who were not subject to expedited removal proceedings. UNHCR considers this a positive aspect of CBP/ICE implementation of the Agreement to date.

While UNHCR was unable to systematically monitor the detention status of asylum-seekers directed-back to the United States from Canada, we were able to confirm through DHS that at least ten asylum-seekers who were directed-back and who did not appear for

⁹³ One U.S.-bound asylum-seeker complained of being kept in handcuffs at a holding area at the Boundary, WA POE upon his entry on 12 July.

⁹⁴ One applicant who was directed-back from Canada and claimed to have no criminal background stated that he was both handcuffed and placed in a holding cell at the Buffalo POE. This applicant also stated that he was restrained by his ankles to a bench inside a holding area during questioning.

⁹⁵ UNHCR would note that this policy is contrary to international principles and UNHCR guidelines which state that because asylum seekers are not criminals and are exercising their right to seek asylum in a safe country, detention should only be resorted to in cases of necessity. *See e.g.* UNHCR Executive Committee, *Conclusions on the Detention of Refugees and Asylum Seekers*, No. 44, paras. (a) and (b) (1986).

⁹⁶ DHS does not have the discretion to parole individuals with criminal convictions and/or final orders of removal. INA 240 Section 236(c)(1) and Section 241(a)(2).

their scheduled interviews were detained in the United States.⁹⁷ Eight of the ten had outstanding orders of removal in the United States. In such cases, UNHCR does not consider detention in the United States, at least initially, to be unwarranted. UNHCR would note, however, that asylum-seekers who were not detained after being directed-back from Canada during the May/June 2002 “rush” to the Canadian border generally appeared for their scheduled interviews at the Canadian POE, suggesting that they were not “flight risks” *per se*.⁹⁸ On this basis, UNHCR has in the past encouraged the United States not to detain asylum-seekers directed-back from Canada absent an individualized determination of criminality or security risk so as to ensure asylum-seekers’ access to the Canadian refugee system.⁹⁹ Two of the ten detained asylum-seekers did not have outstanding removal orders or criminal backgrounds, but were released from detention within two weeks either on bond or under an order of supervision.

3. Conditions of Detention

In its monitoring of conditions of detention for asylum-seekers subject to the Agreement, UNHCR focused on those aspects of detention that would either have the most impact on persons detained for the relatively short period of time required to complete the Safe Third process and/or that could impact an individual’s ability to establish eligibility under one of the Agreement’s exceptions. In this regard, UNHCR focused on three categories of detention conditions: (1) telephone access; (2) detainee-ICE communication; and, (3) interpretation. To the extent possible, UNHCR also examined the treatment of particularly vulnerable persons, which is addressed in further detail under Objective Nine. While UNHCR limits its discussion here to the above three detention-related concerns, it recognizes that other detention-related issues may also be of particular importance to certain Safe Third applicants.

UNHCR Washington visited ten detention facilities where Safe Third applicants were held during the processing of their cases. Four of these facilities were visited on more than one occasion.¹⁰⁰ UNHCR found that conditions of detention varied widely at these facilities, despite the requirement that all meet DHS Detention Standards. UNHCR notes, however, that the main detention facilities used for Safe Third cases on the East and West

⁹⁷ Six of these individuals were subsequently deported from the United States to their countries of origin (El Salvador, Nicaragua, Trinidad & Tobago, Egypt, and Colombia [two individuals]).

⁹⁸ CIC reported that all but five of the 189 refugee claimants directed-back to the United States from the Lacolle POE during the May/June 2002 “rush” later appeared for their scheduled CIC interviews. It is believed that the other five presented themselves at a different POE. See UNHCR letter to INS and adjoining Report, *Report on UNHCR Missions to U.S.-Canada Border* (August 29, 2002) regarding two mission undertaken by UNHCR to the United States-Canada border in July 2002.

⁹⁹ See, e.g. UNHCR letter to Mr. Victor Cerda, Acting Director of the Office of Detention and Removal, Bureau of Immigration and Customs Enforcement, *Implementation of U.S.-Canada “Safe Third Country” Agreement and Possible Pre-Implementation Surge of Asylum-Seekers at Land Border POEs* (December 3, 2004) regarding the anticipated implementation of the Agreement and the expected surge in asylum-seekers at the United States-Canada border.

¹⁰⁰ See “Detention Conditions Summary Chart” at Appendix 11.

Coasts - the Buffalo Federal Detention Facility in Batavia, NY (“Batavia facility”)¹⁰¹ and the Northwest Detention Center in Tacoma, WA¹⁰² - maintained better conditions of confinement than the other facilities visited during the monitoring period. UNHCR also notes, however, that because the Batavia facility does not hold female detainees, female Safe Third applicants on the East Coast were generally detained in local and county jails that had inferior conditions.¹⁰³

a. Telephone Access

As previously noted, telephone access can be critical to Safe Third applicants as it may affect applicants’ ability to obtain evidence, legal representation/assistance, or information about their case status and the Safe Third process.¹⁰⁴ Of the ten detention facilities that ROW visited, six or seven provided no access to free telephone calls to local legal service providers.¹⁰⁵ Eight facilities had additional phone access issues of concern. *See* attached Appendix 11 for a listing of telephone issues by facility. Primary telephone issues of concern included the following:

- Free Calls – While eight facilities had access in principle to the “PCS *Pro Bono* Platform” that enables free calls to legal service providers, only the systems at the Northwest Detention Center, the Elizabeth Detention Facility, and most recently, the Batavia facility, were fully functional.¹⁰⁶ Many facilities also did not post instructions on how to use the phone system or did not post the PCS dial codes for the legal service providers, embassies and UNHCR. UNHCR notes that during its monitoring period, ICE made significant improvements in its posting of phone use instructions, PCS dial codes, and free direct-dial phone numbers for legal service providers at several facilities, most notably at the Batavia facility.

¹⁰¹ At least six U.S.-bound Safe Third applicants (40% of the total detained U.S.-bound male applicants in the Buffalo District) were detained for some period of time at the Batavia facility, as were the majority of detained applicants directed-back from Canada.

¹⁰² Five United States bound Safe Third applicants were detained at the Northwest Detention Center.

¹⁰³ Female Safe Third applicants were held in the following local and county jails on the East Coast: Northwest Detention Center, Calhoun County Jail, Monroe County Jail, Erie County Holding Center, and Wyoming County Jail. Female Safe Third applicants were also held at the Elizabeth Detention Facility, where conditions were generally better than at the local and county jails.

¹⁰⁴ Executive Committee, *Conclusions on the Detention of Refugees and Asylum Seekers*, No. 44, para. (g) (1986) (“refugees and asylum-seekers who are detained be provided with the opportunity to contact the Office of the United Nations High Commissioner for Refugees or, in the absence of such office, available national refugee assistance agencies.”).

¹⁰⁵ DHS Detention Standards provide that all detainees must have the ability to make free telephone calls to local legal service providers. *See* INS Detention Standards on Telephone Access, Section III(E) (September 20, 2000) (“The facility shall enable all detainees to make calls to the INS-provided list of free legal service providers...at no charge to the detainee or the receiving party.”).

¹⁰⁶ Lack of full telephone functionality at the facilities was a result in four cases of a failure to program legal service provider numbers into the system (Monroe, Erie, Franklin, and Albany County Jails), and in another case the result of a failure to update the outdated PCS codes (Calhoun County Jail).

- Collect Calls – Of the ten facilities visited, five permitted only collect-calls (*i.e.*, detainees were unable to use phone cards to initiate phone calls), making it difficult for detainees to contact government offices and NGOs that did not accept collect calls. Detainees reported that telephone service providers frequently blocked collect calls, for example, to family members and UNHCR, and that international collect calls were often permitted only on a collect-call basis or were prohibited altogether.¹⁰⁷
- Access to Telephones – At one facility staff reported that there was no telephone access for an initial 72 hours while detainees were held in mandatory holding cells.¹⁰⁸
- General Calling – At several facilities, all telephone numbers had to be programmed into the system in order to make calls.¹⁰⁹ At a few facilities, detainees reported a significant delay in activating PIN numbers or “adding” numbers to the list of approved numbers, or a lack of response to requests to do so.¹¹⁰
- Notification of Legal Service Provider Phone Numbers – In five facilities, legal service provider and UNHCR phone numbers were not posted in one or more detainee living areas.
- Access to Property – Detainees in a few facilities reported that requests to obtain phone numbers from their luggage or from their cell phones were ignored or denied.
- Functionality of Telephone System - Various problems were reported by detainees, including: restricted calls, disconnected calls, connection problems, audibility problems, and inability to navigate phone trees, dial extensions, or to be transferred to another line.

¹⁰⁷ International collect calls can be of importance in Safe Third cases given applicants’ frequent reliance on family members in the country of origin to facilitate their submission of evidence and to identify, hire, and communicate with legal counsel. International calls also may be necessary for individuals directed-back or seeking reconsideration to contact Canadian government authorities.

¹⁰⁸ Franklin County Jail in Malone, NY.

¹⁰⁹ For example, at the Batavia facility and at the Franklin, Wayne, and Albany County Jails, detainees were unable to make calls to telephone numbers that had not been previously submitted to and approved by the facility. Once approved, such telephone numbers would be programmed into the telephone system under a detainee’s “PIN” number to permit him/her access to that number.

¹¹⁰ For example, at least one Safe Third applicant claimed he was prevented from making any calls during his week-long detention at the Batavia facility due to inactivation of his PIN number.

b. Detainee-ICE Communication

As previously noted, detained asylum-seekers often rely on access to ICE officials to obtain case status information, communicate with CIS or CBP officials, or request ICE assistance in facilitating return to a Canadian POE (if directed-back from Canada). Detainee-ICE communication can also be critical in resolving non-legal issues relating to conditions of detention. DHS standards state that ICE officers shall conduct weekly scheduled and unannounced visits to a facility's living and activity areas to address detainees' personal concerns and to encourage informal communication between staff and detainees.¹¹¹

UNHCR found that half of the detention facilities that it visited during its Safe Third monitoring did not provide adequate access to DHS Deportation Officers.¹¹² Many detainees complained that they had not been able to speak to an ICE officer for prolonged periods of time, and in some cases for as long as nine months.¹¹³ This problem was particularly acute in the Detroit area, where there were only a few Deportation Officers responsible for visiting eight detention facilities located in the Detroit district.¹¹⁴ ICE HQ acknowledged the staff shortages in the Detroit Field Office, which local ICE officials stated made it extremely difficult to conduct weekly visits to all area facilities.¹¹⁵

¹¹¹ ICE Detention Standard on Staff-Detainee Communication, Section III(A)(1) and (2), dated 11 July 2003.

¹¹² Wayne County Jail, Monroe County Jail, Calhoun County Jail, Erie County Holding Center, and Albany County Jail. Other than the one complaint noted in fn. 113, below, UNHCR found that ICE-Detainee communication was adequate at the Batavia facility, the Northwest Detention Center, Clinton County Jail, and Elizabeth Detention Facility.

¹¹³ For example, UNHCR interviewed a U.S.-bound Safe Third applicant at the Batavia facility who claimed he had not been able to speak to an immigration official for two months after his Safe Third eligibility decision and was not informed of his decision until three weeks after the decision was finalized. Applicant stated that despite submitting numerous written requests to speak to an officer about his case he had not been able to do so for three months. UNHCR also interviewed several asylum-seekers who stated that they had not seen a Deportation Officer for the over nine month duration of their detention at the Calhoun County Jail.

¹¹⁴ This staffing problem is exemplified by the case of one Safe Third applicant at the Monroe County Jail who had received a threshold screening interview and had been determined to be ineligible under the Agreement yet remained in detention for over two months thereafter, apparently because ICE was not aware of the decision and/or their duty to process the applicant for return to Canada. The applicant was unaware of his status and had no means of contacting the Asylum Office directly, as the phones only accepted collect calls.

¹¹⁵ ICE HQ has informed UNHCR that it intends to hire more Deportation Officers for the ICE Detroit Field Office.

Elsewhere, it was unclear whether reported problems with detainee-ICE communication were a result of infrequent facility visits by ICE officials or a result of the nature of ICE-detainee communications during these visits.¹¹⁶ While UNHCR was unable to independently verify whether ICE visits were occurring on a weekly basis or the nature of those visits, the frequency of the complaints received by detained asylum-seekers is of concern. UNHCR recognizes, however, that detainees bear some responsibility for initiating contact with ICE officials, provided they understand the process for doing so.¹¹⁷

c. Interpretation

Interpretation can be especially important during the Safe Third process, as non-native English speakers' inability to adequately communicate with DHS and jail staff could hamper their efforts to obtain and present evidence in their cases. Adequate interpretation may also be necessary for the appropriate medical treatment of detainees. DHS regulations and international standards both require the use of interpretive assistance when necessary to communicate with asylum-seekers, particularly when assistance may be needed to submit a refugee claim.¹¹⁸

Five facilities visited by UNHCR failed to provide regular access to professional interpretation when conducting intakes and/or medical exams.¹¹⁹ UNHCR found that in these facilities, a phone interpreter service was either never used or was rarely used, and only when officers or other detainees were not available. This was a particular problem in the local and county jails used by DHS to hold immigration detainees. UNHCR notes that the use of other detainees for interpretation may be inappropriate, in particular in the medical context, for accuracy and privacy reasons.

¹¹⁶ Some detainees at the Monroe County Jail complained, for example, that while a Deportation Officer did visit their detention facility, the Officer never entered the living areas to make herself available, choosing instead to call detainees she was responsible for over the intercom and meeting them outside the pods.

¹¹⁷ Many applicants interviewed by UNHCR were unaware that they could request certain types of assistance from Deportation Officers, i.e. facilitation of telephone calls.

¹¹⁸ 8 C.F.R. § 235.3(b)(2)(i) ("Interpretative assistance shall be used if necessary to communicate with the alien" by an examining immigration officer during expedited removal); UNHCR Executive Committee, *Conclusions on the Determination of Refugee Status*, No. 8, para. (e)(iv) (1977) and UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, para. 192 (iv) (Jan. 1992) (a refugee applicant "shall be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned."). See also Standard Minimum Rules for the Treatment of Prisoners, Rule 51(2) ("Whenever necessary, the services of an interpreter shall be used."). *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

¹¹⁹ Facilities without regular professional interpretation included: Clinton County Jail in Plattsburgh, NY; Franklin County Jail in Malone, NY; Erie County Holding Center in Buffalo, NY; Wayne County Jail in Detroit, MI; and the Monroe County Jail in Monroe, MI.

Recommendations:

- 8.1 *Consistent with CBP guidance, restrain asylum-seekers at POEs only if deemed necessary after an individualized risk assessment. (CBP)*
- 8.2 *To ensure that asylum-seekers directed-back from Canada can appear for their scheduled CBSA interviews, do not detain those directed-back absent criminal or security concerns. (CBP/ICE)*
- 8.3 *Ensure adequate detention conditions for Safe Third applicants. In particular: (a) Provide adequate telephone access for detained asylum-seekers subject to the Agreement; (b) Ensure free telephone calls to legal service providers from all detention facilities where Safe Third applicants may be held, and post telephone use instructions and contact information for legal service providers and UNHCR; (c) Ensure that detained asylum-seekers have meaningful weekly access to DHS Deportation Officers (d) Ensure that facilities have access to the ICE interpreter service and instruct facilities to use it whenever necessary to communicate with detainees. (ICE)*

I. Objective Nine: Asylum-seekers benefit from the principle of family unity and particularly vulnerable asylum-seekers are treated appropriately.

1. Family Unity

The maintenance of family unity has been an area of primary concern for UNHCR with regard to both the content and the implementation of the Agreement. In its monitoring, UNHCR examined this issue in two contexts: family unity as the basis for an exception under the Agreement and detention during the eligibility process.

a. Family-Based Eligibility Under the Agreement

UNHCR recognizes that in comparison to Safe Third country agreements concluded elsewhere, the United States-Canada Agreement has adopted a relatively broad category of family members who may qualify as eligible “anchor relatives” under the Agreement.¹²⁰ The breadth of this category is limited, however, by the requirement that the anchor relative have a certain legal status in the destination country.¹²¹ The Parties chose not to adopt UNHCR’s recommendation that *de facto* family members qualify as

¹²⁰ Eligible anchor relatives under the Agreement may include: parents or guardians, children, spouses, grandparents, aunts/uncles and nieces/nephews.

¹²¹ Under the Agreement, any family member (including minors) can serve as anchor relatives if he/she has been granted refugee/asylum status or has legal status other than as a visitor. Family members over 18 years of age without legal status can also serve as eligible anchor relatives if they are not ineligible to pursue an asylum claim or have such a claim pending.

either eligible anchor relatives under the family-based exceptions or as a basis for establishing eligibility under the public interest exception.

As noted earlier, UNHCR found that asylum-seekers were able to establish their required relationships to anchor relatives in the United States for purposes of eligibility under the family-based exceptions to the Agreement. In this regard, Safe Third applicants with close family members in the United States were generally able to lodge asylum claims in the United States, resulting in the preservation of family unity. UNHCR found, however, that there were some cases where close family members remained separated due to either a failure to satisfy the legal status requirement for eligible anchor relatives (*e.g.*, daughter in the United States with adjustment to lawful permanent resident status application pending) or due to non-inclusion in the category of eligible family members (*e.g.*, same sex partner). UNHCR found that the principle of family unity was not maintained in these cases, despite the equities in these cases and the availability of the public interest exception for establishing eligibility under the Agreement.

b. Detention

As previously noted, all asylum-seekers subject to expedited removal under the Agreement are mandatorily detained. However, DHS currently has only one detention facility in the United States that can accommodate family units. If space in this facility is not available, DHS practice has been to separate the family; detaining the husband/father in a detention facility and holding the wife and/or children in a hotel room.

Based on past practice, it appears that DHS has the authority to parole some individuals who are in expedited removal proceedings, although the scope of this authority is unclear. During UNHCR's monitoring of the Agreement, there was only one family subject to expedited removal, an Argentinean family of four.¹²² The family consisted of a mother and three minor children. DHS chose to exercise its parole authority favorably and did not detain any of the family members. DHS has indicated, however, that it would normally detain an adult male family member if he were placed in expedited removal or otherwise met the detention criteria, irrespective of his connection to a family unit or his status under the Safe Third Agreement.¹²³

2. Treatment of Vulnerable Asylum-Seekers

UNHCR also monitored whether DHS was identifying particularly vulnerable Safe Third applicants and treating them appropriately. During its monitoring, UNHCR encountered several categories of particularly vulnerable Safe Third applicants, including children (accompanied), persons with medical issues, and persons with mental health issues.

¹²² The family applied for admission at the Buffalo POE on 17 February.

¹²³ At least one family unit, a husband and wife from Colombia, was directed-back to the United States from Canada and detained in the United States. The spouses were detained separately at the same facility for a period of time.

a. CBP

The CBP Inspector's Field Manual includes special procedures on the handling of juveniles, family units, and persons of advanced age.¹²⁴ While UNHCR was unable to observe any secondary inspections first-hand, there is no indication that cases of particularly vulnerable people were handled inappropriately by DHS at the United States-Canada POEs that UNHCR monitored.¹²⁵ With regard to mental health cases, two U.S.-bound Safe Third applicants were determined by DHS to be potential suicide risks.¹²⁶ UNHCR's ability to obtain information on these two cases was limited due to the confidentiality of medical records, however, it appears that CBP appropriately handled the one applicant who was identified as a potential suicide risk at the POE.¹²⁷

b. ICE

UNHCR is not aware of any juvenile, elderly, or physically disabled Safe Third applicants who were detained. UNHCR is aware of one elderly asylum-seeker in poor health who was directed-back to the United States from Canada and who was not detained by ICE despite an outstanding order of removal. UNHCR considers this an appropriate exercise of ICE's parole authority.¹²⁸

UNHCR notes, however, that the two U.S.-bound asylum-seekers who were considered potential suicide risks (*i.e.*, possible mental health issues) were detained by ICE. DHS Detention Standards state that all new arrivals are to receive initial mental health screenings immediately, including observation and interview questions related to the detainee's potential suicide risk.¹²⁹ Detainees identified as "at risk" for suicide are to be promptly referred to medical staff for evaluation. Depending on a determination of the imminence of potential harm, a detainee may be segregated from the general population either in a special isolation room or in a Special Management Unit. DHS Detention

¹²⁴ CBP IFM, Chapter 17.8.

¹²⁵ For example, UNHCR received reports from Safe Third applicants that children were fed and were not detained at POEs.

¹²⁶ One asylum-seeker from Angola was identified as a suicide risk by CBP at the Champlain POE. The other asylum-seeker was from Nigeria and was identified as a suicide risk by Corrections Officers at the Albany County Jail while in the custody of the United States Marshals Service.

¹²⁷ According to CBP, the asylum-seeker attempted suicide after being placed in a POE holding cell to use the bathroom. An officer went to get him some water and when he returned, the asylum-seeker was sitting on the floor leaning back with one of his pant legs tied to the base of the bench and the other pant leg wrapped around his neck. The Officer untied the asylum-seeker's pants and called an EMT, who made a determination that he was not a threat to himself. He was kept in the cell with an officer watching him at all times until he was transferred to United States Marshals Service custody. CBP notified DRO that the asylum-seeker may be suicidal. CBP provided UNHCR with the asylum-seeker's "personal detention log sheet" which appears to confirm this succession of events.

¹²⁸ This discretionary parole authority is granted under 8 C.F.R. § 212.5(b) for "urgent humanitarian reasons" or "significant public benefit."

¹²⁹ DHS Detention Standard on Suicide Prevention and Intervention, Sections III(B) and (C), dated September 20, 2000. *See also* UNHCR Guidelines on Applicable Standards and Criteria Related to Detention of Asylum Seekers, Guideline 10 (asylum-seekers should have "the opportunity to receive appropriate medical treatment, and psychological counselling where appropriate.").

Standards do not specify for how long a detainee may be kept in isolation before referral for hospitalization. DHS Detention Standards also do not discuss how medications prescribed for mental health reasons are to be administered.

Due to medical confidentiality reasons, UNHCR was unable to independently verify whether the two suicide-risk asylum-seekers received appropriate mental health services once placed in detention. UNHCR would note, however, that one of the asylum-seekers reported that the mental health services available to him at the Albany County Jail (where both he and the other U.S.-bound applicant were detained for approximately one month), were inadequate;¹³⁰ especially as compared to those available at the Buffalo Federal Detention Facility, where he was subsequently detained.¹³¹ While UNHCR visited the Albany County Jail and did not observe any obvious deficiencies in its mental health care, it does have general concerns about the conditions of confinement for asylum-seekers considered suicide-risks.¹³² UNHCR is also concerned about the unavailability of mental health services at the Monroe County Jail.¹³³

¹³⁰ UNHCR learned that the Albany County facility had held an inmate who committed suicide in the facility two months prior to UNHCR's visit. This inmate was screened for mental health issues and placed on constant observation as a suicide threat. He was, however, released from constant observation when it was determined that he was no longer a threat to himself, and he hung himself in the early morning.

¹³¹ The Nigerian asylum-seeker stated that after mentioning that he wanted to harm himself, he was placed in "lock down" for two days at Albany County Jail and was then kept in segregation for two weeks. He stated that the mental health services offered to him consisted of a "mental health officer" who asked him daily if he still wanted to kill himself. In order to be released from segregation, the asylum-seeker informed the mental health officer that he did not intend to harm himself. According to the asylum-seeker, this statement alone was sufficient for him to be no longer considered a suicide risk. The asylum-seeker stated that while at the Albany County Jail he was not provided with any medication to address his anxiety and/or depression. After being transferred to Batavia some two months later, he was seen by a psychologist and was prescribed anxiety medication, which he stated reduced his anxiety significantly. The asylum-seeker noted that he was also given X-rays and an EKG at Batavia in order to diagnose and treat his symptoms of anxiety, such as insomnia, numbness, temporary paralysis, and profuse sweating.

¹³² Medical staff at the jail informed UNHCR that the jail had a policy of constant observation for suicide risks which requires the detainees' placement in a segregation cell. The detainee may be held in the cell, potentially without any sheets or blankets and/or in a "safety smock" for up to two weeks.

¹³³ The Monroe County Assistant Jail Administrator explained to UNHCR that there are no "in-house" mental health care workers at the Monroe County Jail. There are two mental health care providers who make visits to the Jail, however they are mandated to see inmates only, and DHS detainees do not generally receive their services. If a detainee requires mental health care, Jail staff must report this to a Deportation Officer, who must then transfer the detainee to another facility.

As a general matter, UNHCR recommends that States refrain from detaining asylum-seekers with mental health issues.¹³⁴ All detained asylum-seekers should receive appropriate medical treatment and psychological counseling. UNHCR would note that while neither of the two U.S.-bound asylum-seekers of concern were found to be eligible under the Agreement and were ultimately returned to Canada, one was held in detention for 40 days (10 days by U.S. Marshals Service and 1 month by DHS), and the other for at least 127 days (27 days by U.S. Marshals Service and 100 days by DHS).

c. CIS

As previously noted, CIS Asylum Officers were generally courteous and sensitive to asylum-seekers during threshold screening interviews. UNHCR observed during the interview of one of the two U.S.-bound asylum-seekers with mental health issues that the Asylum Officer asked him about his physical and mental health with concern, and that the Officer made an effort to make the applicant feel comfortable during the questioning.¹³⁵ The transcript of the interview with the other applicant with possible mental health issues indicates that the Asylum Officer also treated his case with appropriate discretion and sensitivity.¹³⁶

Recommendation:

9.1 Do not detain asylum-seekers with mental health issues. If detained: (a) Do so only be on the certification of a qualified medical practitioner that detention will not adversely affect their health and well being; (b) Require regular follow up and support by a relevant skilled professional, and; (c) Provide access to mental health services, hospitalization and medication counseling, etc., should it become necessary. (CBP/ICE)

¹³⁴ UNHCR Guidelines on Applicable Standards and Criteria Related to Detention of Asylum Seekers, Guideline 7 (“Given the very negative effects of detention on the psychological well being of those detained, active consideration of possible alternatives should precede any order to detain asylum-seekers falling within the following vulnerable categories listed: ...Torture or Trauma Victims; and Persons with Mental or Physical Disability. In the event that individuals falling within these categories are detained, it is advisable that this should only be on the certification of a qualified medical practitioner that detention will not adversely affect their health and well being. In addition there must be regular follow up and support by a relevant skilled professional. They must also have access to services, hospitalisation and medication counselling, etc., should it become necessary.”).

¹³⁵ Observed during the Nigerian asylum-seeker’s threshold screening interview, held on 5 April at ICE Field Office in Latham, NY.

¹³⁶ Transcript of the Angolan asylum-seeker’s threshold screening interview, held on 27 June at the ICE Field Office in Latham, NY.

UNHCR MONITORING PLAN
US-CANADA "SAFE THIRD COUNTRY" AGREEMENT
(Subject to final exchange of letters between the Parties and UNHCR)

The Safe Third Country agreement (hereinafter "the Agreement") notes, in keeping with the advice of UNHCR and its Executive Committee, that agreements among states may enhance international protection of refugees by promotion of orderly handling of asylum applications by the responsible party and the principle of burden sharing.

The Agreement acknowledges the international legal obligations of the Government of Canada and the Government of the United States (the "Parties") under the principle of *non-refoulement* outlined in the 1951 Convention and its 1967 Protocol, as well as the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture).

The Agreement notes the Parties' determination to safeguard for each eligible refugee claimant on its territory access to a full and fair refugee status determination procedure as a means to afford the protections of the 1951 Convention, its Protocol and the Convention Against Torture.

Article 8(3) of the Agreement further provides that the parties to the Agreement will invite UNHCR to participate in the first review of the Agreement and its implementation. Under the Agreement, this review is to take place not later than twelve months from the date of the Agreement's entry into force. Under Article 8(3) "Parties shall cooperate with UNHCR in the monitoring of this Agreement and seek input from non-governmental organizations."

Objectives of UNHCR Monitoring

Pursuant to Article 8(3) of the Agreement, and further to its mandate under the 1951 Refugees Convention and Protocol, UNHCR will monitor the Agreement to assess whether implementation is consistent with its terms and principles, and with international refugee law.

Policy & Operating Guidelines

Before the commencement of monitoring activities, UNHCR will receive copies of all American and Canadian policy and operating guidelines for the Agreement. These will include any guidelines or instructions specific to each of the five major ports of entry (POEs) to be visited by UNHCR on a regular basis.

Methodology

Before Agreement Enters into Force

- One tripartite meeting (US, Canada, and UNHCR) to discuss the monitoring plan, on 6 August 2004, to be followed by any subsequent meetings deemed necessary by the parties;

- To the extent the data are reliable and may reasonably be obtained, US and Canada supply the latest statistics on the number of persons who presented refugee claims at a US-Canada land border POE and, of those, the number who were then detained;
- An “introductory” UNHCR visit to one designated land border POE after the monitoring plan is finalized and prior to entry into force of the Agreement;
- “Exchange of Letters” between US, Canada and UNHCR.

After Agreement Enters Into Force

- UNHCR visits to US-Canada designated land border POEs, in accordance with existing field visit protocols;
- UNHCR visits to detention centers in Canada and the US which hold asylum claimants referred by border officials, in accordance with existing practice or field visit protocols;
- Analysis of DHS/DOJ and CIC statistics, policies, case files, and other relevant documents;
- Analysis of information received from NGOs, including statistics, case files, and other relevant documents;
- Ongoing discussions with governmental and non-governmental counterparts;
- Interviews with individual asylum-seekers subject to the Agreement;
- Two tri-partite meetings (US, Canada and UNHCR) to discuss findings, after 6 months and 12 months of monitoring, as part of the first annual review (see also "Reporting" below).

Reporting

- General: UNHCR will formally report to the Parties its findings on the Agreement's implementation approximately six months and twelve months after the Agreement has entered into force. UNHCR expects that these reports will assist the Parties both in their implementation of the Agreement during the first year, and in their twelve-month review of the Agreements' implementation.
- UNHCR Six-Month Briefing: UNHCR will report orally to the Parties its interim observations regarding the implementation of the Agreement approximately six months after its entry into force.
- UNHCR Twelve-Month Review: UNHCR will report orally to the Parties its observations on the implementation of the Agreement approximately twelve months from the date of entry into force, focusing primarily on the last six months of implementation. The Parties and UNHCR will also discuss UNHCR's draft written monitoring report at this time. The final written monitoring report will be submitted to the Parties prior to their final review of the Agreement's implementation.
- Parties' Twelve-Month Report: The Parties will prepare, and share with UNHCR, their twelve-month implementation report, for review and comments. Following tripartite discussions on the Parties' draft report, the Parties and UNHCR will

adopt a final report, provided UNHCR is satisfied that its credibility and independence would be properly maintained. The joint tripartite report will be made public upon agreement of the Parties and UNHCR.

- UNHCR may report on, and/or request additional tripartite meetings to discuss emergent issues as necessary. This would not affect any ongoing and regular bilateral dialogue between UNHCR and the respective host Government on the Agreement.

Site Visits: Ports of Entry (POE) and Detention Facilities

In accordance with existing field visit protocols, UNHCR will conduct site visits to US/Canada POEs during the twelve months following the entry into force of the Agreement. The focus of the site visits will be to the major ports of entry, namely:

- Detroit/Windsor
- Buffalo/Fort Erie, coupled with
- Niagara/Rainbow Bridge
- Champlain/LaColle
- Blaine/Douglas

Some visits may be extended over a period of days. UNHCR visits to other land-border POEs may also be undertaken.

UNHCR staff in the US and in Canada may visit area detention facilities in connection with the scheduled monitoring visits; each office may visit detention centres on other occasions, scheduled separately by each office.

Prior to and/or during visits to ports of entry and detention facilities, the Parties will make individual case files available to UNHCR upon request, either with applicant's consent or redacted as necessary, and will enable UNHCR to have access to individual applicants detained either at the POE or at a detention facility (for purposes of confidential interviews, with applicants' consent).

Assumptions / Constraints

- UNHCR human and financial resources;
- UNHCR access to all aspects of border procedures, including to individuals seeking asylum subject to the Agreement and related documentation; Availability of reliable statistical data.

Statistics

The following statistical information from the Parties may assist the UNHCR in its monitoring objectives, once the Agreement comes into force. The following list is not exhaustive and may be supplemented at any time. In keeping with Article 8(3) of the Agreement, UNHCR will also seek input, to the extent available, from non-governmental organizations. For statistics originating from agencies other than the US Department of Homeland Security (DHS) or the Canadian Citizenship and Immigration Canada (CIC), the Parties will make best efforts to ensure that the

requested information is made available to UNHCR. With respect to the statistics described below, the Parties will provide them to the extent that they are reliable and reasonably available. The Parties will inform UNHCR if requested data is not being provided for reasons of reliability or availability.

1. General

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

- a) Total number of persons requesting asylum in the US and Canada at a US-Canada land border POE;
- b) Total number of persons found not to meet an exception and returned to country of last presence under the Agreement, and total number found to meet an exception.

2. Exceptions under Article 4 (2) (a) and (b) - Family Unity

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

- a) Number of persons deemed eligible to lodge refugee protection claims in the receiving country under Article 4(2)(a) and (b), and number of persons found to be ineligible under this exception.

3. Exceptions under Article 4 (2) (c) Unaccompanied Minors

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

- a) Number of persons considered "unaccompanied minors" subject to Article 4(2)(c);
- b) Number of unaccompanied minors (persons under the age of 18 not accompanied by a parent/guardian) who have parents, guardians, or close family members in the receiving country, but do not fall under Article 4(2)(a) or (b) of the Agreement, and who are returned to the country of last presence under the Agreement;
- c) To facilitate UNHCR access to these statistics in the US, UNHCR requests that the DHS Bureau of Customs and Border Protection provide Alien Registration Numbers and names of unaccompanied minors placed in removal proceedings at US-Canada land border POEs to the Executive Office for

Immigration Review so that appropriate cases may be identified and case-files made available for review by UNHCR.

4. Detention

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately *vis a vis* where the application was initially lodged. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

Total number of persons detained for more than 48 hours in the US or Canada while their cases are being examined under the Agreement. Data should include: (a) names and locations of detention centers; (b) reasons for detention; (c) dates of detention; and (d) for those detained while their cases are being examined under the Agreement, whether the person was deemed eligible to lodge a refugee claim in the receiving country under the Agreement.

5. Processing time

(The Parties will provide statistical data in this category on a monthly basis, broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually.)

The length of time it takes the Parties to make a decision regarding eligibility to apply for refugee protection in the receiving country under the Agreement for each application for refugee protection received, as well as the average length of time.

6. Expedited Removal

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

- a) Number of persons seeking refugee protection in the US at a US-Canada land border POE who were placed in: (1) expedited removal proceedings, and, (2) regular (INA 240) removal proceedings.
- b) Of those persons identified in (a)(1) and (a)(2) above, the number of persons deemed eligible to lodge an asylum claim in the US under the Agreement.

7. Removal through Territory of Other Party (Article 5)

(The Parties will provide statistical data in this category on a quarterly basis, which will be broken down to reflect gender, age and country of origin.)

- a) Total number of persons removed from Canada via the US and the number returned to Canada under Article 5(a);

- b) Total number of persons removed from the US via Canada, who are subject to Article 5(b)(i);
- c) Total number of persons removed from the US via Canada, who are returned to the United States under Article 5(b)(ii).

8. Effective Review Procedures

(The Parties will provide statistical data in this category on a monthly basis. Data will also be broken down to reflect gender, age and country of origin.)

- a) For the US, the total number of persons placed in regular (INA § 240) removal proceedings who appealed the decision of the Immigration Judge regarding their eligibility to apply for asylum in the US under the Agreement, and the decisions of the Board of Immigration Appeals on those appeals;
- b) For the US, total number of applicants placed in regular (INA § 240) removal proceedings who sought reconsideration of a determination that they do not fall under any of the exceptions to the Agreement. Information should also include: (i) the exception of the Agreement at issue (e.g., Article 4(2)(a)), and (ii) final decision rendered. For Canada, and to the extent possible, the number of persons who sought the review of the negative decision before the Federal Court;
- c) To facilitate UNHCR access to the requested statistics under (a) and (b) above in the US, UNHCR requests that the DHS Bureau of Customs and Border Protection provide Alien Registration Numbers and names of unaccompanied minors placed in removal proceedings at US-Canada land border POEs to the Executive Office for Immigration Review so that appropriate cases may be identified and case-files made available for review by UNHCR;
- d) The total number of cases reconsidered by each Party under the bilateral dispute resolution mechanism, the substantive provision of the Agreement at issue, and the outcome of such reconsiderations/decisions.

9. Use of Discretion (Article 6)

(The Parties will provide statistical data in this category on a monthly basis. All data will be broken down to reflect each of the five major ports of entry separately. Data on all other ports of entry may be grouped or provided individually. Data will also be broken down to reflect gender, age and country of origin.)

Total number of cases considered under Article 6 of the Agreement and total number deemed eligible to lodge a refugee protection claim in the receiving country under Article 6.

10. Resettlement provision (Article 9)

(The Parties will provide statistical data in this category once before the six-month review and as available thereafter.)

Total number of persons resettled to either the US or Canada, including information on first country of asylum, dates of resettlement and country of resettlement pursuant to Article 9 of the Agreement.

11. Other information on asylum applications

(The Parties will provide statistical data in this category on a monthly basis.)

Total number of refugee claims lodged inland in either country (*i.e.*, not at a POE). Total number for the same period of claims lodged in either country during the previous year, broken down by month, should also be provided.

Estimated UNHCR Monitoring Costs (in US\$)

The estimated costs (both UNHCR Canada and UNHCR USA) for the proposed UNHCR monitoring plan is approximately \$200,000, covering costs of staff travel, vehicle rental and daily subsistence allowances while on mission. The cost could be higher, depending on the number of site visits undertaken. Given UNHCR's current financial constraints, UNHCR encourages both governments to underwrite these costs to the extent possible.

14 December 2004

**UNHCR MONITORING OBJECTIVES OF THE
CANADA-US SAFE THIRD COUNTRY AGREEMENT**

On 5 December 2002, Canada and the US signed The Safe Third Country Agreement for Cooperation in the Examination of refugee Status Claims from Nationals of Third Countries. The Canadian accompanying Regulations were published on 3 November, 2004 and the US implementing Regulations were published on 29 November 2004. The Agreement entered into force on 29 December 2004.

Under the Agreement the Parties acknowledge their international legal obligations under the principle of *non-refoulement* enshrined in the 1951 Convention and its 1967 Protocol as well as in the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Furthermore, the Parties are aware that they “must ensure ... that persons in need of international protection are identified and that the possibility of indirect breaches of the fundamental principle of *non-refoulement* is avoided.” The Parties are therefore “determined to safeguard for each refugee status claimant eligible to pursue a refugee status claim who comes within their jurisdiction, access to a full and fair refugee status determination procedure as a means to guarantee that the protections of the Convention, the Protocol, and the Torture Convention are effectively afforded.”

In line with Article 8(3) of the Agreement, the Parties invited UNHCR to review the Agreement and its implementation no later than 12 months from the date of entry into force. The Parties also committed to cooperating with UNHCR in the monitoring of the Agreement. Towards that end, UNHCR submitted to, and discussed with, the Parties a Safe Third Country Monitoring Plan. The Monitoring Plan outlines, *inter alia*, the scope of UNHCR’s monitoring role as well as the relevant information and statistical data required to carry out the monitoring role effectively. In addition, the Parties agreed to seek input from non-governmental organisations regarding implementation of the agreement.

SUBSTANTIVE PROVISIONS OF THE AGREEMENT

The Agreement requires that asylum-seekers who transit through either the U.S. or Canada lodge their refugee claim in the “last country of presence” on the grounds that they were in a country with adequate refugee protection procedures and safeguards. The Agreement applies only at U.S.-Canada land borders. The Agreement provides exceptions for certain asylum-seekers, including: (1) those with “adult” family members (defined broadly) who have either legal status or a refugee claim pending in the “receiving country”; (2) unaccompanied minors; and (3) those who do not require a visa to enter the receiving country. The Agreement also establishes that asylum-seekers will not be referred to a third country for adjudication of their claim, thus creating a “closed system” and avoiding the possibility of “refugees in orbit.”

MONITORING STANDARDS AND PRINCIPLES

UNHCR monitors will be using, on the one hand, standards and principles derived from the Agreement, accompanying Rules and Regulations, Standard Operating Procedures (or Safe Third Manuals). In addition, monitors will also use the Statement of Mutual Understanding (SMU) regarding the sharing of information on asylum and refugee status claims, as well as its Asylum Annex, that were agreed between the Department of Citizenship and Immigration Canada (CIC) and the Bureau of Citizenship and Immigration Services (BCIS) of the U.S. Department of Homeland Security (DHS).

On the other hand, UNHCR staff will be using international refugee law standards and principles in their monitoring responsibilities. The sources of international refugee law – those relevant in the context of the Safe Third Country Agreement between Canada and the U.S. - are, among others, the 1951 Convention and its 1967 Protocol (in particular Article 33), Statute of UNHCR, Executive Committee Conclusions and other applicable human rights principles and standards. Considered relevant in this context are the numerous policies and guidelines issued by UNHCR on, *inter alia*, asylum-seeking women and children and other vulnerable groups.

MONITORING OBJECTIVES

The following are the objectives of UNHCR monitoring of the implementation of the Safe-third country Agreement.

Overall objective: The Agreement is implemented in keeping with the letter and spirit of the Agreement as well as in accordance with international refugee law.

1. Asylum-seekers have access to relevant border and adjudicating officers.
2. Asylum-seekers have the opportunity for third party presence during proceedings.
3. Asylum-seekers not subject to the Agreement are effectively identified.
4. Asylum-seekers' claims are determined and finalised expeditiously.
5. Asylum-seekers are subject to eligibility determination interviews that are carried out in accordance with recognised international standards.
6. Asylum-seekers are treated fairly and humanely in accordance with international human rights standards.
7. Vulnerable individuals are treated in a sensitive manner.
8. Asylum-seekers benefit from the principle of family unity.
9. Asylum-seekers subject to the Agreement are aware of their rights.
10. Asylum-seekers are not subject to unwarranted detention.
11. UNHCR staff has access to individual files.
12. UNHCR staff has access to designated land border ports of entry and "border" detention facilities.

UNHCR
February 2005

**AGREEMENT
BETWEEN
THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
FOR COOPERATION IN THE EXAMINATION OF REFUGEE STATUS
CLAIMS FROM NATIONALS OF THIRD COUNTRIES**

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA (hereinafter referred to as "the Parties"),

CONSIDERING that Canada is a party to the 1951 Convention relating to the Status of Refugees, done at Geneva, July 28, 1951 (the "Convention"), and the Protocol Relating to the Status of Refugees, done at New York, January 31, 1967 (the "Protocol"), that the United States is a party to the Protocol, and reaffirming their obligation to provide protection for refugees on their territory in accordance with these instruments;

ACKNOWLEDGING in particular the international legal obligations of the Parties under the principle of non-refoulement set forth in the Convention and Protocol, as well as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York, December 10, 1984 (the "Torture Convention ") and reaffirming their mutual obligations to promote and protect human rights and fundamental freedoms.

RECOGNIZING and respecting the obligations of each Party under its immigration laws and policies;

EMPHASIZING that the United States and Canada offer generous systems of refugee protection, recalling both countries' traditions of assistance to refugees and displaced persons abroad, consistent with the principles of international solidarity that underpin the international refugee protection system, and committed to the notion that cooperation and burden-sharing with respect to refugee status claimants can be enhanced;

DESIRING to uphold asylum as an indispensable instrument of the international protection of refugees, and resolved to strengthen the integrity of that institution and the public support on which it depends;

NOTING that refugee status claimants may arrive at the Canadian or United States land border directly from the other Party, territory where they could have found effective protection;

CONVINCED, in keeping with advice from the United Nations High Commissioner for Refugees (UNHCR) and its Executive Committee, that agreements among states may enhance the international protection of refugees by promoting the orderly handling of asylum applications by the responsible party and the principle of burden-sharing;

AWARE that such sharing of responsibility must ensure in practice that persons in need of international protection are identified and that the possibility of indirect breaches of the fundamental principle of non-refoulement are avoided, and therefore determined to safeguard for each refugee status claimant eligible to pursue a refugee status claim who comes within their jurisdiction, access to a full and fair refugee status determination procedure as a means to guarantee that the protections of the Convention, the Protocol, and the Torture Convention are effectively afforded;

HAVE AGREED as follows:

ARTICLE 1

1. In this Agreement,
 - (a) **“Country of Last Presence”** means that country, being either Canada or the United States, in which the refugee claimant was physically present immediately prior to making a refugee status claim at a land border port of entry.
 - (b) **“Family Member”** means the spouse, sons, daughters, parents, legal guardians, siblings, grandparents, grandchildren, aunts, uncles, nieces, and nephews.
 - (c) **“Refugee Status Claim”** means a request from a person to the government of either Party for protection consistent with the Convention or the Protocol, the Torture Convention, or other protection grounds in accordance with the respective laws of each Party.
 - (d) **“Refugee Status Claimant”** means any person who makes a refugee status claim in the territory of one of the Parties.

(e) **“Refugee Status Determination System”** means the sum of laws and administrative and judicial practices employed by each Party's national government for the purpose of adjudicating refugees status claims.

(f) **“Unaccompanied Minor”** means an unmarried refugee status claimant who has not yet reached his or her eighteenth birthday and does not have a parent or legal guardian in either Canada or the United States.

2. Each Party shall apply this Agreement in respect of family members and unaccompanied minors consistent with its national law.

ARTICLE 2

This Agreement does not apply to refugee status claimants who are citizens of Canada or the United States or who, not having a country of nationality, are habitual residents of Canada or the United States.

ARTICLE 3

1. In order to ensure that refugee status claimants have access to a refugee status determination system, the Parties shall not return or remove a refugee status claimant referred by either Party under the terms of Article 4 to another country until an adjudication of the person's refugee status claim has been made.

2. **The Parties shall not remove a refugee status claimant returned to the country of last presence under the terms of this Agreement to another country pursuant to any other safe third country agreement or regulatory designation.**

ARTICLE 4

1. Subject to paragraphs 2 and 3, the Party of the country of last presence shall examine, in accordance with its refugee status determination system, the refugee status claim of any person who arrives at a land border port of entry on or after the effective date of this Agreement and makes a refugee status claim.

2. Responsibility for determining the refugee status claim of any person referred to in paragraph 1 shall rest with the Party of the receiving country, and not the Party of the country of last presence, where the receiving Party determines that the person:

- (a) Has in the territory of the receiving Party at least one family member who has had a refugee status claim granted or has been granted lawful status, other than as a visitor, in the receiving Party's territory; or
 - (b) Has in the territory of the receiving Party at least one family member who is at least 18 years of age and is not ineligible to pursue a refugee status claim in the receiving Party's refugee status determination system and has such a claim pending; or
 - (c) Is an unaccompanied minor; or
 - (d) Arrived in the territory of the receiving Party:
 - (i) With a validly issued visa or other valid admission document, other than for transit, issued by the receiving Party; or
 - (ii) Not being required to obtain a visa by only the receiving Party.
3. The Party of the country of last presence shall not be required to accept the return of a refugee status claimant until a final determination with respect to this Agreement is made by the receiving Party.
4. Neither Party shall reconsider any decision that an individual qualifies for an exception under Articles 4 and 6 of this Agreement.

ARTICLE 5

In cases involving the removal of a person by one Party in transit through the territory of the other Party, the Parties agree as follows:

- (a) Any person being removed from Canada in transit through the United States, who makes a refugee status claim in the United States, shall be returned to Canada to have the refugee status claim examined by and in accordance with the refugee status determination system of Canada.
- (b) Any person being removed from the United States in transit through Canada, who makes a refugee status claim in Canada, and:
 - (i) whose refugee status claim has been rejected by the United States, shall be permitted onward movement to the country to which the person is being removed; or

- (ii) who has not had a refugee status claim determined by the United States, shall be returned to the United States to have the refugee status claim examined by and in accordance with the refugee status determination system of the United States.

ARTICLE 6

Notwithstanding any provision of this Agreement, either Party may at its own discretion examine any refugee status claim made to that Party where it determines that it is in its public interest to do so.

ARTICLE 7

The Parties may:

- a) Exchange such information as may be necessary for the effective implementation of this Agreement subject to national laws and regulations. This information shall not be disclosed by the Party of the receiving country except in accordance with its national laws and regulations. The Parties shall seek to ensure that information is not exchanged or disclosed in such a way as to place refugee status claimants or their families at risk in their countries of origin.
- b) Exchange on a regular basis information on the laws, regulations and practices relating to their respective refugee status determination system.

ARTICLE 8

1. The Parties shall develop standard operating procedures to assist with the implementation of this Agreement. These procedures shall include provisions for notification, to the country of last presence, in advance of the return of any refugee status claimant pursuant to this Agreement.

2. These procedures shall include mechanisms for resolving differences respecting the interpretation and implementation of the terms of this Agreement. Issues which cannot be resolved through these mechanisms shall be settled through diplomatic channels.

3. The Parties agree to review this Agreement and its implementation. The first review shall take place not later than 12 months from the date of entry into force and shall be jointly conducted by representatives of each Party. The Parties shall invite the UNHCR to participate in this review. The Parties shall cooperate with UNHCR in the monitoring of this Agreement and seek input from non-governmental organizations.

ARTICLE 9

Both Parties shall, upon request, endeavor to assist the other in the resettlement of persons determined to require protection in appropriate circumstances.

ARTICLE 10

1. This Agreement shall enter into force upon an exchange of notes between the Parties indicating that each has completed the necessary domestic legal procedures for bringing the Agreement into force.

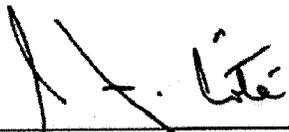
2. Either Party may terminate this Agreement upon six months written notice to the other Party.

3. Either Party may, upon written notice to the other Party, suspend for a period of up to three months application of this Agreement. Such suspension may be renewed for additional periods of up to three months. Either Party may, with the agreement of the other Party, suspend any part of this Agreement.

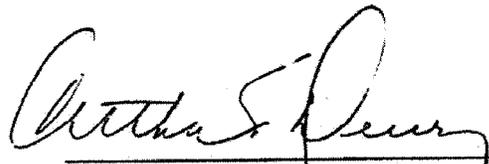
4. The Parties may agree on any modification of or addition to this Agreement in writing. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective governments, have signed this Agreement.

DONE at Washington D.C., 'this 5th day of December 2002, in duplicate in the English and French languages, each text being equally authentic.



**FOR THE GOVERNMENT
OF CANADA**



**FOR THE GOVERNMENT
OF THE UNITED STATES
OF AMERICA**

**PROCEDURAL ISSUES ASSOCIATED WITH IMPLEMENTING THE
AGREEMENT FOR COOPERATION IN THE EXAMINATION OF REFUGEE
STATUS CLAIMS FROM NATIONALS OF THIRD COUNTRIES**

STATEMENT OF PRINCIPLES

The Parties intend to act according to the following principles:

1. **Opportunity for Third Party During Proceedings.** Provided no undue delay results and it does not unduly interfere with the process, each Party will provide an opportunity for the applicant to have a person of his or her own choosing present at appropriate points during proceedings related to the Agreement. Details concerning access to proceedings will be set out in operational procedures.
2. **Proof of Family Relationship.** Procedures will acknowledge that the burden of proof is on the applicant to satisfy the decision-maker that a family relationship exists and that the relative in question has the required status. Credible testimony may be sufficient to satisfy a decision-maker in the absence of documentary evidence or computer records. It may be appropriate in these circumstances to request that the applicant and the relative provide sworn statements attesting to their family relationship.
3. **Standard for Determining Eligibility for an Exception to the Agreement.** The United States will use the preponderance of evidence standard to determine whether an applicant qualifies for an exception under the Agreement. Canada will use the balance of probabilities standard to determine whether an applicant qualifies for an exception under the Agreement. These standards are functionally equivalent.
4. **Review.** Each Party will ensure that its procedures provide, at a minimum: (1) an opportunity for the applicant to understand the basis for the proposed determination; (2) an opportunity for the applicant to provide corrections or additional relevant information, provided it does not unduly delay the process; and (3) an opportunity for the applicant to have a separate decision-maker, who was not involved in preparing the proposed determination, review any proposed determination before it is finally made.
5. **Record of Interview and Eligibility Determination.** Upon request and subject to national law, Canada and the United States will share all written materials pertaining to whether an applicant qualifies for an exception under the Agreement. Subject to national law, this information will also be available to the applicant.

6. **Requests to Reconsider Exception Determinations.** Each Party will have the discretion to request reconsideration of a decision by either Party to deny an applicant's request for an exception under the Agreement should new information, or information that has not previously been considered, come to light.
7. **No Reconsideration of Positive Determinations.** Neither Party will reconsider any decision that an applicant qualifies for an exception under the Agreement.
8. **Timeframe for Return Under the Agreement.** Returns to the country of last presence under the Agreement must take place within 90 days after the original refugee status claim is made.

Web Links to Canada and United States Forms and Regulations

Canada

Link to PP1 (CIC website)

<http://www.cic.gc.ca/manuals-guides/english/pp/pp01e.pdf>

Link to IRPA, STCA regulations (CIC website)

<http://www.cic.gc.ca/english/irpa/index.html>

United States

Link to DHS STCA regulations

<http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/pdf/04-26239.pdf>

Link to DOJ STCA regulations

<http://frwebgate5.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=081486178221+7+0+0&WAISaction=retrieve>

Summary of UNHCR Recommendations by Agency/Bureau

DHS / EOIR

1. In order to ensure access to the refugee status determination process in the receiving country for applicants who would otherwise be eligible to lodge refugee claims under the Agreement, UNHCR recommends that the Parties discontinue direct-backs. If an asylum-seeker is directed-back, confirm the asylum-seeker's valid legal status in the country to which he/she is being directed-back and ability to appear for his/her scheduled interview/hearing. To ensure that asylum-seekers directed-back from Canada can appear for their scheduled CBSA interviews, do not detain them absent criminal or security concerns. (CBP/ICE) [*Recommendations 1.1, 2.1, and 8.2*]
2. Revise the reconsideration mechanism to allow for direct referral of timely reconsideration requests to the government issuing the negative eligibility decision. In the alternative, UNHCR recommends that DHS re-assign the responsibility of reviewing reconsideration requests from CBP to CIS given CIS' expertise in the adjudication of Safe Third cases, and that in considering such requests, DHS obtain relevant case information from CIC/CBSA. UNHCR recommends that the Parties stay any asylum-seeker's deportation pending a final decision on his/her request for reconsideration, and facilitate the release and return of a detained asylum-seeker to the border should the reconsideration request be granted. (CBP/CIS/ICE) [*Recommendations 1.2 and 2.2*]
3. Ensure compliance with established guidelines on the distribution of the TSI Form. (CBP/CIS) [*Recommendation 2.3*]
4. Simplify the TSI Form and/or distribute a flowchart to asylum-seekers at the POEs. Translate the TSI Form into other languages, particularly Spanish and other frequently-encountered languages. (CBP/CIS) [*Recommendation 5.1*]
5. Inform asylum-seekers who are directed-back to Canada of DHS direct-back procedures and explain how DHS/EOIR will ensure their return for a scheduled interview/hearing. (CBP/EOIR) [*Recommendation 5.3*]
6. To ensure detainees' ability to submit evidence, develop inter-agency DHS procedures to authorize Asylum Officers to facilitate telephone calls between detained asylum-seekers and third parties while physically present at POEs and detention facilities. (CBP/CIS/ICE) [*Recommendation 7.2*]

7. Do not detain asylum-seekers with mental health issues. If detained: (a) Do so only be on the certification of a qualified medical practitioner that detention will not adversely affect their health and well being; (b) Require regular follow up and support by a relevant skilled professional, and; (c) Provide access to mental health services, hospitalization and medication counseling, etc., should it become necessary. (CBP/ICE) *[Recommendation 9.1]*

CBP

1. Consistent with CBP guidance, restrain asylum-seekers at POEs only if deemed necessary after an individualized risk assessment. *[Recommendation 8.1]*

CIS

1. Amend the CIS Procedures Manual to provide for the consideration of family unity principles in exercising the Agreement's public interest exception, e.g., "de facto" family members, family members with pending legal status, and same-sex partners. *[Recommendation 3.1]*
2. To ensure efficient processing, establish timeframes for the adjudicative phase of the Safe Third process, with flexibility for more thorough consideration of possible public interest cases. *[Recommendation 4.1]*
3. Consistent with CIS training materials and Principle Two of the Parties' Statement of Principles, amend the CIS Procedures Manual to ensure that credible testimony alone may be considered sufficient to prove eligibility under one of the Agreements' exceptions. *[Recommendations 4.2 and 7.3]*
4. Revise the CIS Procedures Manual and/or training materials to advise Asylum Officers on how to clearly explain the Safe Third process to asylum-seekers and to adequately delineate the threshold screening interview from the credible fear interview. *[Recommendation 5.2]*

ICE

1. Ensure that detained asylum-seekers have free telephone access to local CBP and CIS officials, and to Canadian officials when necessary. Provide adequate telephone access for detained asylum-seekers subject to the Agreement. Ensure free telephone calls to legal service providers and UNHCR from all detention facilities where Safe Third applicants may be held, and post telephone use instructions and relevant contact information. *[Recommendations 1.3, 6.1, 7.1, and 8.3]*
2. Ensure that detained asylum-seekers have meaningful weekly access to DHS Deportation Officers. Increase staffing of Deportation Officers at the ICE Detroit Field Office. *[Recommendations 1.3 and 8.3]*

3. Ensure that facilities have access to the ICE interpreter service and instruct facilities to use it whenever necessary to communicate with detainees. *[Recommendation 8.3]*

EOIR

1. Adopt further guidance regarding Safe Third eligibility adjudications for asylum-seekers placed in 240 removal proceedings. *[Recommendation 2.4]*
2. Establish orientation procedures and forms for those placed in 240 removal proceedings comparable to those created by DHS regarding the Safe Third eligibility process. *[Recommendation 5.4]*

"Safe Third Country" Agreement - Cases Adjudicated by DHS - Subject to Agreement

	Date of Entry	Nationality	Gender	Age	Family Group	Exception Found	Basis for Exception	Port of Entry	Asylum Office
1	12/29/2004	Armenia	M	19	No	Yes	USC Aunt	Peace Bridge, NY	Newark, NJ
2	1/5/2005	China	M	53	No	No		Detroit, MI	Chicago, IL
3	1/26/2005	Cuba	M	25	No	Yes	LPR Brother	Rainbow Bridge, NY	Newark, NJ
4	2/16/2005	Cuba	M	38	No	Yes	USC Aunt	Champlain, NY	Newark, NJ
5	2/11/2005	Nigeria	M	40	No	No		Champlain, NY	Newark, NJ
6	2/17/2005	Cuba	F	20	No	No		Houlton, ME	Newark, NJ
7	2/20/2005	Cuba	F	31	Yes	Yes	LPR Uncle	Peace Bridge, NY	Newark, NJ
8	2/20/2005	Cuba	M	4	Yes	Yes	LPR Uncle	Peace Bridge, NY	Newark, NJ
9	2/25/2005	Cuba	M	65	No	Yes	LPR Aunt	Rainbow Bridge, NY	Newark, NJ
10	3/9/2005	Cuba	M	19	No	Yes	LPR Aunt	Rainbow Bridge, NY	Newark, NJ
11	3/17/2005	Uzbekistan	M	36	No	Yes	Asylee Brother	Champlain, NY	Newark, NJ
12	3/29/2005	Fr. Soviet Republic	F	20	No	No		Higigate Springs, VT	Newark, NJ
13	3/30/2005	Cuba	M	43	Yes	Yes	LPR Niece	Champlain, NY	Newark, NJ
14	3/30/2005	Cuba	F	43	Yes	Yes	LPR Niece	Champlain, NY	Newark, NJ
15	3/30/2005	Cuba	M	45	No	No		Champlain, NY	Newark, NJ
16	4/4/2005	Cuba	M	40	No	No		Champlain, NY	Newark, NJ
17	4/9/2005	Liberia	M	35	No	No		Rainbow Brge, NY	Newark, NJ
18	4/17/2005	Cuba	F	4	Yes	Yes	USC Aunt	Peace Bridge, NY	Newark, NJ
19	4/17/2005	Cuba	F	33	Yes	Yes	USC Aunt	Rainbow Bridge, NY	Newark, NJ
20	4/17/2005	Cuba	F	17	Yes	Yes	USC Aunt	Rainbow Bridge, NY	Newark, NJ
21	4/17/2005	Cuba	M	54	Yes	Yes	USC Aunt	Rainbow Bridge, NY	Newark, NJ
22	4/22/2005	Cuba	F	35	No	Yes	LPR Uncle	Rainbow Bridge, NY	Newark, NJ
23	5/4/2005	China	F	26	No	No		Detroit, MI	Chicago, IL
24	5/16/2005	Cuba	M	24	No	Yes	LPR Uncle	Detroit, MI	Chicago, IL
25	5/23/2005	Cuba/Mexico	M	27	No	Yes	Refugee Father	Rainbow Bridge, NY	Newark, NJ
26	5/23/2005	Cuba	M	53	No	Yes	USC Sister	Rainbow Bridge, NY	Newark, NJ
27	5/28/2005	China	M	20	No	Yes	Asylee Uncle	Detroit, MI	Chicago, IL
28	6/3/2005	Angola	M	32	No	No		Champlain, NY	Newark, NJ
29	6/5/2005	Cuba	M	38	No	No		Rainbow Bridge, NY	Newark, NJ
30	6/7/2005	Cuba	F	24	No	No		Rainbow Bridge, NY	Newark, NJ
31	6/11/2005	Mexico	F	21	No	Yes	TPS Husband	Rainbow Bridge, NY	Newark, NJ
32	6/17/2005	Haiti	F	30	No	No		Champlain, NY	Newark, NJ
33	7/12/2005	Philippines	M	32	No	No		Boundary, WA	Newark, NJ
34	7/12/2005	Dem. Rep. of Congo	M	22	No	No		Derby Line, VT	San Francisco, CA
35	7/23/2005	Sri Lanka	M	39	No	Yes	LPR Father	Rainbow Bridge, NY	Newark, NJ
36	8/29/2005	Colombia	M	32	No	No		Massena, NY	Newark, NJ
37	10/8/2005	Nigeria	F	35	No	Yes	USC Brother	Detroit, MI	Chicago, IL
38	10/28/2005	Ethiopia	M	29	No	Yes	LPR Sister, USC Uncle	Peace Bridge, NY	Newark, NJ
39	11/6/2005	Colombia	M	33	No	No		Pacific Hwy, WA	San Francisco, CA

"Safe Third Country" Agreement - Cases Adjudicated by DHS - Not Subject to Agreement

	Date of Entry	Nationality	Gender	Age	Family Group	Subject to Agmt.	Basis	Port of Entry	Asylum Office
1	1/14/2005	Canada	F	38	No	No	Canadian Citizen	Seattle, WA	San Francisco, CA
2	2/4/2005	Canada	F	50	No	No	Canadian Citizen	Sumas, WA	San Francisco, CA
3	5/30/2005	Canada	M	53	No	No	Canadian Citizen	Sumas, WA	San Francisco, CA
4	10/1/2005	Canada	M	44	No	No	Canadian Citizen	Pacific Hwy, WA	San Francisco, CA

"Safe Third Country" Agreement - Abandoned/Dissolved Cases

	Date of Entry	Nationality	Gender	Age	Family Group	Subject to Agmt.	Basis	Port of Entry	Asylum Office
1	2/17/2005	Argentina	M	<1	Yes	Abandoned	N/A	Peace Bridge, NY	Newark, NJ
2	2/17/2005	Argentina	F	<1	Yes	Abandoned	N/A	Peace Bridge, NY	Newark, NJ
3	2/17/2005	Argentina	F	39	Yes	Abandoned	N/A	Peace Bridge, NY	Newark, NJ
4	2/17/2005	Argentina	M	<1	Yes	Abandoned	N/A	Peace Bridge, NY	Newark, NJ
5	4/30/2005	Nigeria	M	36	No	Dissolved	N/A	Champlain, NY	Newark, NJ

"Safe Third Country" Agreement - Cases Adjudicated by EOIR

	Date of Entry	Nationality	Gender	Age	Family Group	Charge	Case Status	Port of Entry	Court
1	6/16/2005	Cuba	M	36	unreported	212(a)(7)(A)(i)(I)	Terminated on 10/20/05	Rainbow Bridge, NY	Buffalo, NY
2	6/19/2005	Cuba	M	34	unreported	212(a)(7)(A)(i)(I)	unreported	Rainbow Bridge, NY	Buffalo, NY; Bradenton, FL
3	6/20/2005	Cuba	M	30	unreported	212(a)(7)(A)(i)(I)	unreported	Rainbow Bridge, NY	Buffalo, NY; Bradenton, FL
4	7/7/2005	Cuba	F	51	unreported	212(a)(7)(A)(i)(I)	Motion to change venue	Rainbow Bridge, NY	Buffalo, NY
5	7/11/2005	Cuba	F	48	Yes	212(a)(7)(A)(i)(I)	MC hearing on 2/9/06	Champlain, NY	Newark, NJ
6	7/11/2005	Cuba	F	67	Yes	212(a)(7)(A)(i)(I)	MC hearing on 2/9/06	Champlain, NY	Newark, NJ
7	7/11/2005	Cuba	F	14	Yes	212(a)(7)(A)(i)(I)	MC hearing on 2/9/06	Champlain, NY	Newark, NJ
8	7/21/2005	Argentina	M	34	No	Referred by CIS		Champlain, NY	Newark, NJ
9	9/2/2005	Cuba	F	46	unreported	212(a)(7)(A)(i)(I)	MC hearing on 3/28/06	Ogdensburg, NY	Newark, NJ
10	10/25/2005	Cuba	M	24	unreported	212(a)(7)(A)(i)(I)	MC hearing on 9/22/06	Peace Bridge, NY	Buffalo, NY; Miami, FL
11	10/25/2005	Cuba	M	23	unreported	212(a)(7)(A)(i)(I)	MC hearing on 6/14/06	Peace Bridge, NY	Buffalo, NY
12	10/25/2005	Cuba	F	24	unreported	212(a)(7)(A)(i)(I)	MC hearing on 6/14/06	Peace Bridge, NY	Buffalo, NY
13	10/28/2005	Cuba	F	20	unreported	212(a)(7)(A)(i)(I)	MC hearing on 3/6/06	Peace Bridge, NY	Buffalo, NY; Memphis, TN
14	11/15/2005	Cuba	F	26	unreported	212(a)(7)(A)(i)(I)	MC hearing on 7/19/06	Rainbow Bridge, NY	Buffalo, NY
15	11/23/2005	Cuba	M	26	unreported	212(a)(7)(A)(i)(I)	MC hearing on 7/26/06	Rainbow Bridge, NY	Buffalo, NY
16	12/5/2005	Cuba	M	41	unreported	212(a)(7)(A)(i)(I)	MC hearing on 10/26/2006	Rainbow Bridge, NY	Miami, FL
17	12/9/2005	Cuba	F	38	unreported	212(a)(7)(A)(i)(I)	MC hearing on 8/24/2006	Peace Bridge, NY	Miami, FL
18	12/9/2005	Cuba	M	39	unreported	212(a)(7)(A)(i)(I)	MC hearing on 8/24/2006	Peace Bridge, NY	Miami, FL

CUMULATIVE STATISTICS

Total U.S. Asylum Applicants at U.S.-Canada Land Border Ports-of-Entry: 66
 Total U.S. Asylum Applicants Subject to the "Safe Third Country" Agreement: 62

Nationalities	Cuba	38 (56%)
	Argentina	5 (7.5%)
	Canada	4 (6%)
	China	3 (4.5%)
	Nigeria	3 (4.5%)
	Columbia	2 (3%)
	Other	11 (17%)

Gender	Male	38 (60%)
	Female	25 (40%)

Age	over 55	2 (3%)
	46-55	8 (13%)
	36-45	14 (22%)
	26-35	18 (28.5%)
	18-25	14 (22%)
	Under 18	7 (11%)

Family Groups 5 family groups (15 total applicants)

Total "Safe Third" Claims Abandoned/Dissolved:	5
Total "Safe Third" Claims Finally Adjudicated:	39
Yes	23 (59%)
No	16 (41%)

Basis for Exceptions Found (by relationship to principal applicant) (percentage of all cases (23) where exception was found)	Family Relationship:
	Aunt/Uncle 13 (56%)
	Parent 2 (9%)
	Sibling 5 (22%)
	Spouse 1 (4%)
	Niece/Nephew 2 (9%)

Legal Status:
USC 8 (35%)
LPR 11 (48%)
Refugee/Asylee 3 (13%)
TPS 1 (4%)

Ports-of-Entry (by CBP District)
Buffalo 36 (57%)
Champlain 13 (21%)
Detroit 5 (8%)
Seattle 6 (9.5%)
Other 3 (5%)

Timetable for DHS Adjudication of U.S.-Bound Asylum-Seekers under the "Safe Third Country" Agreement

POE by CBP District	ENTRY / CIS REFERRAL*	ORIENTATION	INTERVIEW from entry/referral date	DECISION from interview date	CONCURRENCE from decision date	TOTAL TIME
BUFFALO	12/29	1/6 8 days	1/6 8 days	1/13 7 days	1/13 0 days	15 days
	1/26	1/26 0 days	2/1 6 days	2/2 1 day	2/2 0 days	7 days
	2/20 (a) (family)	2/20 0 days	2/23 3 days	2/23 0 days	2/24 1 day	4 days
	2/20 (b) (family)	2/20 0 days	2/23 3 days	2/23 0 days	2/24 1 day	4 days
	3/9	3/9 0 days	3/9 0 days	3/9 0 days	3/11 2 days	2 days
	2/25	3/8 11 days	3/8 11 days	3/21 13 days	3/21 0 days	24 days
	4/4	4/8 4 days	5/3 29 days	8/8 97 days	8/30 22 days	148 days
	4/17 (a) (family)	4/18 1 day	5/3 16 days	5/3 0 days	5/3 0 days	16 days
	4/17 (b) (family)	4/18 1 day	5/3 16 days	5/3 0 days	5/3 0 days	16 days
	4/17 (c) (family)	4/18 1 day	5/3 16 days	5/3 0 days	5/3 0 days	16 days
	4/17 (d) (family)	4/18 1 day	5/3 16 days	5/3 0 days	5/3 0 days	16 days
	5/16	5/25 9 days	6/8 23 days	6/13 5 days	6/15 2 days	30 days
	5/23	5/26 3 days	6/9 17 days	7/14 35 days	7/15 1 day	53 days
	5/23	5/25 2 days	6/8 16 days	6/16 8 days	7/15 29 days	53 days
	6/5	6/8 3 days	6/8, 6/28 3 days	7/1 3 days	7/11 10 days	16 days
	6/7	6/8 1 day	6/28 21 days	7/1 3 days	7/5 4 days	28 days
	6/11	6/16 5 days	6/29 18 days	7/1 2 days	7/8 7 days	27 days
7/23	7/29 6 days	8/11 19 days	8/11 0 days	unreported	-----	
8/29 Massena, NY	8/29 0 days	9/8 10 days	9/27 19 days	9/29 2 days	31 days	
10/18*	10/18 0 days	10/19, 10/20 1 day	10/20 1 day	10/21 1 day	3 days	
10/28	11/14 17 days	11/16 20 days	11/16 0 days	11/16 0 days	20 days	
Average	Individual: 3.5 days Case: 4.1 days	Individual: 13 days Case: 13 days	Individual: 9 days Case: 11 days	Individual: 4 days Case: 5 days	Individual: 26 days Case: 30 days	

* Criminal prosecution case – date referred to CIS after serving criminal sentence.

Timetable for DHS Adjudication of U.S.-Bound Asylum-Seekers under the "Safe Third Country" Agreement (cont.)

PORT of ENTRY by CBP District	ENTRY / CIS REFERRAL*	ORIENTATION	INTERVIEW from entry/referral date	DECISION from interview date	CONCURRENCE from decision date	TOTAL TIME
CHAMPLAIN	2/16	2/18 2 days	2/18, 2/22 6 days	2/24 2 days	unreported	---
	3/18*	3/22 4 days	4/5 18 days	4/5 0 days	6/10 66 days	84 days
	3/30 (a) (family)	4/1 2 days	4/25 26 days	4/26 1 day	4/26 0 days	27 days
	3/30 (b) (family)	4/1 2 days	4/25 26 days	4/26 1 day	4/26 0 days	27 days
	3/30	3/30 0 days	4/1, 4/8 1 day	4/15 15 days	6/20 66 days	82 days
	5/6* ¹	5/11 5 days	5/26 20 days	6/21 26 days	7/15 24 days	70 days
	6/16* ²	6/21 5 days	6/27 11 days	7/5 8 days	7/6 1 day	20 days
	6/30* ³	7/7 7 days	7/20 20 days	7/25 5 days	7/25 0 days	25 days
	8/11* ⁴	8/16 5 days	9/7 27 days	9/8 1 day	3/20/06 (referred to EOIR) 193 days	221 days
	Average	Individual: 3.4 days Case: 3.6 days	Individual: 17 days Case: 16 days	Individual: 4.1 days Case: 4.6 days	Individual: 47 days Case: 54 days	Individual: 69 days Case: 77 days

* Criminal prosecution case – date referred to CIS from after serving criminal sentence.

¹ Date applicant indicated that he was transferred from Albany County Jail to Batavia Federal Detention Center.

² Date CBP executed Notice and Order of Expedited Removal.

³ Date applicant completed criminal sentence.

⁴ Date of Record of Sworn Statement.

Timetable for DHS Adjudication of U.S.-Bound Asylum-Seekers under the "Safe Third Country" Agreement (cont.)

PORT of ENTRY by CBP District	ENTRY	ORIENTATION	INTERVIEW from entry date	DECISION from interview date	CONCURRENCE from decision date	TOTAL TIME
DETROIT	1/5	1/19 14 days	2/4 30 days	2/4 0 days	2/4 0 days	91 days
	4/22	5/20 28 days	5/27 35 days	5/31 5 days	5/31 0 days	40 days
	5/4	5/12 8 days	5/27 23 days	5/27 0 days	5/27 0 days	23 days
	5/28	6/16 19 days	6/16 19 days	7/15 29 days	9/2 49 days	97 days
	10/8	10/8 0 days	10/21 13 days	11/10 20 days	11/16 6 days	39 days
	Average	Average: Individual: 14 days Case: 14 days	Average: Individual: 24 days Case: 24 days	Average: Individual: 11 days Case: 11 days	Average: Individual: 11 days Case: 11 days	Average: Individual: 58 days Case: 58 days
SEATTLE	1/14	1/14 0 days	1/31 17 days	2/3 4 days	2/3 0 days	21 days
	2/4 Sumas, WA	2/4 0 days	2/8 4 days	2/10 2 days	2/10 0 days	6 days
	5/30 Sumas, WA	5/30 0 days	6/16 17 days	6/17 1 day	6/21 4 days	22 days
	7/12 - referred 7/28 Boundary, WA	8/9 17 days	8/11 30 days	8/29 18 days	9/20 22 days	70 days
	10/1 Pacific Hwy	Unreported	Unreported	Unreported	Unreported	-----
	11/6	11/15 9 days	11/17 11 days	11/17 0 days	11/18 1 day	12 days
	Average	Average: Individual: 5 days Case: 5 days	Average: Individual: 16 days Case: 16 days	Average: Individual: 5 days Case: 5 days	Average: Individual: 5 days Case: 5 days	Average: Individual: 26 days Case: 26 days
BOSTON	2/17 Houlton, ME	2/18 1 day	2/22 5 days	3/10 16 days	3/10 0 days	21 days
	3/29 Highgate Springs, VT	3/31 2 days	4/12 14 days	5/18 36 days	5/18 0 days	50 days
	7/12 Derby Line, VT	7/21 9 days	7/28 16 days	8/18 21 days	8/19 1 day	38 days
	Average	Average: Individual: 4 days Case: 4 days	Average: Individual: 12 days Case: 12 days	Average: Individual: 24 days Case: 24 days	Average: Individual: 0.3 days Case: 0.3 days	Average: Individual: 36 days Case: 36 days

U.S.-Bound Asylum-Seekers Referred for Criminal Prosecution at the U.S.-Canada Border:

PORT of ENTRY By CBP District	ENTRY	REFERRAL to CIS	ORIENTATION from entry date	INTERVIEW from entry date	DECISION from interview date	CONCURRENCE from decision date	TOTAL TIME
Champlain	2/11	3/18 36 days	3/22 40 days	4/5 53 days	4/5 0 days	6/10 61 days	114 days
Champlain	3/17	5/6 ⁵ 52 days	5/11 57 days	5/26 69 days	6/21 26 days	7/15 24 days	119 days
Buffalo	4/9	10/18 192 days	10/18 192 days	10/19, 10/20 193 days	10/20 1 day	10/21 1 day	195 days
Champlain	6/3	6/16 ⁶ 13 days	6/21 18 days	6/27 24 days	7/5 8 days	7/6 1 day	33 days
Champlain	6/17	6/30 ⁷ 13 days	7/7 20 days	7/20 27 days	7/25 5 days	7/25 0 days	32 days
Champlain	7/21	8/11 21 days	8/16 26 days	9/7 48 days	9/8 1 day	3/20/06 (referred to EOIR) 193 days	242 days
	Average	Individual: 55 days Case: 55 days	Individual: 59 days Case: 59 days	Individual: 69 days Case: 69 days	Individual: 7 days Case: 7 days	Individual: 47 days Case: 47 days	Indiv: 123 days Case: 123 days

⁵ Date applicant indicated that he was transferred from Albany County Jail to Batavia Federal Detention Center.

⁶ Date CBP executed Notice and Order of Expedited Removal.

⁷ Date applicant completed criminal sentence.

SUMMARY STATISTICS

STAGE 1

CUMULATIVE AVERAGE TIME from POE/CIS REFERRAL to INTERVIEW:

15 DAYS (Case)
15 DAYS (Individual)

	<u>Individual</u>	<u>Case</u>
BUFFALO:	13 days	13 days
CHAMPLAIN:	17 days	16 days
DETROIT:	24 days	24 days
SEATTLE:	16 days	16 days
BOSTON:	12 days	12 days

STAGE 2

CUMULATIVE AVERAGE TIME from INTERVIEW to FINAL DECISION:

25 DAYS (Case)
22 DAYS (Individual)

	<u>Individual</u>	<u>Case</u>
BUFFALO:	14 days	17 days
CHAMPLAIN:	51 days	59 days
DETROIT:	22 days	22 days
SEATTLE:	10 days	10 days
BOSTON:	25 days	25 days

CUMULATIVE AVERAGE TOTAL TIME from POE/CIS REFERRAL to FINAL DECISION:

42 DAYS (Case)
39 DAYS (Individual)

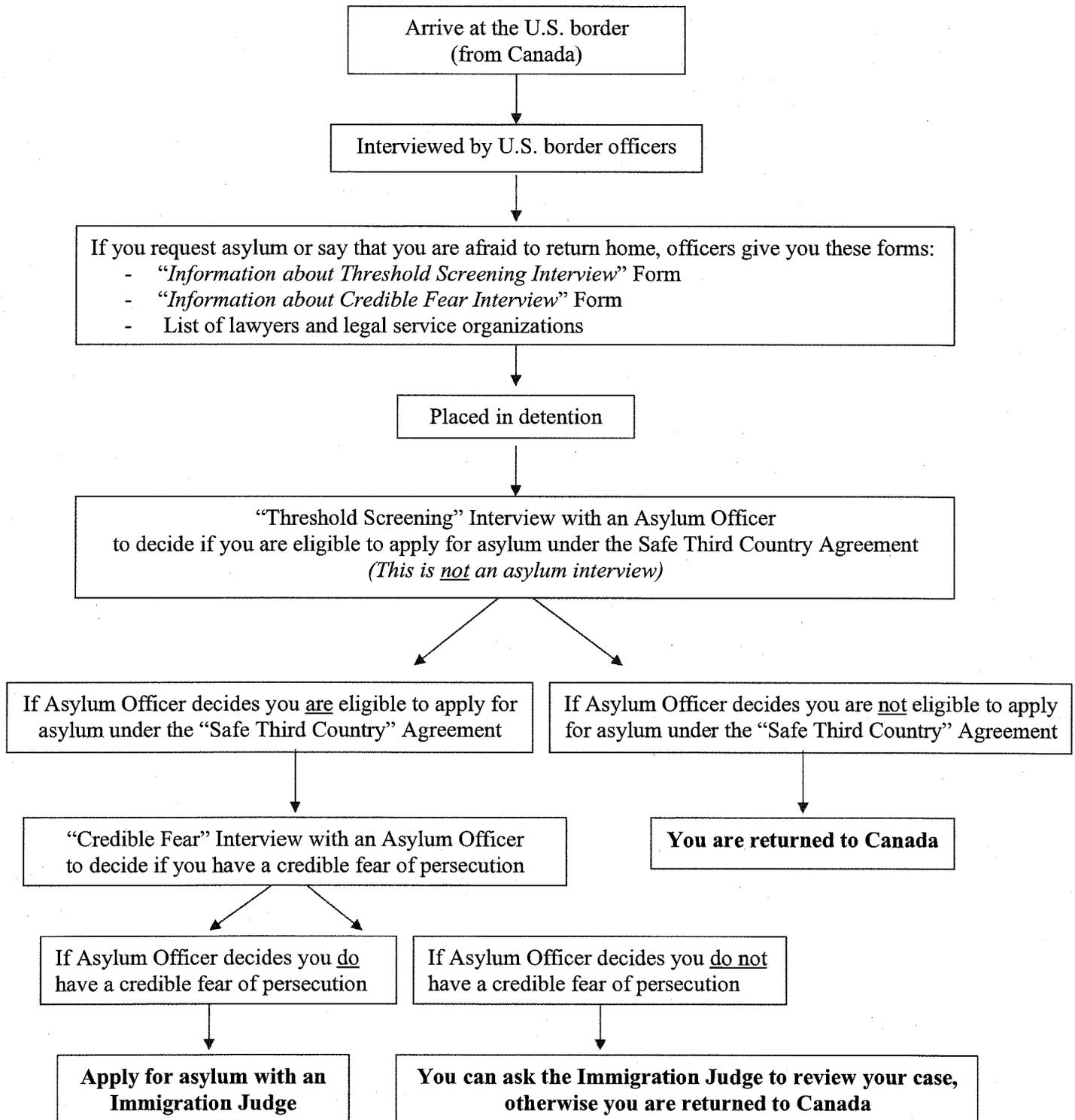
	<u>Individual</u>	<u>Case</u>
BUFFALO:	26 days	30 days
CHAMPLAIN:	69 days	77 days
DETROIT:	58 days	58 days
SEATTLE:	26 days	26 days
BOSTON:	36 days	36 days

CUMULATIVE AVERAGE TOTAL TIME from POE to CONCURRENCE for PROSECUTION CASES:

123 DAYS (Case)
123 DAYS (Individual)

	<u>Individual</u>	<u>Case</u>
BUFFALO:	195 days	195 days
CHAMPLAIN:	108 days	108 days

Flowchart of U.S. Safe Third Process for Those Subject to Expedited Removal



Summary of UNHCR's Safe Third Detention Visits in 2005

POE	Detention Facility	Phone Access Issues	Interpretation	Access to DHS	Other
SEATTLE	Northwest Detention Center (Seattle, WA) <i>Visited 14 April and 23 November</i>	<i>Positive: No major concerns</i>	-----	-----	-----
	Wayne County Jail – Div. III (Detroit, MI) <i>Visited 23 June</i>	<ul style="list-style-type: none"> - No free calls to LSPs. - No LSP or UNHCR numbers posted. - Detainees reported collect-call numbers frequently blocked by telephone service provider. 	<ul style="list-style-type: none"> - Interpreter number not used at time of UNHCR's visit - provided to medical staff at time of UNHCR's visit. - Have used other detainees if available. 	<ul style="list-style-type: none"> - Not regularly visited by DHS officers. 	-----
DETROIT	Monroe County Jail (Monroe, MI) <u><i>Dormitory Facility</i></u> <i>Visited 31 March, 21 June, 29 September, and 18 November</i>	<ul style="list-style-type: none"> - PCS system in place but LSP phone numbers not programmed - free calls to LSPs not possible. - Detainees prohibited from accessing phone numbers stored in their property on cell phones. - <i>Positive:</i> UNHCR and consulate numbers posted, although no LSP numbers posted. 	<ul style="list-style-type: none"> - Have an interpreter number available but rarely used, as use of other detainees is preferred. 	<ul style="list-style-type: none"> - May not be regularly visited by DHS officers. Detainees reported no pod visits by their deportation officers for periods of two weeks to five months. 	<p><i>Positive - Law Library:</i> Lexis Nexis CDs installed and functional (as of 29 September).</p> <p><i>Mental Health:</i> No psychiatrist or social worker available.</p>
	Monroe County Jail (Monroe, MI) <u><i>Main Facility</i></u> <i>Visited 31 March, 21 June, and 18 November</i>	<ul style="list-style-type: none"> - PCS system in place but LSP phone numbers not programmed - free calls to LSPs not possible. - No instructions posted on use of phones. - No consulate, LSP, or UNHCR numbers posted. 	<ul style="list-style-type: none"> - Have an interpreter number available but rarely used as use of other detainees is preferred. 	<ul style="list-style-type: none"> - May not be regularly visited by DHS officers. 	<p><i>Law Library:</i> No immigration materials available.</p> <p><i>Mental Health:</i> No psychiatrist or social worker available for detainees, despite people frequently being on suicide watch.</p> <p><i>Isolation Room:</i> Detainees reported being held in crowded isolation/classification Room #153 for up to 12 days. Reports of denial of access to deportation officers, recreation, and showers.</p>
	Calhoun County Jail (Battle Creek, MI) <i>Visited 1 April</i>	<ul style="list-style-type: none"> - PCS system in place but LSP and 57 embassy phone codes non-operational - free calls to LSPs not possible. - LSP phone codes and embassy phone codes are not posted in the female dorm. - All calls are recorded (notification in handbook), including attorney-client calls, unless the attorney requests otherwise. 	<ul style="list-style-type: none"> - Either interpreter number or other detainees are used. 	<ul style="list-style-type: none"> - Not regularly visited by DHS officers. Non-English speaking detainees reported no visits by deportation officers for several months. 	<p><i>Law Library:</i> Lexis-Nexis and Matthew Benders CDs were expired and therefore inaccessible.</p>

	Phone Access Issues	Interpretation	Access to DHS	Other
BUFFALO BUF. & CHM.	<p>Buffalo Federal Detention Facility (Batavia, NY) <i>Visited 24 February, 5 May, 16 September, and 28 Nov.</i></p>	<p><i>Positive:</i> Pods regularly visited by DHS officers.</p>	<p><i>Property Access:</i> Detainees state that they are discouraged from requesting documents or phone numbers from luggage. Several requests have been denied, including requests for legal documents.</p>	<p><i>Property Access:</i> Detainees state that they are discouraged from requesting documents or phone numbers from luggage. Several requests have been denied, including requests for legal documents.</p>
	<p>Errie County Holding Center (Buffalo, NY) <i>Visited 12 September</i></p>	<ul style="list-style-type: none"> - PCS system functional - permitting free calls to LSPs. - <i>Positive:</i> International calls permitted. - Timely activation of PIN numbers - delays up to a week. - "Adding" phone numbers - requests processed only once a month. - PCS system in place but LSP phone numbers not programmed - free calls to LSPs not possible. - No international calls (international collect calls restricted) - Collect call numbers are frequently restricted, including those for consulates and UNHCR. 	<ul style="list-style-type: none"> - Do not use interpreter number. Intake staff reports that it will not accept detainees that cannot answer booking questions in English. 	<ul style="list-style-type: none"> - Only one detainee present during UNHCR's visit. She had not spoken to DHS for two weeks.
CHAMPLAIN BUF. & CHM.	<p>Elizabeth Detention Facility (Elizabeth, NJ) <i>Visited 1 September</i></p>	<ul style="list-style-type: none"> - Phone system change in August resulted in reports of restricted calls, disconnected calls, connection problems, audibility problems, and inability to navigate phone trees, dial extensions, or be transferred to another line in the male dorms. * <i>UNHCR visited soon after this system change, and has not verified whether the issues have been resolved.</i> 	<ul style="list-style-type: none"> - One report of an asylum-seeker's intake done in a language he did not speak. 	<p><i>Medical Care:</i> Detainees reported inconsistent and delayed responses to medical request forms. One complaint about lack of access to surgery recommended by hospital.</p>
	<p>Clinton County Jail (Plattsburgh, NY) <i>Visited 18 March and 10 August</i></p>	<ul style="list-style-type: none"> - No free calls to LSPs. - No international calls (international collect calls restricted) - No access to EOIR line (1-800 numbers restricted) - No LSP or UNHCR numbers posted. 	<ul style="list-style-type: none"> - Do not use phone interpreter service, although have used other detainees if available. 	<p><i>Property Access:</i> Detainees state that requests to obtain phone numbers from luggage have been denied.</p> <p><i>Law Library:</i> No immigration materials available.</p> <p><i>Detainee Treatment/Medical Care:</i> One incident of physical abuse reported - appears to have been committed by a detainee against a detainee. No immediate medical care available at the facility on Sundays.</p>
CHAMPLAIN	<p>Franklin County Jail (Malone, NY) <i>Visited 19 May</i></p>	<ul style="list-style-type: none"> - PCS system in place but LSP phone numbers not programmed - free calls to LSPs not possible. - All numbers must be programmed into the system before accessible, including attorney numbers. - UNHCR's number was not pre-programmed. - No LSP or UNHCR numbers posted. - No phone access for 72 hours in mandatory holding cells - All phone calls may be recorded but there is no advisal notice posted. - Various problems reported - disconnections, recordings prohibiting "three way calls," blocked calls. 	<ul style="list-style-type: none"> - Do not use phone interpreter service, although have used other detainees if available. 	<p><i>Law Library:</i> Lexis-Nexis CDs are available to DHS but not installed on computers. No alternative written legal materials are available.</p>

Appendix 10

	<p>Albany County Jail (Albany, NY)</p> <p><i>Visited 31 August</i></p>	<ul style="list-style-type: none"> - PCS system in place but LSP phone numbers not programmed – free calls to all eligible LSPs not possible, as certain LSP and UNHCR numbers need to be “added” to the system in order to allow access to free phone calls. - No instructions posted for phone use. - No LSP or UNHCR numbers posted. 	<p>-----</p>	<ul style="list-style-type: none"> - Detainees reported that they have not been visited weekly. Detainees reported no visits by deportation officers for periods of two weeks to over two months. 	<p><i>Mental Health:</i> Concerns about availability of psychiatric medication.</p>
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**LEGAL AND PROTECTION POLICY
RESEARCH SERIES**

**Alternatives to Detention of
Asylum Seekers and Refugees**

Ophelia Field

with the assistance of

Alice Edwards

External Consultants

DIVISION OF INTERNATIONAL PROTECTION SERVICES

**POLAS/2006/03
April 2006**

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This paper was prepared on behalf of UNHCR by Ophelia Field with the assistance of Alice Edwards, both of whom are external consultants.

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Ophelia Field
April 2006

EXECUTIVE SUMMARY

In 2002, UNHCR's Agenda for Protection urged 'States more concertedly to explore alternative approaches to the detention of asylum seekers and refugees ...'¹ in response to the increasing use of detention of asylum seekers and/or refugees by host governments. This study is a contribution towards that objective. This study undertook research into the practices regarding the use of *alternatives* to detention for asylum seekers and/or refugees of thirty-four States. The information presented herein is valid up to 31 March 2004 and takes no account of changes in law or practice between that date and the date of publication. This study has two main parts. First, it presents a concise overview of the legal standards under international law applicable to both detention as well as alternatives to detention that may give rise to some restrictions on the freedom of movement of asylum seekers and/or refugees. Second, and forming the main part of this study, it presents a range of alternatives to detention used by many receiving countries and attempts to evaluate those measures, specifically in relation to rates of absconding.

This study found that there is a significant difference in the level of effectiveness of a particular alternative depending on whether it is applied in a primarily 'destination', as opposed to a primarily 'transit', State. The statistical data available suggests that restrictive alternatives involving close supervision or monitoring, for the purpose of ensuring compliance with asylum procedures, are seldom if ever required in destination States where most asylum seekers wish to remain. In such States, the rate at which asylum seekers abscond, prior to a final rejection of their claim and/or the real prospect of removal from the territory, seems to be low. Projects established to provide alternatives to detention throughout the duration of refugee status determination procedures in such countries are therefore all highly effective, but this appears to be due less to their design than by happenstance, that is, asylum seekers who reach their 'destination' country are unlikely to abscond because they have a vested interest in remaining in the territory and in complying with the asylum procedure. With this context in mind, there is a real risk of certain alternatives, such as electronic tagging, being misapplied to asylum seekers who would not and should not otherwise be detained, thereby becoming an unnecessary restriction on their freedom of movement and other rights.

In some countries with well-articulated national legislation in which consideration of alternatives is required prior to the issuing of any detention order, official information was unavailable with regard to the implementation of the relevant articles. Available figures and anecdotal evidence from asylum lawyers in those countries suggest, however, that alternative measures were rarely if ever applied to their clients. Although detention of asylum seekers prior to a decision on a claim is, to date, a relatively exceptional measure in those contexts, the non-implementation of the available alternative measures is of concern. In transit States, where the rate of absconding is usually higher, this study found several examples of reception policies and programmes which successfully reduced this rate, without recourse to detention. In some southern European countries, for example, the partial or recently introduced provision of State accommodation and support to asylum seekers is making a marked reduction in the rate at which such persons abscond and move on irregularly to other countries.

Even in primarily destination States, certain factors were found to further reduce the low rate at which asylum seekers there abscond. The provision of competent legal advice and concerned case management, for example – which serve as non-intrusive forms of monitoring and which ensure that asylum seekers fully comprehend the consequences of non-compliance – were found to raise rates of appearance and compliance. Similarly, legal support, guardianship and specialised group

¹ UNHCR Agenda for Protection, June 2002, A/AC.96/965/Add.1, p.8.

homes run by nongovernmental agencies were found to successfully reduce the rate at which separated asylum-seeking children disappeared from several European countries. Early, detailed interviewing of such children at the border, to fully establish the nature of their situation, was also found to be an effective alternative to placing 'protective' restrictions upon their freedom of movement after admission.

The effectiveness of alternatives used to ensure the availability for removal or compliance with removal proceedings of persons found not to be in need of international protection is less certain, though there were several successful examples to be cited even here. Several countries report successful results from projects for counselling persons not in need of international protection about consenting to mandatory return, and both Australian and British nongovernmental organisations report high rates of success in monitoring sample groups of people released while awaiting removal. Return-oriented centres established in some European States for persons who refuse to cooperate with their forced return (or for asylum seekers with manifestly unfounded claims or, in one case, for separated children), have not so far produced similar evidence of success. For persons found not to be in need of international protection who cannot be returned to their home country, reporting requirements are successfully used in a number of States as an alternative to the inhumane and unlawful prospect of indefinite detention.

This study further found that, where comparative costs of detention vis-à-vis alternatives to detention are available, alternatives are universally more cost-effective than detention. Finally, this study advocates for further empirical research, transparency and public education at the national and international level in relation to all these issues.

ABBREVIATIONS

1951 Convention	<i>Convention relating to the Status of Refugees 1951</i>
1967 Protocol	<i>Protocol relating to the Status of Refugees 1967</i>
CAT	Committee against Torture
CRC	<i>Convention on the Rights of the Child 1989</i>
ECHR	<i>European Convention for the Protection of Human Rights and Fundamental Freedoms 1950</i>
ExCom	Executive Committee of the High Commissioner's Programme
HRC	Human Rights Committee
ICCPR	<i>International Covenant on Civil and Political Rights 1966</i>
NGO	nongovernmental organisation
UNHCR	United Nations High Commissioner for Refugees

I. INTRODUCTION

A. Context

1. The 1999 UNHCR Guidelines on detention of asylum seekers ('UNHCR Guidelines on Detention')² reaffirmed the general principle that asylum seekers should not be detained.³ In exceptional cases where such detention may be necessary, Guideline 3 recommends that it should only be resorted to 'after a full consideration of all possible alternatives, or when monitoring mechanisms have been demonstrated not to have achieved the lawful and legitimate purpose.' Human rights bodies have similarly emphasised that detention of asylum seekers should only occur as a measure of last resort, after other non-custodial alternatives have proven or been deemed insufficient in relation to the individual.⁴
2. Contrary to this guidance, for many States detention continues to be the preferred means of ensuring that asylum seekers remain available for the determination of their claims and for removal should their claims be rejected. Reception policies involving a strong element of detention are also used, sometimes explicitly, to deter future arrivals, without adequately differentiating between unauthorised migrants and those persons who are seeking asylum in a place that will afford them effective protection. Arbitrary detention, both of asylum seekers and refugees, also continues to occur in numerous host countries.⁵
3. In June 2002, UNHCR's Agenda for Protection urged 'States more concertedly to explore alternative approaches to the detention of asylum seekers and refugees...'⁶ This study offers information and analysis on existing alternatives to detention as a contribution towards that goal.

² UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, February 1999 (henceforth, 'UNHCR Guidelines on Detention'). Based on UNHCR Executive Committee (ExCom) Conclusion No. 44 (XXXVII) – 1986 on the detention of refugees and asylum seekers (henceforth "ExCom Conclusion No. 44 (1986)).

³ 'Asylum seeker' here refers to any person whose claim to asylum is being considered either individually or on a group basis under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees, regional instrument, or other national law. The term should in theory include all persons who are awaiting final adjudication of their appeals. This being said, national laws, statistics or practices will sometimes categorise such persons prematurely as 'rejected' or 'failed' cases. Asylum seekers whose claims to international protection have been rejected ('failed asylum seekers') are included within the parameters of this study in part due to this 'grey area', and in part because the issue of ensuring availability for removal impacts upon the treatment of asylum seekers who are still awaiting decisions. Where asylum seekers have been found neither to qualify for refugee status on the basis of criteria laid down in the 1951 Convention, nor to be in need of international protection in accordance with other international obligations or national law, following due consideration of their claims in a fair procedure, or wherever such persons are mentioned in a normative context, they are referred to as 'persons found not to be in need of international protection' (in the terminology of UNHCR ExCom Conclusion No. 96 (LIV) – 2003 on the Return of Persons Found not to be in Need of International Protection (henceforth "ExCom Conclusion No. 96 (2003))). This study also looks at the treatment of refugees recognised on either an individual or *prima facie* basis where they may experience unnecessary or arbitrary detention or alternative restrictions upon their freedom of movement, alongside asylum seekers

⁴ See, for example, Resolution of the UN Sub-Commission on Promotion and Protection of Human Rights regarding detention of asylum seekers, 2000/21; The UN Working Group on Arbitrary Detention recommendation that 'alternative and non-custodial measures, such as reporting requirements, should always be considered before resorting to detention.' E/CN.4/1999/63/Add.3. See also Article 37(b) of the Convention on the Rights of the Child (CRC).

⁵ See Detention of Asylum-Seekers and Refugees: The Framework, the Problem and Recommended Practice, Standing Committee of the Executive Committee of the High Commissioner's Programme, 15th Meeting, 4 June 1999, EC/49/SC/CRP.13.

⁶ UNHCR Agenda for Protection, above footnote 1, at p.8.

B. Scope, structure and purpose

4. This study aims to evaluate practical arrangements that minimise or avoid the need to deprive asylum seekers of their liberty while at the same time appropriately addressing concerns of States, including, in particular, that of reducing the incidence of asylum seekers who abscond and ensuring their compliance with asylum procedures.⁷ It further aims to identify best practices. For the purposes of this paper, therefore, the term ‘alternatives to detention’ should be understood as shorthand for alternative means of increasing the appearance and compliance of individual asylum seekers with asylum procedures and of meeting other legitimate concerns which States have attempted to address, or may otherwise attempt to address, through recourse to detention. Such measures may or may not involve some degree of restriction on the freedom of movement of asylum seekers. The choice of terminology is in no way intended to imply that detention is the norm from which other measures should be seen as deviations.

5. This study is divided into five main parts. Part I provides an overview of the purpose, context and scope of the study. Part II synthesises applicable legal standards under international and regional law relevant to detention and to other restrictions on freedom of movement, as well as a brief overview of criminal justice standards. Part III, which forms the main part of this study, reviews and analyses various alternative measures to detention. It identifies a range of alternatives to detention that are commonly used and evaluates their effectiveness against the main reasons why detention or alternative measures are resorted to by States, such as to prevent absconding, to perform identity and security checks, or to protect public health. A separate section deals with alternatives aimed at failed asylum seekers pending their removal. Examples of alternative measures are drawn from different States and are examined in the context of these purposes. Part III is to be read in conjunction with the appendices which contain thirty-four separate country sections describing in more detail the alternative measures used in various countries. The information contained in these appendices is valid up to March 2004. These sections are for information only and no attempt has been made to comprehensively assess the effectiveness or the legality of particular alternative practices, although some comments are made in this regard at the conclusion of each country annex. Finally, Part IV offers some concluding remarks to the study as a whole and recommendations for further investigation/research.

6. The present study does not specifically address measures defined as ‘detention’ or ‘detention-like situations’ by the UNHCR Guidelines, that is, ‘confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed and where the only opportunity to leave this limited area is to leave the territory.’⁸ The UNHCR definition encompasses most forms of detention recognised as such by international human rights law. This is of particular relevance with regard to ‘transit’ or ‘waiting zones’ in international ports⁹ but is also relevant to situations where natural geography may be used by a government to severely curtail asylum seekers’ or refugees’ freedom of movement.¹⁰ Similarly, the paper does not examine alternative *forms of* detention, such as 24-hour home detention or transfers to locations where conditions may be better but where regimes of

⁷ The terms ‘risk of absconding’ and ‘flight risk’ are used interchangeably in this study. They are both general headings to describe the risk of an asylum seeker deliberately abandoning a claim and disappearing, either to make an unauthorised onward movement to another State or to remain, illegally and/or without documents, in the State where they claimed asylum.

⁸ UNHCR Guidelines on Detention, above footnote 2, Guideline no.1.

⁹ See, e.g., *Amuur v France*, ECtHR, 25 June 1996 (1996) I.I.H.R.L. 39 (25 June 1998).

¹⁰ See, e.g., *Guzzardi v Italy*, ECtHR, (1981) 61 I.L.R. 227; also (1981) E.H.R.R. 333.

24-hour supervision and escort are still enforced. In several instances, schemes that are sometimes presented as ‘alternatives’ are briefly examined to show why they are not deserving of the name.

7. Although the study does not address measures defined as detention, it nevertheless sets out the legal criteria under which it would be unlawful for a host State to detain an asylum seeker and/or a refugee. It is also beyond the scope of this study to assess policies aimed at reducing periods spent in detention, such as policies promoting prompt removal of persons found not to be in need of international protection, except to note that the orderly return of such persons is an objective of many detention policies as well as of certain alternative measures.¹¹ Tighter border control is another policy alternative to internal controls on the free movement of asylum seekers, but will not be dealt with in this study.

8. The question of how re-detention, and/or the threat of re-detention, may be used in conjunction with various alternative measures is, to some extent, considered. Many of the national schemes for maximising the use of alternative measures include either a brief period of initial detention if the asylum seeker enters the territory without proof of identity, or a period of re-detention after final rejection of a claim or immediately prior to removal. To examine the effectiveness of such models is not to detract from the general principle that asylum seekers should not be detained. Rather, it recognises that a particular individual may need to be detained, on exceptional grounds, at one point in time, but may not need to be detained at another.

9. Certain national reception arrangements, or proposals for reception arrangements, may fairly be regarded, in their entirety, as ‘alternatives to detention’.¹² In the present study, reception conditions are evaluated only in so far as they contribute, intentionally or incidentally, to achieving the same stated objectives as detention: that is, most commonly, ensuring the appearance or easy location of asylum seekers throughout the refugee status determination process, or ensuring compliance with a removal order when issued, or maintaining public order. Therefore, for example, the question of whether residents can cook for themselves in an accommodation centre is not mentioned, while their freedom to come and go is reviewed in detail. On the other hand, where the quality of environment and services were indicated to be important factors in the success of an ‘alternative’ accommodation or programme, in terms of creating an incentive for the appearance and compliance of those under its care, then these services are described. The issue of adequate legal advice and representation is mentioned both with reference to the effectiveness of remedies by which a detention order may be challenged and with reference to the design of programmes aiming to ensure compliance with determination procedures.¹³

¹¹ See, ExCom Conclusion No. 96 (2003), above footnote 3.

¹² What may constitute an ‘alternative to detention’ in one context may be simply a reception arrangement elsewhere – for example, the establishment of an open, collective accommodation centre for asylum seekers. The question is one of sequence for a specific asylum seeker (Was he or she detained and then released because the centre or shelter was willing to offer itself as a fixed address or surety?) and a question of history for each country (Is the introduction of increased restrictions on the free movement of asylum seekers – such as those which may go hand in hand with accommodation in collective centres, for example – a step aimed at reducing the percentage of those in detention or is it about increased State supervision of those who were previously permitted to reside in the community without restrictions?).

¹³ The term ‘legal aid’ denotes State-funded legal advice and/or representation provided free of charge to whole groups of asylum seekers (for example, detainees) or to those with very limited resources. Where other legal advice or representation is mentioned, whether paid for by the asylum seeker or provided on a *pro bono* basis, this shall be stated.

C. Methodology

10. The author did not visit all the countries surveyed, but based her findings upon existing international surveys, other written sources (both published and confidential), interviews (by telephone and email) and comments on the study's draft text provided by experts and practitioners working in the selected countries. Several governmental departments were contacted to supply statistics, to confirm certain facts, or to supply additional information regarding national reception policies and practices. Their views with regard to alternatives to detention were not directly solicited.

11. In the country sections contained in the appendices, specific sources are cited wherever possible, including nongovernmental agencies interviewed. In contrast, sources are not cited directly in the main text of the study; all references to State practice are drawn from the appendices unless otherwise indicated. Some sections are more detailed and fully annotated than others, reflecting differing levels of information provided to the author.

12. This study does not presume to judge the legality of State practice, although in some cases questions are raised where programmes, policies and measures appear, on the face of the evidence, to involve unnecessary, unreasonable or disproportionate restrictions on the rights and freedoms of asylum seekers or refugees. In many cases, though the overall policy or legislation may conform to international standards, the degree to which alternatives were considered prior to the issuance of an individual detention order may be impossible to evaluate without more transparent decision-making and without further independent research at either national or local level.

II. APPLICABLE LEGAL STANDARDS

13. This part of the study provides an overview of the applicable legal standards relevant to detention, that is, any measure that amounts to deprivation of liberty, as well as to lesser forms of restrictions on movement. While this study principally concerns restrictions on movement that fall short of deprivation of liberty, that is, alternatives to detention, one is only able to distinguish between the two adequately by understanding the law relating to both. Sometimes what is called an alternative *to* detention may in fact be an alternative form *of* detention. This study wishes to underline that international law forms a continuum whereby the same rigorous testing applies as much to other forms of restrictions on freedom of movement as to detention. The following section is organised by legal areas, ending with a summary. Its main emphasis is on international law, although, where applicable and/or instructive, reference is also made to regional instruments and jurisprudence.

A. International refugee law

14. Unlike international human rights law which applies to all human beings, except where explicitly stated otherwise (see below under B.), international refugee law, notably the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, endorses a sliding scale of treatment (sometimes referred to as 'gradations' of treatment) which depends on one's legal status.¹⁴ Goodwin-Gill distinguishes four general categories on which rights may be determined,

¹⁴ See, UNHCR, 'Reception of asylum-seekers, including standards of treatment, in the context of individual asylum systems', Global Consultations on International Protection, 3rd Meeting, UN Doc. EC/GC/01/17, 4 September 2001, para. 3.

namely 'simple presence', 'lawful presence', 'lawful residence', and 'habitual residence'.¹⁵ UNHCR would appear to agree with this analysis, stating that 'the gradations of treatment allowed by the Convention ... serve as a useful yardstick in the context of defining reception standards for asylum seekers. At a minimum, the 1951 Convention provisions that are not linked to lawful stay or residence would apply to asylum seekers ...'¹⁶ Most other rights are contingent upon status as a refugee or some other legal status. The question of what amounts to 'lawful residence' versus 'lawful presence' is unsettled (see, below, under B.).¹⁷ In principle, the term "lawfully in" could imply admission in accordance with the applicable immigration law for a temporary purpose, and should, therefore, apply to asylum-seekers who have been admitted into the asylum procedure.

1. Detention

15. Although there is no explicit provision in the 1951 Convention that prohibits arbitrary detention, article 31(1) provides that States 'shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.' Article 31(1) of the 1951 Convention has also been taken to mean that the act of entering a country for the purposes of seeking asylum should not be considered an unlawful act. Article 31 of the 1951 Convention applies to asylum seekers. While 'penalty' has been most commonly associated with criminal penalties, it has been argued that it has a wider application.¹⁸ In this way, it is arguable that detaining asylum seekers or otherwise restricting their freedom of movement without appropriate justification, could amount to a penalty within the meaning of article 31. This remains unsettled.¹⁹ In any case, as will be seen below, international and regional human rights standards pertaining to the prohibition of arbitrary detention, are also applicable to asylum seekers and refugees.

16. Moreover, detention of an asylum seeker must be necessary in the individual case. The Executive Committee of the High Commissioner's Programme (henceforth ExCom) has elaborated four grounds upon which detention, when prescribed by law, could be necessary in an individual case. These are: to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum seekers have destroyed their travel

¹⁵ G. Goodwin-Gill, *The Refugee in International Law* (2nd ed., Oxford University Press, 1996, reprinted 1998), pp. 305-307.

¹⁶ UNHCR, 'Reception of asylum-seekers, including standards of treatment, in the context of individual asylum systems', above footnote 14, at p.1, referring to ExCom Conclusion No. 82 (XLVIII) - 1997 on Safeguarding Asylum.

¹⁷ See, e.g., J.C. Hathaway, *The Rights of Refugees under International Law*, Ch.3.1.2, who argues that it cannot be reasonably concluded that refugees who submit to a refugee status determination procedure are not 'lawfully present'; cf. A. Grahl-Madsen, *The Status of Refugees in International Law*, vol. II (A.W. Sijthoff-Leyden, 1972), p.374, who argues that 'lawful stay' is equivalent to 'lawful presence' of three months or longer; cf. G. Goodwin-Gill, *The Refugee in International Law*, above footnote 15, at p.309, who argues that refugees lawfully staying 'must show something more than mere lawful presence', such as 'permanent, indefinite or unrestricted or other residence status, recognition as a refugee, issue of a travel document, [or] grant of re-entry visa.'

¹⁸ See, e.g., R. Cholewinski, 'Enforced Destitution of Asylum Seekers in the United Kingdom' (1998) 10 *IJRL* 3; G. Goodwin-Gill, 'Article 31 of the 1951 Convention Relating to the Status of Refugees: non-penalization, detention, and protection', in Feller, Türk & Nicholson (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003), 185; A. Edwards, 'Tampering with Asylum: The Case of Australia' (2003) 15(3) *IJRL* 192.

¹⁹ See, for fuller discussion, G. Goodwin-Gill, 'Article 31 of the 1951 Convention Relating to the Status of Refugees: non-penalization, detention and protection', above footnote 18.

and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order.²⁰

2. Other restrictions on freedom of movement

17. Article 31(2) explicitly acknowledges that States retain the power to limit the freedom of movement of refugees, subject to particular restrictions. It provides that '[t]he Contracting State shall not apply to the movements of such refugees [that is, those referred to in article 31(1), including asylum seekers] restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country.' Although article 31(2) of the 1951 Convention does not identify in what circumstances restrictions on movement would be necessary, this provision must be read in light of article 12(3) of the ICCPR, which sets out the conditions in which the host State may limit the freedom of movement of those lawfully in the country. These are discussed below at B.2.

18. The other relevant provision in the 1951 Convention to this study is article 26, which provides that '[e]ach Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within the territory subject to any regulations applicable to aliens generally in the same circumstances.' Many States have made specific reservations to this article. Some States reserve the right to designate places of residence, either generally or on grounds of national security, public order (*ordre public*), or the public interest.²¹ In line with the gradations of treatment framework underlying the 1951 Convention, it is clear that this provision applies to recognised refugees, but it may also apply to asylum seekers who are lawfully within the territory – that is, those who have applied for asylum regardless of whether they entered the territory with or without authorisation. In sum, for those persons lawfully in the territory, restrictions on their choice of residence are not permitted.

B. International human rights law

1. Detention

19. ExCom has on many occasions recommended that any reception arrangements put in place by States parties respect human dignity and applicable international human rights standards.²² This section shall provide an overview of what these standards entail.

20. Rights under the International Covenant on Civil and Political Rights²³ (henceforth 'ICCPR') apply not only to citizens, but equally to asylum seekers and refugees,²⁴ unless expressly provided otherwise.²⁵ The Human Rights Committee (henceforth 'HRC') has held that '... the general rule is that each one of the rights of the [ICCPR] must be guaranteed without discrimination between citizens and aliens.' It further stated that 'In general, the rights set forth in the Covenant apply to

²⁰ ExCom Conclusion No. 44 (1986), above footnote 2. See also UNHCR Guidelines on Detention, above footnote 2, Guideline 3.

²¹ Angola, Botswana, Burundi, Greece, Honduras, Iran, Malawi, Mozambique, The Netherlands, Papua New Guinea, Rwanda, Spain, Sudan, Zambia and Zimbabwe. See, G. Goodwin-Gill, 'Article 31 of the 1951 Convention Relating to the Status of Refugees: non-penalization, detention, and protection', above footnote 18, at p.221.

²² ExCom Conclusion No. 93 (LIII) - 2002 on reception of asylum-seekers in the context of individual asylum systems, para. (b)(i).

²³ GA res. 2200A (XXI), 16 Dec. 1966; entry into force 23 March 1976.

²⁴ See, in particular, art. 1(3), UN Charter; arts. 1 and 2, UDHR; art. 2(1), ICCPR.

²⁵ E.g., the right to participate in public life and to vote is reserved for citizens only, see, art. 25 of the ICCPR.

everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.²⁶ The Human Rights Committee has more recently clarified that ‘the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons who may find themselves in the territory or subject to the jurisdiction of the State Party.’²⁷ Most regional human rights instruments also apply to all persons on the territories of States parties, rather than only to citizens.²⁸

21. Article 9 of the ICCPR is the key provision in international law guaranteeing the right not to be arbitrarily detained. The relevant sub-articles of article 9 are as follows:

- a) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his [or her] liberty except on such grounds and in accordance with such procedure as are established by law.
- b) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his [or her] arrest and shall be promptly informed of any charges against him [or her].
- c) Anyone who is deprived of his [or her] liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his [or her] detention and order his [or her] release if the detention is not lawful.
- d) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

22. Article 9 of the ICCPR protects individuals against arbitrary deprivation of liberty, whereas article 12 applies to restrictions on movement short of deprivation of liberty. Severe restrictions on movement may be considered a deprivation of liberty.²⁹ The European Court of Human Rights stated that the distinction between restrictions upon freedom of movement and arbitrary detention is ‘merely one of degree or intensity, and not one of nature or substance.’³⁰

23. Article 9(1) of the ICCPR is not an absolute protection against detention, but rather it is a substantive guarantee against detention that is arbitrary or unlawful. According to the Human Rights Committee, it ‘is applicable to all deprivations of liberty, whether in criminal cases or in

²⁶ See, Human Rights Committee, General Comment No. 15 on ‘The Position of Aliens under the Covenant’, CCPR/C/21/Rev.1, 11 April 1986, paras. 2 and 1 respectively.

²⁷ See, Human Rights Committee, General Comment No. 31 on ‘Article 2: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant’, 21 April 2004 (adopted at 2187th meeting on 29 March 2004), CCPR/C/21/Rev.1/Add.13.

²⁸ See, e.g., *Loizidou v Turkey*, Judgment (Merits and just satisfaction), ECHR Applic. No. 000153118/89, 18 Dec. 1996, in which the Court stated at para. 52, ‘The obligation to secure ... the rights and freedoms set out in the Convention, derives from the fact of ... control [of territory].’ That is, the application of human rights law is territory-based, not nationality-based.

²⁹ See, e.g., *Celepli v Sweden*, HRC Case No. 456/1991, and *Karker v France*, HRC Case No. 833/1998.

³⁰ *Guzzardi v Italy*, above footnote 10, at para. 93. In this case, the applicant, a suspect in illegal mafia activities, was ordered to live for sixteen months on a remote island off the coast of Sardinia. He was restricted to a hamlet in an area of the island of some 2.5 sq kms that was occupied solely by persons subject to such orders, although the applicant’s wife and child were allowed to live with him. He was able to move freely in the area and there was no perimeter fence, although he could not move beyond the area. He was also required to report twice daily and was subject to a curfew. The Court held that the applicant’s conditions fell within article 5. In *Ashingdane v UK*, Case No. A 93 (1985), the European Court found that the compulsory confinement of a mentally ill patient in a mental hospital under a detention order invoked article 5 protections, even though he was in an ‘open’ (i.e. unlocked) ward and was permitted to leave the hospital unaccompanied during the day and over the weekend (para. 42). Some parallels can be drawn from the facts of these cases and the practices of States in relation to asylum seekers. For more information on the distinctions between arbitrary detention and restrictions on freedom of movement, see D.J. Harris, M. O’Boyle and C. Warbrick, *Law of the European Convention on Human Rights* (Butterworths, London, 1995), p. 98.

other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.³¹ Sub-articles 9(4) (the right to court review of detention) and (5) (the right to compensation)³², as well as parts of (2) (right to be given reasons for deprivation of liberty), also apply beyond criminal cases.³³

24. In accordance with article 4 of the ICCPR, a State party may take measures derogating from its obligations under article 9 in time of public emergency. However, it may do so only to the extent 'strictly required by the exigencies of the situation' and 'provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.'³⁴ Any restrictions must be limited to the needs of the situation and cease as soon as the state of emergency no longer exists. Moreover, any derogation must not interfere with other non-derogable rights in the Covenant, such as the right not to be subject to torture or cruel, inhuman or degrading treatment or punishment under Article 7 of the ICCPR. In addition, the State party must inform other States parties to the ICCPR immediately of any such derogation.³⁵ In practice, detaining refugees and/or asylum seekers is rarely declared to be for reasons of public emergency (as opposed to reasons of public order³⁶).

25. Whether detention is arbitrary is dependent on a number of factors.

26. First, any detention must be in accordance with and authorised by law. Any deprivation of liberty that is not in conformity with national law would be unlawful and therefore in breach of article 9(1). Moreover, legislation which permits the use of detention must be in keeping with international human rights standards.³⁷

27. Second, any detention must not be arbitrary. Even though the detention may be in accordance with the national law, it may nonetheless be arbitrary. The HRC has clarified what it means by arbitrariness in a number of cases, as follows:

“[A]rbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but

³¹ See, HRC General Comment No. 8 (1982) on Article 9 (Right to liberty and security of the person) HRI/GEN/1/Rev.7.

³² Article 9(5) of the ICCPR is to be read in conjunction with article 2(3) on the provision of an effective remedy.

³³ HRC General Comment No. 8, above footnote 31, states that reasons must be given in cases of preventative detention and only parts of sub-article (2) are limited to criminal cases. Therefore, an asylum seeker has a right to be informed of the reason/s for the deprivation of liberty in the context of administrative detention. See, also, Principle 8 of the Working Group on Arbitrary Detention Deliberation No. 5, stating that an asylum seeker must be informed of the grounds for the custodial measure being taken; UN Body of Principles, Principle 10. Similarly, the Council of Europe Handbook No. 5, 'A guide to the implementation of Article 5 of the ECHR', states 'Article 5(2) refers to a person who is "arrested" and to the existence of a "charge". The wording should not lead to the conclusion that the need to give reasons only arises in the context of criminal proceedings. It is well established that reasons must be given in any situation where someone has been deprived of his or her liberty.' (p. 46).

³⁴ Article 4(1), ICCPR; see also HRC General Comment No. 29 (2001) on Article 4: Derogations during a state of emergency, 31 August 2001 (adopted at 1950th meeting on 24 July 2001), CCPR/C/21/Rev.1/Add.11.

³⁵ Article 4(3), ICCPR.

³⁶ See, e.g., country sections on Kenya, Uganda, and Zambia.

³⁷ See, e.g., HRC Concluding Observations on Trinidad and Tobago (2000), CCPR/CO/70/TTO, at para. 16 in which the Committee stated that a vague formulation of the circumstances in which arrest may be issued was 'too generous an opportunity to the police to exercise this power' and that they recommended that the State party 'confine its legislation so as to bring it into conformity with article 9.1 of the Covenant.'

reasonable in all the circumstances. Further, remand in custody must be *necessary in all the circumstances*, for example, to prevent flight, interference with evidence or the recurrence of crime.³⁸ (emphasis added)

28. Whether a deprivation of liberty is considered to be reasonable and necessary will also depend on the proportionality of the measure with its intended objective.³⁹

29. Third, any period of detention must be open to periodic review. Even though an initial period of detention may not be arbitrary (e.g. if it was necessary to carry out identity, security or health checks), subsequent periods may breach article 9(1) of the ICCPR, that is, prolonged detention may be arbitrary.⁴⁰ Therefore an ongoing and periodic assessment is required in order to ensure that the initial reasons justifying detention continue to exist.⁴¹ The mandatory and non-reviewable detention of asylum seekers and/or refugees without an individual assessment of their need for detention would be arbitrary.⁴²

30. Fourth, and related to the above, an asylum seeker and/or refugee must have a right to challenge his or her detention in a court. Anything less than a court review is not satisfactory.⁴³ Even where a decision to detain an individual is taken by an administrative body or authority, article 9(4) of the ICCPR obliges the State party concerned to make available to the person detained the right of recourse to a court of law.⁴⁴ Moreover, review by the court must be effective. It cannot be circumscribed by law to particular forms of review. Merely formal review is not sufficient. Most importantly, the court must be empowered to order release.⁴⁵ The absence of effective court review renders detention arbitrary.

31. The criteria set out in article 9 fully apply to the detention of refugees and asylum seekers. In *A v Australia*,⁴⁶ the HRC confirmed that it is not *per se* arbitrary to detain individuals seeking asylum under article 9(1). Nor did the Committee find support for any rule of customary international law that would render all such detention arbitrary.⁴⁷ Likelihood of absconding and lack of cooperation were specifically cited as reasons that may justify detention in an individual case.⁴⁸ The HRC went on to state that 'without such factors detention may be considered arbitrary, even if entry was illegal.'⁴⁹

32. The HRC elaborated upon when detention is arbitrary in regard to a person who had applied for refugee status in *C v Australia*.⁵⁰ In this decision, the HRC found that the State party had 'not demonstrated that, in the light of the author's particular circumstances, there were not less invasive means of achieving the same ends...' The Committee referred to the imposition of reporting requirements, sureties or other conditions which would take account of the particular circumstances

³⁸ *Van Alphen v The Netherlands*, HRC Case No. 305/1988, para. 5.8.

³⁹ *A v Australia*, HRC Case No. 560/1993, para. 9.2. See also M. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, Strasbourg, 1993 (henceforth: 'Nowak, 1993') pp.172-173.

⁴⁰ See, e.g., *Spakmo v Norway*, HRC Case No. 631/1995, para. 6.3; HRC Concluding Observations on Japan (1998) CCPR/C/79/Add.102, para. 19 and Switzerland (1996) CCPR/C/79/Add.70.

⁴¹ *A v Australia*, above footnote 39, at para. 9.4.

⁴² *A v Australia*, above footnote 39; *C v Australia*, HRC Case No. 900/1999.

⁴³ See, e.g., *Torres v Finland*, HRC Case No. 291/1988; *Vuolanne v Finland*, HRC Case No. 265/1987. See, also, *Amuur v France*, above footnote 9.

⁴⁴ *Vuolanne v Finland*, HRC Case No. 265/1987, para. 9.6.

⁴⁵ *A v Australia*, above footnote 39, at para. 9.5; *C v Australia*, above footnote 42, at para. 8.3.

⁴⁶ *A v Australia*, above footnote 39.

⁴⁷ *A v Australia*, above footnote 39, at para. 9.3.

⁴⁸ *A v Australia*, above footnote 39, at para. 9.4.

⁴⁹ *A v Australia*, above footnote 39, at para. 9.4.

⁵⁰ *C v Australia*, above footnote 42.

of the individual concerned.⁵¹ Therefore, in order to establish that detention is necessary and reasonable in all the circumstances, consideration must be given to ‘less invasive means of achieving the same ends.’⁵² The standards elaborated by the HRC have informed UNHCR’s position that asylum-seekers should not be detained, and that only in exceptional cases would it be necessary to resort to detention in an individual case.⁵³

2. Other restrictions on freedom of movement

33. Article 12(1) of the ICCPR obliges States parties to ensure that ‘everyone lawfully within the territory of the State shall, within that territory, have the right to liberty of movement and freedom of residence.’⁵⁴ In this regard, it is more restrictive than the article 9 protection against arbitrary detention which applies to all persons, regardless of their status. Thus, in order to understand the extent of the protection afforded by article 12 of the ICCPR, it is necessary to examine first who is to be considered ‘lawfully’ within the territory of a State party.

34. The question whether an alien is ‘lawfully’ within the territory of a State is a matter governed by domestic law. A State may impose restrictions on the entry of an alien to its territory, provided they are in compliance with the State’s international obligations.⁵⁵ The HRC has held that an alien who entered a State illegally, but whose status has been regularised, must be considered to be lawfully within the territory for the purposes of article 12.⁵⁶ Thus, recognised refugees are lawfully within the territory for the purposes of article 12 and therefore enjoy its benefits. As noted above in section A, an individual who registers to apply for asylum and is admitted to a procedure ought to be considered ‘lawfully’ within the territory. While the HRC has stated that a State may impose conditions on the entry of an alien, for example, in relation to movement, residence or employment,⁵⁷ these conditions must be justified by reference to article 12(3): ‘... once aliens are allowed to enter the territory of a state party they are entitled to the rights set out in the Covenant.’⁵⁸

35. A relevant HRC communication that supports the above analysis is *Celepli v Sweden* in which a Turkish citizen of Kurdish origin was granted permission to stay in Sweden but not refugee status. He was subsequently subjected to a deportation order on the grounds of suspicion of involvement in terrorist activities. The expulsion order was not however enforced as it was believed that he (and his fellow suspects) could be exposed to political persecution in Turkey in the event of return. Instead, the Swedish authorities prescribed limitations and conditions concerning their place of residence. The HRC found that the person concerned, having been allowed to stay in Sweden, albeit subject to conditions, was considered to be lawfully in the territory of Sweden for the purposes of article 12. Sweden justified its restrictions on the ground of national security under article 12(3), which was accepted by the Committee.⁵⁹

36. However, article 12(1) is not an unfettered right to freedom of movement as it may be subject to particular restrictions. Any restriction must be provided by law, necessary to protect national

⁵¹ *C v Australia*, above footnote 42, at para. 8.2.

⁵² *C v Australia*, above footnote 42, at para. 8.2.

⁵³ UNHCR Guidelines on Detention, above footnote 2, Guidelines 2 and 3.

⁵⁴ Note that under Article 13 of the Universal Declaration of Human Rights, everyone has the right to freedom of movement and residence with the borders of each State.

⁵⁵ HRC General Comment No. 27 on Article 12: Freedom of Movement, 2 November 1999 (adopted at 1783rd meeting on 18 October 1999), CCPR/C/21/Rev.1/Add.9, para. 4.

⁵⁶ See, e.g., *Celepli v Sweden*, above footnote 29, at para. 9.2.

⁵⁷ HRC General Comment No. 15, above footnote 26, at para. 6.

⁵⁸ HRC General Comment No. 15, above footnote 26, at para. 6.

⁵⁹ *Celepli v Sweden*, above footnote 29, at para. 9.2.

security, public order (*ordre public*), public health or morals or the rights and freedoms of others (see paragraphs below), and must be consistent with other rights recognised in the Covenant.⁶⁰ Any restriction must not ‘nullify the principle of liberty of movement.’⁶¹ Persons are entitled to move from place to place and to establish themselves in a place of their choice, irrespective of any particular purpose or reason for wanting to move or stay in a particular place.⁶² Any restrictions on the movement of persons must be justified by the State party⁶³ and must not continue beyond the point in which the justification no longer exists. Thus, periodic assessments are also required.⁶⁴

a. Grounds for restrictions

37. Of the reasons given by States for imposing restrictions on the free movement of asylum seekers, verification of identity, and the protection of national security, public order, or public health are the most common.

38. Recourse to initial, temporary periods of detention in order to verify the identity of asylum seekers, particularly those who arrive without, or with false, documentation, is accepted by UNHCR as satisfying the ‘exceptional’ ground criterion in their guidelines.⁶⁵ Some State practice indicates that other restrictions on movement (e.g. daily reporting requirements, release on bail or surety to citizens) may be effective while awaiting verification of identity, or where identity cannot be readily found but the person is not considered a risk to society. Detention is not necessary in every case, as some examples in this study show, and must be assessed on an individual basis.

39. As UNHCR reminded the international community in the aftermath of the events of 11 September, 2001, both detention and other restrictions on the movement of asylum seekers may only be applied on national security grounds ‘if necessary in circumstances prescribed by law and subject to due process safeguards’.⁶⁶ Unduly prolonged detention or other restrictions may violate international law.

40. ‘Public order’ may be defined as the sum of rules that ensure the peaceful and effective functioning of society.⁶⁷ ‘*Ordre public*’ is the equivalent French concept, but it is not an exact translation, seemingly broader in scope than the concept of ‘public order’. It does not appear, however, that this ‘extra depth’ implied within the notion of *ordre public* has had any effect on the outcome of cases submitted to the HRC under the Optional Protocol to the ICCPR.⁶⁸ Criminal legislation in most jurisdictions contains ‘public order’ offences, which typically include public drunkenness, driving while intoxicated, disorderly conduct, disturbing the peace, rioting, vagrancy,

⁶⁰ Art. 12(3), ICCPR.

⁶¹ HRC General Comment No. 27 on freedom of movement, above footnote 55, at para. 2.

⁶² HRC General Comment No. 27 on freedom of movement, above footnote 55, at para. 5.

⁶³ See, *Ackla v Togo*, HRC Case No. 505/1992, para. 10.

⁶⁴ C. Beyani, *Human Rights Standards and the Movement of People within States*, (Oxford University Press, 2000), p. 116. In situations of mass influx, ‘case by case review of confinement may indeed be unrealistic, and there *may* also exist good reasons – racial, cultural, religious, economic – why alternatives to detention cannot be used in any particular context; but the conditional nature of these statements should not be overlooked.’

⁶⁵ Verification of identity, protection of national security and public order are listed in ExCom Conclusion No. 44 (1986), above footnote 2, and the UNHCR Guidelines on Detention, above footnote 2, as the exceptional grounds upon which detention may be necessary in an individual case.

⁶⁶ ‘Addressing Security Concerns without Undermining Refugee Protection’, UNHCR Department of International Protection, November 2001, Section D, para.10.

⁶⁷ ‘Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights’ (1985) 7 *HRQ* 3.

⁶⁸ See, S. Joseph, J. Schultz and M. Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford University Press, 2nd ed., 2004), p. 530.

nuisance, liquor law violations, disrupting a lawful protest without legal authority, etc. In most cases, these crimes are not punishable by incarceration, although the police may have some discretion to detain individuals in various states of vagrancy or intoxication for a limited time subject to charge and arrest. They are oftentimes referred to as consensual crimes or victimless crimes.⁶⁹ In relation to asylum law, widespread State practice indicates that the most common reason for restricting freedom of movement is associated with preventing absconding or ensuring appearance at asylum procedures. ‘Likelihood of absconding’ and ‘lack of cooperation’ have been cited as factors that may justify detention in an individual case by the UN Human Rights Committee.⁷⁰ Notwithstanding, these measures must still only be applied on an individual basis, after a full assessment of their likelihood of absconding, and coupled with the right to seek judicial review. In particular, any measure must not arbitrarily deprive an individual of their liberty, nor must they unduly restrict their right to freedom of movement.

41. On a broader scale, mass influxes of refugees have had a particularly destabilising impact on public order in many countries, particularly in Africa, Latin America and Asia. Depending on the situation, such movements may also have an impact on national security. The same safeguards relating to detention and restrictions on free movement apply in situations of mass influx.⁷¹ Some States have managed to avoid the use of closed camps,⁷² which amount to *de facto* detention, and to make such confinement as temporary as possible. In 2002, the UNHCR Executive Committee reaffirmed principles for maintaining the civilian and humanitarian character of refugee camps,⁷³ including the necessity of early ‘identification, separation and internment’ of combatants, thereby allowing the remainder of the refugee population not only to live in peace and safety but also allowing them to be accommodated without severe restrictions upon their freedom of movement, in the confidence that they are civilians who pose no threat to national security. It was recognised that civilian family members of combatants should not be interned alongside combatants, and that child soldiers are deserving of ‘special protection and assistance’. Case by case assessments of the level of ‘openness’ in various camps, and then of whether the use of a closed camp may amount to detention or even arbitrary detention in a specific context and over a prolonged period, is, however, beyond the scope of the present paper.

42. It is rare for the protection of public health to be invoked as the sole grounds for detaining or otherwise restricting the movement of asylum seekers or refugees, although some countries conduct medical tests during an initial ‘quarantine’ period in a restricted area of an otherwise open reception centre (as in the Czech Republic, Belgium, Denmark and Hungary⁷⁴) or in detention. This is usually the same period in which identity and security checks are conducted. Confinement in a health

⁶⁹ See, P. McWilliams, ‘Patterns and Trends in Public Order Crime: Ain’t nobody’s business but your own’, at <http://faculty.ncwc.edu/toconnor/201/2011ect17.htm>, accessed April 2005; L. Siegel, *Criminology: Theories, Patterns & Typologies* (Wadsworth/Thomson Learning, Belmont, California, 2004).

⁷⁰ *A v Australia*, above footnote 39, at para. 9.4.

⁷¹ ExCom Conclusion No. 65 (XLII) - 1991 at para. (c), which called on ‘States to intensify efforts to protect the rights of refugees ... to avoid unnecessary and severe curtailment of their freedom of movement.’ Any restrictions in mass influx must be necessary in the interests of public order and public health: see, ExCom Conclusion No. 22 (XXXII) – 1981 on the Protection of Asylum Seekers in Situations of Large-Scale Influx, section II.B, para. 2(a).

⁷² For example, the Ugandan policy of more open settlement areas as opposed to closed camps, or the open refugee camps in the *zones d’accueil* of Côte d’Ivoire, as described in UNHCR Global Report 2002.

⁷³ ExCom Conclusion No. 94 (LIII) – 2002 on the civilian and humanitarian character of asylum.

⁷⁴ In Hungary, UNHCR has recommended that the amount of medical screening be reduced to correspond more closely to levels in other European host countries, and thereby to reduce the length of time that asylum seekers spend in such quarantine detention after arrival.

facility is subject to the same legal requirements as other forms of detention under international law.⁷⁵

43. Since 1990, UNHCR policy has been to oppose mandatory HIV testing/screening of asylum seekers and refugees, and also to oppose any restrictions based on a person's HIV status or potential status. This includes any restriction on freedom of movement.⁷⁶ Expert UN agencies stated in 1997: 'There is no public health rationale for restricting liberty of movement or choice of residence on the grounds of HIV status.' Furthermore, public health interests are best served by 'integrating people with HIV/AIDS within communities'.⁷⁷

44. UNHCR does, however, countenance the screening and isolation of individuals with serious communicable diseases such as active tuberculosis, which may be transmitted via casual contacts and close proximity over a certain period – for example, in a communal reception centre for asylum seekers.⁷⁸ Beyond the initial screening, if an asylum seeker with a highly infectious disease does need to be confined for a certain period of treatment, every effort should be made to transfer the individual to a hospital or private location where the conditions of such quarantine may be as comfortable and conducive to their care as possible.

b. General legal requirements

45. Any restrictive measure must conform to the principle of proportionality; it must be appropriate to achieve their protective function; and it must be the least intrusive instrument amongst those which might achieve the desired result.⁷⁹ Restrictions must not only serve one of the permissible purposes; they must be necessary to protect them.⁸⁰ Moreover, States should ensure that any proceedings relating to the exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided.⁸¹ Furthermore, the application of the restrictions permissible under article 12(3) needs to be consistent with the other rights guaranteed in the Covenant and with the fundamental principles of equality and non-discrimination. 'Thus it would be a clear violation of the Covenant if the rights enshrined in article 12, paragraphs 1 and 2, were restricted by making distinctions of any kind, such as on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'⁸² Where such restrictions are imposed only against asylum seekers, or to asylum seekers

⁷⁵ Under the ECHR, it would first need to be determined that in fact the confinement amounts to a deprivation of liberty: see, *Nielsen v Denmark* (1988), in which it was held that the placement of a twelve year old boy in a psychiatric ward by his mother was not of the same 'nature or degree' to other cases of deprivation of liberty. The Court held that the restrictions on the child were no more than normal requirements for the care of a child of that age receiving treatment in hospital.

⁷⁶ OHCHR and the Joint United Nations Programme on HIV/AIDS, *HIV/AIDS and Human Rights: International Guidelines*, HR/PUB/98/1 (1998) (henceforth "*HIV/AIDS and Human Rights: International Guidelines*"). See, in particular, commentary regarding rights No.7 and No.9.

⁷⁷ *HIV/AIDS and Human Rights: International Guidelines*, above footnote 76. Research in the United Kingdom, for example, found that out of 41,470 asylum seekers selected and consenting to be screened at Heathrow Airport between 1995-1999, 24 were found with the infectious form of tuberculosis and only two individuals absconded before further investigations could be made. See, e.g., Callister et al. in *Thorax* 57, 2002, pp.152-6. Quoted in R. Coker, *Migration, Public Health and Compulsory Screening for TB and HIV*, Asylum and Migration Working Paper No. 1, Institute for Public Policy Research, London, 20 November 2003. In Coker's survey of medical research, it was concluded that, despite its long historical tradition, '[t]he evidence base to support the use of detention as a tool in the public health armamentarium is limited.'

⁷⁸ In the case of tuberculosis, isolation should only be necessary for a few weeks if the person adheres to treatment.

⁷⁹ HRC General Comment No. 27, above footnote 55, at para. 14.

⁸⁰ HRC General Comment No. 27, above footnote 55, at para. 14.

⁸¹ HRC General Comment No. 27, above footnote 55, at para. 15.

⁸² HRC General Comment No. 27, above footnote 55, at para. 18.

from a particular country or region, or the law has this effect, brings into question their compatibility with articles 12(3) and 2 of the ICCPR. To be compatible, an assessment would need to be made on an individual basis to justify any particular restrictions, rather than on a group basis.⁸³

C. Regional refugee and human rights law

1. Detention

46. Regional human rights instruments contain prohibitions against unlawful or arbitrary detention similar to those set out above.⁸⁴ While they all guarantee against unlawful or arbitrary detention, the European Convention on Human Rights explicitly lists those situations in which detention may be justified.⁸⁵ It can be implied, therefore, that any attempt at detention beyond these situations is not permitted within its States parties. The European Court tends to approach the issue of whether a State has complied with article 5 in two stages: First, it is determined whether there has there been a deprivation of liberty. If so, it is then determined whether it was justified under one of the enumerated sub-articles and in accordance with procedure prescribed by law.

47. The question of whether there has been a deprivation of liberty has been addressed by the European Court of Human Rights in relation to asylum seekers. The Court held that confinement in an airport, 'when accompanied by suitable safeguards for the persons concerned, is acceptable only in order to enable States to prevent unlawful immigration while complying with their international obligations', particularly under the 1951 Convention and the ECHR.⁸⁶ It further stated that 'States' legitimate concerns to foil the increasingly frequent attempts to circumvent immigration restrictions must not deprive asylum-seekers of the protection afforded by these conventions.'⁸⁷ The Court further stated that '[s]uch holding should not be prolonged excessively, otherwise there would be the risk of turning a mere restriction on liberty ... into a deprivation of liberty. In that connection, account should be taken of the fact that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled their own country.'⁸⁸ Therefore, the Court found it irrelevant that France referred to its airport holding area as an

⁸³ See, e.g., by analogy, *Lovelace v Canada*, HRC Case No. 24/1977, in which it was found that 'the restrictions on internal freedom of movement associated with the protection of particular minorities must be reasonable and objective and, above all, not discriminatory. In particular, members of a minority may not be deprived of the right to leave their reserve and to return to it.' (paras. 15-19). See, also recommendation (f) that non-custodial alternatives should be used in a way that is not discriminatory, Report of Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, *Migrant Workers*, submitted pursuant to Commission on Human Rights Res. 2002/62, E/CN.4/2003/85, 30 December 2002. See, also, CERD General Recommendation No. 30: Discrimination Against Non-Citizens, 1 October 2004, in which the Committee stated that 'differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention [on the Elimination of All Forms of Racial Discrimination], are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.' (para. 4)

⁸⁴ See, Art. 5, ECHR; Art. 7, Inter-American Convention on Human Rights 1969, adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 Nov. 1969; Art. 6 of the African Charter on Human and Peoples' Rights 1981, adopted 27 June 1981, 21 ILM 58 (1982).

⁸⁵ The following situations when detention may be imposed are included within the exhaustive list of Art. 5 of the ECHR: after conviction by a competent court; for non-compliance with a lawful order to give effect to an obligation; in order to bring an individual suspected of having committed a crime before a competent court; of a minor by lawful order for educational supervision or to bring him (or her) before a competent court; for the prevention of spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants; to prevent a person effecting an unlawful entry into the country or of a person against whom action is taken with a view to deportation or extradition.

⁸⁶ *Amuur v France*, above footnote 9, at para. 43.

⁸⁷ *Amuur v France*, above footnote 9, at para. 43.

⁸⁸ *Amuur v France*, above footnote 9, at para. 43.

‘international zone’ and that the applicants had not yet entered French territory according to French law; article 5 was still applicable. In addition, the Court held that the mere fact that they could return to Syria, a transit location, did not preclude a finding of a restriction on liberty. The Court stated that ‘this possibility becomes theoretical if no other country offering protection comparable to the protection they expect to find in the country where they are seeking asylum is inclined or prepared to take them in.’⁸⁹

2. Other restrictions on freedom of movement

48. A range of regional standards determines what may be a permissible restriction on freedom of movement intended to serve as an alternative to detention. Article 2 of the Fourth Protocol to the ECHR, concluded in 1963, provides a right to freedom of movement very similar to that in the ICCPR. In addition to the grounds enumerated in Article 12(3) of the ICCPR, article 2(1)(3) of Fourth Protocol to the ECHR makes explicit reference to public safety and prevention of crime. Any restrictions must also be ‘necessary in a democratic society’. Like article 12 of the ICCPR, article 2 of the Fourth Protocol is also limited to those ‘lawfully within’ the territory of a State party.

49. Relevant European Union law, based on article 63(1) of the Treaty establishing the European Union,⁹⁰ is also applicable to EU Member States. Article 7(1) of the EU Council of Ministers’ Directive 2003/9/EC Laying Down Minimum Standards for the Reception of Asylum Seekers in Member States⁹¹ permits Member States to limit all asylum seekers’ freedom of movement to an ‘assigned area’, though such an area ‘shall not affect the unalienable sphere of private life...’ and it must not interfere with the enjoyment of other benefits in the Directive. The Directive also permits that ‘Member States may decide on the residence of the asylum seeker for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application’.⁹² UNHCR has expressed concern that this provision allows for ‘a wide measure of interpretation’ and notes that refugee-specific services, such as legal aid providers, and if possible the asylum seekers’ national or ethnic community, should be found in the location to which the applicants’ movement is restricted.⁹³

50. The EU Directive also allows Member States to make the provision of material reception conditions ‘subject to actual residence by applicants in a specific place’⁹⁴ and requires all asylum seekers within the EU to notify the national authorities of their host State of their current address and of any change in address ‘as soon as possible’.⁹⁵ It further provides, in article 7(5), that asylum seekers can request permission to make temporary visits outside the area to which they are restricted, for personal, health and family reasons as well as for the sake of preparing their application. There is no need to request such permission to keep appointments with the authorities or to go to court. Decisions on such requests ‘shall be taken individually, objectively and impartially, and reasons shall be given if they are negative.’ All EU Member States, except Ireland

⁸⁹ *Amuur v France*, above footnote 9, at para. 48.

⁹⁰ Treaty of European Union (Consolidated Version), Amsterdam, 2 October 1997.

⁹¹ Official Journal of the European Union L 31/20, 6 February 2003. The content of this Directive was strongly influenced by the British and German reception systems, which both include schemes of compulsory dispersal for all asylum seekers, though many European Union Member States do not operate such schemes.

⁹² Art. 7(2).

⁹³ ‘UNHCR annotated comments on Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers’.

⁹⁴ Art. 7(4).

⁹⁵ Art. 7(6).

and Denmark, must bring their national law and practice into line with this Directive by 6 February, 2005.⁹⁶

51. Article 22(1) of the American Convention on Human Rights 1969⁹⁷ states: 'Every person lawfully in the territory of the State Party has the right to move about in it and to reside in it subject to the provisions of the law.' This right is to be interpreted in conjunction with article 32(2) of the same Convention which establishes that 'the rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare in a democratic society.' Once again, it should be noted that this right raises issues as to the 'lawfulness' of a person's presence in the territory.

52. The Caracas Convention on Territorial Asylum 1954⁹⁸ also contains standards relating to restrictions on the movement and residence of refugees, which may be imposed for reasons very similar to the grounds for a detention order. This Convention applies to all refugees, including those who enter 'surreptitiously or irregularly'.⁹⁹ Article 9 of this Convention reads:

'At the request of the interested State, the State that has granted refuge or asylum shall take steps to keep watch over, or to intern at a reasonable distance from its border, those political refugees or asylees who are notorious leaders of a subversive movement, as well as those against whom there is evidence that they are disposed to join it...'

53. These are highly individualised requirements.¹⁰⁰ Mexico has entered a reservation to article 9 and Guatemala has clarified that it understands 'internment' to mean 'merely location at a distance from the border'. In practice, larger numbers of refugees than were ever envisaged in 1954 have meant the frequent use of camps and settlements and the Inter-American Commission has lamented that regional legal instruments do not fully address such conditions.¹⁰¹

54. Article 12(1) of the African Charter of Human and Peoples' Rights 1982¹⁰² grants freedom of movement and residence to every individual within the borders of a State Party, 'provided he [or she] abides by law'. The OAU Convention Governing the Specific Aspects of Refugee Problems 1969,¹⁰³ article 11(6), stipulates that for reasons of security, countries of asylum shall, as far as possible, settle refugees at a reasonable distance from the frontier of their country of origin. The principle that the location of asylum seekers should be determined by their safety and well-being is reiterated in several UNHCR Executive Committee Conclusions (for example, No.22 of 1981) and in the Declaration of Cartagena 1984.¹⁰⁴ It is therefore contradictory that many States cite national security and other public interest grounds to justify restrictions on the residence of refugees near to borders or in remote rural areas.

⁹⁶ This deadline applies equally to the new EU Member States.

⁹⁷ Pact of San Jose, Costa Rica, 1969, 9 ILM 673, entered into force 1978.

⁹⁸ Organization of American States, 29 March, 1954.

⁹⁹ Art. 5 of the Caracas Convention on Territorial Asylum 1954.

¹⁰⁰ Prof. Grahl-Madsen has emphasised the fact that the Latin American treaties, which contain restrictions on place of residence for the purpose of preventing subversive activities against countries of origin (the principle of so-called 'safe location'), consider these restrictions as applicable only in individual cases where there is clear evidence of involvement in subversion. A. Grahl-Madsen, 'Political Rights and Freedoms of Refugees' in Melander and Nobel (eds.), *African Refugees and the Law*, (Uppsala, 1978), p.48.

¹⁰¹ C. Beyani, above footnote 64, at p.125.

¹⁰² 21 ILM 59, 1982, entered into force 1986.

¹⁰³ 1001 UNTS 14691, 1969, entered into force 20 June, 1974.

¹⁰⁴ Published by UNHCR, embodying the Conclusions of the *Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*. Entered into force 22 November, 1984.

D. Consistency with other rights

55. Articles 9 and 12 of the ICCPR as described above are the principal provisions governing an individual's rights in relation to freedom of liberty and movement under international human rights law. However, there are also other rights that directly or indirectly are relevant to the treatment of those within detention or subject to other forms of restricted movement. Most notably, ICCPR articles 2 (non-discrimination), 7 (absolute prohibition on torture, and cruel, inhuman or degrading treatment or punishment), 10 (those denied their liberty to be treated with humanity and respect for human dignity), and 17 and 23 (right to privacy and to family life).¹⁰⁵ For children, separation from parents could breach a range of provisions under the Convention on the Rights of the Child.¹⁰⁶ Additional articles include the right to health and to an adequate standard of living in the International Covenant on Economic, Social and Cultural Rights 1966.¹⁰⁷

56. While all forms of detention or restrictions on movement must satisfy the standards enunciated above, article 2 of the ICCPR further prohibits discrimination in the enjoyment of rights under the Covenant. States cannot, therefore, detain or restrict movements of *particular groups* of refugees, based, for example, on their race, ethnicity, or country of origin. This principle is in conformity with the general requirement that any restriction be individually assessed on an ongoing basis.

57. The Human Rights Committee has decided that detaining an asylum seeker who developed a psychiatric illness as a result of a protracted period in immigration detention, and where the State failed to take steps necessary to ameliorate the complainant's mental deterioration, constituted a violation of article 7 of the ICCPR.¹⁰⁸ Failing to provide medical treatment has consistently fallen within the protection of article 7, either alone or in combination with other factors,¹⁰⁹ or at a minimum has violated article 10 in relation to rights to humane treatment. Conditions of detention such as poor sanitation, lack of bedding, cold floors, and/or over-crowding have been held to give rise to breaches of article 7, usually when combined with some form of physical violence,¹¹⁰ or, alternatively, separately or together under article 10.¹¹¹ Separation from family members pending or

¹⁰⁵ On right to family life and asylum seekers, see, K. Jastram and K. Newland, 'Family Unity and Refugee Protection', in E. Feller, V. Türk and F. Nicholson (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003) 555; A. Edwards, 'Human Rights, Refugees, and the Right "To Enjoy" Asylum' (2005) 17 *Int'l J. Ref. L.* 1-38 (advance access).

¹⁰⁶ See, e.g., arts. 2(2), 3(1), 5, 9, 12(2), 16, 20(1), 22, 25, and 37.

¹⁰⁷ GA res. 2200A (XXI), 16 December 1966; entered into force 3 January 1976. Arts. 12 & 11, CRC respectively.

¹⁰⁸ *C v. Australia*, above footnote 42.

¹⁰⁹ See, e.g., *Williams v. Jamaica*, HRC Case No. 609/1995 (failure to provide medical treatment to redress serious mental deterioration in a death row inmate constituted degrading treatment); *Linton v. Jamaica*, HRC Case No. 255/1987; *Hylton v. Jamaica*, HRC Case No. 407/1990; *Deidrick v. Jamaica*, HRC Case No. 619/1995 (together with violence, failure to provide medical care).

¹¹⁰ See, e.g., *Hiber Conteris v. Uruguay*, HRC Case No. 139/1983, in which author was subjected to hanging from wrists for ten days, subjected to burnings, and *submarino*. Subsequent treatment in the form of solitary confinement, only a few minutes exercise per day, kept in the coldest part of the prison, and transferred from floor to floor to increase feelings of distrust, were also found to breach article 7, as 'harsh and, at times, degrading conditions of his detention ...'. See, also, *Deidrick v. Jamaica*, above footnote 109.

¹¹¹ See, e.g., *Ramon B. Martinez Portorreal v. Dominican Republic*, HRC Case No. 188/1984, in which the author was detained in a cell measuring 20x5 metres with 125 other prisoners, in overcrowded, hot and dirty conditions. Owing to a lack of space, some detainees had to sit on excrement. He was detained for fifty hours, without food or water on the first day. See, also, *Victor Francis v. Jamaica*, HRC Case No. 320/1988., in which breaches of articles 7 (degrading treatment) and 10(1) were found. In this case, the urine buckets of detainees were emptied on their heads, and his food and water were thrown on the floor, and his mattress was removed from the cell. Similar acts have been found to constitute degrading treatment by the European Commission and Court: see, *Hurtado v. Switzerland*, A 280-A (1994)

after removal has also been asserted by several complainants as in breach of article 7 of the ICCPR. While the HRC has not ruled this out entirely, it seems more likely to consider it under article 10.¹¹² It is possible that similar arguments could be mounted to argue that being separated from family members during extended periods of detention may amount to a form of cruel, inhuman or degrading treatment or punishment, rather than only in breach of articles 17 and/or 23, although this has not, as far as the writer is aware, been tested. Once again, it should be noted that alternatives to detention involving restrictions on freedom of movement need to comply with these other human rights norms just as fully as any deprivation of liberty.

E. Special legal protections for children

58. Persons under the age of eighteen years benefit from and are entitled to enjoy the range of rights outlined above that apply to adults. In addition to these, international human rights law has introduced a number of rights specific to children, which take account of their special vulnerability. In particular, at all times the ‘best interests of the child’ is to be the primary consideration.¹¹³ This means that even in cases where the above described conditions for restricting a child’s rights apply, the question must be asked whether limiting the right(s) in question is in the child’s best interests. As regards detention of children, UNHCR Guidelines on Detention state that ‘minors who are asylum-seekers should not be detained’.

59. Specifically in relation to deprivation of liberty, the Convention on the Rights of the Child 1989 (‘CRC’)¹¹⁴ states that children should only be deprived of their liberty as ‘a measure of last resort’ and for the shortest period of time.¹¹⁵ This requires that all possible alternatives, including unconditional release, must be reviewed prior to a final determination on a full deprivation of liberty. In those cases where a child is detained, he or she shall have the right to prompt access to legal and other appropriate assistance, as well as to challenge the legality of his or her detention before a court or other competent, independent and impartial authority, and to a prompt decision.¹¹⁶ These provisions are not limited to unaccompanied or separated minors, but apply to all children.

60. Difficult questions arise where a decision is taken to detain one or both parents of a child. As in all cases involving children, their best interests will remain of paramount importance. It is arguable that decisions to detain asylum seeking adults who arrive with children ought therefore to be taken in only very exceptional circumstances, as the consequences on other rights, including the rights of their children, must be balanced. Any decision to separate a child from his or her parents against the child’s will must be subject to judicial review.¹¹⁷ Any judicial review must be effective, that is, the court must have the power to order release or reunification. In addition, any child who is

Com. Rel. F. Sett before Court, in which the applicant defecated in his trousers because of the shock caused by a stun grenade used during his arrest. He was not able to change his clothing until the next day and after he had been transported between buildings and questioned. The Commission declared this to be degrading treatment. See, for further cases, D.J. Harris, M. O’Boyle and C. Warbrick, above footnote 30, at pp. 83-84.

¹¹² See, e.g., *Francesco Maddaferri et al. v. Australia*, HRC 1011/2001, separation from family pending removal would cause psychological and financial problems. HRC found violation of article 10(1), but did not address article 7. See, also, *Charles E. Stewart v. Canada*, HRC Case No. 538/1993, the complainant asserted that enforcement of a deportation order resulting in the permanent separation of an individual from his family and/or close relatives, and banishment from the only country the author ever knew and in which he grew up, amounts to cruel, inhuman and degrading treatment. The HRC declared the claim to be inadmissible on the basis of a lack of substantiation of the claim.

¹¹³ Art. 3, CRC.

¹¹⁴ To date, only two States have not become parties to the CRC: namely, the United States of America and Somalia.

¹¹⁵ Art. 37(b), CRC.

¹¹⁶ Art. 37(d), CRC.

¹¹⁷ Art. 9(1), CRC.

placed in care is entitled to periodic review of treatment provided to him or her and all other circumstances relevant to the placement.¹¹⁸

61. Moreover, article 22(2) of the CRC requires that separated asylum-seeking children should enjoy all the protections for children deprived of their family environment contained in the CRC. Where a child is temporarily or permanently deprived of his or her family environment, or where it is in his or her best interests not to be allowed to remain in that environment, he or she shall be entitled to special protection and assistance.¹¹⁹

62. Protection concerns related to the issue of child trafficking are highlighted in various places throughout this study. In particular, the CRC offers a number of provisions that require States to take all appropriate legislative, administrative, social and educational measures to protect children from all forms of violence and exploitation.¹²⁰

F. Analogous standards for non-custodial measures in the criminal justice field

63. Many binding human rights standards are reflected in the content of the United Nations Standard Minimum Rules for Non-Custodial Measures (the 'Tokyo Rules'),¹²¹ which are the most comprehensive statement of principles relating to non-custodial measures in the criminal justice field. There is to date no equivalent set of rules relating to alternative measures in the immigration or asylum fields, although the Tokyo Rules are instructive by analogy. However, this should not obscure the fact that very few asylum seekers held in detention have committed offences other than violations of national immigration laws. Penalties imposed on asylum seekers for such violations may contravene article 31 of the 1951 Convention as stated above.

64. Rule 3.6 of the Tokyo Rules states that the person upon whom the non-custodial measure is imposed should be entitled to make a complaint or request regarding that measure. Rules 3.9–3.12 require that supervision shall not be carried out in a way that would harass the subject of the non-custodial measure, or jeopardise their dignity or intrude upon their privacy or that of their families. Methods of supervision that treat supervised persons solely as objects of control should not be employed. Surveillance techniques should not be used without the person's knowledge, and third parties other than properly accredited volunteers should not be employed to conduct the surveillance.¹²²

65. Rule 7 of the Tokyo Rules relates to 'social inquiry reports' which are compiled for individual criminal offenders, relating to their past and present circumstances, so that the suitability of an

¹¹⁸ Art. 25, CRC.

¹¹⁹ Art. 20(1), CRC.

¹²⁰ Art. 19, CRC. See, also, arts. 11, 32, 33, 34, 35 & 36, CRC. See also the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 25 May 2000 which entered into force on 18 January 2002.

¹²¹ The Tokyo Rules (adopted by General Assembly resolution 45/110 of 14 December 1990 – A/RES/45/110) are the result of global discussion and exchange of experience, pursuant to Section XI of the Economic and Social Council Resolution 1986/10. It is widely recognised, in view of the individual and social harm caused by incarceration, that pre-trial detention should be used only as a last resort where there exists a danger of the accused absconding, interfering with the course of justice or committing a serious offence. In the case of an asylum seeker, the negative effects of detention may be compounded by the possibility of previous arbitrary detention and/or torture in the country of origin.

¹²² Commentary on the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), UN Doc. ST/CSDHA/22, 1993, p. 13.

alternative may be considered in the individual case.¹²³ Rule 10.3 states that not only detention, but also ‘supervision ... should be periodically reviewed and adjusted as necessary’. The commentary on this Rule then adds that the important element is the personal relationship between the supervisor and the person supervised. It describes supervision as a ‘highly skilled task’, combining a control function with a welfare function. ‘Parts of the supervisory task may be delegated or contracted out to the community groups or volunteers’ while statutory power remains with the State authorities.

66. Rule 12.3 of the Tokyo Rules relates to the quality of information provided to the person who is the subject of the non-custodial measure. It notes that well explained obligations are more likely to be met. Rule 14.3 instructs that ‘[T]he failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure.’ It comments that minor transgression can be handled by a good supervisor and that factors to consider include whether the non-compliance takes place at an early stage or after a period of time during which there was full compliance. Factors beyond the person’s control should be taken into account.

67. Rule 15.1 includes a statement of good practice in relation to alternatives to imprisonment in the criminal justice field, namely that ‘policy regarding staff recruitment should take into consideration national policies of affirmative action and reflect the diversity of the [persons] to be supervised’. Rule 17 encourages public participation in alternatives to detention and notes that ‘ethnic organisations’ can be a resource. Rule 19 similarly describes the role of volunteers, regarding them as working on behalf of the State and therefore requiring training, recognition and reimbursement of costs incurred. Rule 18.1 implies that the government should look favourably on funding nongovernmental schemes to secure release of detainees. Rule 20 encourages research and experimental projects in this field, and Rule 21 stresses the importance of evaluation. All these considerations apply equally, if not more so, to the search for alternatives to detention of asylum seekers.

G. Summary

68. Regional and international standards, taken together, provide a range of safeguards in relation to both detention and lesser forms of restrictions on the freedom of movement of asylum seekers and refugees, many of the latter being used as alternatives to detention.

69. The conditions in which international law permits the use of detention are set out in article 9 of the ICCPR. This provision prohibits arbitrary detention. It applies to all persons regardless of their status. Severe restrictions on freedom of movement which amount to a deprivation of liberty may come within the scope of article 9. In order for detention not to infringe this provision it must:

- a) be authorised by law;
- b) be reasonable and necessary in all the circumstances (including proportionate and non-discriminatory);
- c) be subject to periodic review;
- d) be subject to judicial review.

70. The consideration of alternative, non-custodial measures is a prerequisite for satisfying the principle of necessity in relation to lawful detention.

¹²³ At the moment it is extremely rare for specific evidence of an individual asylum seeker’s likelihood of absconding to be produced by any national authorities, and many of the alternatives to detention examined in this study include a much greater emphasis on case-by-case consideration of such individual evidence.

71. In addition, the conditions of detention as well as the treatment of persons deprived of their liberty must conform to relevant human rights standards. Moreover, should an individual be arbitrarily detained, he or she is entitled to compensation, per articles 9(5) and 2(3) of the ICCPR.

72. The right to freedom of movement as guaranteed under international human rights law is enshrined in article 12 of the ICCPR. This provision applies to individuals lawfully within the territory of a State party. Recognised refugees are covered and it is arguable that asylum seekers who have been admitted to the territory for the purposes of applying for asylum or who have registered their claim are also 'lawfully present'. This is supported by article 31 of the 1951 Convention, which prohibits the penalisation of refugees and asylum seekers on account of their illegal entry or presence.

73. Under international human rights law, any restriction imposed on the freedom of movement of anyone lawfully within the territory (including asylum seekers), must:

- a) be provided by law;
- b) be necessary for one of the prescribed grounds (that is, to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others) and in proportion to the legitimate purpose;
- c) not cause the violation of other rights, such as not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, the right to health, or the right to enjoyment of family life;
- d) not be discriminatory.

74. Any restriction on freedom of movement imposed on asylum seekers who are not lawfully present under article 31(2) of the 1951 Convention must:

- a) be provided by law;
- b) be necessary;
- c) not be discriminatory;
- d) be applied only until status is regularised or until the person obtains admission into another country.

75. There is very little real difference in the scope of protection offered under Article 12(3) of the ICCPR and Article 31(2) of the 1951 Convention given that 'necessary' in relation to the latter is commonly seen as referring to one of the exceptions listed in the former as well as other provisions of the ICCPR.

76. Alternatives that restrict the freedom of movement of persons found not to be in need of international protection must also meet certain legal requirements, though the legitimate purpose behind the restriction will differ from that of the legitimate purpose for restricting the movement of an asylum seeker. As the standards relating to detention apply to all persons, regardless of their status, they also apply to failed asylum seekers. In so far as other forms of restrictions on movement are concerned, it would appear from case law that the safeguards in article 12 of the ICCPR would not generally apply to failed asylum seekers, but would apply where an individual is allowed to remain in a country because the host State is unable to carry out an expulsion or deportation order. As a consequence, any restrictions must be justified according to one of the listed grounds in article 12(3).¹²⁴

¹²⁴ *Celepli v Sweden*, above footnote 29.

77. All alternatives to detention of asylum seekers, whether or not they restrict freedom of movement, must comply with a wide range of other human rights standards relating, for example, to humane standards of treatment and protection of children. It is an increasingly recognised principle of international law that States parties are bound by many of these obligations whether the alternative to detention is implemented within or beyond their own territory when it concerns a person who is within the power or effective control of that State.¹²⁵

78. There are also international standards related to alternatives to detention in the criminal justice field, which are referenced here in order to seek analogous guidance – for example, the Tokyo Rules, article 9(3) ICCPR¹²⁶ and article 40(4) CRC.

III. ALTERNATIVES TO DETENTION IN PRACTICE

A. Overview of alternative measures

79. This study reviews a number of alternative measures to detention, ranging from the least intrusive to the most enforcement-oriented. In doing so, it elaborates upon those enumerated in the UNHCR Guidelines on Detention.¹²⁷ Prior to listing the alternative measures covered by this study, however, it is important to mention ‘unconditional release’. Rather than categorising it as an ‘alternative’ within the list below, it should be regarded as the normative starting point against which all other measures ought to be compared in order to assess their legality (see above Part II on applicable legal standards). It is equally important to take account of the fact that while the below mentioned measures are viewed as alternatives to detention for ease of categorisation for the purposes of this study, it ought to be borne in mind that should any of the measures be applied unreasonably, unnecessarily, or disproportionately, or without due regard to individual factors, a particular measure could amount to an unlawful restriction on movement or an arbitrary deprivation of liberty.

80. The following alternatives to detention were encountered in the course of the present study:

- a) Release with an obligation to register one’s place of residence with the relevant authorities and to notify them or to obtain their permission prior to changing that address;
- b) Release upon surrender of one’s passport and/or other documents;
- c) Registration, with or without identity cards (sometimes electronic) or other documents;
- d) Release with the provision of a designated case worker, legal referral and an intensive support framework (possibly combined with some of the following, more enforcement-oriented measures);
- e) Supervised release of separated children¹²⁸ to local social services;

¹²⁵ HRC General Comment No 31, above footnote 27.

¹²⁶ Article 9(3), *inter alia*, highlights the use of non-custodial alternatives: ‘It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial...’

¹²⁷ See above footnote 2, Guideline 4.

¹²⁸ ‘Separated children’ are children under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal/customary primary caregiver/s. Separated children may be seeking asylum because of fear of persecution or the lack of protection due to human rights violations, armed conflict or disturbances in their own country. This term distinguishes these children from ‘unaccompanied minors’ because often a separated child arrives in the company of an adult but that adult may not necessarily be a suitable guardian or be able to assume responsibility for their care.

- f) Supervised release to (i) an individual, (ii) family member/s, or (iii) nongovernmental, religious or community organisations, with varying degrees of supervision agreed under contract with the authorities;
- g) Release on bail or bond, or after payment of a surety (often an element in release under (f))
- h) Measures having the effect of restricting an asylum-seeker's freedom of movement (that is, *de facto* restrictions) – for example, by the logistics of receiving basic needs assistance or by the terms of a work permit;
- i) Reporting requirements of varying frequencies, in person and/or by telephone or in writing, to (i) the police, (ii) immigration authorities, or (iii) a contracted agency (often an element combined with (f));
- j) Designated residence in (i) State-sponsored accommodation, (ii) contracted private accommodation, or (iii) open or semi-open centres or refugee camps;
- k) Designated residence to an administrative district or municipality (often in conjunction with (i) and (j)), or exclusion from specified locations;
- l) Electronic monitoring involving 'tagging' and home curfew or satellite tracking.

81. Most of the above alternatives are used either for the full duration of an asylum determination process and if necessary, through the pre-removal stage, or for only a portion of the process.

82. Alternatives to detention ought to be distinguished from the general safeguards of due process and other formal channels through which a detained asylum seeker may secure his or her release under a specific legal regime (e.g. automatic review of detention, appeal rights, set limits on the duration of detention, ministerial discretion, etc). There is, however, a very close relationship between the two – particularly in systems where detainees are permitted to apply for release on bail or bond, or where the necessity and proportionality and hence the lawfulness of the detention order is reviewed with reference to available non-custodial alternatives.

83. At their most basic, 'alternatives' are often simply those places where asylum seekers, including those who had been formerly detained, are permitted to reside. In this study, all centres not specified to be detention centres are to be presumed to be open or semi-open centres, meaning that they commonly allow the residents to leave the premises at will, for periods of time, albeit with notification to the managers. This study has identified a type of centre emerging in a number of countries, that is, semi-open centres where, for example, permission for day release remains at the discretion of the centre's management or where residents live in the same premises but under different rules. Their legal status is not always easy to determine, given that they may in practice operate as any other open centre with some restrictions on residents, but the legal framework may indicate that the residents are in fact 'detainees'.

84. In terms of legislation and regulation, models that treat decisions to apply alternative measures and decisions to detain as part of one continuum and one procedure are to be commended for the emphasis they place upon applying the tests of proportionality and necessity at every stage. A number of European countries, particularly the Nordic States and Switzerland, have legislation reflecting such a continuum. This is in line with principles of European human rights law. The Refugee Law of Lithuania contains an especially strong safeguard requiring a court to set a time limit, not exceeding twelve months, for the application of each alternative measure. Other legal safeguards relevant to detention are similarly applied to the enumerated alternative measures.

85. This continuum is also the foundation of New Zealand policy where, according to the New Zealand Immigration Service ('NZIS') Operational Instruction to immigration officers, both a decision to detain as well as any decision to apply alternative measures or to grant unconditional

release, is to be periodically and promptly reviewed in light of changing circumstances affecting an individual asylum seeker. The same approach is recommended in three alternative proposals to the current Australian policy of mandatory detention.¹²⁹ Each proposal foresees varying levels of restriction, against which an individual's likelihood of absconding should be constantly reviewed. These models require that the necessity of a rights-restricting alternative measure be questioned, in individual terms, as much as the necessity of detention.

B. Alternative measures in practice

86. The following section provides an overview of selected alternatives to detention primarily from the standpoint of their practical *effectiveness* in meeting those objectives that States might otherwise meet, legitimately or illegitimately, by means of detention. In particular this section looks at the success or otherwise of various alternative measures in preventing absconding and ensuring compliance with asylum procedures. There are two main difficulties with undertaking such a review. First, statistics are incomplete, and second, it is not always possible to identify the actual reasons for the success of a particular program. Having said this, however, some attempt is made to identify methods that appear to have a positive impact on appearance rates.

87. One of the most commonly cited policy reasons given by States for detaining asylum seekers or imposing other restrictions on their freedom of movement is to prevent absconding and, correspondingly, to ensure compliance with asylum procedures. As stated above, 'likelihood of absconding' or 'lack of cooperation' have been accepted by the Human Rights Committee as grounds for detention in individual cases provided that all other legal requirements are met.¹³⁰ Presumably, therefore, they are equally acceptable grounds for imposing lesser restrictions on an individual's freedom of movement. The usual legal tests justifying the imposition of such measures would need to be satisfied in each and every case (See Part II above). Prevention of absconding itself is cited as a ground for detention in the texts of several national laws and in certain States' internal guidelines and regulations for immigration officers, as well as informally by some governments as their over-arching reason for detaining, or restricting the movement of, asylum seekers.

88. There is no consensus on what may be, in policy terms, an acceptable rate of compliance with a refugee status determination procedure. In the criminal justice field, compliance figures for felony defendants who are released under non-custodial measures before trial usually range from 40-70%. This study, therefore, assumes that any alternative measure applied to asylum seekers to ensure their appearance that achieves a success rate over 80% can be considered 'effective'. Any improvement in the compliance rate that a specific alternative can make in comparison to the average rate at which other asylum seekers abscond in the same country, is considered worthwhile.

89. The present study, however, is hampered by a remarkable scarcity of official data, at least in the public realm, relating to the number of (non-detained) asylum seekers, and failed asylum seekers, who abscond. Only a few host countries keep records of these statistics in a comprehensive and systematic way, and most States do not even attempt to collect or compile them. In light of this

¹²⁹ See, The Human Rights and Equal Opportunities Commission, ('HREOC'), the Refugee Council of Australia, and Justice for Human Rights.

¹³⁰ This interpretation of 'likelihood of absconding' and 'lack of cooperation' as factors justifying detention was confirmed by the Human Rights Committee in *A v Australia*, above footnote 39, at para. 9.4. See also: Para 11(b), Summary Conclusions on Article 31 of the 1951 Convention relating to the Status of Refugees, November 2001, in *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, eds. Feller, Türk, Nicholson, Cambridge University Press, 2003, pp. 253-258. Also available on UNHCR website.

scarcity of statistical data this study often cites figures from those UNHCR offices that conduct refugee status determination procedures under the organisation's mandate, from academic studies, or from nongovernmental projects and lawyers who have tracked their own clients' actions. What national statistics are available usually do not distinguish between failure to appear at each of the various stages of the determination procedure, and failure to comply with a removal order – a crucial difference in terms of designing effective alternatives to detention and knowing when they can and should be relied upon to work. The scarcity of governmental statistics with regard to those who abscond severely weakens the empirical evaluation of one form of conditional release in comparison to another.¹³¹

90. The information in this study confirms the rather common sense conclusion that compliance of asylum seekers prior to receipt of a final decision on their claim is not a significant problem in the world's major 'destination' countries. People go to extreme lengths to enter these territories and to access their asylum systems, and have no obvious reason to disregard or abandon such systems so long as they have any hope of gaining legal status or some right to remain. The evidence suggests that alternatives to detention, including unrestricted stay in the community, are likely to achieve high rates of success in 'destination' States, at least until the final pre-removal stage, if applicable.

91. In a statistical survey of 76 countries relating to the first quarter of 2003, 20% (5,600 of 27,700) of all applications were closed for non-substantive reasons.¹³² From this figure it is apparent that most asylum applicants do not abscond prior to a rejection of their claim. An asylum seeker who may pose a flight risk in one country may pose none whatsoever in the country to which he or she is prevented from travelling (that is, his or her preferred final destination). Destination States should, therefore, be able to implement effective alternatives to detention, including unconditional release or admission to the community with only the minor duties to report addresses and appear for appointments. These alternatives ought to be implemented at least until their claim has been failed and they are required to be returned to their country of origin.

1. Bail, bond or surety

92. The terms 'bail', 'bond' and 'surety' are interlinked and are often used interchangeably. For the purposes of this study, the term 'bail' is used to denote a financial deposit placed with the authorities in order to guarantee the asylum seeker's future attendance for interviews during the processing of his or her case. This means that the sum of money is returned if the asylum seeker appears as required or it is otherwise forfeited. The term 'bond' is used to denote a written agreement, sometimes with sureties, guaranteeing the faithful performance of acts and duties, which may, in the case of an asylum seeker, include future attendance at interviews, inquiries and/or removal proceedings, and/or regular reporting requirements. The term 'surety' applies where a person vouches for the appearance of an asylum seeker and agrees to pay some or all of the agreed amount (the 'surety')¹³³ if the asylum seeker absconds. No amount is required to be paid upfront.

¹³¹ Appearance statistics are notoriously difficult to interpret since, in most places, no one can say whether a high percentage of appearances among those released was only attained because they were rightly designated as posing little flight risk, or whether a number of those who simultaneously remained in detention would also have appeared and complied if they had been released. Only pilot projects that experiment with the release of those designated as high flight risk cases can begin to produce data that answers this question.

¹³² Trends in RSD in 76 Countries (first quarter 2003), UNHCR statistics, 4 July, 2003.

¹³³ Note also that in some contexts the person vouching for the asylum seeker is also called the 'surety'.

93. The right to apply for release on bail, bond or surety is often closely linked to supervision by an individual resident or citizen, usually a family member, or by an organisation. In Canada, for example, where an independent adjudicator mediates between the immigration department and the asylum seeker to establish what conditions of release should be set, the State-funded Toronto Bail Program works to maximise the accessibility of bail by offering to supervise those who have no family or other eligible guarantors/sureties able to offer bonds. So long as the asylum seeker's identity has been established, and if they have met a number of other criteria, the Program may request release of a detainee, without bond, into its supervision. This supervision is conducted primarily by means of regular reporting requirements and unannounced visits to the asylum seeker's residence. The Bail Program has had an extremely high rate of success with its client base composed primarily of asylum seekers and persons found not to be in need of international protection, who would otherwise be regarded by the Canadian authorities as representing a high flight risk (91.6% compliance for Fiscal Year ('FY') 2002-2003).

94. It is also notable that several homeless shelters in Toronto volunteer their addresses at bail hearings of those asylum seekers who have nowhere to live, and that these shelters achieve equally high rates of compliance but without the intensive supervision undertaken by the Toronto Bail Program. The shelters merely support the former detainee with services, and often operate a curfew, but do not play any other surrogate enforcement role. They all ensure that the asylum seekers have legal counsel. Hamilton House, for example, reports that 99% of its residents have complied with the full asylum procedure; Matthew House reports that only three of 300 residents have disappeared from its premises in the past five years; Sojourn House reports that only two of 3,600 asylum seekers who have stayed there in the past six years have disappeared from its premises and from the asylum procedure. This suggests that asylum seekers in Canada, including those released on bail or bond, are generally compliant with the asylum procedure prior to receiving a final decision, especially when they are referred to competent legal representatives. The few individuals who absconded from these shelters were almost all persons known to have family in the United States. These shelters, however, usually do not see the asylum seeker through to the removal stage and so cannot comment on the compliance rate of failed asylum seekers with orders of deportation.

95. In the United Kingdom, there are two types of bail available to immigration detainees. They may apply to either (a) the UK Immigration Service or (b) an adjudicator/the Immigration Appeals Tribunal, although there is no automatic right to a bail hearing. In addition, strict means and merits tests applied to applications for legal aid contribute (along with the sheer difficulty of contacting a lawyer while in detention) to making bail an inaccessible remedy for many detainees. In response to this, two nongovernmental organisations, Bail for Immigration Detainees ('BID') and the Bail Circle, work to bring some equity to the system by offering bail, though their services are overwhelmed by demand. A British academic study that monitored 98 asylum seekers released on bail to BID (and therefore considered relatively 'high flight risks' by the UK Immigration Service) between July 2000 and October 2001, found that only 8-9% attempted to abscond. The median amount of sureties paid in these cases was only £250 and they were released on standard conditions, that is, notification of change of address and regular reporting. UK ports of entry indicate that of those granted 'temporary admission' (that is, they are not detained upon entry) only 3-12% of asylum seekers subsequently fail to reappear for their appointments. Again, this suggests not that BID improves the rate of compliance dramatically by its actions – indeed they do not aim to monitor their clients post-release – but rather that BID (through provision of legal representation to asylum seekers at their bail hearings) facilitates the release of asylum seekers. There is no information from the UK Home Office on what constitutes a 'normal' risk of absconding.

96. Other research in the UK suggests that families with children are even less likely to abscond due to incentives to remain in a system which, for example, provides free health care and education. As with Canada, the high compliance rates in the UK may be due to the general conditions of the country, in particular that it is a 'destination' rather than a 'transit' State for the vast majority of asylum applicants and State support is available throughout the procedure (at least for those who apply for asylum at ports of entry). The United Kingdom, furthermore, has a distinct bail regime – referral to the Special Immigration Appeals Commission – to examine detention based in any part on the grounds of a threat to national security.¹³⁴ The concept of a specialised body competent to handle evidence relating to such cases, and to grant release on bail and other conditions, is worth noting.

97. In Japan, asylum seekers may be released from detention on 'provisional release', which can be granted on a discretionary basis, so long as the detainee can present evidence of financial self-sufficiency, alternative accommodation, and can post a bond. The maximum amount requested as bond/bail is 3 million yen (US\$25,000-30,000). The number of detainees released to date has been too few for their compliance to be analysed statistically, but of those asylum seekers who apply while lawfully present in Japan and who are therefore not detained, 96% complied with the procedure in 2001 and 95% in 2002. These are especially impressive figures in a country where the recognition rate has been very low and where several serious inadequacies in the current refugee status determination procedure are known to exist. The system does favour wealthier asylum seekers.

98. As a model for how the international exchange of experience relating to bail provisions might work, the Open Society and Soros Foundation-Latvia justice initiative in Latvia is of interest.¹³⁵ It aims to promote bail supervision as an alternative to pre-trial detention. Since experience from transitional democracies indicates that it is usually unhelpful to establish a separate national probation service, the model developed in Latvia uses the local municipality as the supervisors of community service sentences. Special units of supervisors have been established and these supervisors have attended a training conference of international experts.¹³⁶

99. The Vera Institute of Justice was invited by the United States' government to conduct a three-year pilot project (1997-2000) to supervise the release on parole of selected detainees, including asylum seekers, with the intention to increase their rate of appearance. Vera's Appearance Assistance Program found that 84% of asylum seekers who were put under 'regular supervision' (mainly support services and referrals, with reminder letters and telephone calls) appeared for all their hearings, as compared to 62% of asylum seekers whose actions post-release were tracked as part of a non-participant control group. However, it should be noted that there was a subgroup in the non-participant group who were intent on transiting to Canada, and were it not for this subgroup, the non-participants would have appeared at a similarly high (over 80%) rate. Vera also found that asylum seekers under 'intensive supervision' appeared for their hearings at a high rate, but not higher. Based on these results, the Vera Institute concluded that asylum seekers with decisions still pending do not need to be detained to ensure their appearance, but moreover '[t]hey also do not seem to need intensive supervision.' The high (84%) rate of compliance revealed by Vera's work is

¹³⁴ Under the Anti-Terrorism Crime and Security Act 2001, the UK government may detain a 'suspected international terrorist' under immigration powers, without criminal charge, and this detention may extend indefinitely if the person can not be removed because his removal would breach article 3 ECHR: a measure which has required the United Kingdom to enter a derogation from article 5(1) ECHR.

¹³⁵ Latvia has the second highest rate of pre-trial detention in Europe (after Albania).

¹³⁶ University of Nottingham Human Rights Centre, *The Development of Alternative Sentences to Imprisonment in Ukraine: A Concept Paper*, May 2003, p.17.

mirrored by US Department of Justice statistics reported to this study for FY2003, which showed the nationwide rate at which non-detained asylum seekers appeared for their hearings to be 85%. This figure relates only to those whose claims were examined by an Immigration Judge – in other words, those who claimed ‘defensively’ after being apprehended for illegal presence and others whose claims were initially rejected by administrative adjudication. The figure, in other words, would undoubtedly be even higher if those who claimed asylum ‘affirmatively’, while legally in the US, were included.¹³⁷

100. The Vera findings are also confirmed by the experience of smaller, nongovernmental projects in the United States. These projects have provided volunteer sponsors/sureties and a fixed place of accommodation which asylum seekers can offer at their parole hearings. This has created opportunities for asylum seekers to benefit from alternatives. International Friendship House in Pennsylvania, for example, has had one resident who absconded (of some 100) in the past four years, and a community ‘circle’ of sponsors in the same area has housed 45 asylum seeker parolees over the past five years, none of whom has absconded. The Lutheran Immigration and Refugee Service managed an experimental project in 1999 which allowed the parole of 25 Chinese asylum seekers without sureties, and achieved a 96% appearance rate for that small but ostensibly ‘high flight risk’ group. The Refugee Immigration Ministries in Boston similarly reports that they have sponsored the parole of 45 asylum seekers over the past three years, all of whom have complied with the conditions of their parole and appeared for their hearings. It should be noted that only one of the latter 45 claimants was not granted asylum, which is certainly higher than the national recognition rate, and reflects the fact that the organisation generally chooses to support the parole of those persons it considers to be most in need of protection.

101. Incentives to comply with the asylum procedure analogous to those in ‘destination’ States can be created in predominantly transit countries; for example, if asylum seekers or refugees who are released on bail can shortly expect, once recognised, to be resettled to other countries. In Thailand, for example, there are very high bond amounts demanded and a great deal of ‘red tape’ in the bail application procedure, but a small number of recognised refugees have secured release on bail and to date none of them has absconded. This is considered to be because they have the tangible incentive of awaiting overseas resettlement.¹³⁸

2. Reporting requirements

102. In some countries, reporting is required of all or most asylum seekers not in detention. In those cases where this constitutes a limitation on an individual’s right to free movement within a country (that is, frequent reporting in person), legally it needs to be justified as necessary and proportionate to its stated objectives in each individual case. In the United Kingdom, the traditional bail condition that former detainees should report to the police has been combined, under recent legislation, with a wider duty for all asylum seekers receiving State support but living independently to report to special ‘reporting centres’. These centres monitor asylum seekers living within a 25 mile or 90 minute radius, but a ‘mobile centre’ has also been established. The authorities may also visit an asylum seeker’s accommodation where reporting is prohibitively difficult. No information is yet publicly available as to whether these new UK reporting requirements are increasing the national rate of compliance with the asylum procedure, though it is

¹³⁷ See US Country Section for explanation of the distinction between ‘defensive’ and ‘affirmative’ asylum applications.

¹³⁸ Bail is not available, however, to asylum seekers awaiting determination of their claims by UNHCR – a group very commonly arrested on grounds of illegal entry/stay – nor is it available to those detained in the ‘special detention centre’ near Bangkok.

believed that compliance is very high due to the fact that receipt of State assistance is conditional upon it.

103. Other countries, such as France, Luxembourg and South Africa, require asylum seekers to present themselves in person to renew their identity documentation. Depending upon the frequency with which an asylum seeker must renew his or her papers, it may form a kind of *de facto* reporting requirement. Luxembourg requires all asylum seekers to present themselves every month at the Ministry of Justice where they renew their asylum permits, needed to access monthly financial support. South Africa similarly requires asylum seekers to renew their permits every month, usually at the original office of application. This process is not for the purposes of accessing support but simply to check that they remain available. South African law also provides for the imposition of reporting requirements, however, they are not applied in practice.

104. A larger number of countries have provisions that may require particular released asylum seekers to report to the police or immigration authorities at regular intervals. Often reporting obligations are a condition of release on bail or bond, or 'parole', as in Thailand, Japan, Canada, and the United States. In Ireland, recent legislation introduced reporting requirements as one condition of release that may be applied. Should the condition be breached, it could carry a penalty of a fine or imprisonment. These reporting requirements may be seen as an additional restriction placed upon those asylum seekers who previously would have been released into the community without restriction, to better ensure their compliance with the system. They aim to tackle a comparatively high rate of non-compliance in Ireland (35% of asylum seekers failed to appear at the first instance in 2002, and 30% in 2003, as of November). In Australia, on the other hand, refugee advocates call for greater use of reporting (a condition of release on a particular class of visa) as a more lenient measure than the current system of mandatory detention of all asylum seekers having entered Australia without authorisation. Between February 2001 and February 2003, a nongovernmental organisation in Melbourne, named Hotham Mission, conducted research to track 200 asylum seekers (111 'cases' including families) living in the community on Class E bridging visas, of whom 31% were former detainees. Hotham Mission reported that not one asylum seeker of the 200 absconded during the two year period, despite the fact that 55% had been awaiting a decision for four years or more, and despite the fact that 68% were found to be at risk of homelessness or were in fact homeless.¹³⁹

105. As with most alternatives to detention, the possibility of imposing reporting requirements appears to be underutilised as a measure to be considered prior to and in place of detention, particularly in specific cases where there is deemed to be some moderate degree of flight risk. In Austria, for example, the law provides for *Gelinderes Mittel* (translated as 'more lenient measures'), which in practice means the requirement to report every second day and also to live in an assigned residence, with the threat of detention if the measures are breached. The authorities are obliged to apply such measures to minors, unless they can prove that such measures would be insufficient. During 2003, however, measures of a more lenient nature were applied to only 622 aliens (not solely, and probably not mainly, asylum seekers) in Austria. Statistics regarding the effectiveness of these measures in terms of ensuring compliance are not available. In Greece, weekly or fortnightly reporting requirements ('alternative restrictive conditions') are more explicitly stated to be applicable only to cases of vulnerable persons who may be released from detention by court order. UNHCR and nongovernmental advocates are involved in referring such cases. This study has received no information on the frequency of these orders or the compliance of those under them.

¹³⁹ In FY1995-97, no asylum seeker absconded from reporting requirements in Australia, and in FY1994 only 4.3% of asylum seekers breached their reporting requirements and 1.6% forfeited their sureties.

106. Similarly, in Scandinavia, the impressive lists of ‘alternatives to detention’ contained in national legislation are not, according to refugee organisations in those countries, applied in practice. In Denmark, the Aliens (Consolidated) Act contains reporting requirements that are, according to Danish asylum lawyers, very rarely applied to their clients. The Aliens Act of Finland also contains reporting requirements seldom used or even considered in practice, though the principle of proportionality (to limit each alien’s rights no more than necessary) is explicitly stated. The same is true in Norway. The conditions for placing an alien, including an asylum seeker, in detention and keeping him or her under supervision are all part of a single structure of considerations under Section 5, Chapter 6 of the Aliens Act of Sweden. Again, the starting point for the authorities is that they should not take more restrictive measures than are necessary in an individual case, but in practice certain regions of the Swedish Migration Board impose the measures of reporting and supervision in lieu of detention far less frequently than others. Such non-implementation of alternative restrictions is not a pressing policy concern so long as orders of detention are also relatively rare, but if alternatives are not fully considered by decision makers a detention order may be unlawful. The same high standards of excellent legislative clarity, combined with lack of implementation to date, perhaps due to lack of administrative capacity, appear to have been exported to Lithuania and are paralleled by a similar non-implementation of ‘designated residence’ provisions in Romania.

3. Open centres, semi-open centres, directed residence, dispersal and restrictions to a district

107. In Europe, asylum seekers awaiting first decisions on their claims are generally not detained. The measures described below, therefore, are generally part of national reception arrangements, not alternatives to detention *per se*. They are described to demonstrate that well-organised reception arrangements can have the effect of improving compliance with the asylum procedure. Open centres, semi-open centres, directed residence, dispersal and restrictions to a specified district are measures so frequently used in combination in European States that their effectiveness cannot be evaluated separately.

108. For the purposes of this section, it is important to distinguish between ‘reception centres’ and ‘accommodation centres’. ‘Reception centres’ refers to collective centres where asylum seekers may stay temporarily soon after arrival or application, whereas ‘accommodation centres’ are collective centres where they reside for either the partial or full duration of the asylum procedure. In practice, such centres can range from a camp accommodating hundreds to a small hostel accommodating no more than four or five persons – for example, a shared house, a bail hostel staffed with a rota of supervisors, or a night shelter run by a charity or church.

109. Germany operates a reception system that includes allocation to large collective accommodation centres as well as restrictions on movement to the district of the federal state in which the centre is located. Exceptions to this rule are authorised. Practice varies by federal state, but generally asylum seekers are not supposed to travel outside their district of assigned residence (some districts are no larger than 15 sq km) without special permission from the competent local aliens authority. They are subject to detention as a penalty if they do so. While the number of asylum seekers in Germany who fail to appear for their interviews is negligible (less than 5%), it is debatable whether this is a result of the restrictions on their movement or a result of the comprehensive provision of social support and the fact that Germany is a ‘destination’ State where asylum seekers want to remain. Switzerland operates a similar system of dispersal to its Cantons and residence in open centres for those who require State support. In contrast to Germany, however, asylum seekers can travel outside their allocated Canton without requesting permission (but do so at

the risk of missing a notification on their case, and hence perhaps a deadline for lodging an appeal). Moreover, the Swiss authorities may view leaving an assigned centre without a forwarding address as evidence that the person will fail to cooperate with deportation at a later stage, and hence as evidence in support of a detention order at that time.

110. Bulgaria operates open centres where residents must request permission for any absence of longer than 24 hours. In-country applicants must register at the centres even if not residing there, and asylum seekers who do not require State support may live independently. The centres are therefore intended more as a way of supporting destitute applicants than of ensuring compliance. Thus, in the decade between 1993 and 30 December 2003, 41.5% of asylum seekers in Bulgaria absconded and had their claims discontinued, a fact that can arguably be attributed to it being largely a 'transit' State during that period (with recognised refugees also disappearing west due to limited integration prospects). In Hungary, there used to be a system of fully open centres, but this was modified because of a 70% absconding rate; this was during the period when Hungary was predominantly a transit State. Now there are semi-closed centres, with an initial two to four weeks of 'quarantine' detention (for medical, identity and other checks) followed by a period of accommodation during which freedom of movement is not formally restricted. Asylum seekers are obliged to reside in these centres if they require State support. There are also several institutions, called (misleadingly, as they are run by the aliens police) 'community shelters', to which both asylum seekers and persons who have been granted a protection status may be released, often after spending the maximum period of twelve months in detention. Conditions in some of these 'shelters' have been found inadequate and unsafe by independent monitors in recent years. Perhaps for this reason, 65% of all asylum decisions in Hungary were 'discontinued' in 2002; a higher rate of absconding than in some neighbouring States which also run open centres. In Poland, receipt of State support is conditional upon residence in an open centre where there is an obligation to inform management of any absence of over 48 hours. An absence can extend for no more than 72 hours in total.

111. In Denmark, all State assistance is conditional upon residence in open centres run by the Danish Red Cross (and upon cooperation with the asylum procedure, unless the applicant is particularly vulnerable). The centres are located in rural areas and residents must be present to collect financial assistance every fortnight, but there are no other restrictions on freedom of movement to ensure compliance with the procedure. Staff leave the centres unattended after 5pm every night. In 2002, there were no fewer than 4,205 departures from Red Cross centres, including 147 by children.¹⁴⁰ As of November 2003, there have been 4,365 departures. These figures do not only represent asylum seekers who are absconding: many were multiple departures of persons who stayed for short periods with friends or family and then returned, others would be voluntary returns to countries of origin, while the majority is believed to represent asylum seekers transiting onwards to Sweden or Norway. Sweden receives most asylum seekers in furnished self-catering flats ('group homes'¹⁴¹) for families or for groups of single asylum seekers. It detains asylum seekers very selectively and, as stated above, also applies other alternative restrictions very rarely. Between January and September 2003, of 23,507 asylum claims received by Sweden, and 22,314 claims processed, only 2,810 were classed as 'annulled'. This latter figure represents the upper limit to the number of asylum seekers who could have absconded during the course of the procedure, but also includes voluntary returnees and cases closed for other miscellaneous reasons. Again, as a

¹⁴⁰ For a rough sense of what percentage this represents, a snapshot figure in October 2002 counted 7,686 persons under Danish Red Cross care.

¹⁴¹ Note that the system of 'group homes' is commonly used in Sweden for the disabled, drug rehabilitation, juvenile justice and for children and mothers released from prison, therefore, the system for asylum seekers is a product of a wider social welfare tradition.

‘destination’ State, residence in the community without restriction is shown to be an effective alternative, ensuring compliance in the majority of cases.¹⁴²

112. In Greece, there are open reception centres and several hostels run by the Red Cross (three centres), *Médicins du Monde*, and other agencies (ELINAS, Social Solidarity, Voluntary Work of Athens). If an asylum seeker is assigned to the centre in Lavrio, he or she must obtain permission for any absences, and if he or she leaves without permission, his or her asylum claim will be suspended. There are some problems with dispersal and assignment to the more remote centres, with people choosing instead to move to Athens despite their destitution. In 2002, when there were 5,600 new asylum applications in Greece, 697 applicants (12%) failed to appear for their interviews at either the first or second instance and, as a consequence, had their cases suspended then later closed. Similar percentages have occurred over the past several years. Despite the fact that Greece is a major country of transit, this is a relatively low rate of non-appearance and suggests that provision of adequate reception assistance, even in a very open system, can effectively raise the rate of procedural compliance.¹⁴³

113. Similarly, in Italy in 2001, the Ministry of the Interior, UNHCR and the Association of Town Councils together established a pilot programme, the National Asylum Programme (*Plano Nazionale Asilo* – ‘PNA’), for the reception of asylum seekers. It aimed to provide accommodation for 2,000 asylum seekers in a network of 60 councils and to keep them from absconding by means of an incentive of adequate social provision. At the time of undertaking the research, some 1,300 places are filled by asylum seekers, but this is only a small percentage of the total number in Italy who require accommodation. Residence in such accommodation is therefore entirely optional. In 2003, some 45% of all asylum seekers in Italy subsequently failed to appear, whereas those accommodated under the PNA showed a much higher appearance rate for their appointments and interviews. If nothing else, the authorities had a reliable and stable address at which to contact these applicants.

114. Other countries have centres containing a mixture of detainees and non-detainees, but usually in separated sections. Finland, for example, has a detention centre in Helsinki for illegal aliens, including selected asylum seekers and failed asylum seekers. There are currently 30 places, but the centre will move premises in 2005 and add another 30 places for an ‘open ward’. Accommodation in the ‘open ward’ will be an alternative to detention but nonetheless a restriction in comparison to the current regime of fully open centres, which are run by the State, local municipalities, or the Finnish Red Cross. Asylum seekers receive State support even if they do not live in these centres. There are no restrictions on freedom of movement and no legal obligations on staff to inform the police of an asylum seeker’s whereabouts. The only *de facto* restriction comes from prolonged residence in sometimes remote locations. No official statistics regarding the rate at which asylum seekers fail to appear in the procedure are published, but the Finnish Refugee Advice Centre estimates that certainly no more than ten per cent abscond.

¹⁴² In Norway, asylum seekers are dispersed to remote open centres, but this system is designed in order to limit the social and financial burden on Oslo rather than to promote compliance with the procedure. Since Norway is a ‘destination’ State, the latter is not a matter of concern, at least not prior to the issuance of deportation orders.

¹⁴³ Spain also has a centralised system for the allocation of asylum seekers to entirely open accommodation for up to six months or, in some cases, a year. Almost all asylum seekers stay in the Spanish asylum procedure, despite its position as a major transit country, because – according to nongovernmental agencies working in Spain – those who wish to transit Spain illegally are seldom detained and so do not need to claim asylum as a defensive means of either evading detention or delaying deportation. This may change in the future, as a result of EU harmonisation processes and the Dublin Convention; if so, non-compliance rates are likely to rise accordingly. For further information on appendix on Spain.

115. In Lithuania, meanwhile, the Pabrade Foreigners Registration Centre contains both detainees and non-detainees. Oddly, therefore, it is both a place of detention and an alternative to detention. There is segregation of detainees and non-detainees, but similar services are provided to both groups. Detainees are only able to exit with permission and escort, whereas those not detained are able to leave unsupervised for a period of up to 72 hours upon notifying the management. For those asylum seekers in the full determination procedure and for children, accommodation in a more open centre (Rukla Reception Centre) is also possible, and those not in need of State support may live independently with relative ease. While there are no specific statistics on compliance with the Lithuanian system (and the number of applicants in total is currently small), it can be noted that only ten per cent of cases in 2002 and 40% in 2003 were classed as 'terminated'. As cases may be terminated for reasons other than absconding, this represents the upper limit of those that might have done so, and compares well with Hungarian figures, for example. The percentage of claimants who are detained and therefore unable to abscond must of course be taken into account when directly comparing the effectiveness of national systems. Also, the relevant legislation in Lithuania is only two years old, so it may be too soon to fully evaluate the regime's effectiveness.

116. In Austria, asylum seekers are dispersed to the nine provinces and they lose all rights to care and maintenance if they leave their designated accommodation centre, sometimes in quite remote locations without counselling or other services, for more than three days. Exceptions to this regime for vulnerable persons are permitted but rarely granted. Asylum seekers who are not in need of State assistance may live wherever they like. This lack of restriction for self-sufficient applicants suggests that the Austrian reception system is primarily designed as a system of burden sharing between the provinces, rather than as a measure to ensure the closer monitoring of asylum seekers' whereabouts. In practice, however, as the vast majority of asylum seekers do require State support, this is one of the policy's effects. In France, there are open centres with waiting lists of several months so their accommodation system cannot be effectively used to keep track of most asylum seekers. French refugee advocates believe that asylum seekers who cannot access accommodation are forced into itinerant lifestyles with no fixed address, which raises the national rate of non-appearance.

117. In Belgium, the centralised 'Fedasil' system, which provides asylum seekers with accommodation, is not specifically designed to improve compliance. The different types of accommodation provided – collective centres or private flats – are allocated based on need rather than on an asylum seeker's risk of absconding, and an asylum seeker is not considered to have absconded until he or she fails to appear for five days or fails to collect his or her financial assistance. In accordance with the incoming EU Directive, judicial oversight of a decision to assign someone to a place of accommodation is available, so that an applicant can be granted an exemption in exceptional circumstances. A large percentage of asylum seekers are believed to abscond during the Belgian asylum procedure,¹⁴⁴ though far fewer in the earlier stages now that the transit route to the UK has been made less accessible. In the Netherlands, asylum seekers who are not kept in the accelerated procedure are dispersed to large reception and accommodation centres. Residents must report to a centre's administration regularly, request permission for any absence, and if a resident is absent for more than three days then his or her place is withdrawn and his or her asylum application considered void. If the centres are full, which has not been the case recently, an asylum seeker may live independently and report daily. Until June 2002, permission to move out of the centres was also granted after six months, if all interviews were completed. No data is available from the Dutch government with regard to the number of asylum seekers who abscond or fail to appear in the

¹⁴⁴ National figures are not publicly available.

course of the main procedure. The availability for removal of persons found not to be in need of international protection is felt to be a far greater problem.

118. The United Kingdom has previously received asylum seekers into the community, but in future all those who request State support will be required to reside in large collective accommodation centres. As in Norway, this is more a cost-sharing measure, based on dispersal away from London and the southeast, rather than an alternative to detention, though the government did promote its new policy in terms of the beneficial effects that such centres, combined with electronic identity cards, would have in terms of controlling applicants' whereabouts. The fact that the same policy statement also announced the doubling of detention space, however, makes British refugee advocates sceptical that the collective centres will reduce the incidence of asylum seekers whom they consider are being unnecessarily detained. The British Refugee Council has proposed an alternative reception model, based on smaller scale centres and a case-management system, which they believe would meet all the State's legitimate concerns while allowing greater freedom to residents and avoiding the problems of large communal institutions.

119. In New Zealand, an innovative approach to collective accommodation and directed residence has been taken at the Mangere Accommodation Centre. This centre holds asylum seekers under orders of detention but it does so alongside housing quota refugees (those resettled from overseas via UNHCR). 85% of asylum seekers detained in New Zealand in the first year of New Zealand's new detention powers have been sent to Mangere. The only differences in the control of those detained and non-detained are: detainees must request permission to leave the centre during the day, as opposed to notifying the management of an intended absence, and detainees may not stay away overnight while the quota refugees may. To date, permission for day release into the community has never been denied and only 5% of residents are supervised during day release. Nonetheless, for those detained, any breaches in the centre's rules may be punishable by transfer to remand prison. Only one of 159 asylum seekers 'detained' in Mangere since September 2001 has absconded and nobody has yet needed to be transferred to remand prison. The environment of the centre, where specialised staff treat detainees and refugees alike with dignity and respect, is cited as a factor in its successful record. In part, this must also be attributed to New Zealand's relatively high recognition rates and the fact that the Mangere detainees receive prioritised processing, so stay at Mangere is usually for around six weeks and a prelude to permanent integration. Onward movement out of New Zealand is neither geographically feasible nor desired by asylum seekers.

120. In Romania, an asylum seeker may be accommodated in a reception centre if he or she cannot afford to rent a flat. The asylum seeker's movement is restricted either to the city of Bucharest or to the province of their registered address in so far as permission must be requested for any travel outside that city or province. The number of asylum seekers in 2003 who continued to abscond and transit west remained significant, but reportedly decreased in comparison to 2002.¹⁴⁵

121. In South Africa, for the past few years, there has been debate regarding the possibility of opening such collective centres – in practice, rural camps – for asylum seekers. The centres would be intended as a deterrent to irregular movement and economic migrants who claim asylum, but there is no evidence that collective centres are needed for either administrative efficiency or to reduce a high rate of absconding during the determination procedure.

122. While the grounds of establishing identity and protecting national security are the least contentious of the stipulated reasons for detaining asylum-seekers or refugees, the verification of

¹⁴⁵ Information provided by UNHCR. Government statistics are not available.

identity takes place successfully within open reception centres in a number of countries: for example, in Finland and in the majority of (non-airport) cases in Germany. In Romania, the Refugee Law permits the competent authorities to order an asylum seeker to live in a 'designated' place, on national security or various other specified public order grounds, for the entire duration of the asylum procedure. This provision is not implemented in practice.

4. Registration and documentation

123. While registration of asylum seekers is common practice in most Western countries, its increased use in several African States has reduced the incidence of arbitrary detention of undocumented asylum seekers. Advances in biometric technologies are currently transforming the nature of identity card systems, both for citizens and aliens, and it is hoped that these heightened internal controls will reduce the need for asylum seekers to be deprived of their liberty. Examples of such positive reforms include: the relative openness of refugee settlements in Uganda and the issuance of refugee identity cards there, the use of biometric identity cards in Zambia and the efficiency of its registration programme, as well as the willingness of the government of Kenya to move away from an inflexible encampment policy towards one where exit permits from camps, issued by UNHCR, are endorsed by the authorities, and where urban sweeps of illegal migrants no longer put unregistered asylum seekers at risk of detention and deportation.

124. In Bulgaria, a 1999 agreement to secure the release of registered asylum seekers protects them from being treated as illegal migrants and, at the end of 2003, the State Agency for Refugees established a mechanism for issuing identity documents on the day after registering the asylum application, which is expected to reduce the incidence of wrongful arrest. Since mid-2003, Tibetans seeking asylum in Nepal, arrested for unauthorised entry, are directly released from police custody upon UNHCR's intervention, without having to go through the Department of Immigration and therefore without being fined or charged visa fees. Such asylum seekers are temporarily accommodated at the Tibetan Refugee Reception Centre, near Swayambunath on the outskirts of Kathmandu, while they are processed.

125. Deposit of travel and identity documents is an effective alternative to hinder some applicants who are in transit or who use the asylum channel as a temporary means of entry without a visa, only to return home in the middle of the procedure after having perhaps worked illegally for a short period. Asylum lawyers in Hungary, Poland, Austria, Luxembourg, Canada and Norway all report that this most simple and cost effective of alternatives is also highly effective in terms of preventing the above-mentioned practices and monitoring those who travel with their own identity documents. Of course, many asylum seekers do not.

5. Release to nongovernmental supervision

126. In the United States, the Vera Institute and now a company named Behavioral Interventions Inc. are nongovernmental entities contracted to conduct programmes of 'supervision' with as much of an enforcement as welfare ethos (see above summary of the Vera Institute's results). Elsewhere, nongovernmental agencies have been given 'custody' of a released detainee as a pragmatic method of releasing vulnerable persons (e.g., the sick, the elderly, separated children, etc.) who have become, in fact, too great a liability or problem for the State to detain and who pose little risk of absconding. Often, in transit States where asylum seekers are arrested among other illegal aliens, this arrangement is supported by UNHCR. In Mexico,¹⁴⁶ for example, the nongovernmental

¹⁴⁶ There is no country section in relation to Mexico. Information received from *Sin Fronteras*.

organisation *Sin Fronteras* has successfully advocated for the release of particular vulnerable individuals and taken on some informal responsibility for them after release. In the Philippines, where detention is used only exceptionally, release to the community is coordinated by UNHCR's implementing partner immediately following an asylum seeker's registration with the Department of Justice. Of 52 asylum seekers whose claims were received or pending in the Philippines in 2003, none absconded.

6. *Electronic monitoring and home curfew*

127. Electronic monitoring or 'tagging' is a system whereby an electromagnetic device (sometimes called a 'Personal Identification Device' or 'PID'), which usually looks like a large black watch, is attached to a person's wrist or ankle. This tag emits a signal which is received by a box-shaped device attached to their home telephone, so the authorities can ring that number on an automated system and tell whether or not the person is within a certain radius of their home telephone. It is a means, therefore, of checking on the enforcement of a home curfew between certain, specified hours. Such a system may be used alone or in conjunction with other forms of traditional supervision, such as an assigned case-manager (in the criminal justice field, a probation officer).

128. In the criminal justice field, electronic tagging has gone through three phases of development.¹⁴⁷ It is now well established in the first three countries in Europe to have experimented with it (Sweden, the Netherlands and England/Wales), whereas Belgium, Portugal, Scotland, Spain and Switzerland are in the second phase of attempting to implement nationwide or regional schemes, and France and Finland are still in the pilot programme phase. This is of interest in so far as alternatives in the immigration detention field often trail developments in the criminal justice field. As of March 2003, 9,200 offenders were being tagged on a daily basis in Europe, but no asylum seeker has yet been electronically monitored.¹⁴⁸

129. The first trials of electronic monitoring of asylum seekers, in conjunction with home curfew, are currently being undertaken in the United States.¹⁴⁹ Pilot projects have been run in Miami, Detroit, Seattle and Anchorage; the implementation of the project in Miami has raised notable criticisms from refugee advocates there. No official information is yet available on the compliance rate of those monitored, though it has been reported that no one has yet been re-detained in Miami as a consequence of violating their curfew. Congressional funding will now extend the use of electronic monitoring to other cities in the US. As of March 2004, it is reported that the contract for

¹⁴⁷ See, 'Electronic Monitoring in Europe', 3rd CEP workshop, 8-10 May 2003 at Egmond aan Zee, the Netherlands.

¹⁴⁸ In England/Wales, the private sector is exclusively responsible for day-to-day operation of electronic monitoring ('EM'), including breach proceedings in courts. The British Curfew Order and Home Detention Scheme is currently handling approximately 70,000 people. In Belgium, the public sector is exclusively responsible for EM and has dealt with 1,200 prisoners so far. In Sweden, 400 prison places (ten small institutions) have been closed and replaced with EM, with a cost saving of 90 million Swedish Kroner. In the Netherlands, there is a capacity of only 200 for EM, and it is only ever half used. In Spain there are 3,000 early releases from prisons to EM per year. In France, there are nine local pilot projects to test EM but daily handling only about 100 people total. In Germany, the Federal State of Hessen has completed an EM pilot project – it is considered a 'last chance' community penalty. In Switzerland, pilot projects on EM are running in six Cantons. Evaluation results will be available in 2004. In Portugal, there is one pre-trial bail scheme involving EM. In Italy, fewer than 100 cases of EM have been applied, though the original target was 3,000.

¹⁴⁹ By way of background with regard to electronic tagging of criminal offenders, at present in the US, the daily average caseload of electronically monitored criminal offenders is 70,000-100,000 but could be as high as 150,000. Satellite tracking by Geographic Positioning Systems ('GPS') is being applied to a further 1,500-2,500 individuals at any point in time (e.g., in Florida, run by Pro-Tech Monitoring since 1997). Altogether 160 jurisdictions in 30 US states are now using satellite-tracking schemes. This new technology will make other electronic monitoring technology obsolete. It is currently double the cost of standard electronic monitoring but these costs are rapidly falling.

these further pilots will go to a private company named Behavioral Interventions, Inc., which has previously implemented electronic monitoring in the criminal justice field.

130. It is notable that, according to Department of Justice figures, comparable data for offenders and alleged offenders in the criminal justice field has achieved, at best, the same rate of compliance as paroled asylum seekers in the United States. Paroled asylum seekers are without any intensive monitoring or supervision. It is, therefore, highly questionable whether, for the overwhelming majority of asylum seekers who have every incentive to complete the US asylum procedure, the use of such an intrusive and stigmatising form of supervision can meet the tests of necessity and proportionality required by international law. Moreover, the extent to which monitoring is conducted (e.g., how frequently the asylum seeker is required to telephone into base and thereby affecting their ability to leave their house, etc.) could transform this alternative measure into a form of detention under international law. In the event that this program continues, it is hoped that preference will be given to less restrictive alternatives, such as another form of electronic monitoring – namely, voice recognition technology to facilitate monthly reporting requirements – under the new Intensive Supervision Appearance Programme in the US.

131. One of the problems with electronic tagging is that it is technically only applicable to persons who can stay in private homes, so they are usually people with family and community ties and who therefore are strong candidates for parole in any case.¹⁵⁰ It is simply unsuitable for destitute asylum seekers or those residing in large collective centres.¹⁵¹ For those who are not deemed high flight risks, the stigmatising and negative psychological effects of the tags are very likely to be disproportionate to the risk posed.¹⁵² US officials have said that they would like to apply tagging to all asylum seekers living in the community, while advocates question the necessity of such monitoring on the basis of general evidence that few asylum seekers (in 2003, at the very most, fifteen per cent) are likely to fail to appear and because of what they believe to be the low flight risk of individual clients. However, advocates concede that if monitoring were able to secure the release of demonstrably ‘high flight risk’ individuals who would not otherwise be released, it could be used as a preferable alternative. However, if the State is not the final destination for an asylum seeker, the technology is likely to prove impractical, as the expensive devices can be removed or destroyed by those determined to transit elsewhere.

132. In November 2003, the Government of the United Kingdom was the first in Europe to propose electronic tagging of persons to be deported, including failed asylum seekers, over the age of eighteen years. A UK Home Office evaluation in 2001 reported 90% compliance with electronic monitoring of criminal offenders, but it should be noted that costs were extremely high (£1,300 for an average 45 day curfew),¹⁵³ while research from the South Bank University in London revealed

¹⁵⁰ By way of analogy: A pilot scheme of home detention with electronic monitoring has been operated for offenders in New South Wales, Australia since 1992. Section 4(2) of the Home Detention Act 1996 (NSW) states that it is not aimed at detaining those offenders who would otherwise be sentenced to an entirely non-custodial sanction. See The Law Reform Commission website - Lawlink NSW: Report 79 (1996) Sentencing – No.7: Home Detention.

¹⁵¹ Voice recognition technology (a form of electronic monitoring which is far less intrusive and restrictive) and expensive global positioning devices may not suffer from these constraints.

¹⁵² While many refugee advocates feel that electronic tags criminalise asylum seekers, they do so no more than being detained; therefore, again, the question becomes one of whether they are used in good faith as an alternative for those who can be proven to need an intensive level of supervision. Criminal aliens may more often fit this description than asylum seekers.

¹⁵³ Electronic monitoring is not a cost-effective alternative to detention, but costs roughly as much in most countries. In Belgium, for example, the Ministry of the Interior reports that it costs some €10-12 per day per capita in a project involving some 300 offenders. There is a large investment for each device (an initial outlay of approximately €250,000), which is lost if the device is tampered with or destroyed. The newest form of the technology, involving

that persons whose asylum claims had been rejected, considered by the authorities to be high-flight risk but released on ordinary bail conditions, complied at a rate of 80% in any case. In certain individual cases, therefore, imposition of electronic monitoring may fail to pass the test of necessity and proportionality required by international law, especially if applied to low flight risk cases such as parents of young children or persons who have complied consistently with the asylum procedure. No evaluations of the pilot projects are yet available. With regard to treatment of persons found not to be in need of international protection, the European Commission has recently recommended the development of rules regarding 'the possibilities of suitable alternatives to detention such as reporting duties, obligatory residence, bail bonds or even electronic monitoring [emphasis added]'.¹⁵⁴

133. In Canada and Belgium there have recently been calls from certain quarters to use electronic monitoring in the immigration field, as an alternative to detention. The Canadian Auditor General estimates that the authorities currently do not know the whereabouts of some 36,000 'immigration violators' (most of whom are neither asylum seekers nor persons found not to be in need of international protection) and proposes that electronic monitoring could reduce such non-compliance. In Belgium, at the end of 2003, the *Vlaamsblok* political party made some proposals for the electronic monitoring of persons found not to be in need of international protection and asylum seekers deemed likely to abscond. This prompted a lively debate on the issue in the Belgian media, but those responsible for the electronic monitoring of criminal offenders in Belgium report that they have not yet been asked by the government to develop any programme for the immigration field. It ought to be noted however that depending on the conditions attached to this form of monitoring, it may well be considered a deprivation of liberty.

134. European human rights law is also likely to make it difficult to apply electronic tagging, which is a severe restriction upon freedom of movement, without evidence in each individual case that it is necessary to ensure availability for removal or to meet some other legitimate ground for restricting one's freedom of movement. Other relevant lessons that may be taken from the evaluation of electronic monitoring in the criminal justice field include: (a) that such monitoring does not work for very short durations (that is, less than a week), (b) that consent of the person tagged is essential both for practical reasons and for liability avoidance, and (c) that the education of both adjudicators and the public on the facts of the subject is essential.

7. Alternatives for children

135. UNHCR Guidelines on Detention emphasise that asylum-seeking children should never be detained. Under international law, detention of children shall be used only as a measure of last resort and for the shortest appropriate period of time.¹⁵⁵ Where such children are intentionally detained by host States, it is usually argued that this is for the sake of preserving family unity, or in order to protect a separated child from abduction and exploitation by traffickers. Although protecting children from exploitation from trafficking is a legitimate purpose, detention and other measures which severely restrict a child's freedom of movement may be unnecessary. With regard to the purpose of preserving family unity, the best interests of the child would be the overriding consideration. This study has therefore searched for alternative measures that may allow these two objectives to be met without resorting to deprivation of liberty.

satellite tracking, is currently two or three times the price per device and is just as easily destroyed if someone has no incentive to comply with the measure. Interview with Ralf Bas, Ministry of the Interior, Belgium.

¹⁵⁴ *Communication from the Commission to the Council and the European Parliament on a Community Return Policy on Illegal Residents*, 14 October 2002, COM (2002) 564 Final, para 2.3.5.

¹⁵⁵ Art. 37(b), CRC.

136. In Europe, there are best practice guidelines relating to the guardianship of separated children,¹⁵⁶ and this guardianship involves varying levels of supervision. In some countries, such as Germany and Italy, pre-existing national guardianship mechanisms are used, whereas there is a specialised system in Norway, and a combination of both in the Netherlands. No research-based evaluations are yet available regarding the way in which different forms of guardianship influence the rate at which children appear throughout asylum procedures and remain safe from traffickers.¹⁵⁷

137. Throughout Europe, separated children continue to disappear at high rates.¹⁵⁸ In Bulgaria, the quality of alternative accommodation is not a factor because there are many adequate group homes, but attention focuses on a child's integration into a Bulgarian foster family environment, which is believed to reduce the chances of abduction or disappearance.¹⁵⁹ There is also a joint State-NGO initiative with regard to border monitoring for such children, which compensates for the commendable absence of internal controls on their movements. In Hungary, as a key element in a joint State-NGO Plan of Action to tackle trafficking of asylum-seeking children, a group home for separated children was established in June 2003, run by the local nongovernmental organisation, Oltalom, in the city of Bekescsaba.¹⁶⁰ Specialised homes for separated minors, run by nongovernmental organisations with State funding, have had a significant beneficial impact on lowering the rate at which children disappear in France. In Poland, a new ordinance has been introduced regarding the treatment of separated children and places of accommodation (open centres, State Emergency Care Centres or foster homes), however the rate of their disappearance remains high.

138. Belgium reports that around half of all asylum-seeking children still disappear from either a special section of an open centre or a foster home or youth care institution. A Belgian agency named Child Focus has conducted a study confirming that 45-50% of children disappear at varying points in the procedure. This agency believes that most of these disappearances are abductions by traffickers. While some parties have used this finding to call for the detention of separated children, a new law is instead establishing 'secure centres' that stop short of this. In Canada, the disappearance of a group of Chinese children following their release from detention in 1999-2000 led to improved preventive measures. Nongovernmental agencies in Ontario are currently proposing a project to supervise separated children, including adolescents too old to qualify for statutory protection by social services, without resorting to detention – involving, *inter alia*, more stringent background checks on adults who come forward to claim custody of a child. Italy possesses a number of successful projects to tackle the problem of protecting separated children from traffickers. One such project, run by a nongovernmental organisation and the local authorities in the port of Ancona in eastern Italy, is a monitoring project which interviews children in detail (in an age-sensitive manner) when they first arrive, in order to fully establish the nature of their relationships to any accompanying or receiving adults. This project has been very successful in

¹⁵⁶ UNHCR and Save the Children Fund, *Separated Children in Europe: Best Practice Guide*, 2000.

¹⁵⁷ Standards of assistance and protection for victims of trafficking also vary widely. In the Netherlands, the victim's status is temporarily regularised so that they may cooperate with enforcement officials. Under the Belgian Act on Human Trafficking, however, residence permits and social assistance are offered only on condition that testimony is submitted against the perpetrators. The United States created a special 'T visa' for victims in January 2002. See, Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, *Migrant Workers*, above footnote 83, at note 17.

¹⁵⁸ In Sweden, in October 2003, a government (*Migrationsverket*) report found that 103 children disappeared from State care during 2002. Most were 15-18 years of age and, in contrast to adult asylum seekers, 70% went missing before receiving the final decision on their claim.

¹⁵⁹ In the United Kingdom, there is a similar shift from use of a secure group home to foster care.

¹⁶⁰ Stricter age assessments in Hungary are also reducing the rate of disappearance as it is suspected that not all those previously claiming to be under 18, and therefore exempted from detention, were really minors.

reducing the rate at which children disappear and has also led to the readmission (to Greece and Albania) of 80 out of 98 minors interviewed between 16 September, 2002 and 20 November, 2003.

139. The flight risk of families with young children in destination States appears to be inherently low, and – if absolutely necessary – can be further reduced by detaining the head of the household. In Australia, and increasingly in the United Kingdom, however, families with children are detained in order, it is said, to maintain family unity. In response to this dilemma, agencies in Sweden find that in most cases parents, when they are given a choice to decide what is in the best interests of their own children, opt to split the family (with one parent granted release to care for the children alone) rather than have their children remain in detention. In cases where there is only a father and child, and for exceptional reasons the father needs to be detained, the child will normally be released into a group home for separated children, with regular access to the father. However, most families in Sweden are released into family accommodation at the Carlslund Refugee Reception Centre, with daily reporting requirements to the Immigration Department. This combination of alternatives has proved extremely effective, and such genuinely open accommodation may be contrasted to shelters in other host States which are really alternative places of detention – for example, the former Woomera Residential Housing Project in Australia, or the ‘shelters’ in the United States in which separated children have been supervised 24 hours a day, very rarely granted permission to leave the premises, and attended school inside the ‘shelter’. A new department of the US government now has responsibility for the care and welfare of separated and unaccompanied asylum-seeking children and is trying to move away from the use of such *de facto* detention towards an expanded number of foster placements.

8. Alternatives for other vulnerable persons

140. No State reviewed for this study had an alternative measure specifically designed to benefit torture survivors or asylum seekers with mental health issues. Several governmental and nongovernmental agencies in Europe, Australia and North America, however, operate counseling services which become available to those released from detention, and actively agitate for the early release of such individuals when they are identified to be suffering psychologically in detention.¹⁶¹ In Greece, vulnerable persons may be released from detention by court order and, in doing so, the court may impose an ‘alternative restrictive condition’ – in other words, reporting to the police once every week or fortnight. UNHCR and nongovernmental advocates are involved in referring such cases.

141. In Nicaragua and Mexico, Catholic charities and nongovernmental organisations sometimes succeed in securing the release of vulnerable asylum seekers. In Mexico City, such persons may live in the community on the condition of reporting and maintaining contact with the local nongovernmental organisation *Sin Fronteras*. Five unaccompanied minors were identified and released, under such *ad hoc* arrangements, during 2003. On Mexico’s southern border, in Tapachula, asylum seekers are usually not detained but instead accommodated in a Catholic ‘migrant house’ named *Albergue Belén*.¹⁶² The *Albergue Belén* has a 9 p.m. curfew, which is

¹⁶¹ See, e.g., Physicians for Human Rights (USA), *From Persecution to Prison*, 2003; C. Pourgourides, ‘The Mental Health Implications of the Detention of Asylum Seekers’, in Hughes & Liebaut (eds.), *Detention of Asylum Seekers in Europe: Analysis and Perspectives*, Kluwer Law International, 1998, Ch. 9.

¹⁶² During 2003, the migrant house reported having assisted 230,000 migrants. If an undocumented migrant is not intercepted by the National Institute for Migration, but is first identified by UNHCR, the National Commission for Refugee Assistance (‘COMAR’) or an NGO as being (potentially) in need of international protection, he or she is placed in the asylum procedure, but usually not taken into migratory custody. He or she is instead taken to *Albergue Belén*. If the asylum seeker has already been intercepted, then COMAR must request their release to the *Albergue*.

strictly enforced. The curfew exists principally as a security measure, and conditions in the shelter are considered to be open and good. Services offered there help enable asylum seekers to remain in the house during the processing of their claim in Mexico, rather than attempting to move northwards illegally.¹⁶³

C. Alternative measures aimed at failed asylum seekers

142. Ensuring availability for removal and compliance with removal of failed asylum seekers is a key policy reason why many States opt for either detention or other restrictions on freedom of movement. As stated above, the lawfulness or otherwise of such measures will depend on whether the tests of necessity and proportionality are met in each individual case. The detention of persons subject to a deportation order may be or may become arbitrary depending on the circumstances, for example, if an individual is detained beyond a reasonable period or indefinitely, or if their detention continues after it becomes clear that the deportation order cannot be carried out. Similarly, ongoing or indefinitely imposed restrictions on one's freedom of movement or restrictions that become onerous over an extended period of time (e.g. excessive reporting requirements over many years) may also become unlawful, and would need to be constantly monitored and subject to periodic review. The results of this study indicate that detention and restrictions of freedom of movement are not always necessary to ensure availability for removal.

143. Persons found not to be in need of international protection and those classed by States as 'failed asylum seekers' are included within the parameters of this study since the issue of detention is in practice closely connected to effecting removals and deportations. Unfortunately, there is limited international data relating to the compliance of persons found not to be in need of international protection with removal orders,¹⁶⁴ and hence limited opportunities for evaluating the effectiveness of non-custodial measures to ensure removal/return. Calculating the gap between the numbers rejected and those deported generally results in an extremely crude figure which does not take account of those whom it is impossible to deport, for whatever reasons, those who may still have appeals against their deportation pending or who may have been granted a subsidiary status, nor those who may depart without notifying the authorities. Nonetheless, this 'gap' between ordered and effected removals of failed claimants is clearly a critical concern for many host States and their electorates, leading to routine detention of such persons. South Africa, for example, has a major problem with the disappearance of refused cases. Those rejected under the normal procedure, after a final decision from the Appeals Board, are given one month to leave the country or they may be deported forcibly. In most cases, failed applicants fail to comply with this order and become subject to re-detention. In Japan, on the other hand, the percentage of asylum seekers absconding after receiving a rejection remains small: 4% in 2002 and 13.5% in 2001.

144. Available evidence does support the presumption that asylum seekers are more likely to abscond following receipt of a final rejection, and that non-custodial alternatives have limited impact on this fact. Yet, on a case-by-case basis, rejection of a claim cannot automatically be equated with a risk of absconding and hence with a need to detain.¹⁶⁵ In Canada, for example, a

¹⁶³ There are no country sections on either Mexico or Nicaragua. Information received from UNHCR and *Sin Fronteras*, Mexico.

¹⁶⁴ Officials in Paris and London have made unverified statements that some 70% of non-detained asylum seekers whose claims are rejected subsequently abscond. M.J. Gibney and R. Hansen, *Deportation and the liberal state: the forcible return of asylum seekers and unlawful migrants in Canada, Germany and the United Kingdom*, New Issues in Refugee Research Working Paper No.77, UNHCR Evaluation and Policy Analysis Unit, February 2003, p.11.

¹⁶⁵ See, G. Noll, *Rejected Asylum Seekers: The problem of return*, New Issues in Refugee Research, UNHCR Working Paper No.4, May 1999, p.28.

State-funded alternative project called the Failed Refugee Project has achieved a 60% success rate in effecting mandatory removal with consent, that is, without resorting to detention, force or other penalties. It operates on the basis of counselling, practical assistance and giving failed applicants 30 days to leave the country on their own accord – time enough to put their affairs in order. In Melbourne, Australia, the Hotham Mission Asylum Seeker Project has achieved similarly high numbers of mandatory returns with consent, and availability for forced returns without consent, by means of caseworker support and counselling. Between February 2001 and February 2003, they conducted research to track 200 asylum seekers (111 ‘cases’ including families) living in the community, of whom 31% were former detainees. Of the finally refused asylum seekers in the study, 85% voluntarily left Australia on receiving a final decision, within the 28 days usually allowed to them to do so. The other fifteen per cent were detained and then forcibly returned. Nobody absconded. The researchers concluded from this evidence that detention was usually unnecessary to ensure the availability for removal of persons found not to be in need of international protection.

145. The Vera Institute project in the United States was not able to track all the asylum cases it supervised until the end of the asylum procedure; most claims/appeals were still pending when the project ended. It can therefore tell us little about compliance with return. In general, the results of Vera’s wider project, involving other undocumented migrants and criminal aliens, found that community alternatives were only partially effective in relation to forced return. The project had an element of departure assistance and verification that incidentally uncovered the fact that the New York authorities were undercounting the number who complied with removal orders.¹⁶⁶ Vera concluded that, after careful individual assessment, re-detention may be necessary to ensure removal in selected cases.¹⁶⁷ Vera’s findings do not, however, suggest that there is empirical justification for the pilot policy introduced in Hertford, Connecticut, in late 2003, and now in other US cities, which requires the detention of all persons issued with removal orders from the moment of issue, regardless of the individual’s likelihood of absconding.¹⁶⁸

146. In the United Kingdom, the government’s declared intention is to shift towards detention as a tool for removal, and hence the detention centres have been re-titled ‘removal centres’. To date, however, refugee advocates report that the centres’ populations include many people with decisions and appeals pending. Research by the South Bank University in the UK found that, even amongst those on bail while awaiting removal, 80% of persons found not to be in need of international protection complied with bail conditions and thus remained available for removal. Meanwhile, the International Organisation for Migration (‘IOM’)¹⁶⁹ and the nongovernmental agency Refugee Action operate a counselling programme to help persons found not to be in need of international protection examine their choices and consent to return home. This is similar to the Canadian and Australian projects mentioned above. It is also similarly effective. In Sweden, through counselling efforts that may involve the applicant’s legal representative and other relevant actors, the State authorities help failed asylum seekers to reach their own decision that it may be best to leave Sweden. This approach, although resource intensive, is reported to be efficiently stimulating returns without enforcement measures. In general, following the return programmes for persons under Temporary Protection back to Bosnia and Kosova, European States have demonstrated great

¹⁶⁶ The US government reports that there are a total 400,000 migrants (including but not solely persons found not to be in need of international protection) who have absconded in the US after being issued with deportation orders.

¹⁶⁷ The New York immigration authorities acted on only 11 of 52 recommendations by Vera to re-detain supervised aliens, and the other 41 did indeed abscond.

¹⁶⁸ The Associated Press, 16 September, 2003.

¹⁶⁹ As of January 2002, IOM offered its services to nine European governments with regard to facilitating programmes of mandatory returns with consent (what IOM calls ‘voluntary return’).

interest in providing inducements and incentives for persons found not to be in need of international protection to cooperate with their mandatory return, through offers of assistance and counselling in place of, or in tandem with, threats of forced return. Such programmes are both more cost-efficient and humane than forced returns, though it is misleading to call them ‘voluntary’. A number of studies have recently begun to evaluate mandatory return programmes where incentives are offered, at least during an initial phase, but further research is required before conclusions can be reached on their effectiveness.¹⁷⁰

147. In contrast, some countries studied remove all material and social assistance from persons found not to be in need of international protection, either immediately or within a set number of days. While this may be aimed at encouraging the person to return, it is certainly not effective in keeping the person available for removal. Those who do not leave must simply go underground, as evidenced by the Central Bureau of Statistics in the Netherlands in 2002.¹⁷¹ Such a policy may be in breach of a State’s human rights obligations if the individual denied assistance is unable to return through no fault of his or her own.¹⁷² In Switzerland, as of 1 April 2004, persons who have received a decision of non-admissibility are excluded from automatic social assistance, though their most basic socio-economic rights remain protected by the Federal Constitution. Those whose claims are rejected under the full asylum procedure, if not detained, and if deportation proves impossible, are provided with social assistance when necessary, and housed in an open centre.

148. In Bulgaria, where deportations are rarely effected, persons found not to be in need of international protection and other illegal migrants are released from detention after 9-10 months, and stringent (daily) reporting requirements are imposed. Some eighteen persons were, as of February 2004, living under these alternative measures, of whom thirteen were persons found not to be in need of international protection. Similarly, The Netherlands Aliens Act 2000 can be used as a basis for restricting the movement of a failed asylum seeker by raising an obligation to report as often as twice each day after a negative decision has been taken on a claim.

149. In Belgium, most asylum seekers who are appealing their rejection to the Council of State disappear at the point when they are instructed to transfer to one of four special centres housing only pre-removal cases. These centres are no more closed or harsh than the other centres in which the asylum seekers are living, but NGOs report that asylum seekers fear the transfer, recognising it as a prelude to deportation, and resist the disruption caused to their lives by the move (for example, taking their children out of local schools where they may have been for some time). Between January 2002 and August 2003, therefore, 52% of such asylum seekers with appeals pending before the Council of State did not report for the transfer. The Flemish nongovernmental organisation, OCIV, argues that this high rate of absconding could be avoided by removing the trigger factor: namely, the four centres that seem to raise anxieties but are of little benefit in terms of facilitating removal.

¹⁷⁰ *Study on Comprehensive EU Return Policies and Practices for Displaced Persons under Temporary Protection, Other Persons whose International Protection has ended, and Rejected Asylum Seekers*, Prepared by ICMPD for the European Refugee Fund, Final Report, January 2002.

¹⁷¹ In 2002, the Central Bureau of Statistics concluded that a minimum of 11,000 and a maximum of 41,000 failed asylum seekers from Afghanistan, Iraq, Iran, Somalia and the former Yugoslavia remained illegally in The Netherlands.

¹⁷² On 31 July 2003, the British High Court ruled that the refusal to grant support to three asylum seekers amounted to a violation of article 3 of the ECHR. A similar finding was reached on 17 February, 2004. The United Kingdom government has challenged these High Court rulings – see *Case of T v Secretary of State for the Home Department*, Court of Appeal, 23 September 2003 [2003 EWCA Civ 1285] - and the matter may ultimately go to Strasbourg for a ruling by the European Court of Human Rights. As the asylum seekers’ inability to exit the United Kingdom was a consideration in these cases, the position of non-returnable aliens might be viewed as closely analogous.

150. In many countries, indefinite detention of people who cannot be returned to their countries of origin in the foreseeable future, including for reasons beyond their own control, has become a growing human rights problem. Alternatives are therefore urgently needed to detention of such cases. A Report of the Special Rapporteur on Migrant Workers has recommended: ‘Detention should end when a deportation order cannot be executed for reasons that are not the fault of the migrant.’¹⁷³ Court rulings in the United Kingdom, United States, Australia and Canada, in line with important decisions of the European Court of Human Rights¹⁷⁴ and the UN Human Rights Committee,¹⁷⁵ have confirmed this general principle. A number of countries have legislated maximum time limits for detention, which should apply to this category of person as much as to any other alien.¹⁷⁶ In Switzerland, for example, ‘preparatory detention’ may be applied for no more than three months and ‘deportation detention’ may be applied for an absolute maximum of nine months, although in practice these two types of detention order may be consecutive. The essential principle applied to ‘deportation detention’ is that detention should continue only for as long as it is necessary to effect removal, otherwise it becomes arbitrary.

151. In Canada, the main complaints regarding reporting requirements have involved cases where they are indefinitely applied to persons found not to be in need of international protection who cannot be returned to their home countries, and where weekly reporting intrudes on their ability to work in and adjust to Canada over the course of many years. Nevertheless, such an indefinite obligation is undoubtedly a preferable alternative to leaving such persons languishing in indefinite detention.

152. In Germany, special return centres (*‘Ausreisezentren’*) have been established in a few federal States to accommodate undocumented illegal migrants, including persons found not to be in need of international protection and who refuse to return. Persons of the above-mentioned category are ordered to take up residence in these Centres, which are formally open. The residents, however, have to report on a regular basis (e.g. three times per week) and they are informed about their legal situation in regular conversations with a view to obtaining their cooperation in the administrative process and encouraging their departure from Germany. The standard of amenities in such Centres is generally set at a level that also acts as a disincentive to remain in Germany – that is, only basic needs are met.¹⁷⁷ Nongovernmental critics of this policy call for a greater use of the concept of ‘supported voluntary return’ – meaning the provision of counselling and incentives, including financial and practical assistance and vocational training, to promote mandatory return with the consent and cooperation of the person to be returned. This concept has seen a revival recently in Germany, with several projects at the *Länder* or district level, in most cases jointly carried out with various nongovernmental partners and co-funded by the European Refugee Fund. These projects are succeeding in minimising the use of pre-deportation detention, but also helping people see when return home may be in their best interests, and to make this a dignified process.

153. In the Netherlands, there used to be an open centre reserved for failed asylum claimants having exhausted all appeals (*Ter Apel*, in a small rural town). It was closed because of high costs

¹⁷³ See Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, *Migrant Workers*, above footnote 83.

¹⁷⁴ *Ali v Switzerland* (1999) 28 EHRR 304; *Quinn v France* (1997) EHRR 167.

¹⁷⁵ *A v Australia*, above footnote 39.

¹⁷⁶ For such persons, however, release is not a ‘solution’ to their situation if their status remains unregularised and they and their children are indefinitely denied any hope of integration. This problem relates to the reduction of statelessness and wider immigration issues beyond the scope of the present study.

¹⁷⁷ Germany’s aliens’ law also provides for possible restrictions on the free movement of persons found not to be in need of international protection, or any foreign national under a final obligation to leave German territory. If not detained or sent to a Return Centre, such a person must inform the competent aliens authority of any change of domicile – even within an assigned district – or of any absence from the assigned district for more than three days.

and failed to raise the rate of return for people who refused to cooperate. In mid-February 2003, the Dutch government voiced a proposal to open centres exclusively for those who have received a first rejection on their claims, focusing on return from this early point. Separated children have, since November 2002, already been housed in two special centres oriented towards return and away from integration into Dutch society. Nongovernmental organisations have criticised the harsh regimes of supervision and disincentives in these centres. In Norway, asylum seekers whose claims are deemed 'manifestly unfounded' (predominantly eastern Europeans at the moment) are sent to a return-oriented centre from day one of the procedure. It is intended to keep them easily available for deportation from Oslo. A recent drop in arrivals may be partly due to the deterrent effect of this return-oriented centre with accelerated procedures completed within one to two weeks. It is located in a former civil defence camp, surrounded by fences. There are no formal restrictions on residents' movements but the gate is watched, visitors to the centre are restricted and the guards create an enforcement environment. There are proposals to accelerate the procedure in this centre to a total of 48 hours, but Norwegian refugee advocates question whether procedures with so few guarantees of due process can operate in an open centre without people fleeing from its premises.¹⁷⁸

154. A number of countries have time limits on the detention pending removal of persons found not to be in need of international protection who cannot be returned. The use of alternatives such as reporting requirements, as in Bulgaria, Canada and the United States (including the use of voice recognition technology), should be promoted where it may promote release of such persons – for example, in Latvia and Australia, where persons found not to be in need of international protection are detained indefinitely, pending the execution of their removal orders.

D. The Question of Effectiveness

1. Factors influencing effectiveness

155. Information in this study reveals that there may be several common factors which influence the effectiveness or otherwise of a particular alternative measure as far as preventing absconding and/or improving compliance with asylum procedures, namely: (a) providing legal advice; (b) ensuring that asylum seekers are not only informed of their rights and obligations but also that they understand them, including all conditions of their release and the consequences of failing to appear for a hearing; (c) providing adequate material support and accommodation throughout the asylum procedure; (d) screening for either family or community ties or, alternatively, using community groups to 'create' guarantors/sponsors. Some countries use a system of penalties or the threat of more severe restrictions, such as detention, to encourage compliance with asylum procedures. This study would recommend more research and evaluation in this area.

156. In several countries, the provision of competent legal counsel to asylum seekers was found, among other due process benefits, to significantly increase rates of compliance and appearance. Lawyers – especially lawyers working in the context of a refugee-assisting organisation – are able to act as an intermediate point of contact with the authorities, to remind their clients of appointments and explain the consequences of absconding. In the United States, according to

¹⁷⁸ As of 1 January, 2004, Norway has opened its first detention centre at Trandum, the former military barracks at Ullensaker, to detain asylum seekers who have committed crimes or absconded as well as persons whose claims for asylum have been rejected (including asylum seekers who may be appealing against a first instance rejection). A special police unit has also been formed that will, among other functions, find those who abscond. As this breaks a long-held Norwegian policy of avoiding the generalised use of detention, advocates fear that 'manifestly unfounded' cases may also, in the future, be detained throughout the asylum procedure.

official data from 2001, separated asylum-seeking children with legal representatives failed to appear 30% of the time, as opposed to 68% of the time when there was no legal representative. It is unfortunate, therefore, that legal aid to asylum seekers is being cut in a number of countries, such as the United Kingdom, at the same time as costly programmes of intensive supervision and electronic monitoring are explored as necessary means of tracking their whereabouts.

157. For example, the alternative (and legal remedy) of bail and bond is found most effective when it is an automatic right and where both access to legal advice and legal aid is provided to all detainees who need it. Decisions on the granting of bail are best taken by specially trained officers or adjudicators whose decisions should be challengeable in an independent and timely appeal process. Advocates recognise that it is necessary to put adequate resources into such an individualised system, but believe the more targeted use of detention (or lesser restrictions) will compensate for these costs. In the United States, where legal aid is never provided in immigration cases, 'legal orientation' presentations by nongovernmental agencies for immigration detainees have not only made the immigration and asylum determination systems more efficient, but have also increased the effectiveness and accessibility of parole and bond mechanisms for release, hence reducing the time spent in detention by an average of 4.2 days per detainee.

158. In the United States, the fact that failing to appear at an asylum hearing will automatically lead to an order of deportation *in absentia* is considered significant.¹⁷⁹ Elsewhere, alternatives to detention are perhaps more effective in conjunction with the threat of detention as an explicit penalty for failing to comply with alternative measures. In Hungary, for example, so-called 'aliens policing detention' may be applied as a penalty for failing to appear when summoned or failing to depart when ordered. In South Africa, detention may be ordered for failing to renew a permit every month or for failing to adhere to conditions of the permit (though such conditions, including being restricted to one district and being required to report regularly, are not implemented in practice). In Switzerland, an asylum seeker who breaches the ban upon presence in certain public places (that is, an 'exclusion' or 'containment' order) may be detained. Under the Irish Refugee Act, an asylum seeker who fails to appear for an interview must provide a reasonable explanation either beforehand or within three days of the appointment, otherwise their application will be deemed withdrawn, and rejected, with no possibility of appeal to the Refugee Appeals Tribunal. Such an asylum seeker does, however, have the option of seeking permission from the Minister for Justice, Equality and Law Reform to make a new application and retains the right to apply for judicial review of the decision to the High Court.

159. In other States, asylum seekers may be penalised for failing to appear by withholding or reducing State assistance provided to them. Denmark's Immigration Service may deprive an asylum seeker of cash assistance if he or she does not cooperate with the examination of his or her claim – including by attempting to abscond. Such an asylum seeker would then only receive assistance in kind (i.e., food parcels). The only exception is where the asylum seeker in question were pregnant, a minor or had other relevant medical needs. In Poland, in any case of gross violations of an open accommodation centre's by-laws by an asylum applicant, including unauthorised absence from the centre, the President of the Office for Repatriation and Aliens may decide to withhold assistance, in whole or in part. Upon request of the applicant, the President may restore full assistance once. If assistance is withheld a second time, the President may restore financial support again, but only at a

¹⁷⁹ The administrative bases on which States conclude that an asylum seeker has 'absconded' are diverse. In some cases, non-appearance leads to automatic closure of the case. In others (for example, in Greece) a certain number of days are allowed for the person to re-appear. In all States, the issue of a fair appeal against the closure of a case on grounds of non-appearance is of critical importance.

reduced level. The impact of such penalties on compliance with alternative measures (and on cooperation with the asylum procedure itself) has not been studied.

160. Adequate material support and accommodation during the asylum procedure was found to be critical to ensuring compliance, as inferred by the high rates of non-appearance in reception systems which exclude a large segment of asylum seekers from State assistance (such as that currently operating in Italy and, until late 2003, that in Austria). In the United States, nongovernmental agencies advocate that asylum seekers be released from detention with work authorisation in order that they should be able to provide for themselves, given that the US does not provide housing or other social services to them. One effect of being permitted to support themselves adequately is that they are more able to maintain a fixed address, which in turn makes communication with the authorities more reliable.

161. For adult asylum seekers, age, nationality and gender are not found to be factors by which flight risk can be predicted, whereas the desire to transit to another country for family reunion purposes appears to be a significant factor in decisions to abscond. Despite the presumed correlation between the strength or admissibility of an asylum claim and the right to liberty in most State systems, especially systems in which the legal review of detention is closely linked to consideration of the claim's merits, there is no evidence that a strong correlation exists between merits and flight risk.

162. Where alternatives to detention do exist, one of the ongoing questions is whether they are effectively available in practice. International experts on non-custodial alternatives in the criminal justice field have learned that legislation is of little use on its own, without additional endeavours relating to how they are to be implemented, as well as detailed guidelines and specific investment in training and infrastructure.¹⁸⁰ The same appears to be true in the asylum and immigration fields, where those who order detention often fail to rigorously apply their own legislation's requirements of necessity and proportionality and thereby fail to consider fully the applicability of various alternative measures.¹⁸¹

163. Alternative measures will not be effective in ensuring compliance and meeting other State concerns if they are not properly policed and if asylum seekers are kept away from essential services or labour markets for extended periods. Where people are kept under onerous restrictions for many years, it is inevitable that some may leave their designated address or district in order to reach urban centres and the companionship of members of their own ethnic community, or they may abscond in order to risk living and working illegally but with some degree of independence and the ability to better provide for themselves and/or their families.

¹⁸⁰ V. Stern, *Developing Alternatives to Prison in Central and Eastern Europe and Central Asia: A guidance handbook*, Constitutional and Legal Policy Institute ('COLPI'), Paper No.6, May 2002, p.54.

¹⁸¹ By analogy, see *Recommendation (2002) 22 on improving the implementation of the European rules on community sanctions and measures*, adopted on 29 November 2000 by the Committee of Ministers, Council of Europe. A number of initiatives are underway in the criminal justice field that may serve as models in the asylum and immigration field, with regard to monitoring the consideration given to, and application of, alternative measures. In Ukraine, for example, the Open Society Justice Initiative is now running a pilot study to monitor, with international and local NGO input, judicial decision-making in the city of Kharkiv [the second largest city] in order to ascertain whether, and to what extent, judges are actually making decisions in conformity with the international standards regarding non-custodial pre-trial options. See, University of Nottingham Human Rights Centre, *The Development of Alternative Sentences to Imprisonment in Ukraine: A Concept Paper*, above footnote 136, at p.23.

The Danish Refugee Council has proposed to monitor decisions to order alternative measures (and detention) in Danish courts in a similar fashion, but has not yet received funding for this project.

164. Large open centres are often difficult to introduce without opposition from local residents, and their effectiveness will be compromised if conditions are so poor or locations so remote that asylum seekers feel depressed and institutionalised. Electronic monitoring by means of ankle bracelets is dependent on certain factors being present, such as a fixed private home address where the device can be installed. Its effectiveness may be limited, however, where the desire and ability to transit to another country will outweigh the potential penalties for destroying or removing the device. Failure by police and other officials to respect or trust registration and refugee identification documents is a major limitation on the effectiveness of registration programmes.

165. While private security companies or State bodies may lack the necessary skills and community contacts required to make a programme of supervised release effective, so too problems arise with nongovernmental agencies running schemes that require a large element of enforcement and the threat of re-detention. Many nongovernmental actors acknowledge this constraint, though more commonly the absence of alternatives is due to an absence of State funding and government cooperation with their agencies.¹⁸²

2. Cost effectiveness

166. There are significant obstacles to collecting and calculating the financial costs of alternatives to detention in relation to the costs of detention. This is partly because most States do not report such costs. Since the length of the asylum procedure will make a great difference to the overall cost, data has been collected in per capita sums, relating to specified periods (daily, weekly), wherever possible. Such figures are seldom able to take account of capital costs and are seldom subjected to a sensitivity analysis in relation to all variables arising within the local asylum system (such as the length of initial detention to establish identity or the costs involved in locating and re-detaining persons who need to be forcibly removed).

167. Nonetheless, it is widely acknowledged that almost any alternative measure will prove cheaper than detention. In Belgium, the Fedasil Director confirmed this assumption, although comparative figures for detention are not published. In Australia, a report by Justice for Asylum Seekers calculated an eighteen per cent saving if its proposed model were introduced, including capital costs and sensitivity analysis for multiple variables. While this figure may be less impressive than a direct per capita daily figure comparison (an average of A\$170 for detention as opposed to A\$60 in community care), the eighteen per cent figure allows for the need to detain in exceptional cases and at certain (first and last) stages of the procedure. The report emphasises that low security alternatives are not cost-effective for cases assessed as high flight risk, and vice versa.¹⁸³

168. In the United States, the project run by the Lutheran Immigrant and Refugee Services ('LIRS'), involving 25 Chinese asylum seekers in 1999, found community release cost only three per cent of what would have been the cost of their detention. Such figures, however, are reliant upon a lot of donated time and services (*pro bono* lawyers, travel expenses) and asylum seekers having the right to work by which to subsidise their accommodation. The State therefore may save money, but at the expense of private charities. The Vera Institute was supplied by the US

¹⁸² Those in the criminal justice field struggle with the same issue of combining the welfare role with the sanctioning role: 'The social workers are torn between their wish to help the offenders and befriend them and the need to supervise them, exert control and report them to the court if they do not keep the requirements of the sanction.' V. Stern, *Developing Alternatives to Prison in Central and Eastern Europe and Central Asia: A guidance handbook*, above footnote 180, at p.43.

¹⁸³ By contrast, the Woomera Residential Housing Project, an alternative place of detention, was in fact more expensive (at around A\$492) than the daily per capita cost of detention at Woomera Detention Centre.

Immigration Department with US\$7,259 for the average cost of detaining an asylum applicant until a final decision. The cost of Vera's alternative supervision, on the other hand, including brief periods of detention where deemed necessary, was US\$2,626 over an equivalent period. American nongovernmental organisations conclude from the Vera findings that most asylum seekers do not in fact require intensive supervision and that therefore future alternative to detention projects could be implemented at an even lower cost per capita. Statements by the US Department of Homeland Security suggest that the electronic monitoring which they are testing through several pilot projects can be run at a cost of US\$10-20 per day per individual.¹⁸⁴ Voice recognition technology can be operated even more cheaply.

169. In the United Kingdom, the South Bank University research found that 73 of 98 people released on bail thanks to the intervention of Bail for Immigration Detainees ('BID') complied with the conditions of their bail. If their detention had not been challenged by BID, it was estimated that the government would have spent some £430,000 detaining them for the period studied. Similarly, the Toronto Bail Program is proud to report C\$12-15 per day staff running costs (not including costs of food and shelter etc.) as opposed to the C\$175 per day average cost of detention in a provincial jail in Canada.¹⁸⁵ In Germany, all the collective accommodation centres provide federally mandated allowances of 41 Euro per month for all residents over fourteen years of age and 20.5 Euro for all those under fourteen. Detention costs in Germany are seldom published, but it is estimated that one day of pre-deportation detention costs around 60-80 Euro, excluding capital costs and varying between *Länder*. Therefore, open centres are cheaper to run than closed. Most interesting, perhaps, is the practice whereby exceptions are permitted to the German dispersal and directed residence policy when available private accommodation, paid for by the State, is not more expensive than that in a centre. This pragmatic exemption may be one that any country considering the model of compulsory centres for all applicants may wish to incorporate.

170. In Lithuania, there is little difference in costs between those who are detained and non-detained in Pabrade Foreigners' Registration Centre (at a cost of some US\$1 million, including the cost of deportations).¹⁸⁶ Only the Rukla Reception Centre is cheaper because it is fully open (with an annual budget of some US\$450,000). For international donors, improving the reception and protection conditions in Lithuania such that refugees may opt to seek asylum there is a more cost effective and comprehensive solution than obstructing their transit movement by means of detention. The highly targeted issuance of detention orders in Lithuania ensures not only greater lawfulness of detention but also that only those individuals who require 24-hour supervision add to these higher costs.

171. In some countries, conditions in detention are so deplorable that a cost argument is almost irrelevant. Policies of interception and external processing also make cost arguments redundant if States can save costs by running closed camps or detention facilities in less developed transit States. In Guatemala, the US already pays US\$8.50 per day per migrant towards the cost of detaining migrants from outside the region (likely to become asylum applicants if they entered US

¹⁸⁴ One positive benefit of electronic monitoring in comparison to detention is that it can be scaled down more easily, so there would no longer be the dynamic whereby set costs of a detention facility are justified by keeping it filled to capacity, and whereby a reluctance develops to decommission facilities even if asylum arrival numbers fall.

¹⁸⁵ The fact that cost savings are far greater for those taken from the higher security jails has meant that criminal aliens are currently released to the Toronto Bail Program more frequently than asylum seekers detained in lower security centres.

¹⁸⁶ Though figures are not published, little difference in comparative costs might similarly be expected from the Mangere Accommodation Centre in New Zealand because it houses detainees and non-detainees under very similar conditions. High quality services are balanced by the lesser costs of low-level security.

territory).¹⁸⁷ On the other hand, in Indonesia, the Australian-funded IOM programme to accommodate asylum seekers and persons found not to be in need of international protection, without resorting to the use of detention, has been relatively cost-efficient in that it operated with a budget of around A\$250,000 per year and handled some 4,000 persons, for varying lengths of time, between 2000-2002. Whether or not this was cheaper than the cost of their detention in Indonesia, it was certainly cheaper than their detention in Australia. Interception measures used in this programme do, however, raise concerns.

172. Whilst intensive supervision and other restrictions placed on community release in order to raise the rate of compliance and appearance may – in some cases – help to do so, the human cost of such measures must also be counted. Alternative measures involving monitoring, supervision and restrictions will make life more difficult for those genuine refugees who, as asylum seekers, are trying to adjust to a new environment, and regain some normality and self-confidence based on newfound rights and freedoms. While the integration cost savings of early release into the community for such persons are impossible to quantify, there is ample evidence that detention exacerbates previous mental trauma and produces anxiety and depression,¹⁸⁸ which, aside from the unacceptable human cost, will incur medical and other costs for the State in both the short and long term.

IV. CONCLUDING OBSERVATIONS

173. UNHCR and non-governmental advocacy groups should continue to focus attention on the fact that basic legal safeguards of detention are not observed in many situations and that conditions of detention within many immigration detention centres, prisons and airport transit zones around the world fall below internationally acceptable standards. Finding alternatives to detention may not always be a key priority when it comes to resolving an inhumane or illegitimate detention policy, but these measures are important for longer-term policy relating to the treatment of refugees and/or asylum seekers.

174. For the world's major destination States, existing evaluations of alternatives – including monitoring of appearance rates during unconditional release or unsupervised stay in the community – support the position that asylum seekers very rarely need to be detained, or indeed restricted in their movements, prior to a final rejection of their claim or prior to the point at which their removal becomes a practical reality.

175. More national research needs to be done to support existing studies and findings need to be shared with a wider constituency, including prison and detention centre staff, judges, adjudicators and immigration officers, members of parliament and the general public. As in the criminal justice field, an alternative measure will not generally be ordered instead of detention unless judges and decision-makers trust their effectiveness and unless public fears about unsupervised release, often provoked by alarmism in the popular media, are allayed.

176. Further thinking, in particular, is required with regard to gaps in the legal standards and other safeguards relating to non-custodial alternatives. For example, there are specific gaps relating to

¹⁸⁷ US-subsidised Guatemalan enforcement operations are part of the 1997 US programme called 'Global Reach' which is a 'strategy of combating illegal immigration through emphasis on overseas deterrence.' INS Fact Sheet on Global Reach, 27 June, 2001.

¹⁸⁸ See, e.g., Physicians for Human Rights (USA), *From Persecution to Prison*, above footnote 161; C. Pourgourides, 'The Mental Health Implications of the Detention of Asylum Seekers', above footnote 161.

privacy and data protection in light of the increased use of biometric data and electronic monitoring in the asylum field. Another 'grey area' is the legal delineation of the difference between a detention centre or closed refugee camp and an open or semi-open refugee camp or reception centre.

177. Further research is also required at the global level with regard to protection of separated children in order to clarify when supervision or confinement to a particular location or facility ceases to be a measure of protection and rather becomes an unnecessary and perhaps harmful restriction on freedom of movement or deprivation of liberty. The findings of this study indicate that there are other more creative ways of tackling the threat posed by child trafficking rings to asylum-seeking children which are proving effective in several countries.

178. Little analytical research has been conducted on the functioning of alternative measures in predominantly transit States, where this study has identified greater challenges in applying such measures effectively. Nonetheless, the common sense conclusion that improving reception conditions and integration prospects in such States will directly raise the rate of compliance with asylum procedures has been borne out by this study's findings.

179. Above all, this study has focused on the human rights argument that the necessity and proportionality of detention requires consideration of possible alternatives. To date there has been too little trial or testing of alternatives in the asylum and immigration field. Finally, such alternatives themselves must always meet the test of legality, necessity and proportionality.

APPENDICES

AUSTRALIA¹

I. DETENTION AND DOMESTIC LAW

A. Detention of unauthorised arrivals

The Migration Act 1958 (Cth) requires that all non-citizens who are unlawfully in Australia be detained, including asylum seekers and other migrants who have entered Australia unlawfully, those whose visa has expired, or whose visa has been cancelled (e.g. for breaching a condition of that visa). It establishes a system of mandatory, automatic, indiscriminate, and non-reviewable detention of all asylum seekers having entered Australian territory without authorisation (referred to as 'unlawful arrivals' under the law).² Under the law, release from such detention is only permitted until removal or until the granting of a visa. An asylum seeker will, therefore, remain in detention until all appeal avenues have been exhausted and should they fail, until removal. There is no maximum duration for a detention order. Detention is applied regardless of an individual's likelihood of absconding and without any consideration as to whether non-custodial alternatives may be sufficient to prevent it. The Act applies to all illegal entrants regardless of age, sex, nationality or any other status and irrespective of whether they are asylum seekers.

Some detention facilities are located in remote, rural areas. They are completely secure, with electric fences and are under the management of a private security company to enforce rules and to provide security. This has been controversial as often prison-like conditions apply.³

B. The Pacific Solution

In 2001, Australia initiated a policy widely known as the 'Pacific Solution' or, more officially, its 'offshore processing strategy'. This strategy involves the forcible transfer of intercepted asylum seekers arriving into either Australian territorial waters or the international sea, by boat via Indonesia, to locations in two Pacific States namely, Papua New Guinea (PNG) and the Republic of Nauru. The Australian government finances the entire costs of the camps, as well as providing large aid donations to the host countries. It also follows the excision by law of various island territories from the ambit of the Migration Act 1958 (Cth), which has the effect of denying the right to lodge an application by an asylum seeker should they reach one of the listed Australian island territories.⁴

The Australian government and its implementing partner, the International Organization for Migration ('IOM'), maintain the position that the camps in PNG (currently emptied) and Nauru are not in fact places of detention. By this logic, the Australian government has declared that its detention policy has switched from being mandatory to discretionary, since an asylum seeker can

¹ The information presented herein is valid up to 31 March 2004.

² Ss. 176 – 196, Migration Act 1958 (Cth). Note that persons arriving in Australia with proper authorization who later apply for asylum are not subject to mandatory detention rules, but they may also be detained should they pose a security risk, etc.

³ Further information on conditions of detention, see ABC Four Corners video, 'About Woomera', 19 May 2003; US Committee for Refugees, *Sea Change: Australia's New Approach to Asylum Seekers*, February 2002.

⁴ See, for further information, A. Edwards, 'Tampering with Refugee Protection: The Case of Australia' Vol. 15(3) *IJRL*, 2003, p.192.

now be moved to an ‘offshore processing centre’ rather than being detained on the Australian mainland.⁵

However, many critics of the policy, and the asylum seekers themselves, believe they are places of detention, and indeed places of ‘arbitrary detention’.⁶ Even the Australian Department of Immigration (‘DIMIA’) acknowledges that freedom of movement is substantially curtailed for those who may reside in the IOM-run camps – by the methods of camp administration and security, the narrow terms of entry visas granted to asylum seekers when they landed in PNG or Nauru, and by the sheer geographic isolation of the camps and the islands. UNHCR has expressed concern regarding the severity of such restrictions⁷ and no court or international human rights body has yet settled the question of whether the restrictions may amount to a deprivation of liberty within the meaning of article 9 of the ICCPR. For the purposes of this study, therefore, the Pacific Solution is considered a form of detention.

In view of UNHCR’s 2003 advice that Iraqis and Afghans from Ghazni cannot be returned due to general insecurity in their places of origin, the failed applicants on Nauru may be considered non-removable and their detention indefinite.⁸ Given that they are no longer on Australian territory, it may be that the Australian High Court decisions in *Al Kateb* and *Al Khafaji* (see below) would not apply.

C. Detention of rejected asylum seekers

Under the law and in practice, rejected asylum seekers who arrived in an unauthorised manner remain in custody until their deportation can be effected. The High Court of Australia (the highest court) upheld the law in a decision in 2004 that a failed asylum seeker did not have to be released. The effect of the decision is that failed asylum seekers could be detained indefinitely where they are unable to return home. The decision was reached by the narrowest of margins (4-3) and turned largely on the construction of the provision in question.⁹

Similarly, rejected asylum seekers who entered Australia in an authorised manner (that is, with a valid visa) are required to be detained under the law, as the conditions of their visa no longer apply. Whether they will be detained in practice however is not clear. They may be issued with another visa (e.g. a bridging visa) until they can be deported, rather than placed in custody.

D. Bridging visas

‘Bridging visas’ are granted by non-reviewable and non-compellable discretion of the Immigration Minister.¹⁰ While all asylum seekers may apply for a ‘bridging visa’ that would allow their release

⁵ Department of Immigration, Multicultural and Indigenous Affairs (‘DIMIA’), ‘Unauthorised Arrivals and Detention: Information Paper’, February 2002.

⁶ See, Amnesty International, *Offending Human Dignity – The Pacific Solution*, ASA 12/009/2002.; Human Rights Watch, *By Invitation Only: Australian Asylum Policy*, Vol.14, No.10(c), December 2002, pp.66-70.

⁷ Submission No.30, Senate Legal and Constitutional References Committee Inquiry into the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, p.8.

⁸ In December 2003, UNHCR and DIMIA reopened the Afghan claims in order to consider *sur place* elements, and the results of the review are currently awaited (as of March 2004).

⁹ See, *Al Kateb v Godwin* [2004] HCA 37, 6 August, 2004; *Minister for Immigration and Multicultural and Indigenous Affairs v Al Khafaji* [2004] HCA 38, 6 August, 2004. Cf. *Al-Mazri v. Minister for Immigration and Multicultural Affairs*, [2002] FCA 10009, 15 Aug. 2002.

¹⁰ The Minister may grant any of five classes of bridging visa (A-E), with Class A affording the person rights roughly equivalent to those of a citizen, dwindling down to the lesser rights entitlement of Class E. The Minister may, however,

from detention, the conditions are so strict it is almost impossible to comply. It is usually reserved for persons who enter Australia with a valid visa that has since expired. Many asylum seekers who arrive by air with documents are swiftly released from detention by this means. This is partly because the identities of those who arrive by air can be more easily verified by the documentation shown at their point of embarkation. For example, an individual who enters Australia on a tourist or student visa and who later applies for asylum is usually granted a bridging visa so they may remain in the community. The bridging visa may be issued without conditions, or with conditions, such as the payment of a cash bond, providing the names and addresses of family members in the community, or reporting requirements. Whether conditions are imposed, or what types of conditions are imposed, seems to vary from state to state.¹¹ There are no entitlements to work, health care or welfare support linked to this visa.¹²

'Class E' bridging visas can be applied to persons from one of five listed groups (minors, the elderly, those with special medical needs and applicants married to Australian citizens or permanent residents) on compassionate grounds. They may also be granted to any person who has a case pending before the High Court. Upon such release, the asylum seeker must provide a residential address and any absence from the address for more than fourteen days must be notified to DIMIA. They may also be required to post a bond and to comply with reporting requirements.

E. Detention of asylum seeking children

Like adult unlawful entrants, asylum seeking children who enter Australia without authorisation must be detained under the Migration Act 1958 (Cth). The Department of Immigration has sometimes argued that detention of a child may be in their 'best interests' because it preserves family unity in situations where the head of household is required to remain in detention. In an earlier High Court case, government lawyers have argued that release of a child during the determination procedure may cause psychological damage if it raises 'false hope' before the child is re-detained following rejection of their asylum claim and pending removal from Australia. Australian refugee advocates have answered the first point by recommending that a child's own parents (and the child themselves, where age appropriate) be allowed to make their own choice as to whether family unity or liberty from detention is in the best interests of the child. The second point is answered with reference to the documented evidence of psychological trauma, cumulative with every passing day, children suffer as a result of being in detention for the full duration of the procedure.¹³

The High Court of Australia in late 2003 found, in a unanimous decision, that it considered it not to be unlawful or unconstitutional to detain children in immigration detention, stating that there were no exceptions to the law for children.¹⁴ Another High Court case found that conditions of detention would not make an otherwise lawful detention, unlawful.¹⁵ Thus, asylum seeking children continue to be detained in Australia. This decision may well be in conflict with the Human Rights

only grant a bridging visa once, therefore people rarely apply to the Minister for one because they would then lose their chance to obtain a substantive visa. Information supplied by UNHCR Canberra.

¹¹ State offices of the Department of Immigration have the responsibility to impose and monitor bridging visa conditions.

¹² 'Bridging Visas' Form 1024i, DIMIA

¹³ See, 'Summary of evidence regarding the psychological damage caused by long term detention' compiled by Zachary Steel, Clinical Psychologist, 3 July, 2002.

¹⁴ *Woolley & Anor; Ex parte Applicants M276/2003 by their next friend GS (M276/2003)* [2004] HCA 29, 7 October 2004.

¹⁵ *Mahran Behrooz v MIMIA, Attorney-General of the Commonwealth of Australia, Australasian Correctional Management Pty Ltd and Australasian Correctional Security Pty Ltd*, 6 August 2004.

Committee's views in which it held that article 9(4) of the ICCPR requires that detained individuals be entitled to review by a court and that any review must be effective, most notably, that a court must be able to order release (see below).¹⁶ Moreover, a full inquiry into children in detention was conducted by the Human Rights and Equal Opportunities Commission, finding that the policy of immigration detention as it applied to unauthorised asylum seeking children was 'fundamentally inconsistent' with the Convention on the Rights of the Child 1989.¹⁷

F. Residential Housing Projects

An alternative place of detention for women and children was established some two kilometres from the former detention centre at Woomera, South Australia. The Woomera Residential Housing Project involved four houses with lesser security arrangements and far less harsh material conditions than those in the detention centre, but residents were supervised by at least three staff from Australasian Correctional Management Pty Ltd (the same company guarding the detention centres) for 24 hours a day. They were unable to leave the fenced cluster of houses except on chaperoned excursions to community facilities. There were also problems with a lack of cultural sensitivity in the Project, with male security staff given unhindered access so that, for example, Muslim women had to wear their chadors at all times of day. This detention venue has now closed, along with the main detention centre.

It is notable that only fifteen of the twenty-five places at the Woomera Residential Housing Project were occupied, despite the much better detention conditions there. DIMIA stated that this was due to difficulty matching families to the layout of the houses, but it was also believed to be due to the fact that many families did not wish to be divided, with the fathers forced to remain at the main detention centre.

DIMIA considered the Project a success, preparing participants for wider release into Australian society should they be granted a protection visa. No asylum seeker attempted to escape from the Project, despite its lesser security arrangements. DIMIA acknowledges, however, that it remained a detention environment. The Department is currently replicating this Residential Housing Project – which UNHCR Canberra considers a desirable 'interim' measure until families are released unconditionally or to a real alternative – in Port Headland, northern Western Australia, and in Port Augusta, near to the present Baxter Detention Centre. It is to this latter Housing Project that families previously housed at the one near Woomera have been moved. It is reported to face many similar problems as the former project with regard to privacy. The women may not receive visitors at the Housing Project but visit their husbands at the Baxter Detention Centre.

The Woomera Residential Housing Project was extremely expensive. DIMIA stated the total costs to be around A\$1.5 million, which equals a daily per capita cost of approximately A\$492.¹⁸

G. Legal aid for detained asylum seekers

Detainees receive State-funded legal aid via the Immigration Advice and Application Assistance Scheme ('IAAAS') but this is only available to assist them with presenting their application for a protection visa to the initial immigration officer and subsequently to the Refugee Review Tribunal,

¹⁶ *A v Australia*, Human Rights Committee (HRC), CCPR/C/59/D/560/1993, para. 9.5; *C v Australia*, HRC, CCPR/C/76/D/900/1999, para. 8.3.

¹⁷ HREOC, 'A last resort?' The National Inquiry into Children in Immigration Detention, Executive Summary, April 2004, para. 1.

¹⁸ Quoted and calculated in the JAS costings report, 2003, p.15 (see below).

but not in relation to judicial review, including challenges to their detention. Moreover, some of the detention centres are located in remote, rural areas, where access to lawyers is limited.

H. Judicial review of detention

The power of the courts to specifically review the legality of such detention has been removed by operation of law.¹⁹ The High Court of Australia has held however that this does not oust its own original jurisdiction and that any attempt to do so would be unconstitutional.²⁰ Appealing to the High Court can be costly and lengthy thus deterring many asylum seekers from pursuing this avenue. The lack of effective means of appeal or review has been held by the UN Human Rights Committee to render such detention 'arbitrary' within the meaning of Article 9 of the ICCPR.²¹

II. EXTENT OF DETENTION AND LIKELIHOOD OF RELEASE

As of July 2002, 1,434 adults and 184 children were detained in six mainland²² Australian immigration detention facilities. By mid-September, there were 1,180 persons detained, and indeed the numbers have continued to decline steadily, largely due to the fact that Australia is operating a policy of *non-entrée* for all unauthorised boat arrivals. As of October 2003, there were only six asylum seekers with pending cases among those detained. As of 12 March 2004, there were reported to be 1,086 persons detained in mainland facilities, of whom the majority (661) were classified as 'awaiting removal'.²³ The detainee population is thus increasingly composed of failed refugee claimants.

The Immigration Minister has very rarely exercised her discretion of granting a 'bridging visa' for the release of an unlawful entrant asylum seeker from detention on compassionate grounds.²⁴ In those rare cases where release has been granted, it has usually followed intense pressure from advocates who brought the case before the media.

III. ALTERNATIVES TO DETENTION

A. Separated children and other vulnerable individuals

A handful of separated/unaccompanied asylum seeking minors²⁵ have been released from detention prior to the determination of their claims. In 2002, for example, nine unaccompanied minors were

¹⁹ S. 183, Migration Act 1958 (Cth).

²⁰ *Plaintiff S157/2000 v Commonwealth of Australia*, [2003] HCA 2, 4 Feb. 2003.

²¹ *A v Australia*, HRC Case No. 560/1993. At para 9.4, the Committee found that the likelihood of a person absconding is a factor particular to an individual case and, where no such factors pertain, detention on such a basis may be arbitrary. See also the more recent decision: *C v Australia*, HRC Case No. 900/1999. See, also, Report of the Working Group on Arbitrary Detention, UN Doc. E/CN.4/2003/8/Add.2, 24 October, 2002.

²² The qualifying term 'mainland' is used to differentiate the centres in Australia from the Australian-sponsored detention centres in other countries (e.g. those within the Pacific Solution) or other Australian island territories.

²³ Statistics supplied by DIMIA to UNHCR Canberra.

²⁴ Between 1994-1998, only two out of 581 children in detention were released through the exercise of Ministerial discretion. Source: Human Rights and Equal Opportunities Commission ('HREOC'), *Those Who've Come Across the Seas*, 1998. As of June 2002, there was found to be only one separated asylum-seeking child under foster care on a Class E Bridging Visa. Source: HREOC National Inquiry into Children in Immigration Detention, Background Paper 1: Introduction.

²⁵ An unaccompanied minor is defined by DIMIA as 'a non-Australian minor (a child under 18) who does not have a parent to care for them in Australia'. An 'unaccompanied ward' does not have a parent or relative over the age of 21 to care for them in Australia. An 'unaccompanied non-ward' does not have a parent but does have a relative over the age of 21 to care for them. The Immigration (Guardianship of Children) Act 1946 ('IGOC Act') provides that such children

transferred from the Woomera Detention Centre to 'alternative places of detention in foster care arranged by the South Australian Department of Human Services.'²⁶

In 2003, Centacare (a Catholic charity near Adelaide) offered community care as an alternative to the detention of children, following its success providing such care to five children of the Bakhtiyari family (aged 6-15) who were 'released' (in fact, though not legally) from Baxter Detention Centre in the summer.

In December 2001, DIMIA signed a Memorandum of Understanding with the South Australian Department of Human Services ('DHS') regarding children in detention. A complementary MOU was signed with the South Australian Department of Education and Children's Services ('DECS') regarding 'the provision of care and education for detainee children, usually unaccompanied minors, in alternative places of detention in home-based care (foster care).'²⁷ This MOU gives a designated person, usually a school principal, responsibility for the whereabouts of a detained child while he or she is attending school. Such a person is obliged to exercise moral, though not physical, restraint over the child and is obliged to notify DIMIA or the detention centre's management as soon as there is any problem or indication that a child may abscond. In December 2002, Migration Series Instructions on Alternative Places of Detention emphasised that persons transferred to such 'alternative places' must be kept under constant supervision and other restrictions on their freedom of movement should be imposed.

Both in South Australia and in Victoria, a few asylum seekers have quietly been released to community care on compassionate grounds – for example, a woman with a daughter was released to live in a motel and a man to the care of a mental institution.

These exceptional arrangements could be formalised into a wider system for the transfer (i.e., *de facto* release with the threat of immediate re-detention at any time) of vulnerable persons into the community or into more appropriate care institutions.²⁸ NGOs and welfare agencies in South Australia, however, have serious concerns about the implementation of such arrangements, the isolation and lack of self-sufficiency they can involve, and whether such arrangements are always in

become wards of the Minister for Immigration and Multicultural and Indigenous Affairs who then delegates this function to officers of the child welfare authority in each State or territory. Source: DIMIA Factsheet No.84 'Caring for Unaccompanied Minors', October 2003. Critics of these arrangements feel that they create a conflict of interest in situations where DIMIA is the detaining authority or responsible for the child's removal from the country. See, UNICEF Submission to the HREOC Inquiry into Children in Immigration Detention.

²⁶ Lawyers Committee for Human Rights, *Review of States Procedures and Practices Relating to Detention of Asylum Seekers, Final Report*, September 2002, p.8.

²⁷ *Memorandum of Understanding between the Commonwealth of Australia and the State Government of South Australia Providing Access for Immigration Detainee Children in South Australia to Education in South Australian Government Schools*, quoted in Hansard (records of the Australian Parliament), 16 June 2002, p.11510.

²⁸ Any agency involved in supervising someone in an 'Alternative Place of Detention' needs to assure the Immigration Minister with regard to several points: (a) the standard of care and services to be provided to the 'detainee'; (b) the responsibility for the costs and the day-to-day needs of the 'detainee'; (c) respect for the privacy of the 'detainee'; and (d) the availability of the 'detainee' for processing and, if necessary, removal from Australia. For welfare agencies, most concerns obviously focus on this final requirement, as it would entail an element of immigration enforcement on their part. Welfare agencies often already have extensive experience with exercising a duty of care with regard to people released on parole or juveniles released on correctional sentences, and DIMIA would implement some supervision requirement as a condition of the transfers – such as a reporting requirement to the police or a government office, either daily, three times a week or weekly – thereby retaining primary responsibility for the person's appearance and compliance. At the same time, the welfare agency would be expected to exercise moral restraint over the individuals, persuading them to comply with these requirements. They would also have to be willing to notify DIMIA whenever anyone seemed likely to abscond. The agency would not chaperone the transferred 'detainee' everywhere, but in some accommodations a curfew system might operate, as already in many treatment centres and hostels.

the best interests of children. They are currently proposing to DIMIA that release on a bridging visa, with minimum entitlements to the Asylum Seeker Assistance Scheme guaranteed, is a more suitable option than expanding the number of 'Alternative Places of Detention' (see below – Hotham Mission Asylum Seeker Project).

B. Hotham Mission Asylum Seeker Project

The Hotham Mission Asylum Seeker Project ('HMASP') in Melbourne and other agencies across Australia have proposed increased use of release on Class E bridging visas, combined with an addition of minimum entitlements to the Asylum Seeker Assistance Scheme, currently run by Red Cross.²⁹ Housing support workers and caseworkers would both support those released to welfare agencies' care, providing supervision primarily through a personalised assistance programme. HMASP points out that, aside from providing practical assistance with material needs, and ensuring that minimum welfare conditions are met, 'casework would play a pivotal role in preparing, supporting and empowering asylum seekers throughout the determination process. While not responsible for implementing immigration decisions or providing legal advice, the caseworker would play a key role in case coordination, including liaising with lawyers and DIMIA/Minister's office.'³⁰

The nature of support that could be provided to former detainees granted community release on a bridging visa has been detailed by the Hotham Mission based upon their long and somewhat unique experience of working with asylum seekers in the community – both those who arrived in Australia with legitimate documentation and were 'immigration cleared' to live in the community, and those who were left to survive in the community without welfare entitlements. In February 2004, the HMASP reported that it was currently working with 250 asylum seekers, housed in 33 properties.³¹ To date, the Mission and its many NGO partners have worked with 66 asylum seekers released on bridging visas but without welfare entitlements.³² Hotham Mission notes an extremely high percentage of their clients who have complied with negative asylum decisions. They attribute this success both to the case-management model and the fact that their clients have received adequate legal representation.³³

Between February 2001 and February 2003, they conducted research to track 200 asylum seekers (111 'cases' including families) living in the community on bridging visa Class E, of whom 31% were former detainees. The Hotham research reported that not one single asylum seeker of the 200 absconded during the two year period, despite the fact that 55% had been awaiting a decision for 4 years or more and the fact that 68% were found to be at risk of homelessness or were actually homeless.³⁴

²⁹ The major opposition party in Australia (the Labor Party) has proposed similar case-management arrangements for non-detained asylum seekers, not as an alternative to detention, but as a solution to reducing levels of immigration litigation by ensuring that asylum seekers better comprehend the system. 'Guardians to manage asylum case load: Labor', *Sydney Morning Herald*, 31 March, 2004.

³⁰ Hotham Mission Asylum Seeker Project, 'Minimum Standards of Care for Asylum Seekers in the Community', (DRAFT working paper) Melbourne, 24 March, 2004.

³¹ Church properties, 'nominated transitional properties', rentals and bungalows.

³² Eleven in 'Alternative Places of Detention', fifteen psychological/medical cases, one unaccompanied minor, 32 on bond, two released on court order, and five 'interlocutory' cases. Hotham Mission Asylum Seeker Project End of Year Report, February 2004.

³³ Submission to the National Inquiry into Children in Immigration Detention from Hotham Mission, Human Rights and Equal Opportunities Commission, No.174.

³⁴ Hotham Mission Asylum Seeker Project, 'Welfare Issues and Immigration Outcomes for Asylum Seekers on Bridging Visa E, Research and Evaluation,' November 2003. See also: www.hothammission.org.au

Of rejected asylum seekers in the study, 85% voluntarily left Australia on receiving a final decision, within the 28 days usually allowed for them to do so. The other fifteen per cent were detained and then forcibly returned. Nobody absconded. The researchers concluded from this evidence that detention was unnecessary to ensure the vast majority of failed asylum seekers' availability for removal, and that absconding of such persons could be prevented with the use of lesser restrictions and positive support, specifically:

- a) Compliance requirements such as regular reporting;
- b) Living assistance linked to maintained contact with the authorities;
- c) Careful risk assessments;
- d) Comprehensive case management.

Finally, it should be noted that the HMASP produced a wealth of other welfare benefits for its clients, allowing them to live in dignity, quite aside from its success in preparing asylum seekers for any outcome of their cases and preventing absconding.³⁵

C. Proposed models of the Human Rights and Equal Opportunities Commission (HREOC)

In its May 1998 report, *Those Who've Come Across the Seas*, HREOC recommended an 'alternative to detention' model for the Australian system, involving imposition of varying degrees of restrictions on asylum seekers' freedom of movement. It recommends a presumption in favour of granting a bridging visa unless the government could produce evidence of a need to detain. DIMIA would need to demonstrate, among other things, a likelihood that the person will abscond, or, if the conditions of a bridging visa have already been breached, that the asylum seeker has failed to show good reason for such a breach.³⁶

Under the proposed model, asylum seekers would be released within 30 (or maximum 90) days. They would be given either: (1) an 'open detention bridging visa' or (2) a 'community release bridging visa' (to community, family or own recognisance). An open detention bridging visa would be more supervision and enforcement oriented, with accommodation provided by the State, operated with a curfew, a regime of signing in and out during the day, permission to work (which, if obtained, would entail paying a fee for the accommodation) or eligibility for welfare assistance if no right to work.

In comparison, the latter visa would involve: provision of a designated address, a duty to notify the authorities of any change of address within 48 hours, reporting requirements, possibly a bond or surety, and a duty to remain available to report to a case officer within 24 hours of being summoned. Both types of proposed bridging visas would, HREOC notes, require 'adequate funding of the community sector so that it can meet the additional demands placed on it by a comprehensive community release scheme.'³⁷ If re-detention were to be necessary, due to a breach of conditions or because a failed asylum seeker had to be detained pending removal, the individual would be unable to apply for re-release for another thirty days.³⁸

³⁵ Hotham Mission Asylum Seeker Project, 'Welfare Issues and Immigration Outcomes for Asylum Seekers on Bridging Visa E, Research and Evaluation,' November 2003.

³⁶ HREOC, *Those Who've Come Across the Seas*, Part 6: An Alternative Model, May 1998, p.235.

³⁷ HREOC, *Those Who've Come Across the Seas*, Part 6: An Alternative Model, May 1998, p.242.

³⁸ HREOC, *Those Who've Come Across the Seas*, Part 6: An Alternative Model, May 1998, p.243.

In April 2004, HREOC is expected to publish the report of its National Inquiry into Children in Immigration Detention, which will detail recommendations for the release and proper accommodation and protection of children.

D. Proposed model of the Refugee Council of Australia

The Refugee Council of Australia (an umbrella organisation for nongovernmental organisations working with refugees and asylum seekers across the country) has developed a similar model to that proposed by HREOC, which calls for more individual assessment as to whether an asylum seeker requires detention or some level of restriction on their whereabouts. They identify as potential beneficiaries of release to an alternative detention model as those who are unlikely to abscond and the expected outcome of their cases looks positive, as well as those who should be released for other humanitarian reasons.

Their Alternative Detention Model³⁹ is based on the argument that individual cases can be reviewed on a regular basis in order to choose the level of control demonstrably required for each person. There are three levels:

Level 1: Closed detention (which all asylum seekers experience initially upon arrival at a port or airport);

Level 2: Open detention (which equates to open centres of compulsory collective accommodation in Europe). Open detention would involve accommodation in a hostel, maintained and regulated by DIMIA, with a curfew from 7pm to 7am, and asylum seekers would be eligible to work or to receive financial assistance;

Level 3: Community release, which involves residence at a designated address and reporting requirements. There are three forms of such release:

- a) Family release. It is proposed that this form of release would be at a designated address, with a nominated close family member, and that the asylum seeker must report to the authorities at regular intervals, the frequency of which would be decided by the case officer after an individual assessment. The family member would be required either to pay a bond in advance or to sign a recognisance with the authorities. If called upon at any time, the asylum seeker must report to the authorities within 24 hours;
- b) Community organisation release. This would be much the same as family release, except with the designated address nominated by a recognised community organisation, and omitting the possibility to ask the community organisation to pay a bond.
- c) Release upon own recognisance. Again, very similar obligations would apply, except that the asylum seeker would be able to change his or her designated address by notifying DIMIA within 48 hours.

Applicants can be moved flexibly up or down these levels of control as their circumstances change. The level is stated upon their visa, and a new visa must therefore be issued every time that the level is adjusted. Anyone who is not released must be provided with a statement of the reasons for ongoing detention.

The Alternative Detention Model proposes that priority be given to securing and sustaining the community release of children, close relatives of children, elderly persons, single women, persons

³⁹ Developed in the late 1990s, this model is found on the website of the Refugee Council (www.refugeecouncil.org/au) and remains a current proposed alternative.

with special health needs or persons with previous experience of torture or showing symptoms of trauma. The penalty for an unjustified failure to cooperate with any of the non-custodial levels of control is return to detention, with a brief period in which it is impossible to apply for re-release.

E. Justice for Asylum Seekers report on costs of alternatives to detention

In 2002, Justice for Asylum Seekers ('JAS'), an alliance of over 25 national, church and community organisations, published its *Alternative approaches to asylum seekers: Reception and Transitional Processing System*. This model introduced three key elements: (1) case management to assist asylum seekers throughout the asylum and review processes; (2) several accommodation options; (3) risk evaluation early in the process, to identify which type of accommodation suits which individuals and to minimise absconding.

JAS recently commissioned a costing analysis from a specialised consulting firm, in order to compare the costs of detaining asylum seekers with the costs of receiving asylum seekers under their proposed, community model.⁴⁰

The report's authors noted that they could not quantify and therefore could not reach conclusions regarding the possible deterrent effect of detention, nor could they precisely estimate the medical and other social (integration) cost savings that might be achieved if the trauma of time spent in detention was minimised. The report accepted as its starting point that the mandatory detention policy for unauthorised arrivals would continue, but then proposed that an early risk evaluation would refer each asylum seeker to either: (a) a community alternative, (b) a moderate security hostel, or (c) recommend continued detention.

It was concluded that, even counting the additional costs of introducing a case management system, the proposed model would be eighteen per cent cheaper than the current detention system. It noted that each level of accommodation – community care, hostels and detention – is also the cheapest option for its appropriate level of security requirement (low, medium or high). It is not cost effective, in other words, to try to provide high levels of security in a community or hostel environment nor to provide low level security to a person that is truly 'high risk'.

The report relied upon figures from a number of sources, including a DIMIA statement in February 2003 that, in FY2001-2002, the average per capita per day cost of detention was A\$160 (and ranged from A\$95-A\$533).⁴¹ These figures did not include capital costs, therefore, a rough approximation was made by JAS based on the capital costs for correctional and elderly care residential facilities in Australia. They found that these costs ranged between A\$30-50 per person per day.⁴²

The report compared this cost evidence to the average cost of care in the community and accommodation in a semi-secure hostel, and concluded that if the daily cost of detention (A\$160) were added to the daily cost of case-management (A\$10) to make a total cost of A\$170, this could be directly compared to a total cost of hostel accommodation including case-management of A\$110

⁴⁰ This 'costings report' was published by JAS in September 2003. JAS received grants from foundations for this commission, which they reported to have cost some A\$10,000 in total.

⁴¹ Letter from DIMIA to JAS, quoted in JAS costings report, 2002, p.9. A direct comparison in September 1997 found that the costs of detention at Port Hedland were A\$161.77 per day, compared to the costs of community-based release provided by the Society of St Vincent de Paul at A\$14 per day. See, HREOC, *Those Who've Come Across the Seas*, Part 6: An Alternative Model, May 1998, p.237.

⁴² JAS costings report, 2003, p.12.

and community care including case-management of just A\$60.⁴³ They then subjected these figures to a 'sensitivity analysis' regarding key variables, including the time period of the initial mandatory detention varying between 15-60 days, and reached the final conclusion of an average eighteen per cent savings between detention and the JAS model.

IV. CONCLUSIONS

A. Do alternatives ensure compliance?

No specific alternative to detention projects have been implemented in Australia in recent years on any large scale, so evidence relating to the success of such alternatives is limited. Nor does the Australian government publish statistics relating to the overall compliance of released or non-detained asylum seekers.

The Department of Immigration reported in late 1997 that no single asylum seeker released on a bridging visa in the previous two fiscal years had failed to meet their reporting obligations or failed to appear for scheduled appointments.⁴⁴ Nor have any of the asylum seekers detained under less stringent security at the Residential Housing Projects near Woomera, Baxter and Port Headland, or at 'Alternative Places of Detention' in South Australia, attempted to abscond. The Hotham Mission in Melbourne reported 100% compliance of 200 asylum seekers, of which 31% were former detainees, tracked over the course of two years. In 1994, a parliamentary committee found that only 28 of 648 persons (4.3%) breached their reporting conditions and 11 of 697 sureties (1.6%) were forfeited.⁴⁵ Figures such as these, though either dated or localised, would suggest that alternatives involving additional supervision or restrictions are not needed to ensure compliance in Australia.

The mandatory detention policy and the reluctance to release asylum seekers to alternative measures cannot be explained with reference to national security concerns either. On 22 August 2002, the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade asked the Director-General of the Australian Security Intelligence Organisation ('ASIO') about the security screening of asylum seekers and learned that out of 5,986 screenings conducted since 2000, not one single asylum seeker was found to pose a national security risk. The same Committee also heard no evidence of a statistical linkage between asylum seekers and criminality (other than immigration violations) since 2000.⁴⁶

What then are the policy objectives being met by Australia's detention policy? It has been repeatedly acknowledged by the former Minister for Immigration in his public statements that the policy serves a deterrent function. It is presumed that this deterrence is directed against abusive claimants rather than genuine refugees, but in fact the debate has become far more complex since it began to focus on the issue of secondary movement from countries of first asylum and the legitimacy or illegitimacy of the reasons for those intra-regional movements. In any case, mandatory detention was introduced in 1992 yet the numbers of unauthorised asylum seekers

⁴³ Evidence was collected from various types of residential care, and also from the Hotham Mission Asylum Seeker Project in Melbourne (costs ranging from A\$19.70 per capita per day for a single adult man to A\$37.70 per capita per day for a high needs family – but note that these low costs were reliant on the donated time of many volunteers); Anglicare NSW (which had spent around A\$168 per day to assist a family of three with special needs – that is, around A\$27 per day per person of case worker expenses, and A\$41 per day per person for living expenses); and the Red Cross IHSS proposal which suggested it could deliver social assistance in place of detention at an average daily cost of A\$11.60 per capita.

⁴⁴ DIMA response to a question on notice by Senator Stott-Despoja on 1 September 1997 – Question No.803.

⁴⁵ Parliamentary Joint Standing Committee on Migration report, *Asylum, Border Control and Detention*, February 1994.

⁴⁶ Quoted in JAS costings report, 2003, p.8.

arriving in Australia continued to rise steadily (and then dramatically in 2001), which suggests that detention was not a very effective deterrent. Australia did not truly begin to deter asylum seekers until it closed its coastal borders completely in September 2001 and boat arrivals did not stop until one vessel (known as Siev X) sank en route, drowning over 300 asylum seekers.

B. Do alternatives ensure availability for return?

The Minister for Immigration stated in 2002 that immigration detention ensured persons are available for removal and identified this as a key component of effective border control. As one of the only alternatives to detention in Australia, the Hotham Mission Asylum Seeker Project has achieved excellent results in ensuring availability of failed asylum seekers for return, by alternative means of early intervention, counselling and assistance. From a cost-efficiency perspective, the government would have to compare the costs and results of locating and re-detaining those few applicants who might abscond when released into the community with the costs of keeping them in detention for long periods while their removal is arranged.

Now that the Australian government is issuing only 'temporary protection visas' the issue of availability for forced return will become increasingly focused on the return of recognised refugees whose protection is withdrawn. If such refugees can be located and returned, then so, presumably, can the majority of failed asylum seekers.

C. Cost effectiveness?

The JAS model (see above), with an element of community care delivered properly and without reliance on charitable funds, represents a potential eighteen per cent cost saving compared to the current policy of mandatory detention for all unauthorised arrivals. For this reason it is extremely persuasive.⁴⁷ The few cases tested to date, where welfare agencies have taken responsibility for low-risk individuals, supports this report's evidence of value for money at no additional risk to the public.

No costing evidence, however, is likely to outweigh the arguments by some Australian policy makers that detention is required as a deterrent against people-smugglers. As of September 2003, the Pacific Solution was reported to have cost over A\$500 million, indicating that almost any expenditure will be considered worthwhile if it delivers a deterrent message to those the Australian government believes to be heading to Australia without legitimate cause.

D. Export value?

As Australia continues to operate under a system of mandatory detention for all unauthorised arrivals, it has yet to introduce any systematic alternatives to that detention. There are a few, *ad hoc* examples, although they are limited in scope and generally have a large number of restrictions imposed on freedom of movement. They are not, therefore, considered to be best practice.

⁴⁷ The number of asylum seekers per case manager will vary depending on the needs of the clients, but JAS found that the supervisor/case ratio tends to vary between 1:6 and 1:30. They used an average of 1:15 (representing 25 individuals) and noted that most of the costs need to be loaded to the first month of arrival and evaluation (making case management 50% more expensive during this period).

AUSTRIA¹

I. DETENTION AND DOMESTIC LAW

A. Detention at borders or transit zones

Prior to a decision on the admissibility of a claim, confinement in a border or transit zone (*Konfinierung*) is permitted for those who apply for asylum at Vienna International Airport. This is not considered, under Austrian law, to be detention.²

UNHCR Vienna has a role in consenting to the rejection of 'manifestly unfounded' claims in the accelerated airport procedure. Such rejected applicants must remain in detention at the airport pending any appeal. In 2003, UNHCR gave its consent to 150 of 182 cases referred to it for review.³ Most of these persons were detained for a short period, however some had to stay for over a month, until a decision on their claim was taken. In 2003, 2,984 asylum applications were registered at the airport. It should be noted that most of these applicants were not processed through the airport procedure or detained, but rather were admitted immediately onto Austrian territory as their claims were not deemed to be manifestly unfounded by the Federal Asylum Agency. The high rate of release is also partly due to a lack of detention capacity.

B. Detention for in-country applicants

Asylum seekers are also detained if apprehended after having entered the country illegally.⁴ In most cases they are released after their first eligibility interview by the Federal Asylum Agency, provided their claim is not deemed 'manifestly unfounded'.⁵ These asylum seekers whose entry took place by evasion of the border control or in breach of the provisions of the Aliens Law are usually held in custody by the district border police. At the eastern border (Lower Austria and Burgenland) and near the Italian border at the Brenner, there are special detention facilities for this purpose. Otherwise, local police facilities are used.

¹ The information presented herein is valid up to 31 March 2004.

² Art. 18(1), Asylum Law. Holding asylum seekers at the airport does not qualify as 'detention pending deportation' (and, therefore, is not subject to the same safeguards (see C. Detention pending deportation, below)) according to the explanatory remarks to the Asylum Law, which claim that this provision is in conformity with article 5(1)(f) of the European Convention on Human Rights 1950. This is counter to the position of UNHCR, which defines detention to include severe curtailment of freedom of movement within such locations, regardless of asylum seekers' supposed ability to depart the receiving country. See, also, ECHR decision *Amuur v France* (1996) on unlawful restrictions on freedom of movement.

³ Information received from UNHCR BO Vienna.

⁴ An asylum seeker may be subject to the provisions of article 63(1)(1) and (2) of the Aliens Law, whereby he or she may be taken into custody for the following reasons: (a) issuance of an arrest warrant ordering that he or she be brought before the relevant authority; or (b) discovery within seven days after illegal entry, unless the individual indicates that he or she will immediately leave the territory. According to article 64 (1) *leg. cit.* the agent of the public security forces shall, without delay, and within twelve hours, inform the authorities of the arrest of an alien pursuant to article 63 *leg. cit.* Any such alien arrested under this provision may be held in custody for up to 48 hours. Beyond that limit, deprivation of liberty shall be permissible only by way of detention pending deportation (art. 61, Aliens Law).

⁵ Asylum seekers whose entry took place by evasion of the border control or in breach of the provisions of the Aliens Law are only granted a provisional right of residence when, after the first eligibility interview, their applications are deemed admissible and not manifestly unfounded (see art. 19(2), Asylum Law). Pursuant to article 21 of the Asylum Law, asylum seekers possessing a provisional right of residence shall not be arrested and detained if (1) they have submitted their application personally to the Federal Asylum Agency without being brought before it, or (2) they have filed their application at the time of the border control or on the occasion of other contact made by them with a security authority or with an agent of the public security service. Those asylum seekers who lodge asylum applications only after being arrested or detained may remain in detention regardless of their provisional residence rights.

C. Detention pending deportation

Asylum seekers and failed asylum seekers may be held in detention pending deportation under a variety of removal provisions.⁶ Article 61 of the Asylum Law allows aliens to be arrested and held in detention where it is considered necessary in connection with the imposition of a residence ban or expulsion order, until the latter can be enforced, or as a security measure in connection with deportation, forcible removal or transit.

The period of any detention pending deportation is supposed to be, according to law, as short as possible, that is, such detention should be enforced only until the reason for it ceases to exist or its objective can no longer be achieved. Detention pending deportation or other removal measures shall not exceed two months, and may only exceptionally be extended for a total duration of up to six months.⁷ Whereas some aliens police districts conduct regular, internal reviews to consider the continuing necessity of their detention orders, others do not. Some border districts have computerised systems that give them notice when the two or six months deadlines are approaching in each case, whereas others do not – occasionally leading to cases where the detention exceeds the lawful maximum period⁸.

D. Legal Advice and Appeals

Asylum seekers have rights of appeal or ‘complaint’ to the Independent Administration Senate, which is a quasi-judicial body in each province. Appeal to higher courts, including the Highest Administrative Court, may also be pursued. Legal aid for detainees making such appeals is limited. Most asylum seekers depend upon legal advice provided by voluntary organisations.⁹

II. EXTENT OF DETENTION AND LIKELIHOOD OF RELEASE

During 2003, some 11,150 aliens (not only asylum seekers) were detained pending deportation. According to the estimates of several NGOs, approximately 10% of these persons were asylum seekers.

Most detained asylum seekers are single adult males, originating from countries with low recognition rates (e.g., Armenia, Georgia, India, Nigeria, etc.). However, starting from November 2003, some district authorities also began to detain heads of households while their wives and children were accommodated in reception facilities for asylum seekers. As the authority to impose detention lies with the district administrative authorities, practice varies considerably depending on

⁶ Art. 61, Asylum Law.

⁷ In four exceptional situations listed in article 69(4) of the Aliens Law the detention order can be upheld for a maximum period of six months. It includes situations in which it is not possible or permissible to expel an alien solely because: (a) a final ruling has not yet been pronounced concerning the inadmissibility of deportation to a specific country pursuant to article 75 of the Aliens Law (in cases contrary to article 3 ECHR), or (b) the establishment of his or her identity and nationality is not possible, or (c) he or she does not possess the necessary entry permit or transit permit from another State, or (d) he or she frustrates the deportation order by resisting the measure of constraint. The Aliens Law fixes also a maximum time limit for cumulative detention pending deportation. Within a two-year period, an alien cannot be held in detention pending deportation for more than six months by reason of the same facts (art.69 (6)).

⁸ There are over 91 first instance authorities (*Bezirke und Magistrate*) in Austria with varying practices, which have not been surveyed in detail by this study.

⁹ Article 40 of the Asylum Law provides for legal counsellors at the Federal Asylum Agency. However, detained asylum seekers do normally not have access to them and are, therefore, dependant on counselling services provided by NGOs. Social counsellors present in the detention facility usually facilitate the establishment of contacts.

the competent border district. Some districts hardly issue detention orders to asylum seekers, while others do so regularly. If the asylum authorities consider the claim not to be manifestly unfounded or inadmissible and issue a provisional right of residence, the asylum seeker is normally released from detention.

During 2003, most detained asylum seekers were held either during the period leading up to the first instance asylum interview or for the full two-month period permitted by law. Longer detention was exceptional and mainly concerned individuals to be returned under the Dublin Convention procedure or cases where the aliens authorities believed that a final negative decision on the asylum request was forthcoming.

III. ALTERNATIVES TO DETENTION

A. Open centres¹⁰ and dispersal arrangements restricting freedom of movement

Non-detained asylum seekers are entitled to be issued with a provisional right of residence until a final decision on their asylum application is taken. They must register their addresses with the federal authorities.

Each asylum seeker is first received at an open 'initial reception centre' (in Thalham, Traiskirchen or at the Vienna International Airport) and provided with an 'asylum procedure card'. They are then dispersed to designated accommodation centres throughout the nine provinces or Federal States (*Bundesländer*).

Destitute asylum seekers may receive assistance through the federal care scheme.¹¹

According to the Federal Care Provision Act, asylum seekers in federal care shall not be relocated to another accommodation or Federal State except in cases involving the closing down of accommodation facilities, the reuniting of families, particularly deserving personal reasons (including needs for psychological or medical treatment), or organisational requirements. As many federal care facilities are small *pensions* located in relatively remote areas, often lacking the necessary treatment for traumatised individuals, asylum seekers often request to be relocated. UNHCR intervenes in a few serious cases.¹²

¹⁰ Austria's so-called 'open stations' (*offene Stationen*) should not be confused with the open centres discussed here, nor with any other form of alternative to detention. The *offene Stationen* are, rather, detention facilities in which aliens who have been detained for some time and behaved cooperatively may be given more space to move around outside their cells, yet within a restricted area of the facility, during the daytime.

¹¹ Austrian policy is currently at a turning point with regard to the provision of social assistance to asylum seekers. Up until late 2003, a large number of asylum seekers were excluded from federal assistance on the basis of the revised Federal Care Provision Act, which entered into force in November 2003,¹¹ and prior to its entry into force on the basis of internal Ministry of Interior guidelines excluding certain nationalities of asylum seekers from all federal assistance.¹¹ Almost two thirds of all asylum seekers in Austria were dependent upon charity and often forced to sleep in the streets. In such cases, ironically, the warmth of a bed in detention during winter was sometimes considered preferable to this 'alternative'. At the time of writing, in early 2004, an agreement for the sharing of costs relating to the reception of asylum seekers had been negotiated between the Ministry of Interior and the provinces (*Bundesländer*). According to this agreement, which is expected to enter into force on 1 May 2004, all needy asylum seekers will once again be eligible for assistance. At the end of 2003, the Ministry of Interior decided to anticipate a solution and agreed to provide federal care to all needy asylum seekers prior to the agreement's entry into force.

¹² E.g., a 2002 case of a seven-year old asylum seeker who needed regular therapy in Vienna. Information received from UNHCR BO Vienna.

Following the entry into force of the new asylum law, all asylum seekers will have to proceed to the 'initial reception centre'. Once admitted to the regular procedure, those asylum seekers who are not in need of State assistance, may live wherever they choose. Their asylum applications will be allocated to one of the seven branch offices of the Federal Asylum Agency in a particular province. An asylum seeker does not need to move to that province if he or she is able to commute there for all appointments.¹³ This lack of restriction for self-sufficient applicants suggests that the Austrian reception system is primarily designed as a system of burden-sharing between the provinces rather than as a measure of enforcement to ensure closer monitoring of asylum seekers' movements. In practice, however, as the vast majority of asylum seekers do require State support, the latter becomes one of the policy's effects when it is fully implemented.

B. Reporting requirements, designated residence, or other 'more lenient measures' (*Gelinderes Mittel*)

The current Aliens Law provides for a number of more lenient measures of a non-custodial nature as alternatives to detention. In practice, these measures are either reporting requirements every second day and/or the requirement to reside at a place, usually a boarding house, specified by the Aliens Police (regardless of the applicant's need for federal care).¹⁴ Accommodation at a boarding house designated as a 'more lenient' measure can last twice as long as detention.¹⁵

The authorities may refrain from imposing a detention order if it is believed that the person will not abscond but will remain available for deportation by the use of such 'more lenient' measures.¹⁶ In particular, the authorities are obliged to apply such measures to minors, unless they can prove that such measures would be insufficient.¹⁷

Should an asylum seeker fail to comply with these measures or fail to appear when summoned, he or she may be detained. The threat of detention acts as a form of assurance against failure to comply. In addition, prior to moving to a designated residence, an asylum seeker is photographed and fingerprinted.

During 2003, measures of a more lenient nature were applied to 622 aliens. This constituted a slight decrease in the use of these alternatives in 2002. In January 2003, 1,042 persons were detained and sixteen benefited from more lenient measures. In December 2003, 983 were detained and 27 benefited from more lenient measures.¹⁸

In Graz, in the province of Styria, some 60% of detainees are asylum seekers, detained on average for around three weeks. While child asylum seekers in Graz are not detained, the 'more lenient'

¹³ UNHCR survey on Reception Standards for Asylum Seekers in the European Union, Geneva, July 2000, p.31.

¹⁴ Article 66, paragraph 4, last sentence of the Aliens Law.

¹⁵ *Study on Comprehensive EU Return Policies and Practices for Displaced Persons under Temporary Protection, Other Persons whose International Protection has ended, and Rejected Asylum Seekers*, Prepared by ICMPD for the European Refugee Fund, Final Report, January 2002, p.62.

¹⁶ Art. 66(1), Aliens Act 1997.

¹⁷ With instruction No. 31.340/17-III/16/00 of 10 April 2000, the Minister of Interior instructed the authorities not to detain minors but to apply instead the more lenient measures. In case this should not be possible the reasons must be communicated to the applicant. The instruction also clearly stipulates that children under fourteen years of age are never to be detained (following an age determination made in close consultation with the Youth Welfare Office).

¹⁸ www.bmi.gv.at - Federal Ministry of the Interior asylum statistics. Prepared by ICMPD for the European Refugee Fund, Final Report, January 2002, p.62.

measures are not applied to adults. In St Pölten, Lower Austria, the 'more lenient' measures are only applied after a person has been in detention for up to two months.¹⁹

C. Other alternatives for separated children

The number of asylum seekers below the age of eighteen years who are detained in Austria is extremely small, though there are indications that the number rose in 2003.

As described above, according to the Aliens Law, separated children are among the key beneficiaries of the 'more lenient' measures, both to monitor them and, according to the legislators' intentions, for their own protection. Separated children seeking asylum in Austria can also be referred to 'clearing houses/centres'. These are hostel-type accommodation facilities in which separated children are hosted immediately after their arrival to Austria and where they have access to a comprehensive psychosocial support network. Due to the limited capacity of existing 'clearing houses/centres', only a small proportion of separated children have access to such comprehensive care arrangements. Other separated children seeking asylum in Austria are provided only with the necessary material assistance (shelter, food, etc.) under the Federal Care Provision Act and are otherwise left to their own devices.

The Youth Welfare Agency acts as the legal representative of any child in the asylum process,²⁰ but this agency does not automatically take on a guardianship role and usually only accompanies such children during their asylum interviews and lodges an appeal on their behalf if required. The explanation leaflet given to minor asylum seekers states:

“[T]he Youth Welfare Agency, being your legal representative, will be served with the decision of the Federal Asylum Agency (and of the Independent Federal Asylum Review Board). Therefore you ought to stay in touch with the Youth Welfare Agency during the entire asylum proceedings, or at least until you are 18 years old, and advise them of any change in address of residence.”²¹

Thus the onus for maintaining contact and complying with the procedure falls to the child. If the court becomes aware of the presence of a separated child in Austria it has to appoint a guardian. However, the court is only exceptionally informed by either the Youth Welfare Agency or nongovernmental organisations and therefore the appointment of a guardian is rather exceptional.

This study is not aware of any national statistics on the rate at which separated child asylum seekers abscond or remain in the Austrian asylum procedure. Therefore it is very difficult to draw conclusions regarding whether or not the current arrangements for children's care and protection are effective, in both ensuring their compliance with the procedure and their protection from abduction by traffickers.

¹⁹Information forwarded from: Leitung Flüchtlinge Migrationsfragen, Caritas Austria.

²⁰Art. 25, Asylum Law.

²¹Quoted in: UNHCR survey on *Reception Standards for Asylum Seekers in the European Union*, Geneva, July 2000, p.30 (but age limit amended to reflect the change of law since 2000).

IV. CONCLUSIONS

A. Do alternatives ensure compliance?

The return to full and non-discriminatory social assistance for all asylum seekers in Austria who need it²², is likely to have beneficial effects not only on the well-being of the asylum seekers themselves, but also on the efficiency of processing asylum claims and on the State's ability to ensure applicants' availability for removal if their claims are unsuccessful. It will mean that the majority of asylum seekers will be more easily contactable at fixed addresses or collective accommodation centres. Although comparative national data is not available, one would expect a decline in the number of asylum seekers recorded as 'no shows' for their interviews when they are no longer preoccupied with the challenges of daily survival.

To date there has been little evaluation, certainly at a national level, as to whether the measures of a 'more lenient' nature, or the care provided to separated children such as the 'clearing houses', are proving to be effective alternative means of ensuring the compliance and appearance (as well as protection from abduction for children) of those selected for these schemes.

B. Cost effectiveness?

There is no doubt that all forms of open accommodation are cheaper to run than closed centres. However, there may be costs saved by ensuring, by means of detention, that rejected asylum seekers who can be returned home are available for immediate return (if an individual assessment indicates a risk of absconding).

²² See above footnote 11.

BELGIUM¹

I. DETENTION AND DOMESTIC LAW

The Belgian authorities may detain asylum seekers at international ports, including at the airport, if they enter without valid documents.² They may detain in-country applicants without valid documents if the claim is deemed inadmissible.³ An asylum seeker may also be detained if he or she is considered to pose a threat to public order or national security.⁴ The only mandatory medical exam is for tuberculosis, so the public health grounds for quarantine detention are limited.

An asylum seeker may only appeal the technical legality of a detention order, without entering into the facts of the case.⁵ There are maximum durations for any such order: two months pre-admissibility, five months pre-removal, and eight months in cases relating to public order or national security.⁶ However, CIRE, a Belgian nongovernmental organisation, reports that these legal maximums are circumvented in practice by the issuance of multiple detention orders consecutively. Also, after every aborted removal attempt, a new detention order may be issued, thus starting a new period from zero.

Asylum seekers are not entitled to legal representation at the admissibility stage of the procedure before the Aliens' Office, however detained asylum seekers are entitled to legal aid to challenge the legality of their detention.

At the end of 2003, the Minister of Interior announced that irregular migrants caught a second time after being issued with an order to leave Belgian territory would henceforth be kept in a detention centre pending their removal. The Department of Immigration, which was not consulted on this policy shift, objected that it had insufficient detention capacity.⁷

Asylum seekers detained in closed centres may challenge their detention before the *Tribunal de Première Instance*, and such appeals have become almost routine. This is especially true in the case of children, who are usually released if suitable alternative accommodation is found.⁸ In the first nine months of 2003, there were a total of 1,163 requests for release from detention.

II. EXTENT OF DETENTION AND LIKELIHOOD OF RELEASE

There are six detention or 'closed' centres for illegal aliens in Belgium, including two at the airport. One of these is used to detain passengers who do not have the required entry documentation and apply for asylum (capacity 60); the second one houses those refused entry to the territory but who

¹ The information presented herein is valid up to 31 March 2004.

² Art. 74(5), Aliens Act.

³ Art. 74(6), Aliens Act.

⁴ Arts. 63(5)(3), 52, and 54(2), Aliens Act.

⁵ Arts. 71 and 63, Aliens Act.

⁶ If a failed asylum seeker does not leave the territory on his or her own accord, he or she may be detained and expelled. He or she may be detained for a maximum period of two months which may be extended for up to five months, if: (a) the necessary steps for removal are initiated within seven days of detention; (b) these steps are pursued with due diligence; and (c) timely removal is foreseen, or (d) up to eight months, where the person is a threat to national security or public order.

⁷ Expatica News, November 5, 2003.

⁸ If the Tribunal orders release, the Aliens Office does not necessarily allow a detainee access to the Belgian territory but sometimes 'releases' him or her into an airport transit zone. In answer to a written question of July 2003, the Minister of Interior stated that eight people had been transferred to a transit zone by the Aliens Office after their asylum application had been rejected and prior to removal.

do not apply for asylum (capacity 30). Four centres detain illegal aliens, including some whose asylum applications have been rejected (total capacity 504).

In 2002, 627 asylum seekers were detained at the border, and out of these, 65 were separated children.⁹ 648 asylum seekers whose applications were rejected by the Aliens Office at the admissibility stage of the procedure were detained on the territory, none of whom were minors.

In its decision of 27 December 2002, the *Chambre du Conseil de Bruxelles* ordered the release of the applicant, a minor born on 30 June 1985, detained at the border in Zaventem since 16 November 2002. Considering that the detention of a minor is not compatible with the Convention on the Rights of the Child 1990 or the European Convention on Human Rights 1950, the Chamber demanded her release if specific reasons for her detention were not produced. On 17 November 2003, the *Tribunal de Première Instance* of the Brussels court decided that separated children cannot be expelled without the guarantee that there is reception in the country of origin, as long as the law on guardianship for separated children of 24 December 2002 has not come into force. The NGO 'Defence for Children International', which had challenged the expulsion in the particular case, also asked the court for immediate release of children from detention. However, the Court ruled that such detention - even if not appropriate - is neither illegal nor contrary to international norms.¹⁰

Another important case concerns two Palestinians who were 'released' from detention into the transit zone of the airport, rather than being set at liberty. The Aliens Office regularly applies such 'release'. On 6 August 2003, four NGOs – among them the refugee agencies OCIV and CIRE – brought the case of the Palestinians to the European Court of Human Rights. Their main argument is that restricting persons in the transit zone amounts to detention and inhumane treatment. As of February 2004, the ECHR ruling is still pending.

III. ALTERNATIVES TO DETENTION

A. Dispersal policy/Directed residence

Asylum seekers who are not detained while awaiting decisions on the admissibility of their claims are assigned by the dispatching unit of the Aliens Office to accommodation centres run by (a) the Red Cross, (b) the State, (c) local initiatives, or (d) other nongovernmental organisations.¹¹ The Federal Agency for Asylum (Fedasil)¹² is responsible for the delivery of this centralised reception and assistance system.

The Director of Fedasil states that the reception system is not intended to have any supervisory or enforcement function, and as such can not be considered an 'alternative to detention' in any

⁹ From the record figure of 42,691 in 2000, the number of asylum requests in Belgium came down to 24,549 in 2001 and 18,805 in 2002.

¹⁰ 'Tabita' Decision of Tribunal de Première Instance of Brussels Court, 17 November 2003.

¹¹ 43 open centres, with a capacity of 75 to 850 people each, cater for over 12,652 asylum seekers as at 31 December 2003. Two of these, with a joint capacity of 190 places, are for emergency accommodation and for short stays (overnight before dispatching to other reception centres). Nineteen of the centres are run by Fedasil, an autonomous administrative body under the Ministry of Social Affairs, and 24 by the Red Cross, CIRE, OCIV (two refugee NGOs) and the Mutualités Socialistes.

¹² Fedasil started operations in May 2002 as an autonomous agency under the authority of the Ministry for Social Integration.

immediate sense.¹³ There is a clear institutional division of responsibility between Fedasil and the Ministry of Interior which operates the detention centres.

The history of how the system developed is also very similar to the current course of reception policy in the UK. Municipalities previously provided assistance in the form of a cash allowance to asylum seekers, but certain Brussels municipalities were overburdened and threatened to load asylum seekers onto buses and dump them in the richer municipalities unless a more equitable solution could be found. The system of collective centres thus began in 1986 and, as of February 2004, there are 15,185 places in the total system, with asylum seekers accommodated in private flats as well as larger centres. Receipt of material assistance is dependent upon residence in the centre or designated residence. Again, the fact that an asylum seeker is not sent to one or the other on the basis of his or her individual need for supervision or risk of absconding, but rather on the basis of need (for example, large families or those identified as vulnerable are sent to private flats) indicates that the system is not geared toward enforcement.

Finally, the fact that people move out of larger centres after six months or so, if their procedure is still ongoing,¹⁴ in order to prevent institutionalisation, suggests that freedom of movement is not restricted for any reason other than efficient delivery of social assistance. On the other hand, in practice, the fact that the vast majority of asylum seekers must stay in a certain place in order to receive State assistance makes it much easier to locate them throughout the processing period.

A person is deemed to have absconded from a reception centre if they fail to appear for five days in a row. The private flats are more difficult to monitor in this way, but social services tracks people in them relatively closely in the course of providing assistance.¹⁵

The objective of the shift away from private rentals and provision of assistance in cash to collective centres and provision in kind¹⁶ was to prevent the start of the integration process for those cases likely to be rejected. This is similar to the reasons for detention of manifestly unfounded cases.

A decision to assign an asylum seeker to a particular place of residence, like a decision to detain, can be taken subject to a series of judicial appeals¹⁷ and an ultimate appeal to the Council of State (*Conseil d'Etat*).¹⁸ If an asylum seeker has sufficient resources to live on his or her own, he or she is not required to reside in a centre or designated place.

B. Arrangements for departure/removal of failed asylum seekers

When a claim is rejected, an asylum seeker is ordered to leave the country – usually within five days - and an *Ordre de Quitter le Territoire* ('OQT') is issued. There is no obligation to report to the authorities with a view to deportation. (But note the recent declaration of a policy change on this matter, as mentioned above.) Asylum seekers whose cases are declared inadmissible because another country of the European Union is responsible for the examination of the asylum request (Dublin Convention cases) are told to report to the Aliens Office to collect their one-way air ticket

¹³ Interview with Director of Fedasil, October 2003-March 2004

¹⁴ The average time before someone receives a first decision is three to four months, but Belgium is currently running a 'last in/first out' system to prevent expansion of the backlog, so the old backlog cases have been in reception system now for a very long time.

¹⁵ Interview with Director of Fedasil, October 2003-March 2004.

¹⁶ If the centres and other accommodation are ever temporarily filled to maximum capacity, then financial assistance may be given directly to any additional asylum seekers.

¹⁷ Art. 71, Aliens Act.

¹⁸ Art. 63, Aliens Act.

to the responsible EU Member State. The majority fail to appear. If the responsible EU Member State is a contiguous country, the asylum seeker may be detained for a few days before being driven to the border and handed over. In 2002, 12,589 aliens were served with an OQT, and 2,398 were detained.¹⁹

Four reception centres are used as open centres for rejected asylum seekers who have appealed the rejection of their claim to the Council of State (*Conseil d'Etat*) under general administrative law; technically speaking, they are no longer in the asylum procedure.²⁰ The appeal does not carry suspensive effect and does not therefore freeze the OQT. They may be deported at any time.²¹

When issuing OQTs, the Aliens Office assigns each asylum seeker or family to one of four centres, which involves transfer from their previous place of abode, whether at a centre or in a private apartment. Most do not subsequently report to the assigned centre but rather abscond at this point.

The Flemish nongovernmental organisation, OCIV, has published a study on this high incidence of absconding during transfer from the general reception to (still open) centres for Council of State applicants.²² OCIV found that between January 2002 and August 2003, at least 2,103 asylum seekers did not report for transfer to such centres (that is, some 52% of those eligible to be transferred). A further 144 did report for the transfer but did not arrive at the centre itself. This is despite the surprising fact that the police do have the power to remove failed asylum seekers from these open centres in order to effect a removal. OCIV believes it is largely a question of perception, that is, asylum seekers fear that these four centres are akin to detention. In addition, some long-staying asylum seekers may not want to abandon their community ties in the areas where they live (for example, removing their children from local schools). Those who fail to make the transfer presumably go underground in the larger cities, surviving without support, or leave for other European countries.

There is no evidence that these centres are meeting the government's stated objective of increased return (either voluntary or forced).²³ OCIV therefore recommends several alternatives, as follows: (a) solving the root cause which is the quality of the asylum procedure itself and the lack of suspensive effect of final appeals; (b) providing a legal status for persons who cannot be returned through no fault of their own; (c) programmes of self-directed voluntary return allowing people up to 30 days to leave in dignity (as in Canada – see Canada section); (d) better provision of advice to those facing deportation; and finally, (e) an even stricter separation between the roles of reception staff and police enforcement.²⁴

¹⁹ Information received from UNHCR RO Brussels.

²⁰ UNHCR, in contrast, would class those who have not exhausted all appeals as 'asylum seekers'.

²¹ Following an important decision by the *Cour d'Arbitrage* (case number 43/98 of 22 April 1998) which held that, despite the lack of suspensive effect, persons residing illegally on Belgian territory are nevertheless entitled to social aid, the number of appeals lodged before the Council of State has increased dramatically. There were 7,519 such appeals in 2002 and 7,171 in the first nine months of 2003. From April 2003 to September 2003, a total of 163 appeals to the Council of State were made by separated children.

²² OCIV Report, 'Evaluatie Omzendbrief opvang asielzoekers tijdens procedure Raad van State, Voorstellen voor alternatieven', 25 September 2003.

²³ The Belgian government has reported that compulsory stay at designated residences, combined with obligations to report to authorities at regular intervals, 'appears to be unproductive.' *Study on Comprehensive EU Return Policies and Practices for Displaced Persons under Temporary Protection, Other Persons whose International Protection has ended, and Rejected Asylum Seekers*, prepared by ICMPD for the European Refugee Fund, Final Report, January 2002, p.68.

²⁴ OCIV Report, September 2003, and interview with OCIV legal department, October 2003-March 2004.

C. Alternatives for separated children

Belgium does not have a system of guardianship for separated children who are seeking asylum.²⁵ Therefore separated children face numerous problems, including a lack of alternative care arrangements pending a solution to their cases. For some years there have been reports that around half of separated asylum seeking children in Belgium disappear before the completion of the determination procedure.²⁶

Separated children who arrive at the Belgian border seeking asylum are usually, like adults, detained in the transit centre if they do not meet the entry conditions. This phenomenon is being tackled by the systematic introduction of an injunction to obtain the minor's release. The Brussels Bar has a pool of 40-50 lawyers who are on stand-by to request the competent court to order the release of a minor, once a suitable alternative reception arrangement has been made. This has reduced the detention of minors substantively. Once admitted to the territory, these minors are usually accommodated in a special section of an open reception centre, such as the ones in Bevingen, Deinze, Florennes or the *Petit Château* in Brussels (35 spaces), or, more rarely, in a foster home or special youth institution. There are presently seven centres hosting separated children seeking asylum (totalling 390 places).

Psychological and social welfare needs are handled by a nongovernmental organisation, EXIL, which continues to provide this support even after a minor leaves the centre.

For its 2001 annual report, a Belgian nongovernmental organisation called Child Focus studied 234 files concerning 284 missing children. By the year's end, 271 children were still considered missing. The majority of those missing were aged between fourteen to sixteen years and 75% were male. In April 2002, Child Focus released a study on the disappearance of separated children and child victims of human trafficking. This study, based on the examination of 255 disappearances, revealed that some of the children immediately disappear and fail to appear at their assigned place of residence,²⁷ some disappear from accommodation at private addresses under the supervision of a briefly vetted adult, while most children disappear after some time in their assigned place of residence (be it a host centre, an institution or a host family). Here, the figures given by the various host centres reveal that 45-50% of separated children end up disappearing from these centres.

Child Focus concluded that, while some cases concerned minors who ran away voluntarily to eventually reach their chosen final destination,²⁸ this was a small percentage of the disappearances, most of which could be counted as abductions.²⁹ This controversial finding has been used by certain Belgian personalities as a strong argument in favour of detention centres for minors.

The government currently intends to end the detention of separated children and instead to establish 'secure centres' adapted to their needs. This will be accompanied by the obligation to appoint a guardian for each separated child arriving in Belgium or intercepted by the police. The relevant

²⁵ There were 603 unaccompanied minors in 2002, and 415 in the first nine months of 2003.

²⁶ UNHCR survey on Reception Standards for Asylum Seekers in the European Union, Geneva, July 2000, p.36.

²⁷ Another study by the International Organisation for Migration found that 67.8% of the separated children seeking asylum never reach their assigned host centres (50% of females and 26.6% of males). A direct link is made with human trafficking.

²⁸ As far as final destination is concerned, the study reveals that nearly half of the missing children and a fifth of the girls had stated a final destination upon their apprehension in Belgium; most intended to go to the United Kingdom.

²⁹ 64 cases of missing children were concretely linked to the trade in human beings. 48 minors were victims of the trade in child prostitution and the rest was victims of the trade in forced labour.

legislation was adopted in December 2002,³⁰ a Royal Decree to implement the law was published in the Official Journal on 22 December 2003 and the law will enter into force on 1 May 2004. This represents a major advance to curb the detention of minors in closed centres and will help support separated children in all administrative matters.

The legislation also contains an article authorising Child Focus to undertake a further in-depth study on unaccompanied minors seeking asylum in Belgium, in order to clarify and propose solutions to the continuing problem of disappearances.³¹

D. Electronic monitoring proposals

At the end of 2003, the *Vlaamsblok* political party made some proposals for the electronic monitoring of failed asylum seekers and asylum seekers deemed likely to abscond. This prompted a lively debate on the issue in the Belgian media, but as of the writing of this report, those responsible for the electronic monitoring of criminal offenders in Belgium report that they have not been asked to develop any programme by the immigration authorities.³² At present, the cost of electronic tagging involving satellite tracking would be twice or three times that which uses radio frequencies, which already costs some 10-12 Euro per capita per day (for a project monitoring, approximately 300 people). An initial investment of 250,000 Euro per device is also required and this will be lost if the device is destroyed. Thus the costs of such monitoring would only be slightly lower than the costs of detention, while guaranteeing far less control. In practical terms, the technology is only useful where there is a fixed home address with a phone line – not the most frequent circumstance for asylum seekers in Belgium – and where the person does not wish to transit to another country or otherwise abscond (see United States section).

E. Return programmes as alternatives?

The International Organization for Migration runs a return programme in Belgium (and in some eight western European countries) where people are offered incentives to return to their countries of origin.³³ As these offers are also made to detainees in closed centres (including asylum seekers and failed asylum seekers with appeals still pending), the programme is sometimes described as providing an alternative to detention. In so far as such return may become an ‘alternative to seeking asylum’, however, these programmes are not in the same category as the other alternatives discussed in this study and deserve separate evaluation.

IV. CONCLUSIONS

A. Do alternatives ensure compliance?

Though Belgian statistics are not analysed in terms of the point in the procedure at which asylum seekers abscond, it is the impression of Fedasil’s Director and of OCIY that the vast majority of failures to appear occur only after a negative decision on the asylum claim has been delivered. Many adolescents who receive final negative decisions remain in the system because they know

³⁰ Introduced through the ‘*loi-programme*’ of 24 December 2002 (published in the Monitor Belge, 31 Dec. 2002).

³¹ In early October 2003, a 17 year old failed asylum seeker was reported missing from the Brussels Airport. Reported on October 10, 2003 – Expatica News.

³² Interview with Ralf Bas, Belgian Ministry of the Interior, October 2003-March 2004.

³³ In the Belgium programme, the returnee is given either (1) 250 Euros and put on a plane or bus, and received at the other end, or (2) a grant of several thousand Euro to set up a small business upon return, training for this before leaving Europe and a contact to support the enterprise upon return.

they are protected from forced return, but then disappear just before their eighteenth birthdays. Previously, many asylum seekers used to depart from the reception centres earlier in the procedure, when transit to the UK was relatively easy, but since the Sangatte Centre closed which narrowed options, such early failures to appear have become relatively rare.³⁴ This is despite the fact that the current Belgian refugee recognition rate is relatively low.³⁵

The fact that people who cannot be returned to their countries of origin, but who cannot be lawfully held in indefinite detention, are simply released onto the streets without assistance or supervision perhaps shows that the concern of the government is not with reducing overall number of people illegally present in Belgium (or in the EU as a whole) but with reducing the number of 'returnable people who refuse to return'.³⁶ In 2003, 10,584 individuals, both illegal migrants and failed asylum seekers, were expelled from Belgium.³⁷

Similarly, the OCIV evidence that so many of those moved to the four special centres for failed asylum seekers (those appealing to the Council of State) regularly disappear in the course of the transfer also suggests that the authorities are somewhat tolerant of such absconding, so long as the person is no longer claiming State support.

A larger State concern also served by detention may be the deterrence of future arrivals, and in this respect the alternative restrictions on free movement, including provision of assistance in kind and on condition of a designated places of residence, are said to have been equally successful in steadily reducing the number of people seeking asylum in Belgium in recent years.

It seems, however, that the implicit agreement that no more closed centres should be constructed to expand detention capacity looks likely to come to end, due in part to pressure from neighbouring countries and from the local police who are frustrated by the revolving door of apprehending illegal migrants who then immediately get released with an order to leave the country.

B. Cost effectiveness?

The Director of Fedasil confirms the assumption that the per capita costs of open centres are significantly less than the per capita costs for detention in Belgium.³⁸ The cost argument has not been a convincing one in Belgium though as the high costs of detention are believed to reap benefits in the longer term in terms of easier deportations or if abusive applicants are deterred from coming to Belgium.³⁹

C. Export value?

There are some excellent collective reception centres in Belgium – for example, the *Petit Château* centre – but even the best such centres are inappropriate for the length of time that many residents remain in them. There is a lack of privacy and difficulties for families to maintain their cultural structures. Since the Belgian procedure can take years, and yet results in a relatively low

³⁴ Interviews with Director of Fedasil and with staff of OCIV, October 2003-March 2004.

³⁵ Recognition rates in Belgium are approximately 5-8% at first instance and close to 20% on appeal.

³⁶ Interviews with OCIV staff, October 2003-March 2004.

³⁷ Information received from the Belgian Aliens Office, October 2003-March 2004.

³⁸ According to the *Moniteur belge* the total running cost of the Aliens Office for 2003 is 66,486,000 Euros, out of which 10,642,000 EUROS are for closed centres: 3,303,000 Euros are spent on clothing, food and health care. An additional 5,023,000 Euros are allocated for the repatriation and removal of undesirable aliens.

³⁹ Interview with Director of Fedasil, October 2003-March 2004.

recognition rate, the majority of those in the allocated residences are being 'warehoused' unproductively for the duration of their time in Belgium. There does not seem to have been a thorough study comparing the costs and benefits of collective centres as opposed to more mainstream assistance in the community. Such a study should be conducted not only in terms of financial costs, but also by assessing elements such as the standards of education for children inside or outside of centres and the sociological and psychological consequences of such institutional living.

The research undertaken by Child Focus on the problem of separated children disappearing deserves citation and replication in numerous other countries struggling with the same problem.

BULGARIA¹

I. DETENTION AND DOMESTIC LAW

A. Asylum-Seekers

According to the Law on Asylum and Refugees 2002 ('LAR'),² all applications for protection in Bulgaria are dealt with under an accelerated procedure³ with the exception of applications from unaccompanied minors.⁴ The State Agency for Refugees, the central competent refugee authority in Bulgaria, is under an obligation to decide, within three days of the registration of the application for protection, between the following three options:⁵ (a) to refuse the application as manifestly unfounded; (b) to discontinue the procedure; or (c) to admit the applicant to the general refugee status determination procedure. Detention of asylum seekers during the latter general, non-accelerated determination procedure is very rare and the majority of asylum seekers in Bulgaria enjoy freedom of movement, as guaranteed by article 35 of the Bulgarian Constitution.

There are two types of detention under Bulgarian legislation: (1) detention used as a measure to secure appearance before a judicial body for the purposes of criminal prosecution (i.e. detention 'in custody') and (2) administrative detention applied in cases of unidentified aliens illegally residing in the country, as a measure prior to expulsion.⁶ According to article 44 (6) of the Aliens Law, after issuing an 'expulsion' or a 'forcible removal to the border' order, an alien may be forcibly accommodated in a special centre until the administrative measure is executed. There is no other maximum duration for such detention.

According to article 30 of the Bulgarian Constitution, detention is only possible on the basis of law. Judicial authorities (including, in Bulgaria, the Prosecutor's Office) must be contacted immediately and must confirm the legality of the detention within twenty-four hours. A person has the right to legal counsel from the moment of detention or from the moment he or she is charged.⁷ According to the Bulgarian Penal Code,⁸ the detention of an asylum seeker carries the same safeguards against arbitrariness as any other detention.⁹

Cases still exist where the Bulgarian police do not distinguish adequately between asylum-seekers and illegal aliens and consequently apply the Aliens Law and the Ministry of Interior Law¹⁰ to all aliens without giving special consideration to the rights of asylum seekers. In the past, the Ministry

¹ The information presented herein is valid up to 31 March 2004.

² LAR, in force as of 1 December 2002. Available at: http://www.unhcr.bg/bg/law/en/ukaz_162_en.pdf.

³ Ch. 6, Section II, Ars. 68 – 71, LAR.

⁴ Art. 71, LAR.

⁵ Art. 70(1), LAR.

⁶ There are no Acts specifically regulating detention of asylum seekers or refugees. The main Acts regulating detention in Bulgaria are the Penal Code; the Penal Procedure Code; the Ordinance N 2 for the Situation of Accuseds and Defendants with 'Detention in Custody' Measure to Secure Appearance of the Ministry of Justice and Legal European Integration (in force since 30 April 1999); Ordinance N 20 for the Organization, Aims and Activities of the Places for Temporary Accommodation of Adult Persons (24 January 1978); some provisions of the Law for the Ministry of Interior and the Aliens Law; Regulations for the Organisation and Work of Places for the Temporary Accommodation of Minors and Underage persons (21 July 1998). Information received from UNHCR BO Sofia.

⁷ Art. 30, para 4 of the Constitution.

⁸ Penal Code promulgated in State Gazette issue 26 of 1968, last amendment State Gazette issue 101 of 2001, effective from 28 November 2001.

⁹ The time limits for detention are determined in Arts. 152 (3), 202 (1) and 203 of the Penal Procedure Code, promulgated in State Gazette issue 89 of 15 Nov 1974, last amendment promulgated in StateGazette issue 42 of 2001, effective 31 April 2001.

¹⁰ Ministry of Interior Law, promulgated in State Gazette issue 122 of 19 Dec 1997, last amendment promulgated in State Gazette issue 28 of 2001, effective 27 March 2001.

of the Interior has detained asylum seekers without proper Bulgarian identity documents as if they were illegal residents. At the end of 2003, however, the State Agency for Refugees established a mechanism for issuing identity documents on the day after registering an asylum application, which is expected to reduce such incidences of wrongful detention. A goodwill agreement, relating to the prompt release of wrongfully detained refugees or asylum seekers, was concluded between the National Service Police, Guards Department of the Ministry of the Interior and the Bulgarian Helsinki Committee legal network in 1999.¹¹

B. Rejected asylum seekers pending removal

Release from administrative pre-removal detention may be secured with the granting of status or a stay of a deportation order on humanitarian grounds. Aside from 1951 Convention refugee status, the Bulgarian Law on Asylum and Refugees also provides for humanitarian status and the Law on Foreigners allows for the granting of a visa of short-term residence for up to ninety days in any case. During 2003, 77 persons were released from pre-removal detention on the basis of applications for protection.¹²

Bulgaria does not presently deport rejected asylum seekers¹³ due to limited State resources, therefore, after three to six months in detention, such persons are often released and asked to report every day to the regional police station nearest to wherever they are registered as residing (see below, under alternatives).

II. EXTENT OF DETENTION AND LIKELIHOOD OF RELEASE

In 2000, Bulgaria detained 137 asylum seekers at border points on the grounds of illegal entry.¹⁴ The two major border points where applications are filed are Sofia International Airport (Vrazhdebna) and the checkpoint at GKPP Kapitan Andreevo on the Bulgarian-Turkish border. Those detained at the airport are held in the transit zone, which is just a separated part of the arrival/transit hall. UNHCR and the Bulgarian Helsinki Committee have limited access to these detainees, who are in some cases held there for up to two weeks. The average length of detention though is two to five days. According to the information from the National Service Border Police for 2003, 421 aliens were detained at the borders while attempting to cross illegally. In addition, 6,907 persons were denied entry due to the lack of a visa, travel documents and/or financial resources.¹⁵ In 2003, according to the figures of the Bulgarian Helsinki Committee, 77 individuals were released from detention on the basis of their applications for protection.

Some persons detained at the airport are, if their case is deemed 'manifestly unfounded', transferred directly to a detention centre, such as that in the neighborhood of Droujba in Sofia. As at 28 February, 2004, twenty-two failed asylum seekers were reported to be detained in the Droujba centre.¹⁶ According to an Ordinance of February 2004, the new Migration Directorate within the Ministry of the Interior shall construct and maintain special centres for temporary accommodation

¹¹ Information from UNHCR BO Sofia.

¹² Information from Bulgarian Helsinki Committee, Protection of Refugees and Migrants Program, 16 February 2004.

¹³ According to the official State Agency for Refugees statistics for the period from 1993 to 31 December 2003, a total of 12,803 persons applied for protection in Bulgaria. For 2003, 1,036 persons were denied protection (including 45 children).

¹⁴ *Safeguards for asylum-seekers and refugees in connection with the prevention of irregular migration into and within Europe: A survey of law and practice of thirty-one European States*, ICMPD & UNHCR, June 2001.

¹⁵ Letter from the Director of the National Service Border Police, Ministry of the Interior, dated 23 January 2004, quoted by UNHCR BO Sofia.

¹⁶ Information received from the Bulgarian Helsinki Committee.

of aliens who have been issued with orders for forcible removal to the border or expulsion.¹⁷ With funding from the EU PHARE programme, Bulgaria is now planning to build two transit centres to accommodate 300 asylum seekers and refugees each, at Busmanci (close to Sofia International Airport) and in the village of Pastrogor (close to the Bulgaria-Turkish border crossing point at Kapitan Andreevo), scheduled for completion by the end of 2005.¹⁸

If someone detained at the airport needs to be detained for more than a few days, they can be transferred to the airport hotel of Bulgarian Air. UNHCR Sofia and the Bulgarian Helsinki Committee report, however, that this practice has not been seen for several years.

III. ALTERNATIVES TO DETENTION

A. Suspension of case due to failure to appear for an interview

For asylum seekers awaiting a decision on their claim, article 14 of LAR permits suspension of the procedure if the applicant fails to appear within ten days of a summons for interview. Article 15(7) states that if the applicant does not appear within three months of such a suspension, then the case will be officially discontinued. The case can be re-opened if evidence of reasonable grounds for absence (e.g., serious illness) is produced. These provisions are derived from the general Law on Administrative Procedure.

For asylum seekers whose claims are rejected but who are not deported,¹⁹ stringent (daily) reporting requirements may be used as an alternative to their indefinite detention. As of February 2004, there were eighteen persons in Bulgaria living under this stringent reporting regime, of whom thirteen were failed asylum seekers and the others, illegal migrants.²⁰

B. Alternatives for separated children

Separated asylum seeking minors in Bulgaria are not detained since they are exempt from the accelerated procedure. According to article 25 (1) of LAR, a guardian shall be appointed for any unaccompanied minor who seeks or has been granted protection on the territory of Bulgaria. Under article 25(2), the Stage Agency for Refugees has an obligation to accommodate unaccompanied/separated children seeking or granted protection, until they come of age, at the specialist institutions managed by the Ministry of Health, Education and Science and Ministry of Labor and Social Policy. The State Agency for Refugees is responsible for the protection of such children against physical or mental torture, or cruel, inhuman or degrading treatment. They are entitled to financial and material assistance, equal to that provided to adult refugees as well as to free primary and secondary education in public schools.²¹ The directors of orphanages are legally appointed guardians for the unaccompanied/separated minors accommodated there.

Nonetheless, the frequent disappearance of separated children from their places of accommodation and their high rate of absconding from the procedure is an issue of concern in Bulgaria. The quality

¹⁷ Ministry of Interior Ordinance 13 February 2004, State Gazette No. 12 of 13 February 2004.

¹⁸ Twinning Project BG 2003/004-937.08.05 under the EU Phare National Program 'Institutional Strengthening of the State Agency for Refugees'. The EU Commission will finance the Project with 3,750,000 Euro and Bulgarian government will co-finance with 1,250,000 Euro.

¹⁹ During 2003, only five failed asylum seekers were deported from Bulgaria. Information received from the Bulgarian Helsinki Committee.

²⁰ Information from the Bulgarian Helsinki Committee, Protection of Refugees and Migrants Program received on 16 Feb. 2004.

²¹ Information received from UNHCR BO Sofia.

of the accommodation is not the problem because there are good social homes available, but a new initiative is trying to promote the integration of such children into Bulgarian foster homes since it is believed that traffickers are less able to take children who are settled with Bulgarian guardians in a family environment. Monitoring at borders is another part of this joint State-NGO initiative to prevent the trafficking of children without overly restricting their freedom of movement within the country.²²

C. Open centres and directed residence

During an asylum procedure, an asylum seeker is obligated to stay at an address authorised by the State Agency for Refugees, and to be at the Agency's disposal at all times. Article 93(2.2) of LAR provides for administrative penal liability of an asylum seeker if he or she leaves the address without authorisation by the Agency.

Depending on availability of beds, asylum seekers under the general procedure, including those released from the airport, are received into two open centres. One centre is within the premises of the State Agency for Refugees in Sofia, with the capacity to accommodate about 400 asylum seekers. The second centre is located in the village of Banya, near Nova Zagora, with the capacity to accommodate some 80 asylum seekers. In-country applicants must register at these centres whether or not they need to reside there. In addition, there are two temporary centres, located at the Bulgaria-Turkish border checkpoint and in Ljubimetz. All four of these centres are open, but a resident must request permission to be absent for longer than 24 hours.

LAR provides for accommodation of asylum seekers at these open centres,²³ but also provides for permission to stay at an independent address if the asylum seeker does not require State support.²⁴ The fact that this greater freedom of residence is accorded to those with their own funds or family ties in Bulgaria shows that the open centres are intended and used more as a way to support destitute applicants than as a way to control applicants' movements, ensure their efficient processing, or prevent them from absconding.

D. Wider policy solutions to transit migration

Eurodac (the EU database which will identify irregular movers within Europe using their biometric data), combined with increased border controls and surveillance, will have the most dramatic impact on transit migration, which is the main reason for asylum seekers absconding in Bulgaria. The number of personnel in the Migration Police Unit is currently being increased as one of the requirements of EU accession.

Bulgaria operates a strong exiting regime, which is another major disincentive for asylum seekers considering abandoning their claims in Bulgaria and moving west by land. According to article 279 of the Bulgarian Penal Code, illegal crossing of a border (to enter or exit) is a crime punishable with imprisonment of up to five years as well as a fine or probation. Paragraph 5 exempts asylum seekers entering Bulgaria without authorisation (in compliance with article 31 of the 1951 Convention), but refugees or asylum seekers who are apprehended while trying to exit Bulgaria illegally are liable to prosecution. In practice, most refugees and asylum seekers apprehended in this way are not prosecuted or incarcerated but are simply returned to the State Agency for Refugees, where their

²² Interview with Bulgarian Helsinki Committee.

²³ Arts. 69(1) and 72(2).

²⁴ Art. 72(3).

attempted exit may impact on the outcome of their claim. It is very rare for anyone to be prosecuted for illegal exit, but there have been a few cases in recent years.²⁵

The long-term solution to reducing transit migration, however, is clearly the creation of improved protection and integration prospects in Bulgaria. Increasingly, both asylum seekers and recognised refugees are opting to remain in Bulgaria rather than transit west, showing that the procedural reforms and social programmes of the past few years have worked as incentives to lower the rate of absconding.

IV. CONCLUSIONS

A. Do alternatives ensure compliance?

Since 1993 (when the 1951 Convention was ratified by Bulgaria) until 30 December 2003, there has been a total of 12,803 asylum applications lodged in Bulgaria, of which some 5,186 (41.5%) have disappeared or been discontinued. It is presumed that most of these absconders transited towards the European Union.

It can therefore be concluded that alternatives to detention – whether open centres, reporting requirements or social homes for separated children – are not effective in ensuring compliance with asylum procedures where the country is only a transit, rather than a final, destination. It should be noted that, although there are no statistics available on the rate of transit migration for recognised refugees with status, it is estimated to be quite high. Thus, though alternatives may be ineffective, detention of asylum seekers who will be released after recognition as refugees may be equally futile in the longer term.

B. Cost effectiveness?

According to the information provided by the Department of International Cooperation of the Ministry of the Interior,²⁶ the cost of maintaining a detained illegal migrant per day in Bulgaria amounts to 4.30 BGN (equivalent to approximately US\$3), including 1.30 BGN for daily nutrition costs.

No information is available on the relative costs of detention in comparison with other alternatives, but in cases where indefinite detention may occur, the authorities often find it both more humane and more affordable to release the failed asylum seeker on condition of frequent reporting requirements.

C. Export value?

The Bulgarian asylum system generally is marked by a liberal approach in terms of reception arrangements, with detention used only as an exceptional measure. Unfortunately, the high rates at which asylum seekers fail to appear and at which failed asylum seekers continue to disappear rather than comply with expulsion orders, limit the international ‘export value’ of these alternatives. This is entirely due to the fact that many refugees and migrants still perceive Bulgaria as a transit, rather than destination, State.

²⁵ Interview with Bulgarian Helsinki Committee.

²⁶ Information from Official letter from the Department of International Cooperation, MOI, dated 20 August 2003.

CANADA¹

I. DETENTION AND DOMESTIC LAW

A. Asylum seekers

The Immigration and Refugee Protection Act 2001 ('IRPA')² contains three principal grounds for detention of an asylum seeker, at any time and without a warrant: (a) to ascertain identity; (b) if there is reason to believe that the claimant will fail to appear for further proceedings; (c) if the person is likely to pose a danger to the public. Detention on entry is also permitted 'for the examination to be completed', which some critics translate as meaning 'for administrative ease' and allowing an overly broad discretion.

Immigration officers are required by their own internal rules³ to make decisions to detain on the basis of an individual, case by case risk assessment, with a view to the following situations:

- where safety or security concerns are identified, including criminality, terrorism or violent behaviour at the time of examination;
- where identity issues must be resolved before security or safety concerns are eliminated or confirmed;
- where removal is imminent and where a flight risk has been identified;
- where there are significant concerns regarding a person's identity including multiple identity documents, false documents, lack of travel documents or non-cooperation in assisting Citizenship and Immigration Canada ('CIC') to establish their identity.

The standard of procedural guarantees for immigration detainees in Canada is relatively high. There are rights to automatic and then periodic review (after 48 hours or without delay thereafter, then 7 days, then every 30 days) of such detention by a member of the Immigration Division of the Immigration and Refugee Board ('IRB') (the quasi-judicial refugee status determination authority).

The detainee has the right to counsel and legal aid, subject to a means and merits test.⁴ Interpreters are provided, oral reasons for detention decisions are given and written transcripts subsequently supplied to the detainee. To protect confidential information, detention reviews are no longer held in public.

B. Conditions of release: bail or bond, reporting and supervision requirements

At such detention reviews, people may be released unconditionally or they may be released with payment of a deposit or the posting of a guarantee to ensure compliance with stated conditions. CIC can request which conditions should be set, but the independent adjudicator of the IRB will consider whether they are in fact necessary and will order release subject to any terms or conditions deemed appropriate.⁵

¹ The information presented herein is valid up to 31 March 2004.

² Bill C-11, enacted in November 2001 and entered into force on 28 June 2002, s. 55.

³ See, Enforcement Manual 20 – Detention. Ss. 3.1-3.2.

⁴ The merits test is roughly based on the recognition rates for various nationalities. UNHCR has expressed the view that it would be desirable to dispense with the merits test, which to some extent is a pronouncement by a body other than the refugee status determining body upon the substance of the claim.

⁵ See, IRPA Regulations, Canada Gazette, EXTRA Vol. 136, No.9, Part II, Friday June 14, 2002, ss.45-48. Section 45 relates to setting the amount to be deposited or set as a guarantee, and part (c) takes consideration of the costs incurred to locate and arrest a person who forfeits a bond.

Compulsory requirements include the provision of an address in the community where the asylum seeker can live and be contacted by the authorities,⁶ the asylum seeker must present himself or herself to the authorities as needed,⁷ and must acknowledge in writing his or her understanding of these obligations.⁸ The Canadian Council for Refugees, an umbrella NGO in Canada, has lobbied unsuccessfully against the automatic first requirement for release since many asylum seekers detained immediately upon arrival in Canada have great difficulty locating such an address whilst detained, but relative ease in supplying one after a few days staying in the community or searching the rental market. Similarly, complaints have been levelled against the second requirement, a condition imposed variously depending on the case in question. Complaints relating to these reporting requirements are focused on cases where they are applied indefinitely. While Canadian courts have consistently prohibited the use of indefinite detention in cases where a migrant or rejected asylum seeker cannot be removed, the alternative of releasing such a person to reporting or supervision requirements may also become punitive if applied without limitation – as, for example, in the case of a rejected asylum seeker who was obliged to report twice a week for over five years after his release, which seriously impaired his ability to find or hold down a job.⁹ Even for those asylum seekers present in Canada for shorter periods, the reporting requirements can be onerous if they have a job or children they can not leave unattended: for example, the journey from the centre of Toronto to the reporting station can involve two bus fares and take 40-50 minutes, and it closes at 3pm daily.¹⁰

The conditions of release may also include payment of a security deposit or the posting of a performance bond (that is, a promise to pay a stated sum in case of breach). Most asylum seekers are released directly from the airport, after their identity has been established, and ‘on terms’ (meaning bail or bond paid by themselves, friends or family). Others are only released with the assistance of the Toronto Bail Program, which is also the only organisation conducting systematic and active supervision of those released (see below¹¹).

These reporting requirements contrast to the general freedom of movement and residence afforded to non-detained asylum seekers in Canada. Most choose to stay in the main urban centres of Toronto, Montreal, Vancouver and Ottawa. Once asylum seekers have made their claims, they have the right to apply for a change of venue. The Refugee Protection Division of the IRB often refuses applications for a change of venue, to prevent ‘forum shopping’ and so asylum-seekers who move to a different region may be obligated to return to their original place of residence for the hearing of their claims. The Refugee Protection Division maintains regional offices in Toronto, Montreal, Vancouver, Calgary and Ottawa and its Members also travel to smaller centres to hear claims.¹²

II. EXTENT OF DETENTION AND LIKELIHOOD OF RELEASE

An average of 440 people were detained under IRPA powers at any point in time during 2002, of whom only a portion would be asylum seekers.¹³ Of these, an average of five persons were detained

⁶ IRPA Regulations, s.48(a).

⁷ IRPA Regulations, s.48(b).

⁸ IRPA Regulations, s.49(1).

⁹ Interview with representative of Canadian Council for Refugees, October 2003-March 2004.

¹⁰ Interview with staff of Hamilton House, Toronto, October 2003-March 2004.

¹¹ The Bail Program is only able to offer supervision to a limited number of individuals upon satisfaction of its program criteria. Therefore some asylum seekers may be kept in detention until they are able to satisfactorily establish their identity.

¹² Information from UNHCR BO Toronto, 2002.

¹³ ‘Snapshot’ statistics provided by CIC indicate that 475 persons were detained under IRPA powers on 19 December 2002 and 524 on 9 January 2003.

for security reasons.¹⁴ Any foreign national, including an asylum seeker or recognised refugee, may now be detained if the Minister of Citizenship and Immigration is ‘taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security.’ Since Canada received 33,428 asylum claims in 2002, it is clear that detention continues to be used quite selectively and that an asylum seeker about whom there are no security concerns will be generally released once their identity is established.

According to legal representatives, there is wide regional variation regarding the rate at which asylum seekers are detained – Toronto receives most asylum claimants and has a higher detention rate, whereas people are far less likely to be detained if they claim in a locale receiving fewer claimants.¹⁵

Since the attacks of September 11, 2001, the Canadian government has been under pressure from some quarters to move towards a policy of mandatory detention for all undocumented or improperly documented asylum seekers, resembling that of the US or Australia. So far, this pressure has resulted in a new policy at Pearson International Airport, Toronto, whereby all undocumented or ‘uncooperative’ asylum seekers are initially detained. In support of this project, CIC reserves a number of beds at the immigration detention centre that is a few kilometres from the Toronto Airport. There are plans to open a new, better designed, immigration detention centre in the Greater Toronto area in April 2004.¹⁶ The need to promote maximal use of alternatives, with particular emphasis on how alternatives can satisfy national security concerns, is therefore urgent.

Legal representatives report that the grounds of detention often shift during the course of detention. For example, detention may be ordered originally due to a failure to establish identity, but then, after satisfactory identity documents have been secured from overseas, the grounds for detention are amended to flight risk and a high bond (e.g., some C\$10,000) is requested. If the bond proves too high for the applicant to pay at first, then the adjudicators may reduce it over time until it reaches a level (e.g., C\$1,000) which the detainee is somehow meant to raise.¹⁷

III. ALTERNATIVES TO DETENTION

The conditions of release identified above – release on bond or bail, reporting or supervision requirements – may all be viewed as alternatives to detention. However, their effectiveness depends upon organisations which assist with raising bail, provide addresses for detainees to offer at their detention reviews, or which commit to undertake supervision where required.

A. The Toronto Bail Program (‘TBP’)

Canada is the only country in the world where the government has funded an initiative specifically aimed at maximising alternatives to detention. However, it should be noted that this project, the Toronto Bail Program, is limited in scale, operates solely in the province of Ontario,¹⁸ and has been

¹⁴ Source: Citizenship and Immigration Canada, Enforcement Branch.

¹⁵ Persons on immigration hold are detained at CIC immigration centres as well as provincial correctional facilities since the number of persons being detained exceeds current CIC holding centre capacity.

¹⁶ Information supplied by UNHCR Toronto.

¹⁷ Interview with Toronto asylum lawyers, October 2003-March 2004.

¹⁸ This may be a function of the fact that the authorities in Ontario detain under IRPA powers far more frequently, especially since a notorious case in 1994 when an undocumented alien shot a policeman. It is notable, however, that this project has not yet been replicated elsewhere within Canada.

criticised by some refugee and migrant advocates for not being sufficiently inclusive of the range of asylum seekers or independent of CIC.

The principal aim of TBP is 'to remove the element of financial discrimination from the bond system'.¹⁹ Its immigration section has an office in downtown Toronto, currently employing eight supervisors. The supervisors consider applications from those who are deemed by CIC to pass all other tests (security, identity, etc) but who have no community ties from whom to raise the requisite bond money.

The Program can receive case referrals from any source, for example, directly from detainees themselves, their families, lawyers, the detention management, or CIC. The first stage is to note the basic information of the detainee (who, where detained and why). TBP verifies whether or not the detainee has been in the Program before. Prior participation means disqualification. Interviews are conducted with the detainee, via an interpreter, stated facts are verified, and decisions are then made whether the person is considered a 'good risk' (meaning that the TBP itself has confidence they will not abscond). If so, once a housing placement is available, the person will be released into the supervisory custody of the TBP. This involves stringent reporting requirements, which, if broken, result in re-detention.

The TBP has been in operation since 1996. At the beginning, it accepted some 50 clients, mostly asylum seekers, released from the minimum security detention centre in Toronto called the 'Celebrity Inn', as well as a few others who were detained pre-removal in provincial jails. Now the Program has some 200 clients (maximum capacity 220) and a much higher proportion (about 70%) come from the provincial jails. This represents a corresponding shift towards more criminal aliens and over-stayers among the TBP clients, rather than asylum seekers. If a client is a refugee claimant, then he or she is likely to be what in the US is known as a 'defensive asylum seeker' – that is, claiming only after having been apprehended for illegal presence. The majority of such asylum seekers are not from the major refugee producing countries and they tend to be of nationalities with low recognition rates (e.g., Jamaica, Costa Rica, etc.).

The TBP cannot assist a person whose identity has not been verified to the satisfaction of CIC, regardless of the length of their detention. Much of the criticism by those who feel that the TBP should be more inclusive relates to cases referred to the TBP despite the fact that they are detained on grounds of unverified identity, but where the advocate or visitor may feel that the CIC is setting too high a standard for identity verification. Sometimes advocates or visitors also refer people who could, in fact, be released 'on terms' because they have resident or citizen family members in Canada who could raise bail. Often asylum seekers deny that they have these ties (perhaps, understandably, because they hope that the TBP might supply bail without them having to inconvenience their relatives) and advocates or visitors seldom have the time or resources to check these statements before contacting the TBP. The Program, however, always investigates the claims of the asylum seeker to be without family ties and quite often uncovers a potential bondsperson. The Director describes this 'bail verification' to track down a bondsperson as 'an unmeasured success', which in itself makes the Program cost-efficient for the government to run.

¹⁹ This statement and all following factual description of the TBP are based on an interview with its Executive Director, David Scott, and the TBP website, October 2003-March 2004.

The TBP also refuses to accept people who have been found to be removable and already had their Pre-Removal Risk Assessment (PRRA)²⁰ determined, since it is almost certain that they will be removed within a few months.

A detainee will also be barred from participating in the Program if the CIC file has noted that they are not cooperating with re-documentation. The Director reports that they would exercise some flexibility if such a person were from a country that was very unstable or dangerous, or if their country of nationality was also known to be uncooperative with supplying such documentation to Canada.

Out of every fifty detainees who might meet all these tests and be eligible, the TBP only accepts some eight or ten. The main selection criteria are the individual's credibility and the TBP interviewer's professional judgement as to whether the individual will be amenable to supervision. The TBP is given full access to the CIC files, but states that it makes its own, independent decisions regarding flight risk. Breach of previous conditions of release – bail, bond or reporting conditions – will be a factor in this decision but a single 'failure to appear' would not automatically exclude a detainee from participating in the Program (as it would in the main criminal justice section of the TBP). The TBP can therefore be considered part of the 'natural progression' in ways to ensure compliance. This aspect of admission to the Program, however, is of less relevance to newly arrived asylum seekers who are without a record of behaviour in Canada.²¹

The TBP supervision consists of a twice-weekly reporting requirement to their offices (sometimes combined with an additional reporting requirement directly to CIC), social counselling and frequent, unannounced visits to the designated address of the former detainee in order to check they are still living there. Their clients must either be in work or at school, and, if there are mental health issues, in treatment. Curfews are sometimes imposed by the TBP, but very seldom on asylum seekers. The main means of checking on someone's continued intention to comply with conditions, however, is asking them whether they have received any communication from CIC (for example, a removal notice) – an answer that the TBP can check against CIC files. If the client lies about this fact, they are considered a likely future flight risk and may be re-detained.

The TBP will find a lawyer for an asylum seeker who does not have one and will help apply for legal aid to pay for the lawyer. The TBP Director also knows of some six to ten local *pro bono* lawyers to call if necessary. The Program does offer all kinds of advice and support, but provides it very much on condition of conscientious compliance – as the Director put it, 'If you play by the rules, we will do whatever we can to help you.' Great emphasis is placed on making sure that clients understand the reciprocal nature of the Program and their duties within it.

The TBP will locate housing for their clients, and it has an especially good relationship with Sojourn House, a homeless shelter very near to the TBP offices (see below). Sojourn House used to reserve beds for TBP clients so that release could happen as quickly as possible, whereas now they

²⁰Foreign nationals subject to a removal order that is in force, including rejected asylum seekers and those denied access to the refugee status determination procedure, may apply for this Pre-Removal Risk Assessment ('PRRA') prior to their removal from Canada. A Canada Border Services Agency (CBSA) official conducts this review, which is based on the same three protection grounds (albeit with different standard of proof) assessed by the IRB: i.e. (a) risk of persecution under the 1951 Convention; (b) personal risk of torture under the CAT; and (c) personal risk to life or risk of cruel or unusual treatment or punishment under the Canadian Charter of Rights and Freedoms – that exists in every part of the country and is not faced generally by other individuals. A PRRA is thus only given once a person has been determined to be removal ready.

²¹ Some 40 of the 200 people (mostly criminal aliens or over-stayers, not asylum seekers) handled by the TBP have a significant history of non-compliance.

are simply prioritised in the waiting list. The shelter's proximity facilitates the supervision aspects of the TBP.

To date, the TBP has been extremely successful in ensuring compliance. A 'failure to appear' at the airport for deportation was reported in September 2003 – the first in four or five years. The TBP keeps a record called the 'lost client ratio' (combining the percentage of those who fail to comply with conditions of their release such that a re-detention warrant is issued and the percentage of those who fail to appear for deportation). They have never had an overall lost client ratio of more than 10% (for all the clients they supervise – 230 in April 2002-April 2003, in which the total lost client ratio was 5.65%). For 'Pool B' (consisting mainly of refugee claimants and failed refugee claimants) their lost client ratio for the April 2002-April 2003 period was 8.42% and for the fiscal year as of the time of writing it was running at only 3%.²²

The careful eligibility screening process of the TBP – of which some advocates complain, believing it to place an additional hurdle into the paths of people who, under the terms of IRPA, deserve to be released with minimal conditions – is explained in part by the funding arrangements with the CIC. There is a 'fee for service' contract by which the TBP gets repaid costs only for those clients who do not abscond.

Provincial jails in Canada currently charge an average of C\$175 per day to CIC, while the Celebrity Inn Immigration Holding Centre, with less security in a retro-fitted hotel, costs somewhat less. Both are significantly more expensive than the TBP, which has per capita running costs of C\$12-15 a day. Since the TBP does not run a group centre, almost all its costs are staff costs.²³ It is, however, an irony of this cost-saving argument that it has pushed the Program towards taking more clients out of provincial jails rather than the minimum security detention centre. Thus aliens with criminal records or repeated evidence of breaches in conditions are being released long before asylum seekers with no history of non-compliance.²⁴

The TBP does not attribute this shift in clientele solely to the cost-saving influence of their CIC funders but also to the fact that the TBP has longer experience with criminal justice bail supervision and is thus more effective in these cases. The latter part of this statement points towards a wider lesson learned: that the vast majority of asylum seekers in Canada will comply with conditions of release, such as reporting requirements, even without additional, intensive supervision. The TBP has therefore learned to target its resources to those other immigration detainees where it can make a measurable difference in appearance rates.

The Director of the TBP believes that this Program is now operating at full efficiency, that is, achieving the release of all those who are safely releasable under present circumstances. He notes that there are some 230 persons detained under IRPA powers in Ontario, of which 150-60 are in jails, so the TBP is more than matching the CIC's capacity for detention in high security locations. He attributes this to the trust which CIC places in the TBP, established through the Program's high

²² Statistics received from the Toronto Bail Program, January 2004.

²³ Another, larger section of the Toronto Bail Program supervises people released under the criminal justice system. A recent study by the Attorney General concluded that supervising a client under the TBP costs C\$3 per day, whereas the cost of incarceration is C\$135 per day. The amount saved by having one person supervised under the Program instead of in jail is therefore \$924 per week or almost \$50,000 per year. Source: 'Bail system taking on water' by John Sewell, *Eye Weekly*, 14 August 2003.

²⁴ Note that the CIC always has to pay the same rent and site costs for the hotels that have been retro-fitted for detention purposes (namely, the Celebrity Inn, or, as of April 2004, the Heritage Inn) so an alternative program can not affect these costs. Empty spaces in these centres do not save the CIC money in the same way that an empty cell in a provincial jail.

success rate proven over eight years. 99% of cases which the TBP asks CIC to release into its care are in fact released. To make such an alternative scheme successful, he believes that it must:

- be managed by someone who knows the immigration authorities from the inside;
- begin tentatively and expand only as interviewing and supervising staff develop experience and instinct, especially regarding who to accept onto the scheme and when it may be necessary to re-detain;
- consult with community groups and immigration lawyers, but not let their advocacy concerns dictate the criteria for selection without regard for State concerns;
- have the respect of the releasing authority but also operational independence from it.

Whereas at the beginning of the TBP, 70% of referrals came from lawyers or the refugee and immigrant community, today the majority come directly from the CIC itself. This, however, may also indicate a declining level of trust in the TBP on the part of advocates and communities, perhaps due to a different definition of objectives for such a scheme.

The TBP, with frank financial incentives for doing so, is almost unique in the world in terms of the expertise it has developed in defining the profiles of those who are likely to abscond. For example, special mention was made of those asylum seekers who are apprehended trying to enter the USA illegally and only then claim asylum in Canada. Experience has taught the TBP that they will definitely abscond in order to attempt to cross the border again, especially if they appear to be the client of a people-smuggler or the victim of a trafficker. Few of the latter cases are referred to the TBP, however, since smugglers and traffickers are usually those best able to find the large sums of bail money requested from detainees (one notable inequity common to all systems where bail is the primary means of release).

On the other hand, a refugee claimant of US nationality (which Canada occasionally receives) may have a claim that is likely to be unfounded but there is still no need to detain the person since it is clear that they will not abscond. The fact of lodging an asylum claim to delay removal is evidence that they have no wish to cross the border or leave the country, so the TBP would be very willing to take their cases. This is the inverse of the usual logic in other 'alternatives to detention' whereby the stronger the asylum claim the more incentive the person is believed to have to comply with the procedure.

From the perspective of some refugee and migrant advocates, the parameters of the TBP make release from immigration detention more difficult, not easier. They argue that where detention is unnecessary – because identity is established and the person poses no security risk and a very low flight risk – release should be unconditional. They also complain that the Program moves slowly, often taking two or three months from referral to release, though this may be due to miscommunication about the eligibility of a certain asylum seeker for the Program, for example if identity is not yet established. In other cases, where CIC policy is itself at issue, the TBP may refuse the application of a detainee to the frustration of its supporters and representatives.²⁵ There is no doubt, however, that on a case by case the TBP is achieving release of individuals who would otherwise remain in detention unnecessarily, perhaps because they represent a relatively low, but not zero, flight risk.

²⁵ For example, a 2002 case was reported of a Nigerian refugee who had been granted status in Brazil, found his protection there ineffective and so boarded ship for Canada. He was regarded by CIC as having enjoyed effective protection, so was ineligible to make a claim until his lawyer argued it successfully in the Federal Court. While classed as ineligible, his applications to the TBP were refused several times, though the man was definitely a refugee and had gone to extreme lengths to enter the Canadian asylum system, which suggested that he would not abscond.

B. The Toronto Refugee Affairs Council ('TRAC')

TRAC is not an alternative to detention so much as a nongovernmental initiative in Toronto, Ontario to try and maximise the means of release contained in legislation. It visits detention centres, gives 'legal orientations' to detainees and assists them with filling out forms, including applications for release 'on terms'. TRAC has no real budget, but depends upon staff donated by the Quaker Committee for Refugees and the Hamilton Refugee Project, as well as volunteers. One detention visitor from TRAC visits the Celebrity Inn Immigration Holding Centre and estimates that approximately one quarter of those he sees are detained for failure to comply with departure or deportation orders.²⁶ The other three quarters are mostly asylum seekers with decisions still pending, who have no record of failure to comply or appear. This visitor also reported that he knew of cases where a person had failed to appear to receive their deportation orders, or failed to appear for the deportation itself, but this was not the person's fault – for example, where the authorities did not properly record a reported change of address before sending out a notice.²⁷

It should be noted that such programs are not available in the provincial jails. As of January 2004, detention orientation visits are being conducted in two correctional facilities in Ontario through a pilot project initiated by UNHCR and in collaboration with key NGOs and law students of Osgoode Hall Law School.

C. Shelters housing former detainees

While the Toronto Bail Program is the only organisation with a budget to provide bonds to secure the release of detainees, many other local NGOs, shelters, and community-based organisations provide addresses for detainees so that adjudicators gain some confidence that they can be released. In some cases, especially those involving vulnerable persons, these groups actively campaign for the release of individual detainees and then, if successful, take on informal responsibilities that permit lesser measures to be applied in place of continued detention. They therefore deserve to be considered as 'alternatives'. It is interesting to note the extremely high compliance rates of asylum seekers living in these shelters, just as high as those of asylum seeking clients in the Toronto Bail Program, even when there are no additional supervision measures applied. The most obvious explanation for this is the incentive provided by the relatively high refugee recognition rate in Canada, especially amongst those who are not detained and referred to competent lawyers.

Hamilton House has spaces for some 35 women and children (a rooming house of 11-12 rooms for short stays, and five apartments for longer stays). Residents are mostly asylum seekers coming into Canada across the land border with the US or referred by other women's shelters in Toronto, but they also include people received directly from detention who are referred by the CIC itself or by a lawyer. It is rare for detainees to be released to Hamilton House on humanitarian grounds, without bail, though it has happened recently in the cases of two women – one who was sick and one with a baby. In most cases, the asylum seeker has paid a cash bond of around C\$1,000 with another bond on property or salary of C\$4,000.

Hamilton House provides long-term accommodation, until the person receives a decision on his or her claim. The manager of the House reports a 99.9% success rate with appearance and compliance,

²⁶ In Canada, a 'departure order' is a self-executing order that obliges the individual to confirm his or her departure from the country within 30 days; a 'deemed deportation order' is issued if departure is not confirmed as required above; a 'deportation order' is issued for violations of immigration law and, unlike the other two, permanently bars individual from returning to Canada.

²⁷ Interview with TRAC staff member, October 2003-March 2004.

in her view due to the House's supportive atmosphere and integrated approach to services. Specifically, elements of the program's success were identified as:

- its small scale;
- provision of stable accommodation for the full duration of the asylum procedure;
- generous donation of interpreters' services allowing good communication;
- referrals of all kinds – to excellent legal counsel, legal aid, social services (including the shelter allowance used to reimburse Hamilton House for its costs);
- staff assistance with compilation of information for lawyers, with ensuring forms are submitted on time and with delivering people to their hearings and other official appointments.

In short, the staff of Hamilton House are willing to help with all aspects of day-to-day life, and this willingness continues even after residents have received refugee status and moved elsewhere. This creates a reciprocal network – for example, there is the incentive of a revolving loan fund to help newly recognised refugee mothers pay the fees and airfares to bring children from overseas. Even amongst the asylum seeking residents of the House, there is much internal mutual support among people of the same nationalities or language groups. It is not an environment, in other words, which claimants would wish to leave.²⁸

Matthew House is another temporary shelter which can, incidentally, provide an address for a detainee so that they may be released 'on terms'. It is completely open, with no security or curfew. It has run for five years, housing some 300 asylum claimants, in the course of which only three have disappeared from its accommodation and, presumably, absconded from the procedure.²⁹ Besides this shelter in Toronto, Matthew House also has shelters in Fort Erie and Windsor providing similar services and facilities.

Sojourn House is another well-respected temporary shelter that mainly accommodates asylum seekers released from detention at Toronto Airport. It has some forty beds and reserves its space for asylum seekers who are new to the city of Toronto, rather than, for example, in-country applicants who may have lived in Canada for some time. Sojourn's residents may be referred from the Toronto Bail Program, the Hamilton Refugee Project or the Toronto Refugee Law Project. The House has a very diverse staff with expertise in asylum matters and, like Hamilton House, they assist claimants and their lawyers with the preparation of cases, with finding longer-term housing once the claimants become eligible for housing support, and with reminding them of their appointments. There is no set limit on how long a person may stay at the House, and in vulnerable cases – a separated child who could not be found a good foster home, a pregnant woman who stayed until she had given birth – residence may last far longer than 'temporary shelter' implies.

Sojourn House is funded through the municipality's per diem for all homeless people, of which twenty per cent is supplied by the City of Toronto and 80% by the province. In the past six years, the present manager reports that out of some 3600 residents (approximately 600 per year), only two individuals have disappeared from the House. The manager confirms the hypothesis that asylum seekers have every incentive to remain in the Canadian asylum system so long as they have not received a final rejection, and that they exhibit an 'almost paranoid fear of defaulting on their release conditions'. It should be noted, however, that people have moved out of Sojourn House to live independently in the community by the time they might receive a final rejection and departure/deportation order, so the House can not testify to the rates of appearance for deportation

²⁸ Interview with manager of Hamilton House, October 2003-March 2004.

²⁹ Interview with manager of Matthew House, October 2003-March 2004.

amongst this group. There is no particular distinction made in the House between those who must appear and meet their reporting requirements on their own recognisance and those who are intensively supervised under the Toronto Bail Program, located a few blocks away.³⁰

D. Other alternatives/proposed alternatives

The CIC also runs a 'Failed Refugee Project' in Ontario, for those asylum seekers who have exhausted all appeals. Subject to a Pre-Removal Risk Assessment, they are handed departure orders in person, counselled on their limited options and given thirty days to leave the country. This programme has a high success rate (60%), in terms of effecting removals without resort to detention, for a variety of reasons. People feel that they are being treated with dignity and are given time to conclude all their personal business in Canada and make arrangements to go home. They know that the CIC will help with arranging flights and paying for the airline ticket without the negative consequence of detention or a deportation order, and so they are more likely to come forward to collect the departure order.

Nongovernmental organisations, such as the Canadian Council for Refugees, have lobbied unsuccessfully to be given a monitoring/advisory presence at Canada's international airports. This is in part motivated by their belief that the frequency of detention could be reduced if they were permitted to help clear up misunderstandings and to advise applicants of their rights at an early stage. To some extent this proposal, modelled on the airport project of the Danish Refugee Council in Copenhagen, could be described as a 'preventive alternative'. In the current security-conscious environment, however, it is unlikely that an NGO presence at Toronto Airport would be able to moderate the policy of almost mandatory detention applied to those arriving without valid documentation and proof of identity.³¹

There is currently a lively debate in Canada on the possible introduction of identity cards (including biometric data) for all residents and citizens. While this may be helpful in tackling fraudulent documentation issues, it will not help with verifying the identities of asylum seekers and so is unlikely to reduce the incidence or length of their detention upon entry. It could, on the other hand, increase the frequency of re-detention for rejected asylum seekers who abscond and attempt to remain illegally in the country.³²

There have also been calls for the use of electronic tracking bracelets as an alternative to immigration detention. The Canadian Auditor General estimates that the authorities currently do not know the whereabouts of some 36,000 'immigration violators' and proposes that electronic monitoring could reduce such non-compliance.³³ The likelihood of such a scheme being introduced is increased as a result of pilot projects relating to immigration detainees now running in the US (see US section), given that the technology's use in the Canadian criminal justice field has tended to follow practice in the US. Both countries now use satellite tracking technology as part of the electronic monitoring of criminal offenders, and though the cost of this second generation technology is currently double that of standard electronic monitoring equipment, the cost is falling rapidly and it is no more expensive than detention in provincial jails or the capital costs of building

³⁰ Interview with manager of Sojourn House, October 2003-March 2004.

³¹ There is a Memorandum of Understanding between CIC and the Canadian Red Cross to monitor detention activities in CIC run facilities. The Red Cross has been fulfilling this monitoring function in selected cities in British Columbia, Quebec and Ontario since 2002.

³² The Canadian Alliance has urged the federal immigration authorities to take DNA samples of all asylum seekers in order to help find those who abscond after rejection. *The Toronto Sun*, November 7, 2003.

³³ Reported in *The Toronto Sun*, August 12, 2003.

new detention facilities.³⁴ On the other hand, it does not produce a cost-saving. If applied to a person who is a low flight risk, as the vast majority of asylum seekers in Canada are, such electronic tagging would not only be a waste of tax-payers' money but may also fail to meet the tests of necessity and proportionality required by international law with regard to any restriction of an asylum seeker's right to freedom of movement. If electronic monitoring were introduced, therefore, the crux of the matter would be to ensure that it was reserved solely for high-risk cases who would otherwise need to be detained.

E. Alternatives for separated children

Under IRPA, detention of minors should take place as a measure of last resort taking into account the best interests of the child principle.³⁵ During 2002, CIC detained an average of eleven minors on any given day, most of them accompanied by family. One or two were, on average, separated minors.³⁶ Less separated children have been detained since the introduction of the IRPA. Regulations require that the detention of minors depend upon '(a) the availability of alternative arrangements...'³⁷

Concern for a separated asylum seeking child's welfare is not considered sufficient reason to detain, but 'the indigence of a minor...may be a strong indicator that the minor is unlikely to appear for inquiry or removal.'³⁸ Before deciding to detain, the immigration officer should consider 'how self-sufficient a child is or whether someone is willing to look after the child...'³⁹ If not, the officer is instructed to contact local child welfare agencies or social or child protection services to determine whether they can take custody of the minor.

Each province of Canada has its own child protection and guardianship legislation and system:⁴⁰

- (a) In British Columbia, they are under the custody of the Migrant Services Team of the Children and Family Development ('MCFD').
- (b) In Québec, they are normally under the custody of a para-public agency called SARIMM (Service d'aide aux réfugiés et aux immigrants du Montréal métropolitain), mandated by the Ministry of Social Services, which has existed for over thirty years. SARIMM works closely with the Centre Jeunesse of Montréal, attached to the Ministry of Social Affairs, which provides placements including foster homes, group homes and semi-independent living. They also use the model of a 'famille d'entraide' within the child's own ethnic community, but such families receive less financial support than other foster families. There is no one who acts as a legal guardian in the full sense.
- (c) In Ontario, one of the 52 local Children's Aid Societies or another nonprofit agency contracted by the Ministry of Community and Social Service, which has statutory child protection duties for all those under sixteen, should in principle be requested by CIC to

³⁴ It should be noted that Canada has been at the forefront of developing a set of ethical guidelines for the electronic monitoring of criminal offenders, including emphasis on 'respect for the dignity of individuals' under such supervision and, therefore, may develop as a model of best practice in this area.

³⁵ IRPA, Section 60.

³⁶ Citizenship and Immigration Canada, Enforcement Branch.

³⁷ Canada Gazette Part II, Vol. 136, s.249. In the criminal justice field, by way of analogy, Canada's Youth Criminal Justice Act ('YCJA') sets out the minimum or threshold criteria for applying custodial sentences (s.39(1)(a) to (c)). One minimum criterion is that the young person must have previously failed to comply with two or more non-custodial sentences.

³⁸ *Canadian Immigration Manual*, EC1, subsection 10.2.

³⁹ *Canadian Immigration Manual*, 'Port of Entry Processing', Ch 1, subsection 7.1.2.

⁴⁰ *Separated children seeking asylum in Canada*, Wendy Ayotte, UNHCR, July 2001 – See this report for detailed analysis regarding the effectiveness of protection within the following three systems.

assume custody. Minors of 16-17 years of age, however, are excluded by law from receiving this protection and assistance. They are in urgent need of an alternative form of accommodation and de facto guardianship that would prevent them from being detained or left without assistance. At the moment, as an interim measure, such adolescents usually stay in homeless shelters, such as those described in the preceding section, and also at Covenant House, which specialises in accommodating 16-18 year old street children in the city of Toronto. Covenant House only reports one to two such adolescents to have ever disappeared from their shelter and abandoned the asylum process, but notes that the mix of street children and asylum seekers is not positive for the latter group.⁴¹

UNHCR, CIC and the IRB are currently cooperating to develop best practice models for the care of separated children seeking asylum in Canada, designed in part with the aim of preventing the use of detention.⁴² This initiative originates from the experience of 1999-2000 when British Columbia received over a hundred separated Chinese children and adolescents who arrived in unseaworthy vessels on the west coast. Later smaller groups were also apprehended while trying to illegally transit Canada to the USA. The authorities at first detained the influx of children, but most were later released into foster care or shelters.

Problems arose with regard to protecting the children, outside detention, from their traffickers. For example, some dozen such children in Windsor were at first detained in a Young Offenders Facility, then transferred to the Celebrity Inn immigration detention facility, then released on large bonds to private shelters. All subsequently disappeared and it was rumored that they later turned up in New York City. Based on this experience, thinking has been done on how to better supervise and protect such children without resorting to detention, particularly in relation to checks on adults who may come forward claiming to be their relatives. The detention of the Chinese minors during 1999-2000 was partly motivated by the aim of deterring the traffickers and people-smugglers, but any lesser measure which similarly interfered with delivery of the children to their intended destination (the US) could presumably serve the same purpose.

F. Alternatives for women, families and vulnerable persons

There are homeless shelters specialising in the accommodation of women and female headed families (such as Hamilton House – see above), however advocates believe that a number of such asylum seekers, posing negligible flight risks and deserving of release on humanitarian grounds, remain in detention for longer than necessary. Recently, for example, there was a high profile case of a wheelchair-bound 63-year-old Pakistani woman and her 17-year-old son who were detained at Laval Detention Centre in Montreal for two months, awaiting removal, despite the willingness of the South Asian Women's Community Centre to vouch for their appearance and find them shelter.

Canadian legislation and regulations do not specifically mention the humanitarian release of elderly persons, torture survivors or those with apparent or possible mental health problems. In practice, however, CIC refers many vulnerable persons for release at the point when they become problematic to detain and often does not set 'terms' (bail or bond) when doing so. One particular group at risk of harassment in detention centres or prisons and therefore sometimes referred to the Toronto Bail Program are asylum seekers from Latin America claiming asylum on grounds of sexual preference.

⁴¹ Interview with manager of Covenant House, October 2003-March 2004.

⁴² Interview with UNHCR Legal Officer for Ontario, October 2003-March 2004.

IV. CONCLUSIONS

A. Do alternatives ensure compliance?

To the knowledge of UNHCR, Canadian government statistics relating to rates at which non-detained and/or released asylum seekers abscond are not currently available. Without such statistics, and in the absence of analytical data as to how the application of alternative measures such as reporting requirements of various frequencies or security deposits affect these rates, it is difficult to reach definitive conclusions. There are too few undocumented asylum seekers currently released without the setting of 'terms' (and unconstrained by their own vulnerability – sickness, young children, etc.) for the restraining effects of the bail and bond system to be measured against the behaviour of a control group with similar characteristics.

Organisations accommodating or supervising asylum seekers interviewed for this research reported uniformly high (over 90%) rates of compliance by their residents or clients within the asylum procedure – a determination procedure in which most applicants continue to place considerable faith. Even those staying in temporary shelters for the homeless, with little stability or support, are usually determined and anxious to attend their appointments. In those rare cases where an asylum seeker in Canada has absconded, it has tended to be where the individual was intent on going to the United States to join family, or at the very end of the procedure following issuance of a departure order.⁴³

The only other notable cases of absconding in recent years have involved minors who appeared to be victims of traffickers. These traffickers were presumably complicit in their disappearance from shelters and foster homes. In future, this problem could be resolved through the careful design of non-custodial alternatives that maintain an appropriate level of supervisory protection for such minors, including those between 16-17 years old, until they can be reunited with their families.

B. Cost effectiveness?

There is clear evidence that most alternatives (except home curfew and electronic tagging) produce large cost savings over detention in the Canadian context, though it should be noted that this argument has greater impact on achieving release of asylum seekers from provincial jails than from facilities built or adapted for immigration detention.

C. Export value?

The Toronto Bail Program may provide a positive model for replication by 'destination States' currently operating policies of mandatory or routine detention for undocumented asylum seekers, particularly those with a common law system in which bail is commonly applied. Within Canada itself, there appears to be a need for better dialogue between this Program and other refugee advocates concerned to secure the release of larger numbers of asylum seekers. This dialogue could potentially produce a new program designed simply to assist detained asylum seekers unable to raise their own bail but *without* additional reporting requirements or intensive supervision. Such a program would then become a highly exportable model to destination countries that are detaining asylum seekers with any degree of frequency.

⁴³ The Safe Third Country Agreement between Canada and the United States should, through the exemptions regarding family reunion in Article 4(2)(a)-(d), help to regulate and alleviate this problem.

DENMARK¹

I. DETENTION AND DOMESTIC LAW

Section 36 of the Aliens (Consolidated) Act permits the detention of asylum seekers for a maximum of three days before being brought before a court. Those in Denmark's 'manifestly unfounded' procedure can be detained for up to seven days in the prison section of Sandholm camp.² Detention of an asylum seeker may also be ordered when 'lesser restrictions' (as outlined in Section 34, Aliens (Consolidated) Act – see below) are deemed insufficient – that is, following a 'failure to comply with a Danish Immigration Board decision requiring the asylum seeker to reside at a specified residence' or general 'non-compliance with alternatives to detention.'³ Detention is to be used only where alternatives have been evaluated and found insufficient in the individual case.⁴

Detainees have automatic review and appeal rights to a city court and then to a higher court, but there is no maximum limit on the duration of detention. Failed asylum seekers are sometimes detained, pending removal, for over a year. Detainees receive legal aid both directly from the State and via the Danish Refugee Council.⁵

Detention was previously used in Denmark strictly for those who had evaded deportation orders, but now it is reportedly used more widely at first reception. The court nearest to the Sandholm camp is approving renewals of detention every four weeks. Usually those detained are Roma or eastern Europeans, especially single adult men. If they have a family or community tie in Denmark, this fact can actually work against their chances of release as it is considered to make them more likely to be 'manifestly unfounded' applicants.⁶ (This is very much counter to the logic of bail hearings in the UK and the US, for example, where family ties are considered to make an individual a much lower 'flight risk').

Nevertheless, Denmark manages its asylum system with a relatively limited use of detention. In 2001, for example, there were 12,403 asylum applications, with 666 detained.

II. ALTERNATIVES TO DETENTION

A. Failure to implement legislative requirements

The Danish Aliens (Consolidation) Act, Section 34(2), provides for an impressive range of alternatives to detention, including: deposit of travel documents, posting of bail, reporting to the police at specified times, and staying at a designated address until deportation.

The legal representatives of the Danish Refugee Council, however, report that these lesser, alternative measures are not applied in practice.⁷ This apparent failure to consider and apply alternatives prior to detention, which should be a last resort after alternatives have proven insufficient, has never been challenged in court, despite the clear wording of the Aliens Act.

¹ The information presented herein is valid up to 31 March 2004.

² Under the responsibility of the Ministry of Justice.

³ Section 35 and 36(2) of the Aliens (Consolidated) Act.

⁴ An assessment of the possible necessity for an order of detention is to be based on a number of factors: where the asylum seeker is not cooperative, or fails to appear at a hearing or to respond to a police summons, or exhibits violent or threatening behaviour to staff or other residents in the reception centre, or who fails to stay in an address designated by the Danish Immigration Service, or does not comply with deportation.

⁵ Pursuant to Section 37(2) of Aliens Act, a lawyer is assigned until a decision is made by a court on the lawfulness of the detention. The Refugee Council provides free advice during first instance of the determination procedure.

⁶ Interview with Legal Section, Danish Refugee Council, October 2003-March 2004.

⁷ Interview with Legal Section, Danish Refugee Council, October 2003-March 2004.

B. Open centres

There are two open reception centres run by the Danish Red Cross on behalf of the Danish Immigration Service, both within 50km of Copenhagen with a combined capacity of 900. Sandholm is half an open centre and half a detention centre. Initial contact with the police, including fingerprinting and photographing of the asylum seeker, takes place at these reception/registration centres.

After six weeks at the 'reception centre', an asylum seeker is normally assigned to an 'accommodation centre', unless they make a special application to live with friends or family. All financial assistance and social services are conditional on residing in the centres (in contrast, for example, to the system in Sweden). The only exceptions to this rule are people whose medical needs require them to live outside the centres. On the other hand, permission to leave the centres for up to six weeks per year may be requested, so long as the resident leaves a contact address or telephone number where he or she can be reached.

As at October 2002, there were some fifty accommodation centres run by a variety of organizations. 8,744 asylum seekers were housed in these centres, of whom 7,686 were in those run by the Danish Red Cross, 941 in one run by the Danish Emergency Management Agency on the island of Funen, and 147 in those run by municipal operators (for example, in Hanstholm municipality).⁸

All the accommodation centres are equally open. The *de facto* restrictions on freedom of movement come from their frequently remote rural locations and the fact that asylum seekers must be continually present for the handing out of food parcels, but this supervisory function is not reported to be a primary purpose of the centres.⁹ Most centres only have a staff of one or two people who leave at 5pm and the centres are not staffed at night.

The only way, for example, that the Red Cross can tell if someone has left one of their centres is if they fail to collect their financial support which is distributed every two weeks. Many disappear in this way, even separated children. In 2002, there were 4,205 recorded departures from the Danish Red Cross centres, including 147 by asylum seeking children. In 2003, there were 4,365 recorded departures.¹⁰ These figures, however, include multiple departures by the same asylum seekers who go to stay with friends or families for short periods and then return. They also include people who might have opted to return to their home countries. It is clear, however, that the majority leave to transit to Sweden or Norway, their intended destination countries.

This transit movement is tolerated, as there is a very open border and it is just an easy twenty minute journey. The main cause of this transit movement is believed to be Denmark's more restrictive immigration and asylum policy and corresponding legislative changes which were introduced in 2002. In particular, Denmark's increasingly restrictive rules concerning the grant of family reunion to refugees. Incentives to remain in the centres, such as educational courses for adults or counseling for victims of torture or trauma, cannot begin to compensate for these strong 'push factors' out of the country.¹¹

⁸ UNIYA Jesuit Social Justice Centre, *Overview of Denmark's Asylum System*, Anna-Louise van Gelder, February 2003.

⁹ Interview with staff of the Danish Red Cross, October 2003-March 2004.

¹⁰ Statistics supplied by the Danish Red Cross.

¹¹ Interview with staff of Danish Red Cross, October 2003-March 2004.

In practice, if an asylum seeker does not show up for an interview or other official appointment, the authorities ask the accommodation centre management whether they know of any good reason for this (for example, misdirected notices or a doctor's appointment). If not, the person is recorded as having absconded.

C. Alternatives for separated children and other vulnerable persons

Detention of minors, families or the seriously ill is avoided as far as possible and determination of their cases is prioritised. Separated children are always provided with a Red Cross guardian *ad litem* but are not provided with free legal advice.

There are two special centres for separated children who are not detained or who are released from detention: one for 17-18 year olds and the other for younger children. They are far from being detention centres, but they are located in the countryside so it is impossible, for example, to go out after midnight. They operate like a rural boarding school. If the Danish Red Cross and the municipality approve, a minor may request to stay with family members residing in Denmark. This does not affect his or her right to financial support.

D. Penalties regarding denial of cash assistance

The Danish Immigration Service may deprive an asylum seeker of cash assistance if he or she does not comply with the obligations to cooperate with an examination of his or her claim. Such an asylum seeker would then only receive assistance in kind (e.g. food parcels). The only exception would be where the asylum seeker in question were pregnant, a minor or had other relevant medical needs.¹²

III. CONCLUSIONS

A. Do alternatives ensure compliance?

It is clear that the system of open accommodation centres does not prevent absconding, and the failure to implement the other legislated alternatives to detention as reported anecdotally by asylum lawyers, would suggest that the rate of non-compliance is not a priority concern for the authorities.

B. Cost effectiveness?

The Danish Immigration Service provides an allowance for food, clothing and pocket money to all asylum seekers in accommodation centres. The totals in 2002 were: DKK1,481 per child, 1,899 per teenager, and 2,458 per adult.¹³ Information on capital costs and on comparative running costs for the detention of asylum seekers is not published.

C. Export value?

The fact that Denmark manages to conduct most of its identity, security and health checks in the context of an open reception centre demonstrates that this can be done without serious breaches in national security or threats to society. Such an approach, however, may only be feasible in a context where the risk of absconding is not viewed as a major policy concern.

¹² UNHCR Reception Survey, July 2000, p.43.

¹³ UNIYA Jesuit Social Justice Centre, *Overview of Denmark's Asylum System*, Anna-Louise van Gelder, February 2003.

FINLAND¹

I. DETENTION AND DOMESTIC LAW

Under the Aliens Act, an asylum seeker may be detained on a number of grounds, namely: (a) if entry was illegal or the legality is under deliberation, or (b) where he or she is awaiting deportation or such a decision is being prepared. In each case, it must also be shown that there is reasonable cause to believe that the asylum seeker is likely to abscond,² to commit a crime in Finland, or his or her identity needs to be investigated.³ There are no internal guidelines on the use of immigration detention and no mention of detention in the Ministry of Interior's guidelines on asylum.⁴

A decision to detain is taken by a senior officer of the local police, Central Criminal Police, Security Police or Mobile Police responsible for the matter.⁵ Information on the reasons for detention is provided to the detainee in writing in Finnish, which is then interpreted orally into a language the asylum seeker understands. The police officer responsible for the decision must, without delay and at the latest on the day following the detention, notify the detention to the local lower court where the detainee is being held or, if reasons of urgency so require, another lower court. Notification may be made by telephone for this purpose, but must be confirmed in writing without delay.⁶ The case must come before a court within four days of notification. If the person has not been released within two weeks, the court shall of its own initiative review the case and can extend the detention for two weeks at a time, as long as the appropriate legal conditions prevail.⁷ There is no maximum period of detention as long as a case is being reviewed every two weeks. The Finnish Refugee Advice Centre is funded to provide legal advice to detainees.

II. EXTENT OF DETENTION AND LIKELIHOOD OF RELEASE

During 2002, a total of 145 asylum seekers were detained in Finland. This included 118 men, 27 women and 4 unaccompanied minors. In July 2002, however, the first detention facility for illegal aliens (including selected asylum seekers) was opened in Helsinki and the extent of detention is expected to rise to meet this expanded capacity. Currently there are 30 places, but the facility will move premises in 2005 with another 30 places as part of an 'open ward'. It will have an emergency capacity of 90 places.

The chances of detention on grounds of the likelihood of absconding are higher following a failed asylum procedure and while awaiting deportation. The courts are very reluctant to release the detainee at this point. In some cases, the person is detained immediately upon being served his deportation order and is then deported some days later, without any opportunity to take care of practical or personal matters before leaving the country.

The police order detention in 10-15% of asylum cases each year, and detention lasts for approximately 3-5 weeks on average. In practice, the police (rather than the courts) usually order the release of detainees after Dublin Convention requests have been answered by other EU States.⁸

¹ The information presented herein is valid up to 31 March 2004.

² The likelihood of absconding is usually considered to be established when the applicant has previously been in another European State, or has not responded to an invitation to appear at the police to collect a decision on his or her case.

³ Section 45 (general criteria) and 46 (specific criteria), Aliens Act.

⁴ Information received from the Helsinki Police.

⁵ Section 47, Aliens Act.

⁶ Section 48, Aliens Act.

⁷ Section 51, Aliens Act.

⁸ Interview with Finnish Refugee Advice Centre, October 2003-March 2004..

III. ALTERNATIVES TO DETENTION

A. Reporting requirements

Section 45 of the Aliens Act provides that asylum seekers may be required to report to the police at regular intervals until it has been decided whether they should be admitted to the procedure, refused admission, deported, or the matter otherwise resolved. In practice, the Finnish Refugee Advice Centre observes that this reporting duty is seldom applied in the first instance, prior to detention, even though Section 1.3 of the Aliens Act includes the proportionality principle – that is, to limit the alien's rights no further than necessary.

B. Alternatives for separated children

A child under eighteen years of age cannot be placed in detention without a hearing with the social welfare authority or the Ombudsman for Aliens. There are two specialised open centres for the reception of separated children and each child is allocated a guardian *ad litem* by a judge. This guardian is often the legal representative or an employee at the centre where they reside.

C. Open centres

Asylum seekers generally enjoy freedom of movement in Finland. They must register with the reception centre closest to their point of entry unless it is full. These centres are run by the State or local municipalities or by the Finnish Red Cross. Asylum seekers are able to stay in the open centres for the full duration of procedure, including all appeals. Asylum seekers may also opt to live outside the reception centre system. Should they choose to do so, they still receive State welfare payments (minus the cost of accommodation, estimated at a 15-20% reduction).

Other than registering to collect monthly subsistence monies, the reception centres exercise no supervisory controls over asylum seekers, except the closed centre run by the city of Helsinki. In practice, though, the staff in the centre may cooperate with the police.

Asylum seekers feel that their freedom of movement is *de facto* restricted because the centres are often located in isolated areas of the country. Because the asylum procedure may last for years, this can lead to mental stress and health problems in the longer term. According to information from the Ministry of Labour, the average length of stay in reception centres is thirteen months. However, there are asylum seekers who have been living in the centres for five years or more.⁹

The Helsinki Rehabilitation Centre for Torture Victims is open to asylum seekers released from detention, but such services are not provided in other municipalities to which asylum seekers are dispersed.

IV. CONCLUSIONS

A. Do alternatives ensure compliance?

There are no statistics on absconding or 'failure to appear' rates currently collected by either the Ministry of the Interior or the Helsinki Police. Nor are there any statistics which could be analysed to measure whether those under reporting requirements or housed in open centres (including

⁹ Information received from UNHCR.

children's centres) are less likely to abscond. According to the impressionistic experience of the lawyers at the Finnish Refugee Advice Centre, it is not usual for an asylum seeker to abscond.¹⁰

B. Cost effectiveness?

The central government pays to the municipality EUR 1,900 per refugee over the age of seven and EUR 6,223 per refugee under the age of seven, each year for three years. The State also covers the living allowance granted to refugees. Comparative information on the per capita costs of detention is not available.

C. Export value?

The Finnish 'open centre' reception system is in no way conceived as an alternative to detention but it does demonstrate, despite the absence of precise statistics on absconding, that an asylum system can operate successfully without resorting to routine detention and with a very high level of legal safeguards in place to protect the rights of detainees.

¹⁰ They estimate this is to be less than 10%.

FRANCE¹

I. DETENTION AND DOMESTIC LAW

Asylum seekers are generally not detained in France while decisions on their claims for asylum are pending. There are two exceptions, however, as follows:

A. Zones d'attentes/waiting zones

Asylum seekers are detained in France's airports or other international ports (including railway stations) during the application of a preliminary screening procedure to determine whether or not their claims to protection are 'manifestly unfounded' (as defined by French law²). These so-called 'waiting zones' (*zones d'attentes*) are not regarded as detention under French law.³ UNHCR, the International Organization for Migration (in French 'OMI'), a variety of independent observers such as French senators, and currently eleven nongovernmental agencies⁴, are all entitled to access these waiting zones, in particular Roissy Charles De Gaulle Airport where the vast majority of asylum applicants arrive. The maximum time permitted in a waiting zone is 20 days.⁵ If the claim is deemed unfounded yet the alien cannot be returned to his or her country of origin within that period of time, then he or she must be admitted to French territory.

An administrative decision refusing entry into France, and thus confining an asylum seeker to the waiting zone,⁶ may be appealed to the competent territorial Administrative Tribunal. Since January 2001, there is the possibility to make a *référé liberté* to the Tribunal,⁷ which is decided upon very quickly (within a few days) and is thus quite an effective remedy. Prolongation orders (after the first four days) may also be appealed to the first President of the Court of Appeal or his or her representative, and subsequently to the highest court, the *Cour de Cassation*.

B. Rétention administrative/administrative detention

The other exception to France's general non-detention of asylum seekers involves administrative detention (*rétention administrative*)⁸, which is applied primarily to certain aliens pending their deportation from France. Most are persons whose removal (*éloignement*) cannot be achieved immediately for various reasons, such as the need to obtain a travel document from the Consulate concerned. Asylum seekers, after a refusal of an *admission au séjour* by the *Préfecture*, while in the process of applying for asylum, may find themselves in this form of detention if they fall into one of

¹ The information presented herein is valid up to 31 March 2004.

² As provided for by article 12 of Decree No. 82-4242 dated 27 May 1982. It should be noted that this 'manifestly unfounded' screening procedure does not include a safe third country criterion (as in most other European countries).

³ The UNHCR position is that any place, including an international port, where an asylum seeker or refugee's freedom of movement is severely curtailed may be considered a place of detention, regardless of their supposed ability to exit the territory.

⁴ ANAFE (Association Nationale d'Assistance aux frontières pour les Etrangers), ASPR (Association pour le personnel de santé réfugié), Amnesty International, CIMADE, Croix-Rouge française, Forum Réfugiés, France Terre d'Asile, GAS (Groupe Accueil et Solidarité), Ligue des Droits de l'Homme, Médecins sans frontières, and MRAP (*Mouvement contre le racisme et pour l'amitié entre les peuples*).

⁵ Made up of 4 days that can be ordered by the border police (the Chief Border Officer, his or her representative or someone holding at least inspector level) and extensions of up to 16 days which can only be authorized by the President of the *Tribunal de Grande Instance*.

⁶ This order of confinement is called a '*maintien*', to distinguish it in French law from detention, but in fact it may be equated with a detention order.

⁷ Article L-521-2 of the Administrative Justice Code.

⁸ Under the responsibility of the Ministry of the Interior.

the following categories:⁹ (a) a cessation clause applies to their country of nationality; (b) the asylum seeker represents a serious threat to public order or national security (*'une menace grave pour l'ordre public, la sécurité publique ou la sûreté de l'Etat'*); (c) the asylum application is considered by the *Préfecture* to be abusive, fraudulent or lodged with the intention of postponing a deportation.¹⁰ With regard to such cases, a *Préfecture* will first deny a temporary residence permit and ask OFPRA, the determination body, to render a decision on the claim as a matter of priority (*procédure prioritaire*). If rejected, the claimant may then be sent to *rétenion administrative*.

Sometimes an undocumented alien is sent to *rétenion administrative* in order to prepare for the implementation of a return measure and only then, in the detention centre, decides to submit an asylum request from within the centre.¹¹ According to the latest amendments to the French law, such an asylum claim must be submitted within five days of the alien being notified of his rights during the initial *rétenion administrative* order. A small number of rejected asylum seekers with appeals pending before the *Conseil d'Etat* may be detained, but most of those in *rétenion administrative* who have not exhausted all remedies are appealing to the Administrative Tribunal against their removal (*arrêté de reconduite à la frontière*), and, simultaneously, regarding the country to which they may be removed

As of 2003, there were 24 centres (with 775 beds) registered as places of *rétenion*. There are, in addition, over one hundred other places which can be temporarily used as sites of *retention*, such as, police stations or, exceptionally, hotel rooms. These are not alternatives to detention, but alternative places of detention. The use of *ad hoc* sites causes some difficulties for organizations seeking to monitor immigration detention in France and to visit and to advise detainees. CIMADE, for example, reports not having the capacity to visit all such places.

The first four days of *rétenion administrative* may be authorized by the *Préfet* or by a civil servant with delegated authority from the *Préfet* as having the quality/status of a judicial police officer (*'ayant la qualité d'officier de police judiciaire'*). The President of the *Tribunal de Grande Instance* or a magistrate delegated by him or her must authorize the prolongation of a detention order (*'maintien order'*) after 48 hours. The current maximum period of such detention is 32 days.¹²

Rétenion administrative may be appealed either to the courts or to the Administrative Tribunal, the latter being the most frequently used and the most effective. Such appeals may be brought simultaneously with an appeal against a return order or an appeal that does have suspensive effect. Asylum seeker appealing the legality of their detention before a court must be provided with a court-appointed lawyer.¹³ Nongovernmental organisations help provide referrals to competent lawyers. Persons challenging their removal have the right to free legal aid.

Detainees in both the *zones d'attentes* and *rétenion administrative* are notified of the reasons for their detention in writing and, according to the latest amendments to article 35 bis of the Ordinance of 1945 implemented on 26 November 2003, they must be informed of their rights in a language they understand. Many detainees nonetheless complain that they do not understand their rights. In

⁹ Described in article 8 of the new French law on asylum of 10 December 2003.

¹⁰ This includes a subset of persons who submit new applications after having been first rejected, as these new claims are generally considered fraudulent or abusive, triggering the issuance of a return order.

¹¹ Refugee advocates are particularly concerned that such asylum requests are automatically presumed by adjudicators to be obstructive, when some may simply be lodged by people who were arrested as illegal aliens before they had time to present themselves to the *Préfecture* and thereby initiate the process of claiming asylum.

¹² According to a new law in force since 27 November 2003. Information received from UNHCR Paris.

¹³ *Review of States Procedures and Practices Relating to Detention of Asylum Seekers, Final Report*, September 2002, Lawyers Committee for Human Rights, p.35.

both types of detention, detainees may contact UNHCR (usually by phone from a waiting zone or in writing from a *réention administrative* centre). Furthermore, the judge, when requested for the first extension of a *retention* order, must remind such persons of their rights and must be satisfied that they have been sufficiently informed of their rights during the initial decision and that they could exercise them effectively.

II. EXTENT OF DETENTION AND LIKELIHOOD OF RELEASE

A. Zones d'attentes/waiting zones

In 2003, the percentage of asylum seekers released from waiting zones and admitted to French territory was 68.8%. There is no provision requiring separated or unaccompanied minors to be automatically released from the waiting zones and admitted to French territory.¹⁴ Children under the age of thirteen years cannot be put in the special minors section of the waiting zone (e.g., Zapi 3 for the Roissy Airport) but must stay in a hotel under the supervision of an airline company staff member. Not being technically on French territory while within the waiting zone or in a hotel room according to French law, these children are not protected by the prohibition against the expulsion of anyone under eighteen years of age from French territory.

B. *Réention administrative*/administrative detention

The maximum period for administrative detention pending removal is briefer than in most other European countries and chances of release prior to return/removal are high. During recent years (statistics for 2003 are not yet known), the average percentage of persons released from *réention* has been approximately one third and the average length of time spent under this form of detention was four and a half days. The problem of the detention of children does not arise in the places of *réention administrative*, except perhaps where there is a dispute regarding an age assessment, since everyone under the age of eighteen is protected against return to the border and expulsion (subject to A. above).

III. ALTERNATIVES TO DETENTION

A. Renewal of temporary permits as a *de facto* reporting requirement

The first document granted to an asylum seeker released from one of the waiting zones is a safe conduct permit (*sauf-conduit*), which is valid for eight days. He or she then receives an *autorisation provisoire de séjour*, valid for one month, from the *Préfecture*. Subsequently, she registers with OFPRA, the determination body, and receives a three-month permit, which must be continuously renewed.¹⁵ The numerous times that an asylum seeker in France must make administrative contact with the authorities in these first weeks and months after release therefore serves as a kind of *de facto* reporting requirement. In practice, the chance of non-appearance at one of these appointments may be increased due to the rather complicated nature of the process and the fact that so many meetings are required.

¹⁴ The *Commission nationale consultative des droits de l'homme*, which advises the Prime Minister, has recommended immediate access to the territory for separated and unaccompanied children (rather than keeping them in the waiting zones at ports for any length of time). See, Advice of 6 July, 2002 (p.6) repeating his earlier Advice of 21 Sept, 2000. A number of other independent observers and refugee advocates have made the same recommendation, although some admit that greater attention and funding would need to be given to 'alternatives' so that children are not released from the waiting zones without adequate care and protection during their first days in France.

¹⁵ *Reception Standards for Asylum Seekers in the European Union*, UNHCR, July 2000, p.58.

Anyone who fails to renew their permit would have to convince the *Préfecture* official that they had good reason for failing to do so and, if he or she failed to do so repeatedly it could become more difficult for the claimant to be readmitted to an asylum procedure. If an asylum seeker fails to show up for a long time and has no satisfactory explanation when he or she finally reappears, it may be that OFPRA would discontinue the claim.

B. Random identity checks

Free movement is one of the highest values of the French Constitution, but may be limited for reasons of '*ordre public*' and/or to control certain groups. All people in France must carry their registration/identity documents at all times. Recognized refugees are required to present their residence cards and asylum seekers are required to present their temporary permits upon request. A 2001 ruling allowed these controls/checks on foreigners in all public spaces, such as train stations, and rejected a strict interpretation of the concept 'threat to public order'.¹⁶ While this is not an alternative to detention in any strict sense, this form of widespread surveillance serves, in part, to meet the same objective (preservation of '*ordre public*') as met by *rétenion administrative* in certain cases.

C. Exceptional provisions for directed residence?

Article 28 of the Ordinance of 2 November 1945 (an old wartime provision) provides that foreigners may be forced to stay at a designated residence (*assignation à résidence*) as an alternative to expulsion from French territory. This is considered a protective measure, which confers some legitimacy on the foreign national's stay on the territory. As a consequence, it is applied very exceptionally. It is a kind of 'home detention' and not currently relevant to asylum seekers whose claims are still pending. It could potentially be used, however, where a refugee (or other person in need of international protection, who already has permission to stay in France) is deemed a threat to national security, or is liable to be expelled after having finished serving a criminal sentence, as an alternative to a ministerial expulsion order.¹⁷ Although there is potential in this restriction on freedom of movement to be applied to particular asylum seekers and/or refugees and in this sense it may appear, superficially, to be a possible 'alternative to detention', this is not the intention or current use of the provision.

D. Alternatives for separated and unaccompanied children

In practice, separated or unaccompanied children seeking asylum are usually released from waiting zones and admitted to French territory as soon as the border procedure has been completed. They are appointed an *administrateur ad hoc*,¹⁸ who represents the interests of the minor in the border procedure and, once the child is admitted to the French territory, also through the normal asylum procedure before OFPRA. This representative is to be provided in addition to a legal guardian who may be appointed, such as the government department *Aide Sociale à l'Enfance* or a French citizen or resident.

Three or four years ago, there was a major problem in France with separated children disappearing, presumably into the hands of traffickers. Many disappeared immediately upon release from waiting zones at airports. The situation has now much improved, with the opening of two special reception

¹⁶ Cour de Cassation, 7 June 2001.

¹⁷ Information received from UNHCR Paris.

¹⁸ Art. 17 of the new law of 4 March 2002 regarding assumption of parental authority and the *décret d'application*.

centres to accommodate such children, funded by the State and run by the French Red Cross (near to Roissy Airport) and by the NGO *France Terre d'Asile*. These are open centres, but ones to which children are escorted directly from the waiting zones and in which they are closely supervised in an age-appropriate manner. Very few minors ever disappear from these centres, and far fewer do so than from other forms of accommodation they may stay in later. The key problem is the limited capacity of the two centres such that children remain there for only two months on average, before having to be transferred to other social homes for children (not specialising in asylum seekers) or other less secure places of accommodation (e.g., hotels). The situation is currently improving, especially as the number of separated children arriving declined in 2003.

E. Open centres

Open centres ('CADA' – *Centres d'Accueil pour Demandeurs d'Asile*) are managed by nongovernmental agencies on behalf of the State and provide shelter to asylum seekers and, in about half the centres, a mixture of other young workers, unemployed persons etc.¹⁹ As of July 2003, there were 151 CADA, with 11,500 beds. There are also, in addition, various other types of accommodation – including hotels – provided by the State to asylum seekers. Residents in a CADA must request permission to be absent, although these centres are primarily designed to meet basic needs and do not serve any kind of enforcement or monitoring purpose if only for the practical reason that they are usually full to capacity, with a waiting list of several months.

Those who cannot get a place in a centre may be housed in homeless shelters and may receive less financial and social assistance than those in the centres. It is thus clear that the material aspects of the French reception system are not organised with an emphasis on keeping track of asylum seekers' whereabouts, preventing their onward movement to other EU States, or ensuring either their compliance with asylum determination procedures or their availability for deportation following rejection of their claims. The organisation and operation of the French reception system is, however, likely to improve in order to be in line with the new EU Directive on reception conditions.

Rejected asylum seekers usually receive an order to exit the territory, within a specified period of time, and many of them disappear within France. Very few are apprehended and put into *réention administrative* immediately upon receipt of their order to leave.

IV. CONCLUSIONS

A. Do alternatives ensure compliance?

No statistics are available on the rate at which asylum seekers abscond from the French reception/asylum system, however the anecdotal impression of those interviewed for this study was that they do so at a high rate, both because the lack of accommodation for all who need it forces many into an itinerant lifestyle and because a significant percentage wish to transit to other EU States. There is a continuing problem with regard to the disappearance of unaccompanied and separated minors from certain places of accommodation, though not from the two specialised centres run by the Red Cross and *France Terre d'Asile*.

¹⁹ Review of States Procedures and Practices Relating to Detention of Asylum Seekers, Final Report, September 2002, Lawyers Committee for Human Rights, p.33.

B. Export value?

The reported success of the two specialised centres for separated children, mentioned above, may serve as evidence that such accommodation can make a positive difference to the rate at which such children abscond or disappear, without the need to resort to deprivation of their liberty.

There are no other specific initiatives or studies in the field of alternatives to detention reported from France, where the only publicly debated 'alternative' to the waiting zones is considered to be externalisation of asylum processing. This would constitute an 'alternative to arrival', not an 'alternative to detention', and therefore falls beyond the scope of the present study.

GERMANY¹

I. DETENTION AND DOMESTIC LAW

In Germany, as a rule, asylum seekers are not subject to detention during asylum procedures. The exceptional nature of detention is shown in the unofficial statistics compiled by the Federal Office for the Recognition of Foreign Refugees ('Federal Office'). In 2003, out of a total number of 50,563 first asylum applications, only 1,683 (3.3%) were filed by applicants in detention, compared to 1,923 out of 71,127 (2.7%) in 2002.

If a person is already in detention, e.g. pre-trial detention, imprisonment on grounds of a criminal conviction, pre-deportation detention according to section 14(4) of the Asylum Procedures Act can be ordered during the asylum procedure. Pre-deportation detention must be lifted when the Federal Office has decided on the claim but no later than four weeks after the application for asylum has reached the Federal Office, unless the claim has meanwhile been rejected as 'manifestly unfounded' or 'irrelevant'. Persons applying for asylum for a second (or further) time might, however, be held in pre-deportation detention, unless their second application is admitted by the Federal Office in accordance with section 71(8) Asylum Procedures Act.

A. Detention during accelerated procedures at the airport

Asylum applicants arriving at one of the major German airports and coming from 'safe countries of origin' or without a valid passport are subject to a special accelerated asylum procedure conducted at the airport (the 'airport procedure'). An applicant may be held in facilities at the transit zone of the airport until he or she is granted entry or his or her application for asylum is rejected as 'manifestly unfounded'. According to a decision of the German Constitutional Court², the holding of asylum-seekers in closed facilities in the transit zone during the airport procedure does not amount to either detention or a limitation of liberty, since the individuals were free at any time to leave for the country they came from or another destination. The time limit for the airport procedure is 19 days.

Applicants whose claims are rejected as 'manifestly unfounded' and who cannot return to their countries of origin may spend several months in *de facto* detention at the airport. The Regional Civil Court Frankfurt (the court of second instance competent for detention matters with respect to the Frankfurt airport), ruled on 5 November 1996³, however, that as soon as an asylum application has been rejected and the removal order enforced, any obligation of the concerned asylum-seeker to remain in the transit zone without prior order by the responsible judge would violate his/her right to liberty. This decision corresponds to the *Amuur v. France* decision by the European Court on Human Rights.⁴ The incidence and duration of such long-term stays have significantly decreased in recent years.

In 2003, according to statistics collected by the Federal Office, 850 persons filed applications for asylum at German airports. Of this number, 458 applications were granted entry in accordance with section 18a(6) of the Asylum Procedures Act. Free legal counselling is supplied to all those persons whose claims were rejected as "manifestly unfounded" within the airport procedure.

¹ The information presented herein is valid up to 31 March 2004.

² Decision of 14 May 1996, 2 BvR 1516/93.

³ Case No. 20 W 352/96.

⁴ ECHR decision of 25 June 1996, 17/1995/523/609.

B. Pre-deportation detention for rejected asylum seekers

Failed asylum applicants liable to deportation may be detained under the conditions of section 57(2)(1) of the Aliens Act. Pre-deportation detention can be ordered for a maximum period of two weeks if the deadline for a voluntary departure has elapsed and if it is certain that the deportation can be enforced.⁵ In such cases, the detention can be prolonged for up to six months, unless it is established that – for reasons not the fault of the alien him or herself – the deportation cannot be enforced within the next three months. However, if the alien prevents the deportation through his or her own actions, the order can be extended for further 12 months, allowing for a total of up to 18 months detention pending deportation.⁶

In practice, the length of detention differs by country of origin,⁷ but on average it lasts between five to six weeks. Although the Constitutional Court has repeatedly ruled that pre-deportation detention may not be ordered if actual deportation can not be foreseen, UNHCR reports that it is aware of many cases in which rejected asylum seekers have been detained although it was unclear whether the (alleged) countries of origin would readmit them.

The imposition of pre-deportation detention must be determined by the local civil or criminal courts on request of the aliens authorities, within 24 hours. The alien concerned can appeal against such an order to the District Court within two weeks, and thereafter to the Regional Court, within a further two weeks.⁸

Any foreign national who enters and stays in Germany illegally may be taken into pre-deportation detention based on their illegally entry.⁹ Such a detainee should, as a rule, be immediately released from detention if he or she applies for asylum, except where he or she has stayed on German territory without authorisation for more than one month.¹⁰ In practice, many adjudicators do not apply this test because it can be difficult to prove.

Pre-deportation detention is ordered in a considerable number of cases, especially if the identity of a rejected asylum seeker is in question or if he or she provided false information regarding his or her identity. Sometimes requests for detention orders by the aliens authorities are based on insufficient or unconvincing facts. Some aliens authorities seem to routinely request pre-deportation detention, while others are less inclined to do so. No comprehensive figures on the number of rejected asylum seekers in pre-deportation detention are available. Existing *Länder* statistics do not distinguish between rejected asylum seekers and other aliens.

⁵ S.57(2)(1), Aliens Act. The test is that (a) the deadline for voluntary departure has elapsed and the person has changed address without notifying the aliens authority; (b) the person failed to appear at the arranged place and time of deportation; (c) the person has otherwise evaded the deportation order; or (d) the person is considered 'for well-founded reasons' likely to do so.

⁶ S.57(3), Aliens Act.

⁷ Rejected Romanian asylum seekers are returned via a simplified procedure under the German-Romanian Readmission Agreement and frequently held for only a few days, for example, whereas rejected asylum seekers of other nationalities may only be deported after several months of detention.

⁸ In view of the fundamental importance of the right to liberty, the Federal Constitutional Court has clarified that the detainee can appeal against the detention order even after release. BVerfG, judgement of 15 December 2000, 2 BvR 347/00.

⁹ Section 57(2) No.1 Aliens Act.

¹⁰ Section 14(4) No.4 Asylum Procedures Act states that detention in those cases can be continued, irrespective of a pending asylum procedure.

Rejected asylum seekers in pre-deportation detention are generally subject to normal prison regimes. No specific rules, rights and duties of these detainees have yet been fixed into formal law. In principle, the detainees may contact lawyers, UNHCR or NGOs, but in practice access is unsatisfactory and there is a severe shortage of professional counselling. Many detainees complain that they do not know how their cases are proceeding or what will happen to them. Courts grant legal aid only after a strict merits test. Further, many lawyers are reluctant to represent pre-deportation cases because such cases are very time-consuming if they are to be handled successfully and most detainees are not in a position to pay for a lawyer. Instead of detaining rejected asylum seekers in regular prisons, some federal states have established special detention centres for aliens pending deportation.

C. Detention of minors

In general, minors who are found not to be refugees may be placed in detention to secure deportation. This happens, for instance, when the rejected minor - regardless if he/she is unaccompanied or if he/she stays with his/her family - is suspected of trying to go into hiding. Furthermore, if a minor alien is found to have already stayed illegally in the FRG for more than four weeks, he/she may be detained. As a rule the authorities try to avoid detention of minors and in case they suspect a family of going into hiding they detain the male head of the household only. Some federal states released special decrees with different regulations on when and how to detain minors. For instance, children and minors under age 16 are in principle not detained in the *Länder* of Berlin, Schleswig-Holstein, North Rhine-Westphalia and Hesse. In Berlin, mothers and single fathers with children under the age of 7 may not be detained. In addition, children and minors aged 16 to 18 may only be detained for a maximum duration of three months. Furthermore, in North Rhine-Westphalia, persons under 18 are neither subject to detention if they attend school, hold a work place or an apprenticeship trainee position, or are still living with their parents. In Saxony-Anhalt minors between ages 14 and 18 may only be detained under very special circumstances, and the decision may be taken with the participation of the respective youth authority only.

The Federal Ministry of Interior published statistics on minors in deportation detention, which had been collected from all federal states. The figures show that consistent nation-wide registration systems for such cases do not exist, and that certain figures are not comparable. Four federal states did not provide any figures at all. The Ministry's statistics yield that in 2004 at least 318 - alleged - minors had been temporarily detained. Only 9 federal states provided information about the respective age of the minors (2 minors were 14 years old, 5 were 15, and all the others were aged 16 to 17). The relatively high number of minors in detention is, however, contrasted by recent jurisprudence, which has increasingly emphasized that detention was the last resort only and any means to avoid detention of minors had to be examined first, e.g. the accommodation in a youth welfare centre.¹¹ According to UNHCR's observations, minors are often released if they challenge the detention decision.

Minors accompanied by the parents, or separated children, are also subject to the rules relevant during the airport procedure. However, unaccompanied minors under the age of 16 are in most cases granted leave to enter the German territory to pursue their procedure inland.

¹¹ Higher District Court of Braunschweig, 6 W 26/03, decision of 18 September 2003, Higher District court of Cologne, 16 Wx 614702, decision of 11 September 2002.

II. ALTERNATIVES TO DETENTION

As already pointed out, asylum applicants and refugees in Germany are seldom subject to detention. In order to ensure compliance during the asylum procedure and availability for removal, as well as a means of cost reduction and national 'responsibility sharing', they are, however, subject to certain restrictions regarding settlement and freedom of movement.

A. Identity registration

The Border Authorities and the Federal Office are responsible for establishing the identity of asylum seekers. The Federal Criminal Police Office takes fingerprints and cross checks them in order to grant security clearance. Identity, security and health checks generally take place within open reception centres. It is not known exactly how many asylum seekers in Germany abscond during this initial period.

B. Distribution and accommodation in collective centres/restrictions on freedom of movement

In principle, applicants for asylum are supposed to live in large initial reception centres ('*Erstaufnahmeeinrichtung*') of the *Länder* to which they have been assigned under the nationwide initial distribution system¹² for a maximum of three months. Subsequently, as provided for in section 50 of the Asylum Procedures Act, applicants are distributed among the districts of the responsible federal state. As a rule, after re-distribution to the district level, they are supposed to live in collective centres managed by the districts¹³ during the entire asylum procedure.¹⁴ Exceptions to this rule are authorised, but practices vary between federal states.

UNHCR has objected to accommodating asylum seekers in collective centres where these facilities are excessively isolated and where no counselling or other NGO services are available. This has been a chronic problem particularly in the federal states of the former East Germany where reception/accommodation centres tend to be in very isolated areas, such as in barracks of the former East German border police. UNHCR has repeatedly called on the authorities to exempt traumatised individuals, such as torture survivors or unaccompanied minors, from the obligation of staying in collective reception and accommodation centres.¹⁵

For the duration of the asylum procedure,¹⁶ applicants are subject to restrictions on their freedom of movement.¹⁷ They are generally not supposed to travel outside their district of assigned residence without special permission from the competent local aliens authority. Should they breach this requirement, they may be subject to detention as a penalty. Some districts are no larger than fifteen square kilometres. No such permission is required for the purpose of appearing in court or before

¹² The distribution system is called 'EASY', '*Erstverteilung von Asylbewerbern*'. Allocation is based on the population of the *Länder* and its sub-districts, though authorities are required to take the place of residence of a spouse, children and/or parents into consideration when deciding on these allocations.

¹³ Some districts, however, transmitted the operation of these collective centres to private agencies or nongovernmental welfare organisations.

¹⁴ S. 53, Asylum Procedure Act

¹⁵ Information received from UNHCR BO Berlin.

¹⁶ In Germany, 28% of all first instance decisions are taken within one month. Altogether, 81 % of all first instance decisions are made within six months upon application. The average length of an asylum procedure in Germany, inclusive of the court proceedings, amounts to 22 months.

¹⁷ As provided for in Sections 56, 57, 58 and 59 Asylum Procedures Act.

other authorities.¹⁸ It is regularly granted to allow an applicant to seek advice from a lawyer or an NGO if such advice is not available within the assigned district.¹⁹ Permission to visit family members residing in other federal states is granted on a very restrictive basis only. In a 1997 decision, the German Constitutional Court held that these limitations on the movement of asylum seekers are not disproportionate and, therefore, are in line with constitutional guarantees.²⁰ The limitations are lifted if and when the applicant is recognised as a refugee, even if the decision has not yet entered into legal force.²¹

In general, persons granted subsidiary forms of protection are also confined to the federal state or even the district of the aliens authority to which they were previously assigned during the determination procedure.

C. Alternatives for separated children

Child asylum seekers and aliens are subject to the same legal regimes as adults, except that they are also subject to German child welfare law (The Youth Welfare Act) and must be appointed a guardian for the asylum procedure while under the age of 16.²² The guardian, appointed by the local court, may be a youth welfare officer, a nongovernmental representative, a relative of the minor or any interested individual who is regarded as reliable by the court. In cities such as Hamburg or Berlin, appointed guardians are mainly from youth welfare offices and are responsible for a large number of wards at any one time. In various *Länder*, e.g. in Baden-Württemberg, Bavaria, Saxony and Lower Saxony, guardianship projects have been established to encourage individuals to become guardians for unaccompanied children up to the age of 18 and to provide them with the necessary support.

Unaccompanied minor applicants under 16 are, as a rule, received in special accommodation centres and are not obliged to stay in initial reception or accommodation centres of the districts. Minors above 16 are as a rule accommodated in reception centers for adults and families, however, in some *Länder* special projects have been established which provide special accommodation for adolescent unaccompanied minors.

D. Return Centres for 'non-cooperative' rejected cases

In light of the prevailing jurisprudence of the Federal Constitutional Court, according to which prolonged pre-deportation detention is prohibited as a means of pressuring an asylum seeker to cooperate in the process of return, the authorities of several federal states have started to establish so-called Return Centres (*Ausreisezentren*).²³ Given the rise in the number of rejected asylum seekers in recent years whose identity/nationality cannot be clarified by 'traditional methods', or who refuse to cooperate in obtaining travel documents, the Return Centres have been introduced to induce cooperation and consent in such problematic cases.

¹⁸ S. 57(3), Asylum Procedure Act.

¹⁹ Ss. 57(2) and 58(2), Asylum Procedures Act.

²⁰ BVerfG, decision of 10 April 1997, BVerfGE 96, 10 ff.

²¹ Restrictions to freedom of settlement pertain, however, when the refugee is dependent on State social benefits.

²² In 2002 and 2003, 873 and 977 separated children under sixteen years of age applied for asylum in Germany, respectively.

²³ In other words, failed asylum seekers may be ordered to reside at such centres indefinitely because they are not technically places of detention.

Return Centres exist in Lower Saxony (Braunschweig and Oldenburg with a combined capacity of 250 places; Bramsche-Hesepe, with 200 places), in Rhineland-Palatinate (Ingelheim, 180 places), in Saxony-Anhalt (Halberstadt, 100 places) and in Bavaria (Fürth, 50-100 places). Rejected asylum seekers who are non-cooperative may be ordered to take up residence in one of these Centres. The Centres are generally open, although residents must report on a regular basis (e.g. three times per week). They are informed about their legal situation in regular conversations with a view to obtaining their cooperation in the administrative process and encouraging their departure from Germany, through, for example, return projects providing short-term vocational training. The standard of amenities in these Centres is generally set at a level that also acts as a disincentive to remain in Germany, that is, only basic needs are met.²⁴

The legality and effectiveness of these Centres has been the subject of heated public debate ever since the first one was opened. While some *Länder* have not adopted this ‘alternative’ at all, and some are considering the closure of existing centres, others intend to further expand their use. Debate continues as to whether everybody already sent to these Centres truly meets the criteria for being labelled ‘non-cooperative’. In certain cases, advocates report that no formal evidence of non-compliance was provided to justify transfer to such a facility.

Critics of this policy advocate instead a greater use of the concept of ‘supported voluntary return’ – meaning the provision of counselling and incentives, including financial and practical assistance and vocational training, to promote mandatory return with the consent and cooperation of the rejected asylum seeker. This concept has recently seen a revival in Germany, with several projects at the *Länder* or district level, in most cases jointly carried out with various NGO partners and co-funded by the European Refugee Fund. These documented successful efforts contribute to minimising the use of pre-deportation detention.

E. Restrictions on freedom of movement for rejected asylum seekers

A rejected asylum seeker, or any foreign national, under a final obligation to leave German territory, if not detained or sent to a Return Centre, may have her freedom of movement restricted as provided for in section 42(5) Aliens Act, irrespective of her former status. Accordingly, the individual must inform the competent aliens authority of any change of domicile – even within the assigned district – or of any absence from the assigned district for more than three days.

III. CONCLUSIONS

A. Do alternatives ensure compliance?

In Germany, non-compliance during the asylum procedure is not reported to constitute a major problem. According to estimates by the Federal Office, the rate of asylum seekers who fail to attend their interview with the Federal Office is negligible and does not exceed 5%. In fact, this high compliance rate during the asylum procedure is an achievement of the legal and reception system, which guarantees that asylum seekers are accommodated and materially supported upon submission of their asylum application and are thus not preoccupied with daily survival strategies. Further, asylum seekers are called in for interview within the first days following their asylum application, so there is not a lot of time in which to lose track of people or for them to grow discouraged.

²⁴ Interview with staff of Pro Asyl, October 2003-March 2004.

With regard to the absconding rate among failed asylum seekers, it should be noted that the gap between the number of claims rejected and the number of persons deported must take account of the large number granted a toleration permit (*'Duldung'*). 226,547 persons were living in Germany under this tolerated status at the end of 2002. Keeping rejected asylum seekers available for removal is obviously a key priority for the German government. In most cases, however, disappearances during the removal procedure can be avoided by restrictions of movement (see above, section II.E).

B. Cost effectiveness?

All the collective accommodation centres provide federally mandated allowances of 41 Euro of pocket money per month for all residents over 14 years of age and 20.5 Euro for all those under 14. This amount has remained unchanged since 1993. This study is not aware of any figures publicly available on the costs of running the accommodation centres. Detention costs in Germany are also seldom published, but is estimated that one day of pre-deportation detention costs around 60-80 Euro, varying between the federal states. Although official comparisons of costs between open and closed centres do not exist, it can be assumed that open centres are less costly to run than closed.

C. Export value?

The German system, in a sense, is already being exported to the rest of Europe via the EU Directive on reception conditions.²⁵ It is a system that seems to confirm the logic that controls on freedom of movement can reduce the overall statistical flight risk among asylum seekers. However, in practice, the low absconding rate may be due primarily to the fact that Germany is a major destination country, for family reunion and other reasons, and may therefore have a naturally low rate of absconding in common with countries such as the US, UK, Canada and Sweden.

²⁵ For further evaluation of the German dispersal system, and how it is being replicated on the regional level, see: 'Burden Sharing in the EU: Lessons from German and UK experience', Christina Boswell, *Journal of Refugee Studies*, Vol.16, Issue 3, September 2003, pp.316-335.

GREECE¹

I. DETENTION AND DOMESTIC LAW

Most reported cases of detained asylum seekers involve persons who enter or reside in Greece illegally without lodging an asylum application.² In a few cases applicants are detained when attempting to exit Greece and travel to a third country using invalid/forged documents.

The Aliens Act 2001³ provides for both court review of detention and limits on the permissible period of detention of 15 days, or up to a maximum of three months. If a claim is rejected, the authorities have only three months within which to effect the removal of the rejected asylum seeker or he or she must be released. NGOs, however, report that asylum seekers and failed asylum seekers are still being unlawfully held beyond the three-month deadline.⁴

II. ALTERNATIVES TO DETENTION

A. Notification of address and change of address

There is general freedom of movement for both asylum seekers and refugees in Greece, despite the Greek government having entered a reservation to article 26 of the 1951 Convention. Asylum seekers are required however to keep the Aliens Department of the Police informed of their address or change of address (whether chosen personally or assigned by the government as a form of alternative supervision). If an asylum seeker changes residence without notifying the authorities, examination of his or her claim is likely to be interrupted.

B. Open reception centres and directed residence at Lavrio

A number of organisations are involved in the provision and management of reception centres and hostels to where asylum seekers are assigned.⁵ It is not clear how controlled these centres are, but the oldest reception centre at Lavrio, Attika, housing between 250 and 300 persons, requires that permission be sought for any absences where the centre is their designated or directed place of residence. There are some problems with achieving dispersal and assignment to the more remote centres, with people choosing instead to move to Athens despite their destitution.

C. Rental assistance

In addition to the reception centres and hostels, the Social Work Foundation ('SWF') runs a programme called 'Nefeli' which subsidises rent for asylum seekers during the first six months of their stay in Greece. Asylum seekers must request permission to move out of the centres if that is their 'designated address.' Nongovernmental organisations give limited assistance with arranging other types of accommodation.

D. Alternatives for separated children and other vulnerable persons

Some vulnerable persons are released from detention by court order subject to a reporting requirement to the police, either once every week or fortnight. There is no statistical information on

¹ The information presented herein is valid up to 31 March 2004.

² Art. 44(3), Aliens Act 2001.

³ No. 2910/2001.

⁴ ECRE Country Report, Greece, 2003, p.14.

⁵ E.g. the Red Cross (three centres), Médecins du Monde, ELINAS, Social Solidarity, Voluntary Work of Athens, etc.

the frequency of these orders or the rate of compliance of those under them. UNHCR and nongovernmental advocates are involved in referring such cases.

In 2002, 247 separated children claimed asylum in Greece.⁶ Detention of such children is very rare. They are instead referred to the Prosecutor for Minors or the local First Instance Public Prosecutor who takes responsibility for them and decides whether to appoint an individual guardian.

Sometimes separated children are accommodated at specialised youth hostels rather than in general reception centres.⁷ The most important such centre is in Anogeia, Crete, and is run by the National Youth Foundation. It has capacity to house some 25 separated asylum seeking minors. Sometimes separated children are placed in foster care if family tracing or return to the country of origin proves impossible.

During the second half of 2001, Greece built new reception centres and introduced assistance programmes for vulnerable asylum seekers. Preference for places in the centres is given to the elderly and families with children. There are also special centres for women and families, such as the Kokkinopilos centre near Elassona. Such accommodation needs to be promoted as an alternative measure, since the detention of families with young children is not uncommon in Greece. There are also special centres helping asylum seekers with psychiatric or other illnesses.⁸

III. CONCLUSIONS

D. Do alternatives ensure compliance?

In 2002, there were 5,600 new asylum applications and 9,400 decisions taken. Of these, 697 applicants (12%) failed to appear for their interviews at either the first or second instances and, as a consequence, their cases were suspended or closed. Similar percentages occurred for the previous several years. Despite the fact that Greece is a major country of transit, this is a relatively low rate of 'no shows' and suggests that open reception systems can indeed ensure compliance of most asylum seekers, at least until a final decision is delivered.

E. Cost effectiveness?

No information is available on costs. The European Refugee Fund and nongovernmental organisations carry much of the financial burden for the reception centres in Greece. Investing in the improvement of the reception and integration prospects of asylum seekers and refugees in Greece is considered a more constructive and cost-efficient solution than attempts at obstructing transit movements through resort to increased detention capacity.

F. Export value?

The model of small specialised centres for different categories of vulnerable asylum seeker is an interesting one, and, in view of Greek evidence of high rates of compliance, may be worth exploring as a model of best practice in the context of any transit country with limited social welfare services for asylum seekers.

⁶ Greek government statistics, cited in ECRE Country Report, Greece, 2003, p.11.

⁷ E.g., the Centre for Childcare in Lamia provides housing to approximately 30 minors, including asylum-seeking children if necessary; the Aghia Barbara Special Professional School in Athens can temporarily host asylum seekers alongside other Greek minors.

⁸ E.g., Iolaos hostel has capacity for 10 asylum seekers with psychiatric illnesses; Naysika hostel is intended for those who need regular hospital treatment.

HUNGARY¹

I. DETENTION AND DOMESTIC LAW

Until September 1998, asylum seekers who had no family ties or means of living on their own were accommodated in refugee reception centres run by the governmental Office for Immigration and Nationality ('OIN', then 'ORMA'). The centres were open and asylum seekers fully enjoyed freedom of movement. However, over 70% of these applicants left the centres and absconded from the asylum procedure. Some were apprehended by the border guards of neighbouring countries and Hungary was heavily criticised by its EU neighbours for not guarding its borders adequately. In response, Hungary established detention centres for foreigners apprehended either entering or staying in Hungary unlawfully, including potential asylum seekers apprehended prior to lodging an application.

As of the time of writing, release of an asylum seeker from detention at a Border Guard shelter to a 'community shelter' or refugee reception centre (both managed by OIN) can be carried out by the OIN's asylum determination units with the consent of the Aliens Police unit of the same organization.² The Aliens Police often denies such consent. In 2002, a total of only 54 asylum seekers were transferred from detention to open reception centres.³ In 2003, almost all Afghan and Iraqi asylum seekers were transferred from detention to open reception centres, as the Hungarian government decided to treat these nationalities more leniently in light of the unstable situations in their home countries.

As of 2003, detention was not being ordered in cases of separated children or families with children, though this is not explicitly prohibited by the law (see below, under alternatives).

No legislative or administrative regulations or other measures apply specifically to refugees or to asylum-seekers with respect to detention. However, the Aliens Act 2001 introduced three different forms of detention of foreigners (at large, not only applicants for refugee status).

Lack of guidance to the Aliens Police and Border Guards on how to implement the detention policy, coupled with a lack of clarity in the legislation itself, has produced some apparently arbitrary decisions to detain. This lack of clarity is perhaps the most significant failing of Hungarian detention practice. Encouragingly, however, Hungarian courts are increasingly refusing to extend orders of detention where the initial decision appeared arbitrary.

As mentioned above, the Aliens Act 2001 contains three different forms of detention. These are: (1) detention for refusal,⁴ (2) 'aliens policing detention'⁵ and (3) detention prior to expulsion.⁶

In the first case ('detention for refusal'), detention for up to five days may be ordered to effect a removal in accordance with a readmission agreement. This may be extended by a local court to a maximum of 30 days.

¹ The information presented herein is valid up to 31 March 2004.

² S. 10 (4) of Government Decree No. 172/2001.(IX.26.) on the detailed rules of the asylum procedure.

³ Information received from UNHCR BO Budapest.

⁴ S. 47, Aliens Act.

⁵ S. 46, Aliens Act.

⁶ S. 48, Aliens Act.

In the second case ('aliens policing detention'), detention for up to five days (extendable by a local court to a maximum of six months, reviewed every 30 days, and by a county court after six months to a maximum of twelve months, reviewed every 90 days) may be ordered to ensure the execution of an expulsion order if the alien: (a) has been hiding from the authorities or has prevented the implementation of the expulsion order; (b) has refused to depart or there are other good reasons to presume that he or she would delay or try to obstruct the implementation of an expulsion order; (c) is subject to expulsion and prior to departure has committed a petty offence or criminal act; (d) has severely or repeatedly violated the prescribed rules of behaviour in the place designated for his or her mandatory stay, has failed to meet the obligation to appear prescribed for him or her in spite of being called upon to do so and has thereby impeded the alien policing procedure; or finally, (e) if he or she has been released after a criminal sentence.

In practice, even if an individual does not personally obstruct his or her own expulsion, and it is evident that expulsion cannot be implemented in the foreseeable future, stateless persons and others who cannot be returned will frequently spend the maximum period of twelve months under 'aliens policing detention'.

In the third case ('detention prior to expulsion'), the aliens police may detain, for reasons of public security, for up to five days (or up to 30 days, if extended by a local court) an alien whose identity or legality of stay is unclear. If an expulsion decision is taken and further detention is justified in accordance with section 46 of the Act, parallel with a termination of detention in preparation for expulsion, 'aliens policing detention' of the alien may be ordered.⁷

A detained alien may request judicial review of the lawfulness of the first instance decision to detain. Appeals submitted against the decision of the local court are to be considered by the county/capital court within five days. The detainee does not bear the costs of such proceedings, including the cost of interpretation, but must pay for his or her own legal representative. During the second instance judicial procedure the detainee can present his or her application and evidence orally. Most of the criminal procedure rules established by the Criminal Code are applicable to such a procedure.⁸ The Hungarian Helsinki Committee states that these judicial reviews are an ineffective remedy, especially in cases detained at the airport transit zone, which can be detained during pre-admissibility and then, if the case is not admitted, transformed directly into pre-removal detention.

II. EXTENT OF DETENTION AND LIKELIHOOD OF RELEASE

According to the Director General of Hungary's Office for Immigration and Nationality, 28% of all asylum seekers in 2002 were detained.⁹ While this is a significant percentage, it should be noted that the number of asylum seekers detained has decreased each year since 1999.¹⁰ However, the number of asylum applications has also been declining (e.g., 33% between 2001-2002), so this does not necessarily indicate that Hungary is relying more on alternative measures than in any previous year since 1998.

⁷ S. 59 (2) of Government Decree No. 170/2001.(IX.26.) on the implementation of the Aliens Act

⁸ S. 356 of Act No. I of 1973, promulgated by the official gazette on 31 March 1973, date of enforcement, 1 Jan. 1974

⁹ Information received from UNHCR BO Budapest.

¹⁰ In 2002, the monthly average of foreigners detained decreased to 345 (from 660 in 2001, 720 in 2000, 900 in 1999). Eight detention centres of the National Border Guards are operational, with capacity ranging from 26 to 242 persons, and totaling 593.

The transfer of asylum seekers from the Border Guard shelters to the open reception centres has sometimes been prevented in previous years by lack of available space. In this respect, UNHCR has expressed concern regarding the policy of refurbishing detention facilities and increasing their capacity, while letting the open reception centres deteriorate. The 1999 EU PHARE National Program included 600,000 Euros to refurbish and expand the open reception facilities and this has now taken place.¹¹

III. ALTERNATIVES TO DETENTION

A. Alternatives for separated children and other vulnerable persons

Separated asylum seeking children¹² are to be released from detention and appointed a temporary guardian to assist with all legal proceedings, as well as a permanent guardian to represent them in relation to social and educational matters.¹³ There are, however, several shortcomings in the Hungarian arrangements, which are currently being addressed through a plan formed jointly by UNHCR, the Hungarian government and a local nongovernmental organisation, Menedek. This Plan of Action is based on 'best practice' identified under the Separated Children in Europe Programme. One key element is the establishment of a group home for separated children, with a capacity of 30, run by the local nongovernmental organisation, Oltalom, in the city of Bekescsaba. The home was inaugurated on 27 June 2003 and has been operational since. It is hoped that this new accommodation will help tackle the problem of separated children disappearing, presumably into the hands of traffickers, during the procedure. Previously high rates of absconding for separated children may have been due to the fact that traffickers and smugglers told their victims/clients to claim to be under 18 as a means of evading detention whilst in transit through Hungary. Thus stricter age assessments may, in part, be responsible for closing this 'loophole'.

There are no legal requirements for the release from detention or special reception of other vulnerable groups, such as torture survivors or pregnant women. Those released are sometimes cared for by nongovernmental organisations on an *ad hoc* basis.

B. Registration and documentation

Asylum seekers must deposit their original identity and/or travel documents with the authorities at the time they submit their application for asylum. This is intended to prevent non-detained asylum seekers from transiting westwards. In return, they are provided with a humanitarian residence permit/identity card.¹⁴ Such identity cards were issued during 2003, except to those in detention (a practice which gives rise to some concern, since detained asylum seekers are not equipped with any document indicating that they are asylum applicants).¹⁵ The residence permit is renewed every three to six months, and permit holders must report in person for renewal.

¹¹ Information received from UNHCR BO Budapest.

¹² In 2002, 658 asylum applicants were identified, following new methods of age assessment, as being separated children (10.2% of the total number of asylum applications).

¹³ *Review of States Procedures and Practices Relating to Detention of Asylum Seekers, Final Report*, September 2002, Lawyers Committee for Human Rights, p.45.

¹⁴ Ss. 15 (a) and 16 (b) of the Asylum Law, and ss. 13, and 16-17 of the implementing Government Decree on the detailed rules of asylum procedure.

¹⁵ Information received from UNHCR BO Budapest.

C. Open centres

Asylum seekers who are admitted to the Hungarian procedure may be referred to one of three open reception centres run by OIN. If an asylum seeker needs State support, they are obliged to reside one of these centres. A small number of recognised refugees also reside in these collective centres, alongside asylum seekers.

The three centres are located in Bekescsaba, Bicske and Debrecen with a capacity of 250, 360 and 1,500 persons respectively. Residents of these facilities enjoy full freedom of movement, except for an initial period of two to four weeks where they are placed in 'quarantine', while medical checks are conducted.¹⁶ It has been suggested that a number of the compulsory medical tests conducted are unnecessary (or unreasonably applied to asylum seekers while not to any other foreigners) and that this time in quarantine detention could be safely reduced, bringing Hungarian practice more into line with that of other European States.

There is a high rate of turnover for residents, with the average time spent in the centres being between 84-108 days.¹⁷ This is probably largely due to the fact that asylum seekers are not authorised to work outside the centres and the centres are located in economically depressed areas where it is difficult to integrate even temporarily into society. Moreover, the level of support and services provided by the centres is also extremely limited. Support services are currently available only to vulnerable cases such as the elderly or sick, female heads of households, torture survivors or those suffering from PTSD, and most such services, as well as several other basic amenities, continue to be funded by UNHCR.

Some residents may also leave because there is an absence of separated and safe living quarters for families. Women and children are housed in centres with an overwhelming number of single male residents. UNHCR and others have recommended the development of separate, protected accommodation for women, female-headed households and families with children, but as of the time of writing, this had yet to be instituted.

D. Community shelters

Smaller, so-called 'community shelters' are another alternative in Hungary for housing aliens who are ordered to reside in a designated place. The minimum living standards set for community shelters are very similar to those set for detention facilities and there are far fewer services and amenities than in the open refugee reception centres. The community shelters are run by the same Aliens Police (OIN).¹⁸ These officers are supposed to play a dual role, as quasi-social workers but also as enforcers of expulsion, deportation and re-detention orders.

The shelter's residents are mainly foreigners released after having spent the maximum twelve months in detention, but who are destitute and have no other place to stay. Many are also, since July 2002, foreigners holding a residence permit issued on humanitarian grounds (i.e., beneficiaries of subsidiary protection or 'Persons Authorised to Stay' ('PAS')).

¹⁶ S. 16(c), Asylum Law, s. 12 of Government Decree No. 172/2001.(IX.26.) on the detailed rules of the asylum procedure. The average time spent in quarantine to undergo mandatory medical examinations, including HIV/AIDS tests, in 2002 was: Bekescsaba, 17 days; Bicske, 18 days; Debrecen, 15-20 days.

¹⁷ In 2003, the average length of residence in the Bicske Refugee Reception Centre had increased from two months (in 2002) to six. It is too early to tell whether this increase will continue as a positive trend in 2004 and coming years. Information received from UNHCR BO Budapest.

¹⁸ S. 70-76 of Government Decree No. 170/2001.(IX.26) on the implementation of the Aliens Act.

At the end of 2002, there were three operational community shelters – in Balassagyarmat (capacity 70), Győr (90), Nagykanizsa (43).¹⁹ All were located within Border Guard premises, next to a detention facility or sharing the same building. Freedom of movement is in practice extremely restricted so that residents perceive little difference between being in a community shelter and being in detention. For example, residents are sometimes escorted by armed guards and dogs to and from the shelters and the communal canteen, or to and from the exit gate of the Border Guard barracks.²⁰ There are barred windows and doors on the shelters, which are supposed to be to protect the Border Guard premises from outside intruders. If a resident commits any petty offence or fails to abide by the shelter's rules, they may be liable for 'alien policing detention' (see above) and immediately re-detained.²¹

Women, families, children and other vulnerable persons are among those sent to such shelters, though the shelters are presently wholly unsuitable for them. Apart from the lack of services, some of the premises are in an extremely poor condition (as of mid-2002) and lack separate spaces for women and children to feel protected from male residents. There are no playgrounds for children in these facilities.

After eighteen months in community shelters, the residents are supposed to receive another, better form of accommodation²² but in some cases they remain there.

IV. CONCLUSIONS

A. Do alternatives ensure compliance?

Hungary received 6,412 asylum applications in 2002, but 5,073 cases were discontinued in the same period, mainly due to the applicant absconding. That is equivalent to almost 65% of all decisions taken during 2002 (including those pending from previous years). This high rate of non-appearance and non-compliance indicates that the alternatives – open centres and 'community shelters' – are failing to address this issue, despite the *de facto* restriction of free movement in the shelters. This is no doubt partly due to Hungary's continuing role as a gateway to the EU, in turn due to limited integration prospects for refugees in Hungary, but it also may be due to the poor conditions inside certain centres and shelters and the fact that there is no regular reporting obligation applied to non-detained asylum seekers who do not seek State support.

More broadly, there may be a relationship between the fact that Hungary's recognition rate for 1951 Convention refugees is less than 10% (3% in 2002), such that asylum seekers feel little incentive to remain in the procedure. Having said this, it should be noted that a large number of claimants are granted a secondary or subsidiary status (i.e., PAS) which gives them a legal right to remain, though less equal rights, in Hungary. For example, in 2002, while only 104 persons were granted refugee status out of 6,412, there were 1,128 persons granted PAS status.²³

¹⁹ A total of 424 foreigners were hosted in community shelters during 2002.

²⁰ Reported by UNHCR BO Budapest.

²¹ S. 46 (9), Aliens Act.

²² Ss. 56 – 57, Aliens Act.

²³ One particularly worrying finding of a UNHCR mission to Hungarian detention facilities in April-July 2003 was that no detained asylum seeker had been recognised as a refugee or granted the subsidiary status of 'Person Authorised to Stay' since 1 January 2001. It was concluded that there was an implicit bias against the claims of those held in detention, despite the fact that decisions to order detention or release continue to appear arbitrary in many cases.

B. Cost effectiveness?

In 2003, the average cost of running the open refugee reception centres was reported to be HUF4000 (some US\$19) per person per day. In comparison, the 'community shelters' cost HUF1650 (some US\$8) per person per day, reflecting their lower standard of accommodation and services.²⁴ No comparative figures were available for the costs of running Hungary's detention centres, though these are presumed to be relatively high. Thus while it might be argued that a greater use of open centres and community-based reception as an alternative to detention would prove cost-efficient, the transfer of 'Persons Authorised to Stay' and other vulnerable cases from the community shelters to the open centres, in order to supply them with the treatment to which they are entitled, would involve an increase in cost. On the other hand, it is hardly cost-efficient for the open centres to be under-occupied so long as arrival numbers are declining, as many of the overhead costs of those facilities would be fixed.

The reduction of time spent in 'quarantine' detention upon entry to the reception centres, through reduction in non-essential mandatory medical testing, would not only bring Hungarian practice more in line with international norms, but would also produce significant cost-savings.

C. Export value?

Hungary's open centres and shelters are not examples of 'best practice', yet Hungary should be commended for reducing the percentage of asylum seekers it is detaining on average every year. It is the only country in Europe to have done so in recent years. The centres and shelters deserve to be viewed as alternatives in light of the intense pressure put upon Hungary by western European States to crack down on absconders and to prevent irregular movements by any means – including, potentially, greater use of detention.

²⁴ Office for Immigration and Nationality figures, as reported by UNHCR BO Budapest.

INDONESIA¹

I. DETENTION AND DOMESTIC POLICY – PRE-2001 PRACTICE

The Indonesian Immigration Law 1992 governs who is permitted to lawfully enter the country, but contains no provisions relating to the granting of asylum.² Under this law, all asylum seekers and refugees in Indonesia are at least formally subject to detention, as migrants attempting to enter or stay in Indonesia unlawfully.³

Indonesian immigration detention centres are called '*karantina*' ('quarantine centres')⁴ and, prior to mid-2001, it was common for persons in need of international protection to be indefinitely detained in either prisons, police stations or *karantina*. Primarily these persons were from the Middle East and other extra-regional refugees transiting Indonesia in an attempt to reach Australia to claim asylum there.⁵ They usually had not contacted UNHCR Jakarta, either by choice or because they were prevented from doing so by smugglers, and so had not been registered by that Office. Persons arriving at the airport in Jakarta were the most likely to be detained, however, those transiting the country under the direction of local smugglers by land and boat were also arrested.

Accounts of the conditions in the *karantina* and Indonesian police cells during the period 2000-2001 suggest that they were far below international standards. There were no legal safeguards or means of release available to immigration detainees unless they had their own resources or a smuggler who was able to bail them out.⁶ People are known to have been held in detention for several years under these conditions.

UNHCR was given access to such detainees and conducted refugee status determination interviews in the *karantina* for those persons wishing to claim asylum. Those recognised as of concern to the Office were released to its supervision by the Indonesian authorities and accommodated in Jakarta pending resettlement to another country. Recognised refugees were accommodated in Jakarta and assisted by UNHCR, rejected refugees, including those with pending appeals, were accommodated outside of Jakarta and assisted by IOM. The Jakarta police generally respected, and continues to respect, the letters of attestation issued by UNHCR, written in both Bahasa Indonesia and English.

The International Organization for Migration ('IOM') was also given permission to visit detainees and supply them with additional food and water.

After the introduction of the IOM Program described below, any extra-regional refugees/ asylum seekers/ migrants (mainly Iraqis, Afghans and Iranians) intercepted trying to leave Indonesia for Australia were released to the supervision of IOM. Rejected asylum seekers who were not considered to be intercepted cases were not entitled to IOM's assistance and are left to find their own means of support.

¹ The information presented herein is valid up to 31 March 2004.

² Immigration Act No.9/1992, Sections 8 and 24.

³ Sections 1 (15) & (16) and 44.

⁴ These quarantine centres also hold other illegal immigrants serving sentences while awaiting deportation. Indonesia generally does not deport illegal migrants due to lack of funds, unless the illegal migrants have their own means to leave the country.

⁵ They hoped to reach Australia for a variety of reasons including the lack of integration prospect in Indonesia and the wish to reunite with family members.

⁶ '*By Invitation Only: Australian Asylum Policy*,' Human Rights Watch report, Vol.14, No.10(C), December 2002, pp.36-37.

II. ALTERNATIVES TO DETENTION – POST-2000

At the beginning of 2000, IOM commenced a program which later became known as the 'Regional Cooperation Model'. It was a program originally entitled 'The Interception Program' and driven primarily by the Australian government's interest in stemming the flow of migrants and refugees transiting Indonesia on their way to Australia. The program was fully funded by the Australian government.

Between 2000-2002, the program handled just under 4,000 'irregular migrants' and 'stranded transit migrants'. Almost all of these persons chose to submit applications for asylum to UNHCR when it became apparent that they would not reach Australia. As of October 31, 2002, 734 asylum seekers and failed asylum seekers were under IOM's supervision, 198 Afghans having chosen to voluntarily repatriate between May and October 2002.

Under the program, while their status was being determined by UNHCR, 'irregular migrants' were accommodated by IOM at various locations around Indonesia, such as former tourist hotels and army camps.⁷ These were open shelters rather than places of detention and as such the program can be described as an 'alternative to detention'. IOM Headquarters has stated that it was conceived specifically to alleviate the inhumane conditions of detention in Indonesia.⁸

People living in IOM's open camps while their claims were processed were not permitted to work but were given assistance with basic needs. At first the level of assistance was inadequate and the locations were not always sustainable (for example, the camp in Kupang prior to January 2002), but material conditions and security generally improved during the course of 2002. Residents of the camps still complained of the lack of education for children, of failings in the health care provision and a lack of independent legal advice. Another major difficulty was that the Indonesian government insisted that all the accommodation sites should be outside Jakarta, dispersed in relatively remote towns. By 2004, this was limited to two sites outside of Jakarta, Situbondo and Mataram. If asylum seekers tried to leave their designated places of accommodation (as some did in order to protest their situation outside the UNHCR Office in Jakarta at the beginning of the program), they were threatened with denial of further assistance and/or detention if they refused to return. They were not provided with assistance in Jakarta, but their assistance was re-instated upon their return to their designated area.

As of the time of writing, the number of persons under IOM's supervision has reduced dramatically as a result of far fewer extra-regional arrivals in Indonesia, in turn a result of Australia maintaining closed coastal borders and a high number of returns to countries of origin. Those remaining are mostly failed asylum seekers, left over from the groups intercepted at sea by the Australian navy during late 2001. Those who have left the IOM accommodation and moved to Jakarta have ceased to receive material assistance but have not been arrested.

⁷ For example, in Kupang, Mataram, Surabaya and Cisawa.

⁸ 'By Invitation Only: Australian Asylum Policy,' Human Rights Watch report, Vol.14, No.10(C), December 2002, p.52.

III. CONCLUSIONS

A. Do alternatives ensure compliance?

It is extremely difficult to evaluate the impact of the IOM assistance program for released and intercepted asylum seekers in Indonesia as distinct from the impact of Australia's interception and other asylum policies (see country annex on Australia). In other words, the fact that almost all asylum seekers complied with the UNHCR determination procedures while under IOM's supervision in Indonesia was arguably influenced by the fact that Australia closed its coastal borders and thus transformed Indonesia into a long-term transit country or a resettlement-processing country. It is interesting, however, to compare the relative freedom of movement afforded to asylum seekers in Indonesia with the detention of an identical caseload of asylum seekers in Nauru and Papua New Guinea during the same period (also under the management of IOM and funded by the Australian government). It would seem that there was no more risk of onward transit from these nations than from Indonesia. Moreover, the local Nauruan and PNG populations needed no greater protection or separation from the asylum seekers as did Indonesia, so the difference in liberty afforded to the groups remains difficult to justify on objective grounds.

B. Cost effectiveness?

For the Indonesian government, the program was extremely cost effective in the sense that it removed a group of 'illegal aliens' from their custody and budget and transferred all costs to IOM Jakarta, which in turn was fully funded by Australia at a reported cost of US\$250,000 per month (80% of which was spent on direct assistance). Compared to the high capital and per capita running costs of detention in Nauru or Papua New Guinea,⁹ the Indonesian program was also much cheaper and easier for the Australian government to administrate.

⁹ For full description of these costs, see the Australian Senate's Inquiry into a Certain Maritime Incident, Final Report, Chapter 11.

REPUBLIC OF IRELAND¹

I. DETENTION AND DOMESTIC LAW

A. Asylum seekers

Ireland does not have a general policy of detaining asylum seekers and does not have any dedicated detention centres for illegal immigrants or asylum seekers. However, legislation provides for the possibility of detention in certain exceptional circumstances.² Section 9(8) of the Refugee Act 1996, as amended, provides for the detention of an asylum applicant if ‘an immigration officer or member of the Garda Síochána [police], with reasonable cause, suspects’ that an applicant: (a) poses a threat to national security or public order; (b) has committed a serious non-political crime outside Ireland; (c) has not made reasonable efforts to establish his or her true identity; (d) is attempting to avoid a Dublin Convention transfer; (e) intends to leave and enter another State unlawfully; or (f) has destroyed identity or travel documents or is in possession of forged documents ‘without reasonable cause’.

Section 10 of the Refugee Act 1996, as amended, further provides that the person detained under the above provision will be informed of his or her rights, ‘where possible in a language that the person understands.’ These rights include, *inter alia*, the right to be brought ‘as soon as practicable’ before a court, to consult a solicitor, and to have the assistance of an interpreter for these purposes. It also provides, in section 10(4), for the prioritised examination of asylum applications from detainees.

The new Immigration Act 2003 amended the Refugee Act 1996. Importantly, it increased the period of time an asylum seeker can be detained from a period not exceeding ten days to a period not exceeding 21 days.

B. Asylum seeking minors

Section 9(12)(a), (b) and (c) of the Refugee Act 1996, as amended, provides for the exemption of minors from detention, other than where deemed on ‘reasonable grounds’ to be an adult. This provision further requires that ‘Where an unmarried child under the age of 18 years is in the custody of any person (whether a parent or a person acting *in loco parentis* or any other person) and such person is detained pursuant to the provisions of this section, the immigration officer or the member of the *Garda Síochána* [police] concerned shall, without delay, notify the health board for the area in which the person is being detained...’

C. Rejected asylum seekers pending removal

Section 5 of the Immigration Act 1999 provides for the detention of any individual subject to a deportation order, including rejected asylum seekers where, ‘an immigration officer or a member of the *Garda Síochána*, with reasonable cause suspects’ that a person against whom a deportation order is in force: (a) has failed to comply with any order to leave the country; (b) intends to leave Ireland or enter another State unlawfully; (c) has destroyed his or her identity documents or is in possession of forged identity documents; or (d) intends to avoid removal from Ireland. A person may only be detained under these provisions for a maximum of eight weeks.

¹ The information presented herein is valid up to 31 March 2004.

² As there are no dedicated detention centres, an asylum seeker who is detained under the following provisions would be held in a prison, albeit separated from convicted criminals.

II. ALTERNATIVES TO DETENTION

A. Reporting requirements, restrictions on freedom of movement and residence, and deposit of documentation

Section 9(5) of the Refugee Act 1996, as amended, provides that an immigration officer may require an applicant to reside or remain in a particular district or place in Ireland, or alternatively, to report at specified intervals to an immigration officer or member of the *Garda* (police). This provision is subject to review upon application by the affected asylum seeker to the Minister to waive the reporting/residency requirement. According to the same section, an applicant's failure to comply with such requirements shall render him or her guilty of an offence and liable, upon conviction, to a fine not exceeding 500 pounds, or to imprisonment for a term not exceeding one month, or both.

The new Immigration Act 2003 further amended the Refugee Act 1996 such that section 9(10)(a) and (b) provides for a detained asylum seeker³ to be brought 'as soon as practicable' before a judge of a District Court, who may either confirm the detention order or release the person 'subject to such conditions as he or she considers appropriate.' Such conditions may include any one or more of the following: (a) that the person resides or remains in a particular district or place in Ireland; (b) that he or she reports to a specified police station or immigration officer at specified intervals; or (c) that he or she surrenders any passport or travel documents in his or her possession.

B. Alternatives for separated children

Separated children, upon applying for asylum, are appointed a guardian by the Health Board and are accommodated by the Reception and Integration Agency in a specially designated hostel in Dublin. They are not dispersed. Those who subsequently leave the designated hostel are considered to have 'disappeared.' This number is very small compared to numbers accommodated.

C. Reception/accommodation centres

All asylum seekers arriving in Ireland are housed in a reception centre for the initial two weeks after making their application. They are then dispersed to one of the 63 accommodation centres throughout Ireland, which are administered by the Reception and Integration Agency, where they are accommodated and provided with full board for the duration of the asylum procedure. They are permitted to move freely out of the reception and accommodation centres.

Asylum seekers who reside outside designated reception/accommodation centres are, since May 2003, no longer entitled to rental allowances from the State, although asylum seekers with special needs may be exceptionally provided with self-catered accommodation.

D. Implications of failure to appear

Amendments to the Refugee Act 1996, which came into force in September 2003, provide for negative decisions to be issued to applicants who fail to appear for their asylum interviews or other appointments. Section 11(10) states that an asylum seeker who fails to appear for an interview must provide a reasonable explanation either beforehand or within three days of the appointment or their

³ Under s.9(8).

application will be deemed withdrawn and rejected with no possibility of appeal to the Refugee Appeals Tribunal. Such an asylum seeker does, however, have the option of seeking permission from the Minister for Justice, Equality and Law Reform to make a new application⁴ and retains the right to apply for judicial review of the decision to the High Court.

III. CONCLUSIONS

A. Do alternatives ensure compliance?

The Irish government reports that 48% of asylum applicants failed to appear at the first instance in 2001, 35% in 2002 and 30% in 2003 (as at November). Of the 5,850 who failed to appear in 2001, 2,233 failed to appear again at the second instance, and of the 4,499 of those who failed to appear in 2002, 1,380 continued to fail to appear.⁵

On the one hand, a 70% or higher appearance rate (as in 2003) demonstrates that the Irish policy of resorting to detention of asylum seekers only in exceptional cases⁶ does not have adverse consequences in processing the overwhelming majority of cases. In particular, the Irish system appears relatively successful in protecting separated children from disappearing into the hands of traffickers or otherwise absconding. These statistics imply, however, that the Irish system, at least prior to recent amendments of the Refugee Act, while protecting the rights and freedoms of those within it, did not result in optimal administrative efficiency. The new rule requiring an explanation within three days for any failure to appear is likely to have a significant impact on these already declining rates of disappearance. It is also widely expected that other aspects of the Irish reception system will become more restrictive in the future, with greater control being exercised over applicants' freedom of movement as the new provisions of the Act are implemented.⁷ It is hoped that wherever possible, any restrictions that are necessary in an individual case, will involve the alternative measures set out in the Act, rather than full deprivation of liberty.

⁴ S. 17(7) of the Immigration Act 2003.

⁵ Statistics received from the Department of Justice, Equality and Law Reform, January 2004.

⁶ This is not to overlook the large numbers of persons not in need of international protection and other aliens awaiting mandatory removal who are detained in Ireland.

⁷ Interview with 'Door to Limerick' NGO, October 2003-March 2004.

ITALY¹

I. DETENTION AND DOMESTIC LAW AND PRACTICE

Aliens who arrive in Italy by boat – that is, ‘mixed-flows’ of potential asylum seekers arriving alongside irregular migrants – are held in ‘first reception centres’, located relatively close to their landing point, for the purpose of identification and initial clarification of their status (as irregular migrants or asylum seekers). When larger vessels arrive, these aliens may be immediately transferred to centres in other regions.

The first reception centres for boat arrivals are closed centres, without judicial controls. The amount of time spent there depends on the length of time needed to determine their identity/nationality and status (asylum seeker versus immigrant). On average, it lasts between a couple of days to, exceptionally, two months. This deprivation of liberty in the first reception centres is similar to the condition of foreigners held in the ‘*zones d’attente*’ in France. Asylum seekers may also be detained in airport transit zones for hours or days prior to a decision on admissibility or identity. They are then usually released with a renewable three-month residence card. According to general practice in Italy, as soon as an alien has his or her identity verified and claims asylum, he or she is automatically released.

An alien found undocumented on Italian territory is brought to a ‘Centre for Temporary Stay’ (‘CPT’), from where he or she is to be returned to his or her country of origin within 60 days. If such an alien’s identity cannot be verified within 60 days, he or she must be released. If an alien applies for asylum from within a CPT, and if his or her identity can be established, he or she is automatically released. An exception to this practice, however, is found in the *Ponte Galeria* centre located between Rome and Rome Airport, where undocumented aliens who are apprehended and then claim asylum are brought promptly (within the 60 days) to the city for their first asylum interview. Those whose claims are rejected at first instance may remain in detention until removal.

In September 2002, a new law² was introduced, however, the sections on asylum have yet to be implemented, as relevant implementing regulations are still awaited.³ The asylum part of this law modifies substantially some important elements of the previous asylum procedures under the Immigration Law 1990. In particular, it provides for the establishment of a number of ‘identification centres’. The status and characteristics of these centres will be defined by the above-mentioned regulations. In this regard, on 26 January 2004, the State Council requested, as a pre-condition for its approval of the implementing regulations, a number of corrections to the current draft/text. The quantity and quality of these corrections suggest that approval of the implementing regulations may be indefinitely postponed.

Were the current provisions of Law 189/2002 implemented, certain categories of asylum seekers would be accommodated in identification centres throughout the refugee status determination procedure (which is, rather ambitiously, expected to last no more than thirty days in the first instance). Asylum seekers would have to request authorisation for absences from the identification centres, but if they abandoned the centre without authorisation their asylum claim would be considered withdrawn.

¹ The information presented herein is valid up to 31 March 2004.

² Law No. 189/2002.

³ Arts. 31 and 32.

It is unclear from the text whether the application of this provision would amount to a deprivation of liberty; the Italian term translates literally as 'keep in custody'. The implementing regulations would need to define this more precisely. In its above-mentioned evaluation of the implementing regulations, the State Council made reference to article 13 of the Italian Constitution which stipulates that 'personal freedom is inviolable...' and asserted that the holding of an alien in an identification centre would have to be considered a restriction on this constitutional guarantee to personal freedom.

At the time of writing, the Italian parliament was examining a draft, prepared by a number of parliamentarians of both opposition and majority parties, of a comprehensive asylum law. The parliamentary debate on this initiative was still in its very early stages and there was no clearly defined position on detention. The debate on the possible detention of at least certain categories of asylum seekers will most likely become an important issue in the debate, certainly influenced by the comments of the State Council to the implementing regulations of 26 January 2004. As of March 2004, the outcome of this debate is difficult to predict.

II. ALTERNATIVES TO DETENTION

A. Reception arrangements following release

In the initial phase, undocumented (potential) asylum seekers are held in reception centres for identification purposes. Once the identity and nationality of an asylum seeker is ascertained, and after his or her application for asylum is submitted, he or she obtains a stay permit and is released. Thereafter, he or she may freely choose a place of residence in Italy.

In 2001, the Ministry of the Interior, UNHCR and the Association of Town Councils ('ANCI') established a National Asylum Programme (*Programma Nazionale Asilo* – 'PNA'). It aimed to provide accommodation for 2,000 asylum seekers in a network of 60 councils. Currently, some 1,300 places are provided. These places are insufficient in proportion to the number of asylum seekers in need of assistance in Italy as a whole, and there are plans to increase the number of places available.

There are no real criteria to select those who are actually accommodated through the existing PNA. The original intention was to have a turnover every six months but this has not occurred due to the fact that the status determination procedure takes between nine months and two years, severely limiting the number of places available for new arrivals. It is notable, however, that asylum seekers seem to abscond far less often from these accommodation centres than if they are not assisted by the State. The 'centres' in the PNA, scattered throughout the country, range from private apartments to centres for up to 50 persons. If a resident is absent for three days, then he or she loses his or her place but is not considered to have withdrawn his or her asylum application.

The PNA was established as a pilot project, with a view to creating a basis for a well-structured assistance system for asylum seekers and refugees at national level in the future. The Immigration and Asylum Act 2002 provided the legal basis for a consolidation of this programme, mentioned in Law 189/2002 as 'Central Services to supply information, promotion, advice, monitoring and technical support to the local bodies that provide the reception services'.

B. Confinement to a designated province

According to an old law, applicable both to aliens and Italian citizens, freedom of movement may be restricted for the protection of public morals (traditionally, to prevent prostitution). This could, theoretically, be used to confine an individual to a certain province of Italy as an alternative to detention. To the knowledge of UNHCR Rome, these measures have never been applied to asylum seekers.

C. Alternatives for separated children

Separated children seeking asylum in Italy are not detained. They are instead accommodated in reception centres suitable for their age group, or assigned to a foster family. In a number of cases, however, it has taken the competent tribunal quite some time to nominate guardians. Furthermore, experience has shown that the guardians or the local institutions taking care of separated children are often insufficiently informed about the possibility of the minors applying for refugee status.

It is reported that many separated children in Italy disappear from the system, presumably into the hands of traffickers. A number of nongovernmental organisations in Italy have been extremely active in tackling this problem, and combined with a new law against trafficking and other initiatives by the Italian authorities themselves, these nongovernmental projects have been successful at reducing the rate at which separated and unaccompanied children disappear. One model approach has been to focus on in-depth interviewing of children who may be at risk at the earliest point of reception and to fully establish the nature of their relationships with the adults accompanying them or who claim custody. This reduces the risk of child trafficking *without* resorting to limitations on the children's freedom of movement.⁴

III. CONCLUSIONS

A. Do alternatives ensure compliance?

There were approximately 14,000 applications for asylum in Italy in 2003. The applications examined by the Commission during 2003 numbered 12,858, with 625 granted 1951 Convention refugee status and 10,555 claims rejected. Among the 10,555 persons whose claims were rejected, 1,678 were granted a subsidiary form of protection, 3,207 were rejected after the interview and 7,348 failed to appear for their interviews. Hence, some 60% failed to appear for their interviews.⁵ It can be concluded that Italy's current failure to provide adequate reception standards to all asylum seekers is one of the main reasons, together with the length of the asylum procedure, for the system failing to ensure compliance. The minority of asylum seekers who have received State assistance through the existing PNA have the highest rate of appearance for interviews – if only because the authorities have an address at which to contact them to inform them of appointments. Working to

⁴ For example, since December 2001, the Italian Refugee Council ('CIR') has been running a monitoring programme in the south of the country (the Prefettura of Ancona), named the 'Initiative against the irregular access to Italy of abandoned foreign minors'. The programme's agents are on call by the border police at any time to interview children at the point of first arrival/interception. The aim is to identify those children at risk of abduction or in the process of being trafficked, but also to protect the role of the family as the essential social group protecting the welfare of children by preventing unnecessary and traumatic separations of family members when they do not have documentation certifying the identity of the minor. Of 98 minors interviewed between 16 September 2002 and 20 November 2003, 80 children were successfully readmitted to Greece and Albania and fifteen children were admitted to Italy, of which five separated children were hosted in a protected location. Nine of the admitted children claimed asylum. 'Minors met at ANCONA port border', statistics and information supplied by the Italian Refugee Council, November 2003.

⁵ Statistics received from UNHCR Rome, March 2004.

improve reception conditions in Italy may also have a beneficial impact on the efficiency of the status determination system.

Many asylum seekers who stay in Italy through the full procedure 'disappear' into Italian society after receiving a first rejection, since it makes more sense for them to await a regularisation amnesty for illegal migrants in the country than to pursue an expensive appeal case through the courts that might take many years.

B. Export value?

The fact that providing social assistance to asylum seekers (the minority assisted to date via the PNA) has had a measurable impact on their willingness to comply with the asylum procedures and to avoid onward migration to other EU States is an important demonstration that, in a country that generally avoids detention of asylum seekers, other more positive incentives will in many cases achieve the same results.

The preventive/early intervention programme in Ancona, designed to combat the trafficking of children, is one of several Italian projects that can point to clearly successful results without resorting to oppressive restrictions on the children's liberty and freedom of movement. It may therefore be a model for similar cooperation between local authorities, border police and nongovernmental agencies elsewhere.

JAPAN¹

I. DETENTION AND DOMESTIC LAW

According to the Immigration Control and Refugee Recognition Act ('ICRRA'), aliens in Japan can be detained for the purpose of deportation if they have infringed the regulations on legal entry or presence.² An immigration officer may issue a detention order against any alien who falls within the scope of the deportation procedures as set out in article 24.³ In addition, article 70 of ICRRA provides that all aliens who are apprehended for illegal entry or unauthorised stay may be subject to imprisonment for up to three years and/or a fine of up to 300,000 yen (some US\$2,500). However, refugees are exempted from these penalties under certain conditions.

In May 2004, Japan amended several provisions of ICRRA, which are due to enter into force in 2005. Based on the new provisions, an asylum applicant who would have entered or remained in Japan without authorisation may be entitled to a temporary permit (and hence release into the community) *only if* he or she: (a) applied for asylum within six months of arrival in Japan;⁴ or (b) came 'directly' from a territory where his or her life, physical security or physical freedom was threatened due to the reasons defined in article 1A(2) of the 1951 Convention;⁵ or (c) is considered unlikely to abscond;⁶ and (d) has not been 'convicted of a violation of any law or regulation of Japan, or of any other country, and sentenced to penal servitude of one year or more' except for political crimes.⁷

Prima facie, the new provisions are an improvement as asylum seekers in Japan will receive temporary permits reflecting their status provided they satisfy the elements above. As a result, they should not be detained during the asylum procedure. The extent to which detention is used however will depend on the implementation of these new provisions, in particular the application of the condition of 'coming directly' in (b) above. Thus, there will continue to be asylum seekers who fail to meet these conditions of a temporary permit and will be detained as a consequence. The only other possibility to avoid detention or to be released is to be granted a 'permit for provisional release' from detention as set out in article 54 of ICRRA (see under Alternatives to Detention below).

Until the new law comes into force, an asylum applicant who has overstayed his or her visa will continue to be denied any form of status and will, therefore, in principle, be subject to detention as if he or she were an illegal alien. This would occur regardless of whether he or she is awaiting the outcome of an asylum application. A detention order (followed by a deportation order) may be issued at any time during the asylum procedure since the triggering element is the expiry of the visa. In practice, however, the Ministry of Justice usually resorts to detention only when an appeal has been rejected, or during the first instance procedure if the authorities have reason to believe that the applicant poses a danger to the community or will abscond. There is no requirement for the authorities to supply evidence for the latter belief.

¹ The information presented herein is valid up to 31 May 2004.

² Art.24, ICRRA, as amended in 2001.

³ Art.39, ICRRA.

⁴ Art. 61-2-4 (1) (6).

⁵ Art. 61-2-4 (1).

⁶ Art. 61-2-4 (1) (9).

⁷ Art. 61-2-4 (1) (4) in connection to art. 5:1:4.

Article 41 of ICRRA provides a 30-day limit on detention, which can be extended by a further 30 days only once.⁸ Prior to this, such detention may be challenged in court. A deportation order must be issued within 60 days. Detention for the purposes of carrying out a deportation order, however, has no fixed time limit and may be extended indefinitely.

Detention for the purpose of deportation is not subject to mandatory judicial or administrative review, which is a matter of concern to UNHCR and other refugee advocates. However, provisional release from detention can be sought at any point of time by the detainee, his legal representative, or the detainee's relatives (article 54, ICRRA). The other remedy available is the Habeas Corpus Act procedures enacted in 1948. Under this Act, a court may order the provisional release of the detainee under oath to appear when summoned (article 10), or release the detainee upon questioning of the parties concerned (article 16). The UN Human Rights Committee has expressed the view that the Habeas Corpus Act procedures are ineffective since there have been no known successful challenges under this Act.⁹ Asylum seekers may also file lawsuits to cancel (or nullify), and/or suspend the execution of a detention order as well as a deportation order (under which an asylum seeker can be detained pending deportation). However, it is only in recent years that lawsuits of this nature have met with success.

Airport detention of asylum seekers, in 'Landing Prevention Facilities' or 'Airport Rest Houses', and the detention house (*shuoyo-ba*) which belongs to the Narita branch of the Immigration Bureau, occurs regularly.¹⁰ There are concerns that asylum seekers detained at the airport, in particular those without proper documentation, do not have the possibility to receive legal counselling or basic information on asylum procedures. There is resulting uncertainty as to whether detainees may be *refouled* or prevented from submitting an asylum claim.¹¹ In 2003, all UNHCR's requests to access asylum seekers held in the 'Landing Prevention Facilities' were accepted by the authorities. In cases that UNHCR was aware of, asylum seekers have been able to contact a local NGO and UNHCR. The Ministry of Justice is bound to provide free interpretation during the eligibility interviews, however there is no State-funded project for providing legal aid to asylum seekers. There is limited legal aid via the Japan Legal Aid Association, partially funded by UNHCR.

II. EXTENT OF DETENTION AND LIKELIHOOD OF RELEASE

As detention of illegal aliens (including asylum seekers falling into that category) is not mandatory, Japanese immigration officers have a discretionary power to decide whether or not asylum seekers should be detained. Both 2002 and 2003 saw a drop in detention numbers in Japan compared to the practice in the months post September 11, 2001, due in part to a new policy of suspending the issuance of deportation orders until asylum decisions are made at first instance or appeal, unless the individual constitutes a threat to the community. This reduces the number of persons subject to detention under ICRRA and is, to some extent, a return to earlier practice, prior to 11 September 2001. In fact, however, under the legislation in force until 2005, only those in-country applicants who come forward and apply before being apprehended are left at liberty. This is a commendable feature of the Japanese system. On the other hand, those who apply for asylum after being

⁸ Art. 41 of ICRRA (www.moj.go.jp/ENGLISH/IB/ib-42.html)

⁹ UN Human Rights Committee, 1998 Observations to the periodic report from Japan – CCPR/C/79/Add.102.

¹⁰ In 2002, Amnesty International reported that there were "a daily average of some 7 persons detained in the landing Prevention Facility" in Narita airport. Source: *Welcome to Japan?*, Amnesty International, ASA 22/002/2002.

¹¹ Carriers have partial legal responsibility for the detention of deportees at the 'Airport Rest Houses' and during the transportation of the detainee between locations, employing private security companies for this purpose. *Welcome to Japan?* Amnesty International, ASA 22/002/2002.

apprehended for illegal entry or stay are likely to be detained and kept in detention for the entire determination procedure, unless UNHCR or lawyers successfully intervene.

Separated asylum seeking children are not detained in Japan, though Amnesty International did identify at least one such child detained at an airport in 2000.¹² (Recently, based on the information available to UNHCR, there have been no cases of asylum seeking separated children in Japan.) In most cases, if parents are detained, the children are accommodated in specialised institutions for minors, or placed in foster care. An NGO, partly funded by UNHCR, provides social services to detained parents and children in specialised institutions. It is reported that the frequency of visits to parents is at the discretion of the institutions' caretakers.¹³

Torture survivors and those suffering from severe mental or physical health problems are generally not released on compassionate grounds. There is the possibility of submitting medical reports as part of an application for release, but there is no requirement for these facts to be considered under the law. However, based on the 2001 'Provisional Release Manual' issued by the Immigration Bureau, the detainee's health condition is a relevant factor to decide on a request for provisional release. One asylum lawyer reported that Afghan asylum seekers were in detention at the East Japan Immigration Center (Ushiku) for several months (3-7 months) suffering from a long list of medical conditions including depression and PTSD due to previous hardships in their country of origin and indefinite detention in Japan, yet were still denied release by the Tokyo courts. There were also several cases of self-harm among the Afghan asylum seekers detained at Ushiku during 2002. In 2002 and 2003, UNHCR has also raised concerns about the long-term detention of mandate refugees, including refugees suffering from serious health problems.

In practice, due to administrative delays and various practical problems, it is virtually impossible to effectively challenge the detention order before civil courts, therefore most challenges are made at the deportation stage. For example, an important legal challenge was mounted concerning nine Afghans arrested after September 2001 on unproved suspicion of links with terrorism. On November 6, 2001, the Tokyo District Court made a historic decision to suspend the detention order for the five Afghans who were earlier arrested. While it was overturned by the High Court on December 19, 2001, this decision was the first victory in thirty years regarding the suspension of detention order for asylum seekers in Japan.¹⁴ By the end of November 2001, however, all of the nine Afghans were denied refugee status and were subsequently sent to Ushiku Detention Centre. After the nine Afghans were transferred to this detention, the lawyers representing the nine discovered a further 14 Afghan detainees, many of whom had been detained at the airport and directly transferred. On March 1, 2002,¹⁵ Tokyo District Court suspended the deportation order for seven Afghan asylum seekers who were released as a result. By April 16, 2002, the remaining 16 Afghans in the Ushiku Detention Centre had been granted provisional release. On June 11, 2002, the Tokyo High Court confirmed the Ministry of Justice position that seven of the Afghans had breached the immigration law by their illegal entry, but due to the publicity attracted by the case, they were not re-detained. In another case involving a refugee from Myanmar who had been detained for several months and subsequently recognised as a refugee, the Tokyo District Court granted compensation damages for the hardship suffered in detention. The decision was however later overruled by the High Court.¹⁶ In another case concerning Vietnamese refugees, a court

¹² *Welcome to Japan?* Amnesty International, ASA 22/002/2002.

¹³ Information received from UNHCR Tokyo.

¹⁴ There was a similar outcome in another Afghan case before the Hiroshima High Court. Other cases regarding a number of Afghans at Ushiku Detention Centre are still pending in District Court, with the judgment expected in 2004.

¹⁵ Tokyo District Court, H13 (2001) (gyo-ku) No. 1-4, No.166, No.170, No.187.

¹⁶ 14 January 2003 (Gyo-Ko) No131, Appeal to claim compensation.

challenge against their indefinite detention was launched at the Osaka District Court in November 2003, and a decision is still pending.¹⁷

III. ALTERNATIVES TO DETENTION

A. Conditions of provisional release

Under the current legislation, as stated above, immigration rules regulating detention are entirely independent from asylum procedures. Under the immigration law, asylum seekers, like any other immigration detainees, may be released if they meet certain conditions, and as with the issuance of the original detention order, decisions on so-called 'provisional release' are purely discretionary.

The conditions of provisional release are set out in article 54 of ICRRA and require that the detainee should present evidence of financial self-sufficiency (personal income or a sponsor's income), 'taking into consideration of circumstances, evidence produced in support of the application', and the payment of a bond.

This provision does not clearly define when a detained asylum seeker should receive provisional release, that is, the 'circumstances' to be taken into account in any assessment are not disclosed to the applicant and the decisions are made on purely discretionary bases. This raises concerns that alternatives to detention will not be properly considered in the assessment. Based on the information available to UNHCR, a number of asylum seekers have been kept in detention for the entirety of the asylum procedure despite their apparently low risk of absconding, the existence of alternative accommodation, and the deposit of bail and other guarantor requirements (see below).¹⁸

In practice, alternative accommodation may be offered by anyone with legal residency rights – that is, an individual or NGO. In principle, nothing precludes the government itself acting as a sponsor and offering accommodation to support a request for provisional release. However, securing alternative accommodation is very difficult. This is true, in particular, for refugees under UNHCR's Statute who, by definition, are not assisted by the Japanese government.

Under present reception arrangements, whether or not asylum seekers hold a temporary permit, they can have access to assistance from the Refugee Assistance Headquarters, a quasi-governmental organisation, until the completion of the asylum procedure before the Immigration Bureau of the Ministry of Justice. This assistance includes financial assistance and accommodation for selected cases. Asylum seekers with a temporary permit may be allowed to work under certain conditions, subject to the decision of the local authority. There are restrictions on accessing social welfare, including medical insurance, for aliens with a permit of less than one year. Under the amended provisions, the new temporary residency permit will not be considered by the Japanese authorities as a form of legal status which would enable asylum seekers to work under certain conditions, as at present. It would, however, protect them against detention.

State financial support for asylum seekers lasts four months (though it is renewable), while the average waiting time to receive a first decision on a claim is one year. State support is no longer available after rejection on appeal before the Immigration Bureau. Asylum seekers with cases that go to court, therefore, do not receive assistance. In 2004, however, free accommodation was provided for the first time to selected needy asylum seekers (see below). As this shelter programme

¹⁷ Osaka District Court, 2003(u) No.108-110, 20 November 2003.

¹⁸ See UNHCR comments on the amendments to ICRRA, 19 May 2004, available on unhcr.or.jp

is still at a very early stage, it is difficult to assess whether provisional release might be facilitated through this programme.

In 2003, State assistance was provided to some 108 persons – that is, to the majority of those who applied for such assistance and approximately a third of all non-detained asylum seekers.¹⁹ In addition, only asylum seekers who apply in-country, after having entered Japan on a valid visa, may be given work authorisation under certain conditions, within the period of the validity of their stay permit, and upon request. Some needy asylum seekers have been accommodated with shelter charities, such as the Japan Evangelical Lutheran Association (JELA), which lodged 10 destitute asylum seekers in 2002 and 15 in 2003.

When the 23 Afghans were released from the detention centre based on the court decision as well as the provisional release permits throughout March to April 2002, the difficulty of where to house them immediately arose. However, church groups such as the Catholic Commission of Japan for Migrants, Refugees and People on the Move (J-CARM) immediately arranged the church premises and private apartments to host these Afghans. Further, individual lawyers, activists, and NGOs such as the Japan Association for Refugees (JAR) and the International Social Services Japan (ISSJ) coordinated with each other to provide stipends and, very importantly, to help young asylum seekers to access education (junior high school) in Japan. Without any duty of supervision, these groups act as informal case managers in the sense of accompanying asylum seekers to all appointments and meeting their basic needs. There is a small, established Afghan community in the Chiba area that was also helpful. Other communities of refugees, such as Burmese, Chinese (Falun Gong) and Turkish Kurds, sometimes help provide the bail and accommodation.

B. Registration, reporting requirements and bail

All non-detained asylum seekers must register at the municipality of their residence and obtain an 'aliens registration card'. Those released from detention (or subject to detention but not actually detained) carry a permit for their provisional release²⁰ on conditions of reporting and bail. These provisional release permit holders are subject to re-detention if their status is not renewed.

UNHCR has helped to obtain the provisional release of asylum seekers and mandate refugees on the basis that the individual concerned will be accommodated with a guarantor. Accommodation must be found with friends or relatives, or in few cases with a nongovernmental or religious organisation (see description above of some such arrangements). The Ministry of Justice has usually put several conditions upon the release: a legal resident must act as a personal guarantor; deposit of bail; and monthly reporting requirements. The section responsible for examining requests for provisional release is the Enforcement Section, while the directors of detention centres have the formal authority to decide on the request. They may consider factors such as the strength of the claim, the asylum seeker's financial situation or character, medical conditions or psychological state (though, as stated above, the latter are rarely accepted as grounds for release).

Provisional release is thus restricted to one designated area: the Prefecture the asylum seeker selects for his or her residence. Prior approval must be sought from the Immigration Bureau to travel outside the designated area. Most former detainees are required to report on a monthly basis, and to notify the authorities of any change of address within the Prefecture.

¹⁹ Information received from UNHCR Tokyo.

²⁰ These permits for provisional release are not to be confused with Japan's 'Special Residency Permit' (SRP), which is a form of legal status.

The maximum amount requested as bail is 3 million yen (US\$25-30,000). A famous Japanese authoress, Ms. Kayoko Ikeda, founded a local charity to raise bail monies for the Afghan asylum seekers after their detention in 2001. Although it is of limited capacity, this charity may develop in time into an organisation similar to The Bail Circle in the United Kingdom (see UK section).

The new May 2004 Act, amending ICRRA, includes a new temporary status for asylum seekers, as described above. Based on the flight paths of recent arrivals in Japan, however, less than 20% of asylum seekers would be eligible for this new permit, if the term 'coming directly' were to be strictly interpreted.²¹

C. New initiatives for state-sponsored accommodation

In December 2002, the Japanese Cabinet's Coordinating Committee on Refugee Matters invited civil society to make presentations regarding the co-ordination of alternative reception arrangements for asylum seekers. Long-standing proposals to convert a centre (previously used to house Indochinese refugees) at Shinagawa were inconclusive. Although the centre has already been converted to a language training programme and temporary housing for recognised refugees,²² it has been decided that it will be closed in 2006. At the end of 2003, the Japanese government instead opted for a reception policy for destitute asylum seekers consisting of direct financial assistance and free accommodation in rented apartments under the management of a local NGO, Japan Association for Refugees.

There is no statistical or other evidence that Japan has a problem with absconding asylum seekers prior to the receipt of final decisions. They almost all comply with procedures, as Japan is their 'destination' country so long as any hope of recognition remains (see statistics under Conclusions, below). The newly instituted reception arrangements for destitute asylum seekers, hopefully including those on provisional release permits, are therefore intended to efficiently address their socio-economic needs in an environment of independent living, rather than being designed to maximise control over their whereabouts or activities within Japan.

IV. CONCLUSIONS

A. Do alternatives ensure compliance?

For those who have been actually released from detention, the numbers are so small that there is little point in examining their compliance or appearance rates. According to the Ministry of Justice, there are some 20-25% non-detained asylum seekers who 'abuse the system' by, among other things, absconding (the Ministry of Justice classifies all absconding, withdrawal of applications, falsification of identity, multiple applications or repatriation prior to the completion of the procedure as: 'abuse of the asylum system'). However, Ministry of Justice statistics record that, in 2002, 250 applicants out of 264 who remained in the country reported to the authorities throughout the first stage of the procedure.²³

²¹ UNHCR's estimate based on cases registered with its implementing partner, Japan Association for Refugees.

²² As of February 2004, there were less than ten Convention refugees accommodated in Shinagawa on voluntary basis, as part of the six months language training programme.

²³ Ministry of Justice, Table: 'Abuse of RSD Procedures', supplied October 2003. The figures do not include compliance at the appeal stage. In 2002, though 57 persons (21.6%) were reported as "abusing the system" in various ways, only 14 absconded prior to rejection of their claims. 28 of the 57 returned to their country of origin or otherwise departed Japan. In 2001, 91 persons (24.6%) 'abused the system' but again, only 14 actually absconded during the procedure. 17 returned to their countries of origin or otherwise departed Japan. In 1999 and 2000, the percentages

This percentage of compliance (95%) is especially high considering the risk of being detained at any time in the case of applicants whose visa has expired. In 2001, similarly, the percentage of asylum seekers who absconded during the first stage of the procedure was only 4% of the total of 370 applicants.

A further number of failed asylum seekers do fail to appear when summoned by the Immigration Bureau to receive the deportation notice. In 2002, 11 of 264 applicants (4%) did so, and in 2001, 50 of 370 applicants (13.5%) absconded after rejection.²⁴ While in part this is a typical problem regarding unfounded claims, it is also a reflection of several serious inadequacies in the Japanese determination procedures, such as the overly high burden of proof commonly demanded and the absence of an independent review level within the determination procedures.²⁵ Procedural reform may therefore be the only policy solution to the non-compliance of some persons in this group who believe they have been unjustly rejected and so continue to fear *refoulement*.

B. Do alternatives meet other State concerns?

The inadequate welfare provision to some asylum seekers and the denial of work authorisation to all asylum seekers (including, under the current regime, to asylum seekers without legal status, such as visa overstayers) appears intended to serve a deterrent purpose alongside detention. Penalties for illegal employment include imprisonment for up to three years (article 73(2), ICRRA). It is true that better social provision and accommodation might reverse this deterrent purpose, but the ban on legal employment would still continue to deter most applicants with unfounded claims.

Although the detention of the Afghan asylum seekers after September 2001 was most likely based upon security concerns (Japan has US bases and has supported the US counter-terrorism campaign), this was not cited as the legal grounds for the orders of detention. Indeed, most of the Afghans detained were Hazara victims of the Taliban and the authorities ultimately acknowledged that there was no evidence of a security threat among them. The need for alternatives that meet national security concerns has therefore not yet arisen in Japan.

C. Export value?

Japan's practice of leaving in-country asylum seekers, who pro-actively apply for asylum, at liberty in the community may serve as a model to certain other countries, and in one sense the Japanese public's outcry at the unusual and unnecessary detention of Afghan asylum seekers in 2001, to which the government was responsive, was a positive development which, together with other factors, mobilised a larger movement for reform of the immigration legislation.

In Japan, alternatives to detention are not necessarily linked to alternative accommodation arrangements. The Ministry of Justice applies other criteria (health, family situation, etc.) in a purely discretionary manner. While the reform of ICRRA and extension of temporary residence permit to a wider range of asylum seekers are important signs of progress, detention of asylum seekers who do not meet certain conditions will continue to be an element of Japan's reception

recorded as 'abusing the system' were lower (19.1% and 17.3% respectively). The percentage who absconded in Japan were therefore as follows - 1999: 2%, 2000: 8%, 2001: 4%, 2002: 5%. See Ministry of Justice 2003 Annual Statistics.

²⁴ Ministry of Justice, Table: 'Abuse of RSD Procedures', supplied October 2003.

²⁵ See, for further information, Mrs. Sadako Ogata's speech at the Japan Federation Bar Associations Symposium of November 2002 and her lecture at the LAWASIA Conference, 9 September 2003, available at www.unhcr.or.jp

policy. In particular, the requests for 'provisional release' will need to be handled by the Ministry of Justice on the basis of transparent and objective criteria.

Until 2004, the 'alternative' accommodation arrangements of church shelters were extremely *ad hoc* and only provided a place to sleep for very limited numbers of people released from detention on a provisional permit. These arrangements were not a model of best practice, but rather a pragmatic solution in a difficult situation. Nevertheless, they showed how much can be done even in a country where non-governmental organisations generally do not receive State funds for the reception or legal assistance of asylum seekers. The first experiments with State-funded support for destitute asylum seekers, delivered via a local nongovernmental organisation, are a positive development. Although to date this programme has not been used as an alternative to detention, this use could be further explored.

KENYA¹

I. DETENTION AND DOMESTIC LAW

On the basis of the Aliens' Restriction Act and the Immigration Act, an alien must report to a registration officer within 90 days of entry. Detention of asylum seekers and refugees occurs at Kenya's borders, particularly the border with Ethiopia, and at airports, as well as within urban areas, on the basis of these laws which define who is a prohibited immigrant.² Illegal entry/stay is a violation that carries a penalty of imprisonment of between three months and one year, and it may result in deportation.

The legal provisions concerning the arrest of refugees and/or asylum seekers are the same as for all other persons in Kenya, including citizens. Importantly, police custody without charge is limited to 24 hours, although, as much for Kenyan citizens as for aliens, this time limit is not always adhered to in practice.

Since 1991 and the mass influx of refugees from Somalia and Sudan which severely strained existing structures and procedures, Kenya adopted a policy of confining refugees to camps, such as Kakuma and Dadaab.³ Although the camps are not fenced, they are notionally semi-closed: a camp resident must request permission to reside or even travel outside the camp perimeters (see below for details). Refugees and asylum seekers who live in Nairobi in defiance of the encampment policy may be subject to arrest on charges of irregular entry/stay and/or vagrancy. Arrest may take place on an individual basis (and, in that case, release is often allegedly obtained through payment of bribes) or on a mass scale following 'urban sweeps' motivated by domestic political pressures.

Refugees who arrived prior to 1991 and who were recognised under the 1951 Convention enjoy a wider range of rights, including freedom of movement. These refugees are legally entitled to live in the cities.⁴

A. The 'encampment' policy

While the encampment policy is loosely based on the Aliens Restriction Act, which provides that the Minister may impose restrictions on aliens' freedom of movement, the practice has never been formally articulated. It is understood to be based on two stated concerns of the Kenyan government: (a) national security, in relation to unconfirmed but frequently cited concerns that refugees are involved in illegal activities, and (b) public order, which may be threatened if large numbers of refugees were permitted to converge on the labour markets of the main cities.

Both the Dadaab and the Kakuma camps are located in remote, inhospitable, semi-arid areas, close to borders. Refugees, like local residents of the area, are exposed to raids by bandits, both locally and from across the border. The refugees also often allege infiltration of the camps by agents from their countries of origin. No meaningful economic activities can be pursued in either environment.

¹ The information presented herein is valid up to 31 March 2004.

² Kenya is a party to the 1951 Convention and its 1967 Protocol, as well as to the 1969 OAU Convention. However, it has no domestic asylum legislation and has tended to leave management of refugee matters to UNHCR in practice. If the proposed terrorism Bill is enacted, there are likely to be additional legal grounds for detention of refugees and other foreigners.

³ At the end of 2003, there were an estimated 245,000 refugees remaining in Kenya.

⁴ Department of Immigration estimates 12,500 such refugees.

The present Kenyan government has stated its intention to relocate the refugees and allow greater economic opportunity, thus relaxing the encampment policy. The possibility of relocation, however, remains unrealistic in view of the complex nature of land ownership and the limited availability of productive land in Kenya.

Although accorded the standards of treatment laid down by UNHCR ExCom Conclusion No.22 (XXXII) on responses to a mass influx, the overwhelming majority of the *prima facie* refugees in Kenya do not have access to 1951 Convention standards of treatment. Human Rights Watch has concluded that refugees in these camps are deprived of freedom of movement to such a great extent that they may be considered, following the UNHCR Guidelines on Detention which define a place of detention as one where movement is 'substantially curtailed', as living under conditions at least 'analogous to' detention.⁵

During 2003, the Kenyan government agreed to authorise certain refugees and asylum seekers to reside outside the camps upon UNHCR request and, in several cases, without it. UNHCR requested such authorisation for individuals with protection needs that could not be addressed at camp level, students, refugees in transit to a resettlement country or repatriating, and refugees financially supported by nongovernmental organisations or others.

Permission to leave the camps is given for several reasons. Refugees who find admission to an educational institute can obtain a 'Pupil's Pass' from the immigration department, which is a valid document to remain outside a camp. 'Travel permits' may also certify permission to travel outside the camp for short periods – for example, for medical needs or other compelling personal reasons – and for periods up to one year. The permit is issued and signed by UNHCR and endorsed by the District Officer. During 2002, UNHCR Kakuma issued an average of 500 permits per week, of varying durations.

Police and immigration officers are usually willing to honour UNHCR's travel permits from the camps or *ad hoc* certification issued in Nairobi,⁶ but such certification may not always protect the holders from police harassment. This may have more to do, however, with failings in the general rule of law in Kenya than with either discrimination against or deterrence of refugees.⁷

B. Detention of urban refugees

As a consequence of the situation described above, hundreds of refugees and asylum seekers are arrested in urban areas for illegal entry/stay or for vagrancy. UNHCR or nongovernmental intervention leads to release in most cases. In others, refugees are charged with an immigration violation, most often illegal entry under Kenya's Immigration Act, and sentenced.

⁵ Refugees in Kenya, whether recognised on a *prima facie* (i.e. Sudanese and Somali refugees) or an individual basis, are 'lawfully present'. Therefore their confinement to camps may be examined under article 12 ICCPR and article 26 of the 1951 Convention. Human Rights Watch reasons that, while some refugees do reside outside of the camps or move in and out of the camps without permission, they do so at risk of arrest and possible deportation. Their research in 2002 concluded that permission to exit the camp is in many cases granted on an arbitrary basis, making confinement to the camp analogous to arbitrary detention. *Hidden in Plain View: Refugees living without protection in Nairobi and Kampala*, Human Rights Watch, November 2002.

⁶ The Kenyan authorities do not endorse documentation issued by UNHCR to refugees located in Nairobi.

⁷ Transparency International, an organisation which aims to curb both international and national corruption, found that six out of ten urban Kenyans pay bribes to the police or are mistreated or denied service if they do not. See, *Hidden in Plain View: Refugees living without protection in Nairobi and Kampala*, Human Rights Watch, November 2002, p.43.

In addition, thousands of refugees choose to defy the encampment policy and reside in Nairobi without a permit or any other legal status, and so are at risk of arrest and detention at any time. Their departure from the camps may be for a variety of reasons: because they do not wish to live in the harsh conditions of the camps, dependent on inadequate humanitarian assistance; because many rely on remittances from abroad and the financial institutions are located in Nairobi; because they have fled ineffective protection in a camp, including abuse of women and children, or, as some refugees allege, continuing persecution by persons who have pursued them into exile in Kenya; or because the refugees erroneously believe that physical proximity to the UNHCR office and to foreign embassies will give them better chances of resettlement or emigration to the west. When such unregistered refugees are arrested, UNHCR is less easily able to secure their release but normally manages to do so eventually.

In May and November 2002, thousands of foreigners, including refugees authorised by permits to live in Nairobi, were arrested for illegal entry/stay. In response, UNHCR set up a special task force to visit all detention facilities in order to identify detained refugees and asylum seekers and seek their release.⁸ In 2003, UNHCR made around 90 interventions in cases of detention. The Refugee Consortium of Kenya legal aid programme also plays a key role in interventions to ensure that individual detention decisions are properly reviewed.

During 2002, UNHCR recorded 1075 known cases of detention in Nairobi, including 54 children, though the actual number of such detainees may be higher. Most of the detainees originated from Ethiopia.

In May-June 2002, after the discovery of the unauthorised landing of a plane carrying Somali citizens near Nairobi, some 800 people were arrested in indiscriminate police sweeps on the Eastleigh Estate, a slum area inhabited by Somalis and Ethiopians. UNHCR addressed a written request for the immediate release of all women and children, and all those in possession of refugee documentation, to the Ministry of Home Affairs. The remaining group was charged with unlawful presence in Kenya, and failure to report to the authorities within 90 days of arrival, as required by the Aliens Restriction Act.⁹

On 28 November 2002, prior to the national elections, the Kariobangi and Kawangware Estates, where mainly Congolese and Sudanese congregate, were also subject to police sweeps and many refugees were arrested, though they did not appear to be targeted over other foreigners who were detained to prevent them enlisting as voters. Since the new government was elected, and as of November 2003, there have been no further mass arrests of illegal migrants. The problems surrounding arbitrary police arrest of individual urban refugees, including permit holders, do continue but the situation has generally improved.

II. ALTERNATIVES TO DETENTION

A. Improved registration and joint issuance of permits

In 2001, the Kenyan government agreed accept joint responsibility for registering and documenting asylum seekers and refugees. The District Officers became involved in the issuance of permits to refugees for travel outside the camps. A registration and documentation exercise carried out in Kakuma with UNHCR support led to the issuance of refugee cards to some 20,000 refugees. A

⁸ Previous round-ups also occurred in September 1998, October 2001 and twice during February 2002.

⁹ Information received from UNHCR Nairobi.

similar exercise was planned for Dadaab though it could not be carried out. With the progressive assumption of responsibility for refugee management by the government, it is envisaged that permanent registration structures will be established in both camps and in Nairobi in 2004. The question of the joint UNHCR-Kenyan government issuance of documents to asylum seekers and refugees in cities, however, remains unresolved.¹⁰

B. Proposed alternatives

In November 2002, Human Rights Watch¹¹ made a number of recommendations for reform of the Kenyan system of encampment and detention of urban refugees, including:

- a) A list of five groups of persons who, in the view of Human Rights Watch, should be eligible for exemption from encampment to be provided for by domestic law or regulation¹²;
- b) Standard procedures, before an impartial decision-maker, for both refugees recognised on an individual or *prima facie* basis, to apply for permission to leave the camps;
- c) The establishment of temporary reception sites for new arrivals, including those who have left camps, providing them with safe shelter for at least the first two weeks they are in Nairobi;
- d) Training of all police officers in refugee protection, including incorporating it into the police academy curriculum;
- e) Training of all magistrates on the principles and standards of international refugee law.

III. CONCLUSIONS

The pragmatic arrangements which have developed over the past decade, by which UNHCR identifies and documents individuals whom it considers ought to be exempt from encampment, create some flexibility in the encampment policy. As the issuance of travel permits does not assist the Kenyan government to regulate individuals for the sake of protecting national security or public order, and the individual is not provided with an alternative place of residence, the practice is not an 'alternative to detention' in the standard or strict sense. Nonetheless, the system could be conceptualised as an 'alternative' if the camps are considered, as Human Rights Watch argues, places of *de facto* detention, since it allows the Kenyan government to recognise that not every individual refugee needs to be confined to camp residence in order to maintain public order and security. If the camps are not classified as places of *de facto* detention, then the issuance of travel permits may at a minimum be labeled an 'alternative to encampment' which removes restrictions on individual refugees' right to freedom of movement.

Longer-term 'travel permits' issued to those who need to reside outside the camps may be viewed as an 'alternative to encampment' available for those with protection or other needs that can not be addressed at camp level, although it is an alternative that in many cases does not guarantee access to safer or more adequate living conditions in Kenyan cities.¹³

¹⁰ Information received from UNHCR Nairobi.

¹¹ See, *Hidden in Plain View: Refugees living without protection in Nairobi and Kampala*, Human Rights Watch, November 2002, pp.6-8.

¹² These five groups include individuals with serious security problems in the camps; individuals in need of medical care only available in urban centres; individuals who have been living in a refugee camp for an excessive length of time, such as three years or more, and for whom alternative permanent solutions in the foreseeable future appear unlikely; individuals who are in need of educational opportunities not available in the camps; and individuals with family members who are residing legally outside the camps.

¹³ *Hidden in Plain View: Refugees living without protection in Nairobi and Kampala*, Human Rights Watch, November 2002, pp.28-42.

The continuation of this alternative policy requires though improved respect for the rule of law, specifically recognition and observance of the 'travel permits.' This could be achieved by means of, *inter alia*, improving the ability of the police to check the validity of documentation, police and court reform, refugee law training, the distribution to police stations of information concerning refugee rights and conditions of detention, and funding of legal aid programmes to secure the release of those refugees charged with illegal presence. The establishment of a recognised joint document certifying that the bearer is authorised to reside outside the camps will be the most important safeguard for such refugees.

A. Export value?

The situation of urban refugees in Kenya – living with the constant possibility of arrest and detention for the purpose of police extortion – is common to a large number of other States, such as Egypt, Guinea, Pakistan, Iran, etc. The Kenyan government's willingness in 2003 to begin endorsing UNHCR-issued travel permits and to refrain from ordering urban sweeps of refugees with or without such permits, indicates a gradual move away from an inflexible encampment policy. Such changes are positive steps and show that such moves can be made without disturbing public order or increasing threats to national security and they could be applied in other States hosting large refugee populations in semi-closed camps for prolonged periods.

LITHUANIA¹

I. DETENTION AND DOMESTIC LAW

In January 2002, major legislative amendments to Lithuania's Refugee Law elaborated upon the grounds for which a detention order may be imposed and, in the same framework, less restrictive, alternative measures. These amendments included a requirement for courts to consider the sufficiency of alternatives to detention in each individual asylum case prior to ordering detention, forming an important safeguard against the possibility of arbitrary detention. Courts considering the necessity of a detention order may choose, instead, to assign an alternative measure.

Article 12 of the Refugee Law has also been supplemented by Government Regulations of 29 January 2001 laying down the procedures and standards of treatment for both detained asylum seekers and migrants and, at the same time, for those accommodated without detention in collective accommodation (see below).

The Refugee Law requires a court to sanction a police order of detention, made on any of the following grounds, within 48 hours:

1. to prevent a foreigner from making an unauthorised entry into the country;
2. when actions are being taken with regard to deportation of a foreigner;
3. to ascertain the identity of a foreigner, or the reasons why the foreigner used forged identity documents or destroyed them;
4. to prevent the spread of an infectious disease; or on
5. other grounds provided by the laws of the Republic of Lithuania.

Provision for independent, periodic review is guaranteed. It is the duty of the Foreigners' Registration Centre ('FRC') (that is, the place of detention) to apply to the court for review of each detention order once the grounds for detention have ceased to exist. Decisions to confirm or extend detention orders taken by a district court may be appealed to the High Administrative Court.²

Legislative amendments limit the total detention period to twelve months, which is intended to be sufficient time to complete the full asylum procedure. State-funded legal aid is available via the Red Cross Legal Assistance Project to Refugees and Asylum Seekers.³ When the detention of a minor, unaccompanied by parents or legal representatives, is examined by the court, the interests of the child are to be represented by an assigned guardian, and the Law of the Republic of Lithuania on the Protection of the Rights of the Child is to be taken into consideration.

Procedural safeguards are lacking, however, for applicants who choose to seek a complementary form of protection/humanitarian status, rather than refugee status under the 1951 Convention (two separate procedures in Lithuania). Those seeking humanitarian status fall under the general provisions of the Aliens Act, which allows detention in cases of illegal entry and/or to establish identity. A new draft Aliens Act, which was still under discussion as of March 2004 in the Lithuanian Parliament, seeks to remedy this unequal treatment.⁴

¹ The information presented herein is valid up to 31 March 2004.

² Art. 12(3), Refugee Law. Law supplemented by Art. No. IX-704, 15 01 2002, News, 2002, No. 13-466 (6 February, 2002).

³ Interview with Lithuania Red Cross, October 2003-March 2004.

⁴ Information from UNHCR Lithuania.

Another gap in the legal safeguards for detainees concerns failed asylum seekers. Once an asylum claim is rejected, the failed applicant is detained. In practice, this may only amount to removal of exit privileges from Pabrade FRC (see below). Neither the new Refugee Law nor any other national legislation provide for the possibility of release on a temporary residence permit for those who cannot in practice be deported in the foreseeable future. The Lithuanian government does not have the financial capacity or institutional capability in many cases to return a person to his or her country of origin, leading to some failed asylum seekers being held indefinitely.

II. EXTENT OF DETENTION AND LIKELIHOOD OF RELEASE

Lithuania received 256 asylum applications in 2001. Of this, five asylum seekers were detained.⁵ After November 2001, however, some Afghan asylum seekers were detained on national security grounds related to terrorism. The Red Cross, supported by UNHCR, appealed for their release, calling for faster verification of their identities and initiation of court reviews. Consequently, the Migration Department verified their identities in April 2002 and the FRC recommended their release to the regional court. However, the court extended the detention order due to prevailing security concerns and the Afghans were only released at the expiry of the maximum twelve month period in detention, at the end of 2002.

III. ALTERNATIVES TO DETENTION

A. General legal framework for alternatives to detention

Article 12 of the Refugee Law, as amended in 2002, explicitly provides a list of alternatives to detention that may be assigned by the court, including periodic reporting requirements, release to a nongovernmental organisation, release to a Lithuanian citizen or to a foreigner legally residing in Lithuania who is a relative of the asylum seeker, or custody of a separated child to social services.⁶ The courts are required to consider the applicability of such alternatives based on an applicant's individual characteristics, including their vulnerability, the level of threat posed to society, the probability of cooperation in ascertaining the reason for using forged or damaged/destroyed documents, and the strength of their asylum claim.

If the conditions of such alternative measures are not complied with, the Migration Department may approach the court again and request detention of the asylum seeker.

When taking a decision to apply an alternative measure, the court is required to set a time limit, not exceeding twelve months, for its application.

The same safeguards that apply to a detention order (described under 'Detention and Domestic Law' above) also apply to any assignment of an alternative measure. Thus a court must confirm the imposition of an alternative measure, as made by the Migration Department, within 48 hours. The asylum seeker must be immediately informed of the decision to apply the measure in a language that he or she understands and he or she must receive a written copy of the decision. Legal aid must be provided for this hearing.⁷ Furthermore, the decision of a district court regarding the imposition of an alternative measure may be appealed to the High Administrative Court either directly or via

⁵ ECRE Country Report, 2001.

⁶ Art. 12(1), Refugee Law. Law supplemented by Art. No. IX-704, 15 01 2002, News, 2002, No. 13-466 (6 February, 2002).

⁷ Art. 12(2), Refugee Law. Law supplemented by Art. No. IX-704, 15 01 2002, News, 2002, No. 13-466 (6 February, 2002).

the Foreigners' Registration Centre, where it is to be examined by a collegium of three judges. The court may not only confirm or deny the assignment of the alternative measure, but it may also change the nature of the assignment to another alternative or even order release without any restrictions on freedom of movement.⁸

B. Reporting requirements and directed residence

Asylum seekers in Lithuania who do not reside in a collective accommodation centre may be required to report periodically to the territorial police and to inform the police of their whereabouts at all times. Statistics regarding the number of asylum seekers in Lithuania living under such a reporting regime and the percentage complying with it are not available.

C. Pabrade Foreigners' Registration Centre

The Pabrade FRC houses both detained and non-detained asylum seekers. Oddly, it is therefore both a place of detention as well as an alternative to detention. Government Regulations provide that asylum seekers may be detained in the centre on the basis of a court decision, while those merely 'accommodated' there are assigned by the Migration Department. Although the regulations do not specifically mention the different regimes applicable to the different categories of inhabitants, they do refer to restrictions on freedom of movement. In particular, those who are detained in the Centre may only exit its premises under the supervision of a staff member.⁹ Regulations specifically address the question of disciplinary measures, which may be assigned for violating an internal order of the centre. In contrast, since February 2001, asylum seekers who are not detained are able to leave the centre for a period of up to 72 hours upon notifying the centre's administration.¹⁰ This partial freedom of movement was generally respected throughout 2002, except in November, when permission to exit was restricted for a period of several weeks on the stated grounds of protecting public health.

In relation to lodging arrangements, in practice, detained illegal migrants are lodged separately from detained asylum seekers; detained asylum seekers are lodged separately from non-detained asylum seekers; males and females are separated; and unaccompanied minors are housed separately from adults.

Article 13 of the Refugee Law specifies that those asylum seekers under the accelerated procedure should be accommodated in the Pabrade FRC, while those whose claims are considered under the normal procedure are accommodated in the Refugee Reception Centre (see below). A separated child seeking asylum should also be accommodated in the open Refugee Reception Centre unless the assigned guardian of the child decides otherwise.

Foreigners, who legally entered the territory of Lithuania or who are legally present, including asylum seekers, may be allowed to choose their place of residence.¹¹ Such an asylum seeker may also choose, if destitute, to reside in the communal Pabrade FRC under the 'open regime' for non-detainees, to which he or she would be transferred after the initial period in quarantine.

⁸ Art. 12(3), Refugee Law. Law supplemented by Art. No. IX-704, 15 01 2002, News, 2002, No. 13-466 (6 February, 2002).

⁹ 'On approval of order and conditions of temporary accommodation of foreigners at Foreigners' Registration Centre', Decree No.103, 29 January 2001, Vilnius.

¹⁰ 'On approval of order and conditions of temporary accommodation of foreigners at Foreigners' Registration Centre', Decree No.103, 29 January 2001, Vilnius.

¹¹ Art. 13, Refugee Law. Amendments to Art. No. IX-704, 15 01 2002, News, 2002, No. 13-466 (6 February, 2002).

Those who apply for humanitarian status, sometimes on grounds very similar to 1951 Convention status, are also accommodated in the Pabrade FRC, but they are treated under the same regime as other migrants. In some cases the authorities have agreed to transfer them to the section lodging other asylum seekers.

Among the rights of inhabitants, government regulations include a possibility to make use of State guaranteed legal aid and interpretation services to request contact with UNHCR, and for children to attend school. Specialist psychological assistance is available for victims of torture, violence or rape and for other vulnerable persons.

D. Rukla Reception Centre

Lithuania has also operated a fully open reception centre for asylum seekers since the first asylum law was adopted.

E. Alternatives for separated children

Children can only be detained in exceptional circumstances.¹² In 1999-2000, there were eleven separated asylum seeking children in Lithuania, with a guardian appointed to help them represent themselves in court regarding all decisions on their detention or accommodation. Such children may be assigned to Rukla or to other independent accommodation.

IV. CONCLUSIONS

A. Do alternatives ensure compliance?

There are no statistics available specifically concerning rates of non-compliance with asylum procedures and/or non-appearance of failed asylum seekers subject to deportation orders. No statistics are available as to the numbers who have had alternative measures assigned to them, nor on how well such measures have helped to ensure compliance and appearance.

Of a total of 546 applications pending or received in 2002, 55 (some 10%) were 'terminated'. Of 406 such cases in 2003, 165 (some 40%) were terminated. This termination figure includes not only absconding asylum seekers but also voluntary departures from the country, which may explain the thirteen Afghan cases of the 165 that were terminated in 2003.¹³ In any case, these figures represent an upper limit regarding the numbers who abscond and, for a traditional transit country, they are relatively low percentages. To some extent, therefore, the alternative measures employed in Lithuania must be considered effective in terms of ensuring compliance.

Precise statistics are not available on the number of failed asylum seekers who abscond. However, they usually have several days to abscond before a detention order is approved by the court and, therefore, the rate of disappearance at this point is high.

¹² Art. 12, Refugee Law.

¹³ Statistics provided by UNHCR Lithuania.

B. Cost effectiveness?

To date, international funding has carried the costs of building and running both the accommodation for asylum seekers at Pabrade FRC (at a cost some US\$1 million, including the cost of deportations) and the Rukla Reception Centre (with an annual budget of some US\$450,000). For these international donors, improving the reception and protection conditions in Lithuania such that refugees may opt to seek asylum there is a more cost effective and comprehensive solution than obstructing their transit movement by means of detention. The highly targeted use of detention orders ensures that only those individuals who require 24 hour supervision are detained and therefore keeping costs down.

C. Export value?

Lithuanian legislation is a model of nuance in this field, incorporating a wide range of alternative measures and orders of full detention into a single continuum. The many legal safeguards applied to alternative measures rightly recognise the fact that they involve restrictions on the basic human right of free movement, which must therefore be necessary and strictly proportionate to its intended purpose and assessed on a case-by-case basis. What statistical information is available also suggests that this system is working to meet governmental concerns regarding compliance, at least prior to the delivery of final negative decisions. This case study shows what can be done with adequate international funding in a context where the number of asylum applicants is not overwhelming.

LUXEMBOURG¹

I. DETENTION AND DOMESTIC LAW

Detention is applied at Luxembourg Airport to those asylum seekers without valid documents, or to facilitate Dublin Convention transfers. One month detention orders are issued, renewable up to a maximum of three months. There is independent, automatic and periodic review, and detainees receive legal aid. Courts have ordered release whenever faced with asylum seekers being held in penal institutions. According to a report from the Luxembourg government in January 2002, family units are never detained.²

Detention of both illegal entrants and persons who are ordered to be removed, including rejected asylum seekers and those awaiting removal to another Dublin Convention country, is applied at various locations, such as Schrassig Detention Centre.

II. ALTERNATIVES TO DETENTION

A. Reporting requirements

All asylum seekers in Luxembourg must present themselves every month at the Ministry of Justice to renew their identity papers/asylum permits. This documentation is needed to access monthly financial support and forms a *de facto* reporting obligation.

B. Deposit of identity or travel documents

To prevent onward transit, all asylum seekers with their own identity or travel documents must deposit them with the Ministry of Justice until the end of the procedure.

C. Open centres

After registration with the Ministry of Justice's Refugee Reception Office, asylum seekers are referred to the *Commissariat du Gouvernement aux étrangers* ('CGE'), where they are interviewed by a social worker who evaluates their needs in terms of accommodation, basic support and health care. Upon arrival, single males may be provided with emergency accommodation in shelters for homeless persons, including Luxembourg City's reception shelter or Caritas' night shelter, while families are usually accommodated in hostels or in youth hostels. This kind of emergency accommodation is provided free of charge unless asylum seekers have their own financial means.

Asylum seekers who have no family members living in Luxembourg are then offered accommodation in one of the CGE's reception centres or one of the centres run by various NGOs such as Caritas or the Red Cross. There are about 40 centres in Luxembourg. Twelve hostels are run by the CGE and are government property. Seven hostels are being leased and managed by the CGE. Other hostels are shelters or hotels managed privately or by NGOs. In addition, there are *pensions de famille*, hostels and campsites. In some very rare cases, applicants may find private accommodation and have the rent paid by the CGE.

¹ The information presented herein is valid up to 31 March 2004.

² Information received via UNHCR RO Brussels.

Collectively, the centres host 2,000-2,500 persons, of whom some 1,500 are rejected cases. It is interesting to note that the centres host not only asylum seekers but also refugees, failed asylum seekers and persons whose status has been regularised.

Centres are open. Accommodation in the reception centres is, in principle, on a temporary basis and may not exceed two years. In some cases, an extension of a further two years may be granted. This may on an exceptional basis for serious reasons be further renewed. However, in practice, these time limits are not applied.

During recent years, NGOs in Luxembourg have consistently criticised overcrowding in some centres, inadequate attention to the mixed profile of the inhabitants of the centres, deterioration of the buildings, location of some centres in isolated areas, and lack of structured management/supervision of the centres. In 2003, the situation seems to have further deteriorated as the number of new asylum seekers increased (with some 200 asylum seekers arriving per month) and local authorities expressed greater resistance to the opening of new centres to accommodate them. In addition, the Ministry of Family has been obliged to close certain centres and places of accommodation due to their deterioration. According to the authorities, all asylum seekers are presently accommodated but the maximum capacity has been reached.³

During 2004, an agreement was reached between the Red Cross and the authorities to create a *centre de premier accueil* (a larger centre for first reception and orientation of all asylum seekers before they are allocated to CGE accommodation) with a capacity of 150. The authorities are also reported to be considering increased presence in the centres.

III. CONCLUSIONS

Based on anecdotal evidence regarding the rate at which asylum seeker's abscond,⁴ Luxembourg's reception system appears to be reasonably effective in preventing secondary movement within Europe and promoting compliance with its asylum procedures. However, as national statistics are not available it is impossible to draw definite conclusions. As compliance of rejected asylum seekers with removal orders has not been an issue in Luxembourg until recent years, there is also a lack of data in this area – for example, on how many of the rejected asylum seekers accommodation by CGE in open centres remain available for removal. It should be noted that arrival numbers had not put the Luxembourg system under any strain until 2003. This new strain is raising a number of other concerns regarding conditions of reception that prevent the CGE accommodation system from being considered a model of best practice despite its efficacy in ensuring compliance without resort to detention.

³ Information received via UNHCR RO Brussels.

⁴ Interview with Caritas Luxembourg, October 2003-March 2004.

NEPAL¹

I. DETENTION AND DOMESTIC LAW

Nepal is not a signatory to the 1951 Convention and has not enacted any national legislation pertaining to asylum seekers and refugees. UNHCR conducts individual status determination for urban asylum seekers of various nationalities whilst His Majesty's Government of Nepal, with the observatory participation of UNHCR, carries out the individual screening of Bhutanese asylum seekers. Through its implementing partner, UNHCR also conducts interviews of Tibetan new arrivals (i.e. those having entered Nepal after 31 December 1989) to ascertain their reasons for flight and declare them of concern to the organisation. Tibetan new arrivals are not, however, allowed to stay in Nepal and are only permitted to transit through safely.

Asylum seekers and refugees (other than Tibetans who arrived prior to 31 December 1989 and who therefore received refugee status from the Government of Nepal, and Bhutanese refugees) are liable to be detained as illegal immigrants according to the Nepalese Immigration Act.² Tibetan new arrivals are subject to arrest and detention, especially near the northern border with China. Until May 2003, Tibetan new arrivals were brought to the Department of Immigration in Kathmandu, which has the discretion to impose visa fees and fines for illegal entry. In a case where a forged travel document has been used, the Department of Immigration has to forward the case to the court and the sentence imposed can include a prison sentence as well as the visa fees and fines for illegal entry and stay in Nepal (on the basis of a calculation completed by the Department of Immigration). The latter also applies to urban asylum seekers. When such an asylum seeker is not in a position to pay, he or she must satisfy the amount calculated by days spent in prison at the rate of 25 rupees per day.

There is no systematic legal aid provided to detainees in Nepal, however, they can apply for a *pro bono* lawyer to be designated by the court. A local NGO also provides legal aid free of cost, including to some asylum seekers or refugees. UNHCR is given access to all refugee and asylum seeker detainees.

Refugees and asylum seekers facing criminal charges may also be detained. As at 31 December 2003, a total of 33 Bhutanese refugees and one UNHCR Mandate refugee were being detained in Eastern Nepal, Western Nepal and Kathmandu on criminal charges.

II. ALTERNATIVES TO DETENTION

A. Release into care and supervision of UNHCR

After any fine is paid, the asylum seeker is released into the care and supervision (sometimes called 'custody') of UNHCR. UNHCR gives a letter acknowledging receipt of the person from the Nepalese authorities. If recognised as a Mandate refugee and in need of resettlement, an exit permit is requested by UNHCR which will include a waiver of the visa fees and fines for illegal stay for the whole proceeding period.

Since mid-2003, and after a deportation of Tibetans in May 2003, Tibetan new arrivals are directly released from police custody upon UNHCR's intervention, without having to go through the

¹ The information presented herein is valid up to 31 March 2004.

² Immigration Act 1992, Section 9.

Department of Immigration and therefore without being fined or charged visa fees. If Tibetan new arrivals are intercepted by the police or the armed forces in a remote area under a UN security phase (which does not permit UNHCR staff to travel without delay), UNHCR requests the local authorities to allow its implementing partner, the Tibetan Welfare Office, to travel to the area, to release and to receive these Tibetans and to escort them to the Tibetan Refugee Reception Centre, near Swayambunath on the outskirts of Kathmandu. While this is not official 'custody', it operates as such de facto. The Centre is administered by the Tibetan Welfare Office, with UNHCR funding. The processing of Tibetans for onwards travel to a third country is carried out there.

Under this system, UNHCR is treated as an 'alternative' supervisor to prevent the prolonged detention of illegally present asylum seekers.

III. CONCLUSIONS

A. Export value?

UNHCR's role as an intermediary to alleviate the impact of detention and other penalties on refugees is quite unique to this situation, yet at the same time it is similar to the role of UNHCR in Mexico. The success of such arrangements depends, in a sense, upon their pragmatic, *ad hoc* nature and the continued cooperation of the State authorities with UNHCR.

THE NETHERLANDS¹

I. DETENTION AND DOMESTIC LAW

A. Aliens refused entry to the Netherlands

Article 6 of the Aliens Act 2000² is specifically aimed at those aliens who are refused access to the Netherlands upon arrival by aircraft or boat at the border of the Schengen area (i.e. Schiphol Airport and the sea harbours of Rotterdam and Amsterdam). Such persons are required to leave the Netherlands and may be detained at the border until they can be put back on a plane or boat.

B. Asylum seekers registered at in-country application centres

Asylum seekers registered at in-country application centres ('ACs') can be instructed, on the basis of Article 55 of the Aliens Act 2000, to remain at the disposal of the Dutch decision makers and, if necessary, available for processing through an accelerated procedure. In practice, this means that their movement is restricted continuously for a maximum of five days. (They have to leave the application centre after 48 processing hours from the moment that the asylum interview starts, but the hours between 22.00 and 08.00 are not counted as processing hours.) If a case can be assessed and rejected within the 48 processing hours, it will be dealt with in an accelerated procedure at the application centre.

In 2001, the National Ombudsman requested more openness in the ACs, as it considered the situation similar to detention but without adequate legal safeguards. The government was not willing to meet this request. However, the Court of Appeal in The Hague ruled, in a judgement of 31 October 2002³, that restrictions on movement during the accelerated procedure at in-country application centres constitute 'detention' in the sense of article 5 of the ECHR, which finds no legal basis in article 55 of the Aliens Act 2000. In a first reaction to this ruling, the Minister for Immigration and Integration announced, in November 2002, that an application can no longer be rejected on the sole ground that an asylum seeker has left the application centre during the accelerated procedure.⁴ As of March 2004, the Ministry of Justice is working on several general adjustments to the accelerated procedure,⁵ but so far the nature and timing of these adjustments remains unknown.

C. Rejected asylum seekers

Administrative detention can also be used, under certain circumstances, following rejection of an asylum application.⁶ The purpose of administrative detention is to facilitate the deportation of rejected asylum seekers. Generally though such administrative detention is not ordered, unless the 28 day limit has expired within which deportation should have been effected and the person has remained in the country illegally. A decision to detain is not made earlier unless there is a

¹ The information presented herein is valid up to 31 March 2004.

² Entered into force on 1 April 2001.

³ De Vereniging asieladvocaten en-juristen Nederland (VAJN) & Het Nederlands Juristen Comité voor de Mensenrechten (NJCM) v. De Staat Der Nederlanden (Ministerie van Justitie) - Gerechtshof 's - Gravenhage (Court of Appeal, The Hague), Case No: 00/68 KG.

⁴ Ministry of Justice Press Release, quoting Mr Nawijn, released on 4 November 2002 at:

www.justitie.nl/english/english/press/press_releases/archive/archive_2002/ac_procedures_remains_intact.asp.

⁵ Information received UNHCR Netherlands.

⁶ Arts. 57-59, Aliens Act 2000.

presumption, supported by individual facts, indicating that the asylum seeker will try to avoid expulsion.

A District Court considers the lawfulness of such administrative detention for the first time after ten days and from then on every 28 days.⁷ A lawyer usually assists the detainee with the hearing. The Aliens Act 2000 is likely to be amended to introduce a first judicial check within 42 days and no automatic review. However, the detainee's lawyer can present his or her client's case at any time to the court.

Since the new Aliens Act 2000 came into force in April 2001, it is also possible to detain rejected asylum seeker who possess travel documents or who will receive travel documents in due time. They can be detained for a maximum of four weeks. On 27 June 2003, the Ministry opened a removal centre near the airport in Rotterdam. A second centre has been opened in March 2004 near Schiphol Airport. These detention centres will be used for illegal aliens, including children, who can be deported quickly.

Dutch jurisprudence has ruled that detention must be terminated after six months, unless the authorities have very good reasons to extend it. According to individual circumstances, a longer or shorter maximum period of detention may be justified.⁸ In 2002, the Ministry of Justice reported that 483 failed asylum seekers were released from detention because they could not be returned to their country of origin due to a lack of documentation.⁹

II. ALTERNATIVES TO DETENTION

A. Reporting requirements for rejected asylum seekers

Article 57 of the Aliens Act 2000 provides that an asylum seeker can be required to report twice daily after a negative decision has been taken on their claim. This has the effect of restricting movement quite severely.

B. Open centres

Aside from the ACs, other centres for the reception of asylum seekers are fully open, except that movement may be restricted to the municipality in which the reception facility is located until a first decision has been taken.¹⁰

If an application is not processed through the accelerated procedure, the asylum seeker is taken from the AC and allocated to one of the reception and investigation centres ('OCs'), run by the Central Agency for the Reception of Asylum Seekers ('COA').¹¹ People are free to come and go from these reception centres, but they are still required to report to the police, usually once per week.

⁷ There have been complaints that some failed asylum seekers are unlawfully detained at Rotterdam Airport beyond the 28 day maximum period for detention without judicial review. 'Labour questions refugee detention,' *Expatica News*, 17 November 2003.

⁸ Information received from UNHCR.

⁹ Information received from the Policy Department of the Dutch Refugee Council, 13 November 2003.

¹⁰ Art. 55, Aliens Act 2000.

¹¹ Information received from the Policy Department of the Dutch Refugee Council, 13 November 2003.

Subsequently, the asylum seeker is transferred to a Centre for Asylum Seekers ('AZC') which is under the jurisdiction of the Ministry of Justice. If all AZCs are full, then asylum seekers may be accommodated elsewhere (e.g. hotels or boarding houses) but must report regularly to the nearest AZC.¹²

The average number of residents in an AZC is 335 and the reception and accommodation centres (OCs and AZCs) combined have 62,289 spaces.¹³ Residents must report to the centres' administration regularly, ask permission for any period of absence, and if a resident is absent for more than three days then his or her place is withdrawn and his or her asylum application considered void. Should this be the case, the person will be reported to the Immigration and Naturalisation Department ('IND') and police as having absconded.¹⁴ Permission to live in a centre other than that designated is granted only if the asylum seeker has close family members (spouse, parents or children) at another centre.

In general, asylum seekers are allowed to leave centres and move in with relatives after six months, provided they have already had their asylum interviews.¹⁵ This is called a 'self-care arrangement'. If an asylum seeker is not living in an AC, he or she may be required to report to the aliens' police located at the nearest AC each day or at least once a week in order to collect their financial support.

In practice, many Dutch municipalities have opposed this 'self-care arrangement', which they consider to be 'uncontrollable'. Since June 2002, therefore, asylum seekers are no longer allowed to move out of the reception centres. The low number of new asylum seekers means that the centres are far from full. 7,571 asylum seekers are allowed to continue to make use of the 'self-care arrangements' as they were permitted to do so before June 2002.¹⁶

C. Alternatives for separated children

Since November 2002, the reception of unaccompanied minor asylum seekers has been organised according to two alternatives: (a) an 'integration alternative' for those persons who have been granted a residence permit and (b) a 'return alternative' for children over fifteen years of age who have received a first instance negative decision. The objective of the latter is to prepare these minors for return home following a final negative decision or, if they have been granted a provisional residence permit only on the basis of their unaccompanied status and lack of possibility of return to their country of origin, until they reach eighteen years old.¹⁷

Since November 2002, separated children rejected at first instance have been received in a campus at Vught, a former army barracks with places for up to 360 children (270 boys and 90 girls). A second campus in Deelen, which can receive up to 180 children, was opened in February 2003. Both campuses are closed centres with strict regimes. The children are closely supervised and kept busy from early morning to late evening to avoid all possibilities of external contacts which could

¹² Information taken from the website of the Dutch Refugee Council (VluchtelingenWerk):

www.vluchtelingenwerk.nl/en/sections

¹³ Figure at 1 September, 2003. Information received from the Policy Department of the Dutch Refugee Council, 13 November 2003.

¹⁴ UNIYA, Overview of the Netherlands' Asylum System, February 2003.

¹⁵ *Reception Standards for Asylum Seekers in the EU*, UNHCR, July 2000, p.88.

¹⁶ Information received from the Policy Department of the Dutch Refugee Council, 13 November 2003.

¹⁷ Separated children who are rejected are granted a revocable three year residence permit during which time the Ministry of Justice examines what is best to do with them, but the permit is invalidated if a minor turns eighteen within those three years. The Lawyers Committee for Human Rights, *Review of States, Procedures and Practices relating to Detention of Asylum seekers*, September 2002, Final Report, p.75

favour integration, although they are allowed to leave the campuses under strict conditions. The children are also intensively prepared for return. If they express their willingness to comply, return can usually be organised within 4-6 weeks, through the collaboration of the IND, the International Organisation for Migration, the Aliens' Service and refugee organisations. Some children, however, refuse to participate in the activities and run away.

Contrary to the Parliamentary Commission for Justice, Dutch nongovernmental refugee organisations have been very critical of the campuses' regimes. In April 2003, seven such organisations went to court to challenge the two centres, arguing that there was no legal basis for them. While the court in The Hague rejected the challenge against the legality of the regimes, it did decide, *inter alia*, that an independent complaints commission must be established. Furthermore, the judge ruled that adaptations of the regimes are necessary to allow the children more free time in the evenings and on weekends. A less strict regime should be applicable to children who have not yet exhausted all appeals in the procedure.

After an evaluation of the projects in November 2003, the Minister for Immigration and Integration decided to close the campus in Deelen, but to keep the campus in Vught open for another year.

The official guardianship organization for separated children, NIDOS, is running a parallel pilot project on a small scale involving accommodating children in homes (involving 3-4 children in each home) and will compare its results to those of the above project.¹⁸

D. Proposals for return-oriented centres for adults

In mid-February 2003, a leak from the Dutch government suggested a new policy to open return-oriented centres for adults who have received a first instance negative decision. The fifteen per cent who later win their cases on appeal and gain permission to stay in the Netherlands would simply have to cope with these return-oriented conditions. Previously, the Netherlands had such a centre (Ter Apel) but it was closed for reasons of general ineffectiveness and its cost.

The Dutch Refugee Council (VluchtelingenWerk) and other critics of this leaked policy question why the government would try to re-open such centres that have been proved to be ineffective.¹⁹ They propose, as a more constructive alternative, return processes that do not attempt to force return to unstable countries and which offer some short-term financial incentives to restart life in places that have shattered economies.²⁰ They believe that more emphasis should be placed on uncooperative countries than on uncooperative rejected asylum seekers.²¹

¹⁸ Interview with Policy Section, VluchtelingenWerk (Dutch Refugee Council), 15 October 2003.

¹⁹ Interview with Policy Section, VluchtelingenWerk (Dutch Refugee Council), 15 October 2003.

²⁰ 1,537 failed asylum seekers are known to have left the Netherlands voluntarily in 2002, not all to their country of origin but also to third countries (U.S, Canada), usually with assistance from the International Organisation for Migration (IOM). Certain nationalities – Bosnians, Kosovars, Afghans and Iraqis – receive reintegration assistance if they return home. In 1997-98, there was a pilot return programme funded by the Ministries of Development Co-operation and Justice and focused on returns to Ethiopia and Angola. The idea was that the returnee could request funding for a project from which the local community to which he or she returned would also benefit. The Angolan programme could not start though due to a resumption of the civil war. The Ethiopian programme was not considered successful, as only 14 failed asylum seekers returned. Since then no such programmes have been initiated. In November 2003, the Minister for Immigration and Integration presented a paper entitled, 'Note on Return: Measures for a more effective enforcement of return policy', to the Second Chamber of Parliament. It was aimed at reducing the number of illegal aliens residing in the Netherlands. In January 2004, the Minister then announced additional measures that would promote and accelerate the return of some 26,000 persons to their countries of origin over the next three years: first offering air tickets and financial assistance, but if those incentives were not taken up, transferring the persons to a 'departure centre' for eight weeks, and if counselling there is not persuasive, ultimately relying upon the disincentive of

III. CONCLUSIONS

A. Do alternatives ensure compliance?

No comparative statistics are available by which to measure the effectiveness of the various Dutch 'alternatives to detention' – for example, failure to appear or failure to comply rates differentiating between those living in open centres and those living under reporting requirements. It is hoped that the parallel pilot projects regarding separated children will produce some data, but more research is needed.

All material assistance is denied to failed asylum seekers 28 days after receiving a final negative decision upon completion of a full procedure.²² This is intended to push them towards return. Only after eviction from a reception centre has taken place may certain vulnerable persons (for example, those too physically ill to travel and those from countries to which there is a current moratorium on deportations) appeal against this removal of assistance. Many do not bother at this stage, but simply live on the streets as best they can. Vluchtelingenwerk reports that failed asylum seekers usually disappear just before the 28 days expire because they do not want the humiliation of facing a police eviction,²³ but it is clear that some 75-80% of failed asylum seekers, who are thus recorded in the government's statistics as 'removed', may in fact remain in the country illegally.

Municipalities complain about the number of rejected asylum seekers without any form of support, with whose illegal presence and destitution they are confronted.²⁴ The Aliens' Police, in contrast, claim that they are hardly ever confronted with illegal former asylum seekers, suggesting there is no problem and that the policy is effective in propelling people to leave the country.²⁵ In 2002, the Central Bureau of Statistics (CBS) conducted some research on the subject and concluded that a minimum of 11,000 and a maximum of 41,000 failed asylum seekers from Afghanistan, Iraq, Iran, Somalia and the former Yugoslavia remained illegally in the Netherlands.²⁶ As a result of these findings, some policy discussion developed to consider making illegal presence a criminal offence and thereby allowing for criminal prosecution and detention for a fixed period of time instead of immigration detention with all its restrictions/safeguards.²⁷

B. Cost-effectiveness?

A place in an open reception centre costs 13,000 Euro on average per person per year. The government intends to reduce this to 11,000 Euro.²⁸ Equivalent figures for the cost of *de facto* detention at the application centres (ACs) are unavailable, but the deterrence effect of the accelerated procedure may be considered by some policy makers to be worth the cost.

detention (up to the legal maximum of six months) in order to encourage the individuals' cooperation with re-documentation and the process of forced deportation. Of these 26,000 persons, UNHCR reports that only 3,000 have currently exhausted the asylum procedure, while others still have appeals pending and therefore should not be classed as 'failed asylum seekers'.

²¹ Interview with Policy Section, VluchtelingenWerk (Dutch Refugee Council), 15 October 2003.

²² Asylum seekers who have been rejected via the accelerated procedure are ordered to leave the country immediately and are not given the 28 days, with continuing support, to organise their return; Article 62(3)(c) Aliens Act 2000.

²³ Interview with Policy Section, VluchtelingenWerk (Dutch Refugee Council), 15 October 2003.

²⁴ Information received from the Policy Department of the Dutch Refugee Council, 13 November 2003.

²⁵ Information received from the Policy Department of the Dutch Refugee Council, 13 November 2003.

²⁶ Report of the CBS, 13 March 2002.

²⁷ Information received from the Policy Department of the Dutch Refugee Council, 13 November 2003.

²⁸ Figures provided by the Dutch Refugee Council (Vluchtelingenwerk), November 2003.

NEW ZEALAND¹

I. DETENTION AND DOMESTIC LAW

Prior to September 2001, only some 5% of asylum applicants in New Zealand were detained. Section 128 of the Immigration Act 1987 allows the Immigration Service ('NZIS') or police to detain at a border (in practice, an airport) if there are 'reasonable grounds for believing' that the unauthorized arrival poses a genuine risk to national security or public order, for example, because an asylum seeker has committed a serious crime(s), is involved with terrorism or criminal organisations, or is likely to become involved with such groups. The Act further provides for the detention of failed asylum seekers, among other migrants, prior to removal.

In December 2001, an 'Operational Instruction'² was issued to NZIS officers directing them to detain a much wider group, both in the Auckland Central Remand Prison and as a 'commitment for residence at the Mangere Accommodation Centre' (see alternatives, below). Both options included release subject to conditions or release to the community without restrictions.³

Ninety-four per cent of claimants were detained under the 2001 Operational Instruction. It was later found to be unlawful by the High Court (the second highest court). The ruling, dated 27 June, 2002, found that it breached article 31(2) of the 1951 Convention which requires, *inter alia*, that restrictions on freedom of movement be no greater than necessary. Baragwanath J. found that 'necessary' in this context meant the minimum restriction required to allow the Refugee Status Branch to perform its determinations, to avoid a real risk of criminal offending or to avoid a real risk of absconding. He further ruled that claimants had the right to apply for bail.⁴

Following this decision, the Transitional Organized Crime Bill of June 2002 amended the Immigration Act to allow applications to the District Court for conditional release pending adjudication of asylum claims. It introduced the possibility of release on bail and allowed the following ('alternative') conditions to be imposed on release: (a) a date or point of expiry; (b) a location to which the person must report upon expiry; (c) a designated place of residence; (d) reporting requirements to either the police or NZIS; and (e) required attendance at refugee status determination interviews. Any breach of conditions would permit the police to make a warrantless arrest and a District Court judge would then review the release. NZIS may also, at any time, apply to a District Court judge for cancellation of the release.

On 16 April 2003, the government successfully appealed the decision of Baragwanath J.⁵ Today, a revised Operational Instruction is in use.⁶ This Instruction has very many points to recommend it. First, it clearly states its overriding principle that 'if the freedom of movement of persons claiming refugee status at the border is to be restricted at all, then it should be restricted to the least degree and for the shortest duration possible.'⁷ In light of this principle, '[i]n all cases a decision to detain in a penal institution rather than any lesser form of restriction on the freedom of movement of a

¹ The information presented herein is valid up to 31 March 2004.

² 'Operational Instruction' from Border and Investigations NZIS, issued 19 December 2001 [now withdrawn].

³ Released asylum seekers are assisted but are not permitted to work.

⁴ *Refugee Council of NZ v Attorney General* High Court Auckland M1881-AS01, 27 June 2002, Baragwanath J. and interim decision of 31 May 2002, Baragwanath J.

⁵ See, *Refugee Council and Ors v Attorney General*, Court of Appeal, 16 April 2003.

⁶ 'Operational Instruction: Exercise of Discretionary Powers under the Immigration Act 1987 in response (at the time of their arrival and subsequently) to Persons Claiming Refugee Status at the Border, issued by NZIS on 10 December 2003 and published in the NZIS Operational Manual.

⁷ S.1.2.

refugee claimant is considered only after all other alternatives have been excluded.’⁸ With an emphasis on the principle of ‘necessity’, firmly grounded in international human rights law, the Instruction sets forth a four level hierarchy of decision-making, starting with consideration as to whether the person may be released into the community without any restriction.⁹

A list of considerations that ‘may guide’ decisions as to the necessity of detention or another restriction on freedom of movement is supplied in Appendix B of the Operational Instruction. These are introduced, *inter alia*, by a reminder that ‘[t]here is no predetermined view that an asylum claimant without valid travel documents, or whose documents have been destroyed, should be treated as high risk... A critical factor... is the existence of an intention to mislead the authorities of the State in which they wish to claim asylum.’¹⁰ The list of considerations is too detailed to be fully summarised here, but in essence, it rests upon establishing the extent to which an individual presents a risk to national security, public safety or order, or a risk of absconding or criminally offending.¹¹

The question of whether actions, including the submission of the asylum claim, are ‘in good faith’ is a central consideration of the NZIS Instruction. The time at which the claim is lodged may affect determination of this point. Appendix A further states that a rejection of an asylum claim ‘may have a bearing on any review of the necessity for continued restrictions on the claimant’s freedom of movement.’¹²

One unusual and debatable consideration in Appendix B of the Operational Instruction concerns its view that unlawful arrival as part of a group, suggesting involvement with people-smugglers, may be a factor weighing in favour of detention or another restriction on freedom of movement. Though it states that ‘[s]muggled migrants must not...be automatically subject to detention’, the unevicenced presumption that a smuggled person is a greater risk to public safety, security and order¹³ may somewhat undermine the otherwise strongly stated principle of individual assessment.

Additional principles relating to children are stated in Section 4, and it is specified that ‘[a]ny restriction on the freedom of movement of an unaccompanied child or young person under 18 years of age should only occur after the Department of Child Youth and Family Services (‘CYFS’) has been involved...’¹⁴ Appendix B also requires that ‘special consideration’ be given to the treatment of other vulnerable groups, including women (especially pregnant women and adolescent girls), the elderly, the disabled and torture or trauma survivors.¹⁵ The persons are recommended as particularly likely to comply if released without restrictions into the community.

New Zealand has relatively strong safeguards for the review of decisions to detain. The Operational Instruction requires an immigration officer to reconsider the grounds justifying detention ‘as soon as practical after any new evidence or information emerges about the claimant, or at least 14 days

⁸ S.2.1.

⁹ S.3.3.

¹⁰ Appendix B, s.1.

¹¹ Of these grounds, prevention of ‘absconding’ is the one which is, in and of itself, not specified in international law or the UNHCR Guidelines as a legitimate grounds for detaining an asylum seeker, yet, as this study shows, it is a often considered indirectly but closely related to the other grounds (most notably, ensuring availability for removal) and so forms a key objective of many countries’ detention policies.

¹² Appendix A, s.1.5.

¹³ S.3.2.

¹⁴ S.4.2.

¹⁵ Appendix B, s.2.

after detention at the latest.’¹⁶ After 48 hours there is a judicial review of the necessity of detention and, after 28 days, the decision to extend detention is reviewed by a court every seven days. The Instruction makes explicit the fact that changing circumstances, including ‘the simple passage of time’, will require that the decision to detain be periodically reviewed.¹⁷ There is, however, no maximum duration of detention in New Zealand.

The decision to detain or to apply alternative measures is, as already mentioned, usually taken at the airport. An interview is conducted by NZIS Borders Investigation, with the possibility for the asylum seeker to rebut any initial view expressed by NZIS that detention is necessary. The refugee branch of NZIS is alerted and, if the person is to be detained, so is UNHCR (by fax). Asylum seekers are informed of their right to contact UNHCR and to have a legal aid lawyer appointed.

According to the Operational Instruction, not only the decision to detain, but all decisions to apply alternative measures or decisions to grant unconditional release, are to be periodically reviewed in light of any changing circumstances affecting an individual asylum seeker (see below, alternative 2).¹⁸

A. Mangere Accommodation Centre

The vast majority of asylum seekers held because of lack of identity documents (85% of cases are technically ‘detained’ during the first year) stay at Mangere Accommodation Centre near Auckland. In contrast, the remand prison tends to be used only in exceptional cases.

Mangere Accommodation Centre houses persons who are classified as ‘detainees’ under the Immigration Act. It is run by NZIS, with the help of NGOs, such as Refugee and Migrant Services (‘RMS’). In spite of it being a former army barracks, UNHCR states that there are numerous safeguards of residents’ rights and excellent conditions. Asylum seekers are given an information package when they arrive so that they know and understand their rights and duties. The Centre has electronic gates, but in practice these are used primarily to keep non-residents out.

Detainees/residents must request permission from the management if they wish to leave the centre during the daytime. In practice, this permission has never been denied, so ‘detainees’ frequently spend the day in the community. However, the management retains the right to refuse such permission. This is what makes Mangere definable as a ‘place of detention’ rather than a simple ‘alternative to detention’. Approximately 5% of asylum seekers are supervised during their visits to the community. If any condition of day release is broken by a ‘detainee’, which is very rare, then Mangere’s staff are required to notify the police according to operating instructions and to discuss with Border Investigations whether or not the breach is sufficient to require the person to be moved to a more secure place of detention (i.e., the remand prison). The option of making such a transfer administratively, rather than by court order, raises serious legal concerns over the transfer procedure. This reinforces Mangere’s status as a place of detention. As of December 2003, no one had ever been transferred from Mangere to the remand prison due to a breach of curfew or other rules.

Claims of persons in Mangere are prioritised for processing on the basis that they are ‘detainees’, so the average time spent in the centre is approximately six weeks.

¹⁶ Appendix A, s.1.3

¹⁷ S.2.3

¹⁸ Appendix A, s.1.4

One peculiarity of Mangere is that it also continues to be used for its previously sole purpose of the past ten years – to receive recognised refugees resettled to New Zealand from overseas (called ‘quota refugees’). The quota refugees and the ‘detained’ asylum seekers cohabit, with the only differences in their treatment being that (a) the quota refugees only have to notify the authorities of their departure from the Centre during the daytime, rather than ask permission, and (b) the quota refugees may stay away from the Centre overnight if they notify the management. The asylum seekers are not given the orientation programme for those who are sure to be integrating into New Zealand society, but are given English and other classes alongside the quota refugees (skills useful even if returned to their countries of origin) and they have equal access to all other services, especially the mental health workers who are available even after hours.¹⁹ The six-week programme for a quota refugee coincides in length with the average stay of an asylum seeker in Mangere, which prevents tension from arising between the two groups with different statuses.

There is only capacity to detain 28 asylum seekers at any one time at Mangere, so the number of persons requiring close supervision is limited and easily manageable. According to independent monitors, the current staff of Mangere treat asylum seekers in a professional and respectful manner. There are plans to replace the uniformed guards with more NZIS staff and there is an effective complaints mechanism. If a complaint is not resolved, there is the possibility of appealing to an ombudsman.

The large group of asylum seeking separated children who were on board the Tampa vessel in October 2001 and transferred by Australia to New Zealand were initially ‘detained’ at Mangere for 3-4 months, and were then released following swift determination (and recognition) of their claims. Only two of the children were assigned individual guardians, but the CYFS has taken care of the group as a whole. The minors, mostly 14-18 year old boys, are all now in school or jobs and are reported to be well settled in the community. In October 2003, many were reunited with their families (parents) who were resettled from Afghanistan to join them in New Zealand.

As of December 2003, out of 159 asylum seekers detained under the regime at Mangere Accommodation Centre since September 2001, only one completely absconded.²⁰ Two or three other detainees absconded just before they knew they were about to receive a final rejection of their claim.²¹ None of the Afghan children and adolescents from ‘the Tampa’ incident absconded while accommodated there. From this we can conclude that Mangere has been a highly successful and innovative form of detention in terms of ensuring compliance and reducing any risk of absconding. While not entirely an alternative to detention, it is a more humane form than closed detention centres or prisons.

II. ALTERNATIVES TO DETENTION

A. Release on conditions and unconditional release

The New Zealand system operates a sliding scale of four options, namely detention in prison, detention in Mangere Accommodation Centre, condition release, or unrestricted release.

The terms of conditional release – the amount of bail, the place of residence, or the frequency or manner of reporting requirements – must be flexibly set in proportion to the needs of the individual case. An immigration officer may at any time apply for the conditional release of a detained asylum

¹⁹ Interview with Refugee and Migrant Services in Mangere Accommodation Centre, October 2003-March 2004.

²⁰ Information supplied by NZIS to UNHCR Canberra.

²¹ Interview with Refugee and Migrant Services in Mangere Accommodation Centre, October 2003-March 2004.

seeker, and a detainee ‘may apply for release on conditions when there has been an application for extension or further extension of their detention. Release on conditions is ultimately a matter for the discretion of a District Court Judge.’²²

A District Court judge may also cancel an order for release on conditions where the asylum seeker breaches any reporting, bail or residence conditions imposed. He or she will be detained or re-detained, unless he or she can offer a ‘reasonable excuse’ for the breach.²³

III. CONCLUSIONS

A. Do alternatives ensure compliance?

The high rate of recognition in New Zealand and the lack of transit options for rejected claimants suggest that the risk of absconding is small. In addition, New Zealand is a final destination State which, above all, tends to produce compliance with asylum procedures.

B. Export value?

The fact that ‘unrestricted’ release – that is, without conditions – is explicitly stated in the Operational Instruction as an alternative measure against which all restrictions must be measured, is one of the most exemplary features of the New Zealand policy.

Despite the high level of safeguards with regard to detention and other restrictions on freedom of movement in New Zealand, and the far more restrictive detention policy of its neighbour Australia, there has been no significant rise in the number of unauthorized arrivals, by either boat or air, seeking asylum in New Zealand.

²² Operational Instruction, Appendix A, Section 2.3

²³ Operational Instruction, Appendix A, Section 2.5

NORWAY¹

I. DETENTION AND DOMESTIC LAW

Section 37(6) of the Aliens Act provides for detention of asylum seekers for the purpose of establishing identity, but it is rarely used. There is a small detention centre at the Gardermoen Airport for pre-removal detention.² In October 2003, it was announced that the old military barracks at Ullensaker will become Norway's first so-called 'asylum jail'. It will hold up to 200 asylum seekers, who have either committed crimes, absconded, or whose claims have been rejected and who are awaiting deportation.³

Any decision to detain is subjected to an independent and automatic review and a twelve-week time limit is imposed on detention of asylum seekers for purposes of establishing identity, barring exceptional circumstances. Failed asylum seekers are usually only detained for a couple of days prior to deportation, but this may change with the opening of the new facility. There is limited access to legal aid, although the court appoints a lawyer for periodic review hearings. There is no guarantee though that he or she will have asylum expertise.

II. ALTERNATIVES TO DETENTION

A. Deposit of travel documents

All asylum seekers must deposit their travel documents and papers with the authorities when they apply for asylum. Not only does this ensure easy removal should an asylum claim fail, but it also deters economic migrants from using the length of proceedings to stay and to work in Norway and subsequently to return home.

B. Reporting requirements and other orders to restrict movement

Detention is not permitted if the court is able to find an alternative. Failure to supply one's identity or suspicion of false identity are considered grounds for some restriction on one's freedom of movement and, if that is deemed insufficient, detention. The Norwegian Organization for Asylum Seekers (NOAS), however, reports that alternative measures are very rarely used. In the past four years, NOAS has not had a single case with a reporting requirement or supervision order imposed.⁴

C. Dispersal and open centres

Asylum seekers are accommodated in special transit reception centres while they are initially interviewed and registered. After spending approximately one month at a transit reception centre, the asylum seekers are relocated to the regular reception centres to await the outcome of their asylum applications.

Asylum seekers may settle anywhere if they have their own means. Most receive a temporary work permit within a few months and so are able to do so. Only those without resources are dispersed to the open centres, so this system is not conceived in any way as an alternative means of controlling asylum seekers' whereabouts. The main purpose of the system is to prevent a concentration of newcomers in the city.

¹ The information presented herein is valid up to 31 March 2004.

² In 2000, only 77 of 2,186 aliens were detained pre-removal, of whom 49 were failed asylum seekers. In 2001, 56 of 5,161 aliens deported were detained, of whom 15 were failed asylum seekers. Statistics from the Norwegian Dept of Immigration, quoted in *Review of States Procedures and Practices Relating to Detention of Asylum Seekers, Final Report*, September 2002, Lawyers Committee for Human Rights, p.8.

³ 'Norway establishes an asylum seeker jail', *Nettavisen*, 30 October 2003.

⁴ Interview with Norwegian Organization for Asylum Seekers (NOAS), October 2003-March 2004

However, there are two transit reception centres in Oslo – one of which is for ‘manifestly unfounded’ claims, intended to keep them easily available for deportation from Oslo (predominantly for eastern Europeans). A recent drop in arrivals is partly due to the deterrent effect of this return-oriented centre with accelerated procedures completed within 1-2 weeks. It is located in a former civil defence camp, surrounded by fences and with a gatekeeper. There are no formal restrictions on residents’ movements but the gate is watched and visitors to the centre are restricted. The guards reportedly check the rooms often and create an ‘enforcement environment’ even if it is not a detention centre. There are proposals to accelerate the procedure in this centre to only a total of 48 hours, but even the conservative media is questioning whether procedures with so few protections of due process can take place in an open centre without people fleeing from its premises.

D. Alternatives for separated children

Separated children are housed in special parts of the open reception centres and their claims are prioritised. They are appointed legal guardians by the Public Trustees Office, whose role is to protect their best interests, liaise with the authorities, attend asylum interviews and help the child adapt to their new environment. There have been rare cases where minors are detained to ensure removal.⁵

III. CONCLUSIONS

A. Do alternatives ensure compliance?

Official Norwegian statistics show that, during 2003, only some 6% of asylum seekers (1,016 out of 16,505) had their claims dismissed or withdrawn. This category would include persons who absconded during the asylum procedure. During 2002, it is estimated that some 9-10% of asylum seekers in Norway failed to complete the procedure.⁶ Current arrangements other than detention would therefore appear sufficient to ensure appearance in the overwhelming majority of cases admitted to the full determination procedure.

However, approximately 3,600 failed asylum seekers disappeared after receiving a final negative decision in 2002.⁷ Prior to October 2003, there was only limited work done to locate and detain those who absconded at this stage, since the official expectation is that they depart the country of their own accord in compliance with deportation orders. Recently, however, there has been a large investment in immigration enforcement police (223 new officers) forming a special unit (PSU) who, among other tasks, are supposed to locate absconders. As a result, it is expected that detentions and deportations of persons who failed to comply with deportation orders will increase in 2004.

B. Cost effectiveness?

The cost of running Norway’s reception centres amounts to some 1 billion NOK per year (some US \$125 million).⁸ Comparative information on the cost of the new ‘asylum jail’ at Ullensaker is not yet available, but is likely to be outweighed by the perceived benefits of deterring failed asylum seekers from disappearing and of enforcing their return.

⁵ *Review of States Procedures and Practices Relating to Detention of Asylum Seekers, Final Report*, September 2002, Lawyers Committee for Human Rights, p.86.

⁶ During 2002, the Norwegian government took a total of 17,853 decisions in the first instance. Of the decisions taken in the first instance, 332 (2.7%) were recognised as 1951 Convention refugees, while 2,958 (24%) persons were allowed to stay on other grounds. 5,497 cases were otherwise closed, of which 3,793 were deemed to be cases falling under the Dublin Agreement. If the remaining 1,734 cases were closed due to the claimants absconding, then only 9-10% of asylum seekers in Norway failed to complete the procedure in 2002. Statistics provided by UNHCR RO Stockholm.

⁷ At the end of 2002, 13,864 persons were accommodated in reception centres. The authorities estimate that over 3,600 persons have disappeared from the reception centres, while 2,400 are awaiting deportation.

⁸ These centres primarily house asylum seekers. Sometimes a few refugees, resettled from overseas, stay in the centres before being housed in host municipalities.

THE PHILIPPINES¹

I. DETENTION AND RESTRICTIONS ON FREEDOM OF MOVEMENT AND DOMESTIC LAW

Refugees in the Philippines are not generally subjected to any restrictions with respect to their freedom of movement. Similarly, asylum seekers whose applications are pending with the Refugee Processing Unit are granted the right to remain in the Philippines until determinations of their individual claims are made. Penalties that may otherwise apply are generally waived.² The asylum seeker is registered with the Department of Justice which issues a letter of attestation, requiring periodic renewal.

The policies and practices of the Bureau of Immigration became increasingly restrictive in 2002 and 2003, however, as a result of the international campaign against terrorism that is supported by the Government of the Philippines. Drives to reduce the number of illegal aliens in the country were intensified in 2002 while attempted or actual arrests and detention of a relatively small number of refugees were reported, both for common crimes (two cases) and charges relating to terrorism (three cases). In 2003, as a result of external pressure in the run-up to the war in Iraq, seven Iraqi refugees were included among those arrested on charges of terrorism. Three were eventually released while four remained in detention. These detainees' access to their families, legal counsel, and to judicial and administrative remedies, was ensured.³

Prolonged and continuing detention of a few asylum seekers was also reported during 2002 and 2003, with release granted only after recognition. Persons originating from South Asian and Middle Eastern countries are more likely to be detained than other asylum seekers.⁴

II. ALTERNATIVES TO DETENTION

A. Reception system based on accommodation in the community

The Philippines' system is an example of one that does not regard detention as the norm, but has managed to function well for many years on the basis of open reception arrangements. Such reception arrangements in Manila are mainly provided or organized by UNHCR's implementing partner, Community and Family Services International (CFSI), which in turn networks with a number of NGOs, charitable institutions, and government departments to provide complementary services. Legal aid clinics of two prominent law schools are available to provide legal aid to asylum seekers. There is an existing social support network among the urban refugee community that also provides assistance to asylum seekers.

B. Alternatives for separated children and other vulnerable persons

The official appointment of guardians or other representation for asylum seekers with special needs can be undertaken under regular Philippines procedures for guardianship, which require a judicial hearing. However, *de facto* guardianship and assistance may be provided through the social welfare department and by a limited number of humanitarian organizations.

¹ The information presented herein is valid up to 31 March 2004.

² E.g. fines and/or detention for an asylum seeker having entered the Philippines illegally or who are illegally present prior to application for registration.

³ Information received from UNHCR Manila.

⁴ Information received from UNHCR Manila.

III. CONCLUSIONS

A. Do alternatives ensure compliance?

During 2003, 61 asylum applications were pending or received by the Philippine government. By the end of that year, nine claims were recognized, ten were rejected, four were closed due to the claimants having absconded, while the rest were still pending.⁵ Looking at statistics for cases closed in recent years, these statistics appear broadly typical.

B. Export value?

The Philippines has one of the most vibrant civil societies in the region, and this is reflected by the way in which multiple agencies and interests have been involved in providing reception arrangements for asylum seekers, including legal advice. These open arrangements, without restrictions on freedom of movement, have so far proven successful and have shown there is no need for routine detention in a context where the intent among refugees to transit is minimal. The new tendency towards detention of refugees and asylum seekers resulted primarily from external pressure in the international campaign against terrorism and did not necessarily apply to all nationalities and case profiles. According to UNHCR, adequate legal and judicial remedies against arbitrary arrest and detention have been made available to the affected persons.

⁵ Information received from UNHCR Manila.

POLAND¹

I. DETENTION AND DOMESTIC LAW

A. Detention at the border – pre-screening detention

The Aliens Protection Law 2003² introduced pre-screening detention of asylum seekers in Poland. An asylum seeker may be detained if he or she submits an application at the border and does not have other authorisation to enter the territory, or if, prior to submitting an application for refugee status, he or she has crossed or attempted to cross a border illegally. In such cases, the applicant shall be placed in a guarded centre or under ‘deportation arrest’ (the latter is applicable where the Border Guard establishes that it is necessary, on grounds related to the defence or security of the State or public order).

The submission of an asylum application does not prevent the aliens’ authorities from conducting deportation proceedings or issuing a decision on the deportation of an asylum seeker. However, the enforcement of such decisions is suspended until the asylum authorities have rendered a final negative decision.

B. Detention of in-country applicants

In addition to the grounds for detention applicable to asylum seekers who present their claims at the border, in-country applicants may be detained if they submit their applications while illegally present in Poland, or if, prior to filing an application, they have been served either an order to leave Poland or a deportation decision.

The rights and obligations of aliens held in a guarded centre or under deportation arrest are determined by articles 110–123 of the new Aliens Protection Law 2003.³

Whether an asylum seeker is detained in a guarded centre or under deportation arrest, he or she is not allowed to leave the facility, although applicants placed in guarded centres are subject to fewer restrictions on their freedom of movement than other forms of detention.

The placement of an applicant in a guarded centre or under deportation arrest must be decided by a court and may be ordered for a period of 30 days at a time. If an asylum application is submitted by an alien who is already in a guarded centre or under deportation arrest on the basis of a court ruling, the court shall extend the period of his or her detention by 90 days, counted from the time the application for refugee status is submitted.

If a denial of refugee status is delivered to the applicant prior to the expiry of his or her period at a guarded centre or under deportation arrest, his or her detention may be extended by the specified period of time necessary to issue a final determination on the claim and to enforce deportation. Detention at a guarded centre or under deportation arrest may not exceed a maximum of one year. A ruling on the extension of detention shall be issued, upon request by the President of the Office for Repatriation and Aliens, the Border Guard or the police, by the district court where the authority submits the request.

¹ The information presented herein is valid up to 31 March 2004.

² As of 1 September 2003, the refugee status determination procedure is regulated by the Act on Granting Protection to Aliens on the Territory of the Republic of Poland of 13 July 2003 (‘Aliens Protection Law’). This law, together with a new Aliens Law, have replaced/repealed the Aliens Act 1997.

³ These provisions partially replaced the regulations contained in the Ordinance of the Minister of Internal Affairs and Administration 1999 and the previous by-law governing sojourn in detention centres.

C. Ground for release from detention

An applicant is released from a guarded centre or from deportation arrest when, *inter alia*, he or she is granted refugee status, asylum or a permit for tolerated residence, or if the court rules that his or her continued detention could result in a danger to health or life.⁴ The President of the Office for Repatriation and Aliens may also decide the release of an applicant, *ex officio*, or upon request by the latter, if based on the evidence collected, it is likely that he or she meets the criteria of the 1951 Convention and 1967 Protocol. The President shall not order the release of the applicant if his or her stay within Polish territory constitutes a threat to the defence or security of the State, or a danger to public order, or if exclusion grounds provided for in article 1F of the 1951 Convention apply. The decision whereby the President of the Office for Repatriation and Aliens refuses to release the applicant may be appealed to a district court within three days of its delivery. The head of a guarded centre or an officer responsible for the operation of detention for purposes of deportation shall submit the appeal within two days to the court, which shall examine it immediately.

D. Access to legal advice

Applicants placed in a guarded centre or under deportation arrest may, in order to obtain legal assistance, personally contact a representative of the UNHCR or organisations statutorily dealing with refugee affairs. Exceptionally, this right may be denied if it is necessary to ensure public security and order, or to comply with internal by-laws of residence in a guarded centre or under deportation arrest. Since the introduction of pre-screening detention, NGOs have monitored detention centres with particular emphasis on access to legal advice, and have noted:⁵

- A lack or insufficiency of information on the rights of asylum seekers and available legal procedures that (according to the aforementioned acts) should be provided in the alien's language in an effective manner (that is, in writing);
- A lack or insufficiency of information about the possibility of contacting refugee-assisting NGOs in order to receive legal assistance or social benefits. In most cases the information displayed on the information board available to the detainees would only include a list of refugee and migrant-assisting NGOs (in Polish), with no information whatsoever on the scope of their activities, the free-of-charge nature of their services, etc.;
- Insufficient information about the possibility of contacting UNHCR (in most cases only the UNHCR Warsaw Office's address and phone number was available with no explanation of the Office's scope of activities and mandate).
- In some cases the detained aliens/asylum seekers also experienced difficulties in using or receiving faxes from their lawyers, and in some extreme cases had a very limited possibility of using the telephone (no incoming phone calls are accepted by the arrest authorities under deportation arrest at Wlocklawek)

E. Exceptions for unaccompanied minors and victims of violence

Unaccompanied minors and applicants who are presumed to be victims of violence, or who are disabled, may not be placed in a guarded centre or under deportation arrest. According to the new Aliens Protection Law, unaccompanied/separated children are also exempt from pre-screening or other detention.

II. ALTERNATIVES TO DETENTION

A. Designated place of residence

⁴ A pregnant woman may be held under deportation arrest until the end of the seventh month of pregnancy.

⁵ Preliminary information on such monitoring has been provided by NGOs to UNHCR Warsaw, and shared with this study.

An applicant released from a guarded centre or deportation arrest may be ordered by the President of the Office for Repatriation and Aliens to remain in a particular place of residence or at a particular location. He or she is not allowed to leave this location without the President's consent. This also applies if the applicant was not placed in detention for reasons that would pose a danger to his or her health or life.

B. Deposit of travel document

An asylum seeker must deposit any travel document he or she holds, as well as those of any family members also applying for asylum, with the President of the Office for Repatriation and Aliens, via the Commandant of the Border Guard accepting his or her application. The President of the Office for Repatriation and Aliens keeps these travel documents until the final determination on the asylum application, following which they are returned to the applicant.

C. Penalties for non-notification of address

If an asylum seeker fails to provide an address, and if it is impossible to establish one, the application will be left unacknowledged. If an official summons from the Refugee Office is not delivered successfully, this may lead to the discontinuation of the refugee status determination procedure. Polish lawyers and NGOs strongly criticise this practice, as asylum seekers may be unable to maintain a fixed abode or correspondence address for reasons beyond their own control. To avoid the risk of having their claims discontinued, asylum seekers therefore frequently use the office addresses of NGOs. If the person whose case was closed re-presents himself or herself, the Office for Repatriation and Aliens is obliged to reopen the discontinued proceedings in accordance with the Procedural Administrative Code of Poland.

D. Open centres

Asylum seekers usually receive accommodation in open reception centres. During 2003, asylum seekers were housed in reception centres in Debak, Smoszewo, Wolomin, Czerwony Bor, Lomza, Bialystok (2), Lukow, Lublin, Zakroczym and in temporary homeless shelters in Warsaw. The reception centre in Suprasl was closed at the end of May 2003.

Most applicants for refugee status are provided with governmental assistance (accommodation, medical care, clothing, food, and minimal living expenses) in these centres. They are not permitted to work.⁶ Applicants who are excluded from governmental assistance must rely upon their own resources, or assistance from a nongovernmental organisation, as supported by UNHCR.

Applicants, for whom stay at a reception centre is inadvisable due to their state of health, as confirmed by a medical report, or due to a special need to ensure their safety, are granted financial support to live independently.

Applicants placed in a reception centre must respect its regulations. They are obliged to inform the management if they leave for more than 48 hours. Breaking this rule may result in expulsion from the centre. Permission for absence may be granted for no more than 72 hours in total. In case of gross violations of a centre's by-laws by an asylum applicant, the President of the Office for Repatriation and Aliens may decide to withhold assistance, in whole or in part. Upon request of the applicant, the President may restore full assistance once. If assistance is withheld a second time, the President may restore financial support again, but only amounting to one third of the assistance

⁶ The procedure to obtain a work visa is in practice closed to them, as such visas must be issued abroad by a Polish Consul residing in the country of origin of an applicant.

granted to those persons whose stay at a reception centre is inadvisable for reasons of health or safety.⁷

In 2002, a record number of asylum seekers (1900), mostly Chechens, were accommodated in Poland's reception centres. The Office for Repatriation and Aliens, in response to this influx and the perception of possible security threats associated with Chechens, introduced close monitoring of the refugee population by internal security staff, though fortunately this did not deteriorate into a situation of *de facto* detention.⁸

E. Alternatives for separated children and other vulnerable groups

In June 2002 an ordinance on the treatment and protection of unaccompanied/separated children during the status determination procedure was finally promulgated. This ordinance, together with an ordinance on the treatment of victims of torture and traumatised refugees issued at the same time, creates a legal basis for improvement in the treatment of these vulnerable groups of asylum seekers and refugees.

In September 2003, the new Aliens Protection Law further improved the situation of unaccompanied/separated children seeking asylum in Poland. Such children are not only granted a legal guardian appointed by the family court for refugee status determination procedure matters, but also a custodian to care for the child and his or her property, which includes, in particular, supervision of accommodation, arranging activities during free time, and providing assistance in contacting national and international organisations assisting minors and refugees in the tracing of family members. The custodian should have the qualifications of a social worker, as defined by the Law on Social Assistance 1990. The custodian is appointed by the President of the Office for Repatriation and Aliens, from among officials of the Office, and is empowered until the determination procedure is completed.

According to the new Aliens Protection Law, unaccompanied children over thirteen years of age are accommodated in a special section of a refugee reception centre, while younger children are cared for in an 'emergency ward' at the State Emergency Care Centre in Warsaw. In 2003, 146 children lived in a refugee reception centre, compared to 161 in 2002. The Aliens Protection Law 2003 and the ordinance of the Ministry of Interior regulate the conditions of accommodation of unaccompanied children in the centre as well as standards of custody in such centres.

The Central Reception Centre in Debak, outside Warsaw, is responsible for accommodation of separated child asylum seekers over thirteen years of age. In 2003, the Office for Repatriation and Aliens reported 146 children housed in Polish reception centers. Of great concern is that most of these children are reported to have 'disappeared' from the reception centre during 2003, indicating that these arrangements fail to ensure the appearance of child asylum seekers until the end of the procedure, guarantee their protection from traffickers or smugglers, or ensure their availability for deportation if deemed necessary and permissible.⁹

⁷ The previous Ordinance on reception conditions for asylum seekers led to situations where asylum seekers could be evicted from the reception centres as a disciplinary measure. As a result, some asylum seekers were unable to effectively pursue their applications and UNHCR expressed the view that such a penalty was excessively severe. In this regard, the reception requirements have improved with the introduction of the Aliens Protection Law.

⁸ The introduction of pre-screening detention of asylum seekers arriving illegally in Poland in 2003, however, was in part a response to these arrivals in 2002.

⁹ Both Polish asylum and aliens legislation contain special provisions regarding the deportation of unaccompanied minors. According to article 94 of the Aliens Protection Law 2003, a decision ordering the deportation of an unaccompanied minor to his or her country of origin or another country may be enforced only if care will be provided to

In addition, the Aliens Protection Law contains special provisions for proceedings concerning applicants whose psychosocial condition permits the presumption that they are victims of violence or are disabled. Such applicants must not be subject to pre-screening detention, placed in a guarded centre or under deportation arrest. The Aliens Protection Law further provides that certain kinds of assistance in the centre where such an applicant resides may only be carried out by a person of the same sex as the applicant and one who has completed special training for work with victims of crimes or violence or with disabled persons. There are no specific figures available to determine whether such vulnerable persons comply with the asylum procedure or abscond at a significantly different rate from other asylum seekers.

III. CONCLUSIONS

A. Do alternatives ensure compliance?

During 2002, the Polish Border Guards alone received 4,520 applications, of which 2,409 were from Chechens. Many of the other applications followed readmission under the bilateral agreement with Germany, and were therefore clearly submitted in Poland unwillingly. During the same period, 1,452 Chechens reportedly left the open reception centres and 383 individuals from this group were arrested at the Polish-German border and readmitted to Poland. In 2003, the majority of asylum seekers applied for discontinuation of their determination procedure in Poland and subsequently sought refugee status in the Czech Republic. Many persons, registered previously as asylum seekers in Poland and then the Czech Republic, later arrived illegally in Austria to file asylum claims.¹⁰ This suggests that the alternative measure of open accommodation has been unsuccessful in preventing secondary movement of a significant portion of asylum seekers during 2002-3. The high rate at which separated children continued to disappear from the Central Reception Centre in 2003 also suggests that the system is failing to protect them from traffickers, or failing them in some other respect.

B. Cost effectiveness?

The unprecedented rise in the number of asylum seekers during 2002, and the tendency of most (if not all) Chechen asylum seekers to remain in Poland for the full duration of the determination procedure, put some strain on the resources of the Ministry of the Interior. A wider range of alternatives – including homeless shelters and emergency care centres – were therefore used temporarily. No figures are available regarding the relative per capita costs of these *ad hoc* arrangements, or the costs of accommodation in the refugee reception centre, in comparison to the costs of detention in Poland, whether in a guarded centre or under deportation arrest.

C. Export value?

The only alternative measure that seems to operate without complication or drawback in Poland is the deposit of travel documents for the duration of the procedure. This is a simple measure to prevent transit migration at the minimum of expense and administrative effort and, in relation to those asylum seekers who travel with valid documentation, asylum lawyers in Poland report it to be generally effective.

him or her following return by one of his or her parents or other adults, or by the relevant juvenile welfare institutions, in keeping with the standards provided for in the Convention on the Rights of the Child 1989.

¹⁰ Reported by UNHCR Warsaw.

ROMANIA¹

I. DETENTION AND DOMESTIC LAW

Article 22 of the Refugee Law² provides for detention of aliens who apply for asylum at 'transit zones' at border points for up to a maximum of 20 days. Article 22 applies equally to asylum seekers whose applications may have been rejected by the National Refugee Office ('NRO') (first instance - administrative stage) but who have a judicial appeal pending. Asylum seekers at the border who are granted some form of protection, or who are granted access to the territory by the NRO, are released prior to the expiration of the maximum period of 20 days.

In addition, Article 93 of the Aliens Law³ stipulates the procedure for taking an alien into custody. Illegal aliens are placed into custody in Otopeni Detention Centre, which is located approximately two kilometres from Bucharest's main Otopeni Airport, or Arad Detention Centre, in the western part of the country. UNHCR is given access to detainees in these centres, and access to lawyers has improved. The Aliens Law provides for certain legal safeguards, such as a requirement that the grounds for detention be specified and that the detainee be notified of them in writing, although practice remains inconsistent. Reports in several cases show that aliens have not been informed in a timely manner of the grounds for their detention.⁴

A maximum period of six months for detention is set by the Aliens Law, subject to specific exceptions. For example, where an alien is convicted of a crime and against whom a court has ordered expulsion, or where an alien is declared 'undesirable persons' for reasons of national security and public order.⁵

A decision to take an alien into custody for an initial period of 30 days is made by the Prosecutor at the proposal of the Aliens Authority. An appeal may be lodged by the alien against the Prosecutor's decision to be reviewed by the Court of Appeal. No further challenge is possible against this decision. No free legal aid is available.

Upon expiry of the 30 days period, if the alien had not been removed from Romanian territory, the Aliens Authority may request the Court of Appeal to extend the detention for up to five months. In cases where the Court of Appeal decides to prolong custody, the alien has the right to submit another appeal against this decision.

During 2003, there were reportedly several cases of asylum seekers who entered Romania illegally, were convicted of illegal border crossing, and subsequently transferred to the Otopeni Detention Centre.⁶ Failed asylum seekers pursuing second asylum procedures may also be detained, pending deportation, until or unless their second asylum applications are deemed admissible. If this is the case, the asylum seeker is issued with documents by the NRO and released.

¹ The information presented herein is valid up to 31 March 2004.

² Ordinance No. 102 /2000 on the Status and Regime of Refugees in Romania, 31 August 2000 (entry into force 2 November 2000), as amended by Government Ordinance No. 43/2004, January 2004.

³ Government Ordinance 194, adopted in Dec. 2002, amended in July 2003.

⁴ E.g., being informed one week after being taken into custody.

⁵ See articles 84 and 85 of the Aliens Law under which asylum seekers and refugees declared 'undesirable persons' for reasons pertaining to national security and public order may also be detained. The decision to take them into custody is taken by the Prosecutor's Office. While a review procedure is possible before the Court of Appeal, it does not seem to be an effective remedy, since the specific reasons for declaring an individual 'undesirable' in this way do not have to be disclosed by the authorities.

⁶ Information received from UNHCR Romania.

According to article 99 of the Aliens Law, corroborated by article 16(1) of the Refugee Law, a finally rejected asylum seeker who, for objective reasons,⁷ cannot leave Romania, will be granted tolerated status. Nonetheless, practice remains inconsistent and, in some cases, tolerated status was granted to such finally rejected asylum seekers only after they had been detained in custody.⁸

In practice, aliens who apply for asylum while they are in custody are normally released, in accordance with article 93(6) of the Aliens Law, if it is their first application and if they have not previously been convicted of any offence, including irregular border crossing.⁹

II. ALTERNATIVES TO DETENTION

A. Deposit of documents and registered residence

Article 13(1)(j) of the Refugee Law requires asylum seekers to hand over their border crossing permits in exchange for which they should be issued with an identity document, on which a residence visa will be stamped. These visas are not issued for standard lengths of time, but are granted until an interview is held at the NRO and are then renewed for every subsequent step in the asylum procedure. This identity document enables asylum seekers to move freely, either within Bucharest or within their registered province of residence. However, should they wish to move beyond Bucharest or their registered province, they need to request approval from the NRO. Problems arise in cases where an appeal is lodged too late as no visa will be issued in such circumstances and asylum-seekers will find themselves staying in the country illegally and no longer able to remain in the accommodation centre for asylum seekers.

B. Designated residence

According to article 23(b) of the Refugee Law, a refugee has the right “to choose his place of residence and circulate freely, under the conditions provided by the Aliens Law.” Article 9(5) of the Refugee Law provides that the NRO may ‘designate’ a place of residence for the full duration of the asylum determination procedure, including ‘accompanied transportation’ to that place, on grounds of public order, national security, protection of public health and morality, and for the protection of the rights and freedoms of others. It appears though that these provisions of ‘designated’ residence have not been implemented in any cases to date.

Asylum seekers who have served a prison term for a criminal offence and who file an asylum application while within detention may be assigned the Otopeni Detention Centre as their place of residence on the basis of the provisions in the Aliens Law described in the previous section.

C. Restrictions on residence location

In Romania, an asylum seeker may be accommodated in a reception centre if he or she cannot afford to rent a flat. If he or she chooses to rent a flat, he or she must produce the lease as proof. According to article 13(1) of the Refugee Law, asylum seekers are under obligations not to leave their locality of residence or change their address without the authorisation of the NRO, or they may

⁷ In practice, objective reasons have included no diplomatic mission in Romania, lack of a passport, or medical reasons.

⁸ Information received from UNHCR Romania.

⁹ Interview with Romanian asylum lawyers, October 2003-March 2004.

be refused re-accommodation. They may choose another place of private residence afterwards under the condition that they present a lease.

D. Alternatives for separated children

Separated asylum seeking children under the age of fourteen are appointed a guardian *ad litem* and may be accommodated in a special reception centre. There are two accommodation centres in Bucharest and one in Timisoara.

III. CONCLUSIONS

A. Do alternatives ensure compliance?

A significant percentage of asylum seekers in Romania abscond from the determination procedure. The primary reason is a desire to transit to western Europe. However, some asylum seekers apprehended exiting the country stated that their decision was based primarily on the very low recognition rates in Romania, though the latest data shows that this rate has improved.¹⁰

Since the provisions relating to 'designated residence' are not implemented, it is impossible to reach any conclusions regarding their possible effectiveness, nor are there figures relating to the rate of compliance of asylum seekers in the open centres.

B. Cost effectiveness?

For such measures as 'designated residence' to be implemented effectively, there would have to be high policing costs and a capacity to re-detain those who fail to comply with the alternative measures.

C. Export value?

As in Poland, it appears that the compulsory deposit of documents currently serves to reduce non-appearance rates.

¹⁰ The combined recognition rate at the administrative stage of the procedures (refugee status and humanitarian status combined) amounted to only 4.4% in 2002, as compared to 4.98% in 2001. The very high number of successful appeals raises the overall recognition rate in 2002 to some 9.6%. However, the recognition rate (both in the administrative and judicial stages) was 15.2 % in 2003. Source: Information and statistics received from UNHCR Romania.

SOUTH AFRICA¹

I. DETENTION AND DOMESTIC LAW

A. General grounds for detention

The majority of asylum seekers in South Africa enjoy freedom of movement.² Detention, however, is permissible if (a) an asylum seeker fails to appear,³ (b) fails to renew his or her temporary residence permit in time, (c) contravenes conditions of that permit, or (d) if the claim is deemed manifestly unfounded or fraudulent.⁴ The conditions of a temporary residence permit may include (a) restrictions on residence to a certain Magisterial District or province, (b) periodic reporting obligations to the office where the application was lodged, and/or (c) an obligation to keep the authorities duly advised of residential address. Section 22 of the Refugee Act 1998 also states that other conditions may be determined by the Standing Committee for Refugee Affairs (the regulatory and supervisory body in the asylum system) so long as they are 'not in conflict with the Constitution or international law and are endorsed by the Refugee Reception Officer on the permit.'

In South Africa there is a quota system based on countries of origin for the registration of asylum seekers. When coupled with staff shortages at the Reception Offices, this system sometimes causes new arrivals to have to wait before they may apply and receive their permits. Meanwhile they may be subject to arrest as undocumented migrants. Furthermore, the police sometimes disregard or even destroy valid permits, assuming them to be fraudulent or not recognising their validity. Asylum lawyers sometimes report that an asylum seeker may not be permitted to go home to collect his or her identity documents and permit, or to telephone others to bring them to the police station. Such detentions are partially an issue of inadequate police training and technology, and partially a matter of deficiencies in the rule of law.

Recognised refugees receive two-year renewable permits and enjoy full freedom of movement and settlement throughout South Africa. On 1 May 2001, the Department of Home Affairs started to issue identity cards to recognised refugees, as provided for in the Refugee Act 1998. These documents better protect them against arbitrary arrest by the police.

B. Means and conditions of release

If asylum seekers who fail to renew their permits in time or fail to adhere to the conditions attached are arrested and detained, UNHCR or its partners in the legal field can normally intervene to secure their release.⁵

A High Court judge must automatically review any immigration detention of over 30 days.⁶ Legal aid clinics have been established, with the support of UNHCR, which may challenge: (a) a wrongful application of the manifestly unfounded, abusive or fraudulent criteria, (b) the arrest and processing for deportation of asylum seekers before their claims have been finally adjudicated, (c) the

¹ The information presented herein is valid up to 31 March 2004.

² The Department of Home Affairs ('DHA') issues them temporary residence permits, which may be withdrawn or withheld if (a) the application is deemed manifestly unfounded or fraudulent, (b) conditions of the permit are contravened, (c) a rejected applicant re-enters the country, (d) the applicant leaves the country without permission during the procedure, or (e) there are grounds for exclusion or cessation. Immigration Act 2002, s. 23.

³ Refugee Regulations (Forms and Procedure) 2000, s.8(1).

⁴ Refugee Act (Act No.130) 1998, ss. 22-23 and Refugee Regulations, s.8(1).

⁵ Information received from UNHCR Pretoria.

⁶ Refugee Act (Act No.130 of 1998), §29(1).

erroneous issuance of appointment letters instead of temporary residence permits to those who approach DHA to lodge an asylum application, and (d) the erroneous issuance of temporary residence permits to recognised refugees awaiting renewal of their refugee status. Furthermore, Refugee Legal Counsellors working in the cities where Refugee Reception Offices have been established (e.g., Pretoria, Johannesburg, Cape Town, Durban and Port Elizabeth) are able to challenge instances of unlawful detention and provide legal assistance for the renewal of temporary residence permits. For example, a nongovernmental organisation called Lawyers for Human Rights ('LHR') filed a case in 2003 where the powers of immigration officers to detain foreigners under the Immigration Act 2002 were successfully challenged in the High Court in Pretoria.⁷

II. EXTENT OF DETENTION AND LIKELIHOOD OF RELEASE

In 2002, 59 cases of arrested asylum seekers were reported to Lawyers for Human Rights in Pretoria and some 30 cases in Durban. In 2003, LHR managed to secure the release of some 584 refugees and migrants who had been wrongfully detained. Most immigration detention in South Africa concerns persons awaiting removal, including failed asylum seekers. In practice, for those undocumented migrants detained pre-removal, the only means of release is to apply for asylum, so long as they have not applied previously.

Problems of independent access to Lindela Deportation Centre, near Krugersdorp, have long existed. Those held in Lindela are supposed to be illegal migrants and failed asylum seekers, not asylum seekers awaiting decisions or refugees, but there are doubts that not everyone in detention who wishes to claim asylum is appropriately referred. The Department of Home Affairs has reported that in 2003 some 154, 000 people were deported through Lindela. Mozambicans formed the majority with some 82,000 deportees, Zimbabwe 55,000,⁸ Lesotho 7,000, Malawi 4700, Tanzania and Swaziland each with 1,000.⁹ There are some deportations of foreigners from refugee-producing countries of the Great Lakes region. Lindela itself has a capacity of over 4000 and people are detained there for an average of two weeks.

In November 1999, the Law Clinic of the University of the Witwatersrand and the South African Human Rights Commission ('SAHRC') obtained an important court decision¹⁰ that required the Lindela management to report the names of detainees to SAHRC every month in order to check their compliance with the '30-day rule',¹¹ which was rarely followed in practice.¹² SAHRC and LHR now have a joint monitoring project of Lindela. By court order, they are supposed to be given

⁷ *Lawyers for Human Rights and others v Minister of Home Affairs and others*, High Court, Pretoria, 2003.

⁸ As of September 2003, South Africa was deporting some 2,500 Zimbabweans each month, including, it is believed, critics of the governing party in Zimbabwe fleeing persecution. Many of those deported from Lindela intend to return from Zimbabwe to South Africa at the earliest opportunity, so their detention and deportation is often a futile, circular exercise.

⁹ Information received from UNHCR Pretoria.

¹⁰ *SAHRC and Forty Others v. Minister of Home Affairs and Dyambu (Pty) Ltd.*, Case no.28367/99, Witwatersrand High Court, November 1999.

¹¹ The Constitutional Bill of Rights, section 12, protects any person from arbitrary arrest and detention while section 35 deals specifically with limitations to arrest and detention. Under the Aliens Control Act 1991 which is now repealed, the court made a provision for review of all detainees within 30 days. Section 34(1)(d) of the Immigration Act 2002 has similar provisions, which allow review by the courts of detention made without a warrant. The SAHRC may have acted under the Aliens Control Act (which has been replaced by the Immigration Act 2002 that came into force in 2003) and in line with the Bill of Rights.

¹² In December 2000, SAHRC reported that only one detainee at Lindela had been informed of the judicial review of her case and she was not given the opportunity to make a submission to it.

the names of all detainees who are detained for over 25 days, but in fact the lawyers must go and physically collect the list, which is not always accurate.¹³

The Witwatersrand High Court has also found a failure to give effective notice of an application to extend detention to be unlawful.¹⁴

III. ALTERNATIVES TO DETENTION

A. Bail

As immigration detention is largely restricted to pre-removal detention, 'alternatives' such as bail¹⁵ are not really relevant in most cases. The 30-day rule (see above) is of more direct use to an undocumented migrant or failed asylum seeker who, because they can not be removed, may find themselves in prolonged detention at Lindela.¹⁶

It is notable that South Africa has followed the example of the Vera Institute for Justice in New York with regard to developing alternatives to pre-trial detention in the criminal justice field, at three pilot projects in Cape Flats, Johannesburg, and Durban. This precedent may make it particularly open to following the Vera model with regard to alternatives to immigration detention (see US section), were it deemed possible to release a percentage of those detained pre-removal into the community on bail.

B. *De facto* restriction of asylum seekers' freedom of movement - renewal of permits

The right to freedom of movement is guaranteed by article 21 of the South African constitution. In addition, section 36(1)(e) of the Constitution provides for consideration of alternatives before resorting to any limitation of a constitutional right. The Constitution is applicable to 'everyone', including refugees and asylum seekers. Based on this constitutional right to freedom of movement, there is very little restriction on the movement or settlement of asylum seekers and refugees in South Africa, although certain conditions may be attached to a permit.

Permits for asylum seekers (see above) require monthly renewal at the original office of application. This may result in *de facto* restrictions on an asylum seeker's freedom of movement. LHR has managed to gain some flexibility in the application of this rule so that asylum seekers only have to go back to the original office for asylum interviews or if they completely lose a permit.

The conditions which the Regulations allow to be attached to a permit – restricting an individual asylum seeker's movements to one District or requiring regular reporting to the authorities – are not

¹³ Interview with Lawyers for Human Rights, October 2003-March 2004.

¹⁴ *Fei Lui v Commanding Officer*, 1999(3) SALR 996(W), Witwatersrand High Court.

¹⁵ In the criminal justice system, there are some creative initiatives relating to the setting of bail for offenders on remand. The Community Peace Program, for example, began in 1997 as part of a broader community policing initiative in post-apartheid South Africa. It uses a 'collective, deliberative decision making process involving the people immediately affected by an incident.', per Declan Roche, 'Restorative Justice and the Regulatory State in South African Townships,' 42 *Brit. J. Criminal.* 514, 515 (2002). Local residents are made participants in the decision at a bail hearing, helping the courts decide on the danger posed by an accused person, and thereby assisting the magistrate in determining the propriety and amount of bail for a given offender. Adding this democratic element to bail procedure acts as a safeguard, assuring that bail is being administered fairly.

¹⁶ It is notable, however, that the South African immigration system relies heavily on bonds, such that all Zimbabwean visitors have to pay a cash guarantee of R1000 (previously only 300,000 Zimbabwean dollars, or about R430) which is intended to ensure their subsequent departure from the country. Source: *The Financial Gazette* (Zimbabwe), 16 October, 2003.

implemented in practice, in part because of a lack of infrastructure in the police or Department of Home Affairs, and in part because such restrictions on free movement are not deemed necessary under current circumstances.

C. Proposals for collective accommodation centres

Due to the constitutional right to free movement, there have never been designated refugee settlements or camps in South Africa. Civil society is strongly opposed to proposals to detain asylum seekers in camps, however, debate continues as to whether it is possible or desirable to establish collective reception centres for asylum seekers where the restriction of liberty does not amount, in law or in fact, to detention.¹⁷ Critics of the proposals fear that collective accommodation centres will become *de facto* detention centres due to their physical geography and remoteness, and the fact that they would be run by the same private company currently managing Lindela.¹⁸

Under current reception policy, asylum seekers have no access to local social services or social grants. A technical (and perhaps temporary) right for asylum seekers to work and study immediately upon lodging their applications was secured by a High Court ruling in 2002.¹⁹ Nevertheless, many needy asylum seekers, mostly living in the city, remain dependent on charitable organisations with very limited resources.

Legislative changes would be needed to introduce a policy of general encampment, since the current Refugee Act only allows the Minister to create camps in case of a mass influx.²⁰ Most African refugee camps have been established in this context. The proposed centres might be more like collective centres in Germany, though with many additional resource and geographical constraints, routinely housing individual asylum applicants and constraining their ability to move freely around the country.

The proposals to set up centres were mentioned publicly by the Deputy Minister for Home Affairs in a Parliamentary Committee of 2000²¹ and the South African government confirmed its continuing interest in the viability of this policy at the 2003 meeting of UNHCR's Executive Committee. They have not, however, issued a policy paper on the matter, so the precise nature of their plans is currently uncertain. Rumoured proposed locations have included Kimberly and Louis Trichardt in the Northern Province.²² They could accommodate up to 5,000 asylum seekers and would replace the current reception offices in Braamfontein, Marabastad, Cape Town and Durban.²³

¹⁷ UNHCR *Discussion Document on the Proposed Reception Centres for Asylum-Seekers in South Africa*, 1999.

¹⁸ Perhaps with good reason, nongovernmental critics of the encampment proposals tend to conflate reception centres with detention centres. See, F. Jenkins & L.A. de la Hunt, *Detaining Asylum Seekers: Perspectives on Reception Centres for Asylum Seekers in South Africa*, University of Cape Town Legal Aid Clinic, September 2000.

¹⁹ *Watchenuka and another v Minister of Home Affairs and others*, case no 1486/02, Capetown High Court, 2002, reported in 2003 (1) SA 619 (C). See, however, the Supreme Court of Appeal ruling of 2003, cited at footnote 29, below.

²⁰ Immigration Act 2002, s. 35.

²¹ F. Jenkins & L.A. de la Hunt, *Detaining Asylum Seekers: Perspectives on Reception Centres for Asylum Seekers in South Africa*, University of Cape Town Legal Aid Clinic, September 2000, p.10.

²² F. Jenkins & L.A. de la Hunt, *Detaining Asylum Seekers: Perspectives on Reception Centres for Asylum Seekers in South Africa*, University of Cape Town Legal Aid Clinic, September 2000, p.41. The former is 970km from Cape Town and 480km from Johannesburg, while the latter is 1800km from Cape Town and 430km from Johannesburg.

²³ F. Jenkins & L.A. de la Hunt, *Detaining Asylum Seekers: Perspectives on Reception Centres for Asylum Seekers in South Africa*, University of Cape Town Legal Aid Clinic, September 2000, p.36.

It seems, however, that nongovernmental agencies may be expected to cover all the social and welfare costs and services in the camps. Asylum seekers would not be allowed to work and children would not be given schooling, on the presumption that residents not stay in the centres for longer than the asylum procedure and that the procedure can always be completed within a relatively short period (less than 180 days). Nongovernmental agencies are obviously reluctant to be given this burden unless certain conditions are met. In particular, concern is raised regarding the provision of more complex services, such as access to asylum lawyers.²⁴

Lawyers for Human Rights recommends – as an alternative to these reception centres that may become *de facto* places of detention – that there might be, when necessary, greater ‘limitations on relocating’ placed upon asylum seekers, meaning that they would have to request permission for every change of address.²⁵ Such a proposal does not, of course, address the underlying but perhaps overriding policy objective of the proposed centres: deterrence of secondary movers and those making unfounded claims as a means of accessing the South African economy.

C. Reception of separated children

The law states that asylum-seeking minors may be detained only as a last resort. Indeed, separated children have not been detained but their alternative care arrangements have been far from ideal. Not only are such children often abused by smugglers, but some foster carers have also abused them. Places of accommodation may include Children’s Homes, safe houses and foster care placements, sometimes with other refugees or asylum seekers. Foster families often lack the means to care for the children, and UNHCR must often provide assistance. In past years, there have been unfortunate cases where parents or relatives chose to abandon their children to the care of UNHCR as a means of getting them accommodation, food and education.²⁶

IV. CONCLUSIONS

A. Do alternatives ensure compliance?

The South African government does not claim that absconding is a major issue among registered asylum seekers. There is no reason why an applicant with an unfounded claim, using the asylum channel as a means of entry to South Africa’s economy, would chose to exit the procedure prior to a final refusal of their claim. Those who use South Africa as a point of transit in an irregular movement would have no need to submit an asylum application unless they were detained and sought release.

If the introduction of collective reception centres in remote locations is intended to act as a deterrent, it is perhaps a strange place to start tackling the problem of an estimated 3-5 million undocumented migrants in the country.²⁷ The resulting restrictions on asylum seekers’ freedom of movement, even if not so severe as to amount to detention, may be disproportionate to the public interest served.

²⁴ F. Jenkins & L.A. de la Hunt, *Detaining Asylum Seekers: Perspectives on Reception Centres for Asylum Seekers in South Africa*, University of Cape Town Legal Aid Clinic, September 2000, p.37.

²⁵ F. Jenkins & L.A. de la Hunt, *Detaining Asylum Seekers: Perspectives on Reception Centres for Asylum Seekers in South Africa*, University of Cape Town Legal Aid Clinic, September 2000, pp.41–44.

²⁶ Information received from UNHCR Pretoria.

²⁷ There is estimated to be only one asylum seeker for every fifty undocumented migrants in South Africa. F. Jenkins & L.A. de la Hunt, *Detaining Asylum Seekers: Perspectives on Reception Centres for Asylum Seekers in South Africa*, University of Cape Town Legal Aid Clinic, September 2000, p.61.

Ensuring availability for removal is a more reasonable ground for limiting the free movement of failed asylum seekers. Asylum seekers rejected through the normal (non-accelerated) procedure, after having received a negative decision from the status determination officers, standing committee or Appeal Board, are given one month to leave the country on their own terms and are only detained and forcibly deported if they fail to comply with this order. Experience suggests that the majority of such rejected asylum seekers currently fail to comply.

B. Cost effectiveness?

The costs of running Lindela are reported to be twice those of a normal South African prison.²⁸ Large collective centres are also likely, despite their economies of scale, to prove cost inefficient in comparison to community-based reception (though less so if the already under-resourced charitable organisations were really expected to supply all material assistance to residents). The government might believe, however, that such high costs would be justified by their deterrent value, and ultimately repaid by lower deportation costs when the deterrent effect started to reduce the number of asylum applications from irregular movers.

The South African asylum administration suffers from a lack of both human and financial resources. Nongovernmental critics of the proposed collective centres question the costs of transferring existing refugee status determination and other trained personnel to these remote sites. They hint that many administrators would be reluctant to relocate, undermining the administrative efficiency rationale for such centres, at least in the short to medium term.

Arguments by local refugee advocates against the introduction of the open centres for asylum seekers also cite evidence that, in countries with high levels of poverty, such camps can create a perception that such asylum seekers receive privileged assistance not available to locals, even where asylum seekers have no choice but to depend on State support when they are not allowed to work legally.²⁹

C. Export value?

The current South African asylum system manages to function without the use of routine detention, either upon arrival or during the determination procedure. The law provides for detention only when an individual fails to adhere to the primary 'alternative' restriction – periodic renewal of the temporary residence permit – or fails to comply with an order to leave the country within a month. Current practice perhaps serves as a better model than any of the proposed alternatives.

²⁸ F. Jenkins & L.A. de la Hunt, *Detaining Asylum Seekers: Perspectives on Reception Centres for Asylum Seekers in South Africa*, University of Cape Town Legal Aid Clinic, September 2000, p.4.

²⁹ In November 2003, the Supreme Court of Appeal of South Africa ruled that the Department of Home Affairs has discretion to limit the right of asylum seekers to work and study. The Department is now seeking public hearings on the issue and is very likely to reintroduce limitations on these rights of asylum seekers in the future: *Watchenuka and another v Minister of Home Affairs and others*, Case No. 10/03, Supreme Court of Appeal of South Africa, 28 November 2003

SPAIN¹

I. DETENTION AND DOMESTIC LAW

The general rule is that aliens legally present on Spanish territory enjoy freedom of movement and may freely choose their place of residence, subject to limitations provided for by law as well as measures that the Minister of the Interior may adopt on grounds of public security. This applies equally to persons in the asylum procedure.

Spanish aliens legislation provides for the detention of aliens found unlawfully in the country for a maximum period of 72 hours without judicial authority. This can be extended to 40 days in an internment centre (*Centro de Internamiento para Extranjeros* - 'CIE'), once a judge has authorised the internment of the alien. While in a CIE, any alien may apply for asylum and he or she receives legal assistance to do so. Pending a decision on the admissibility of the claim to the asylum procedure, the applicant will remain in detention at the CIE. He or she may be released before completion of the 40 days should his or her application be accepted into the asylum procedure prior to its expiry.

Aliens who are intercepted attempting to enter illegally (*via patera*), and who then submit asylum claims which are handled under the in-country admissibility procedure, may be sent to CIEs such as the ones in Fuerteventura and Lanzarote in the Canary Islands. Although persons held in the internment centres are not free to leave, these facilities are not considered to be penitentiary centres. In practice, some of these centres are severely overcrowded, and serious concerns were expressed in the past as to the conditions of detention at these facilities.²

A rejected asylum seeker who no longer has a legal basis to stay in Spain is treated just as any other illegal alien and may be detained for the purposes of deportation. In the case of a rejected asylum seeker, the Ministry must demonstrate to the court that detention is necessary to effect the deportation. In many instances, internees in CIEs are released when the government fails in their attempt to return them to their countries of origin. This is the case, for example, with regard to many sub-Saharan Africans who come to Spain undocumented and where Spain does not have readmission agreements with their countries of suspected origin.

The Asylum Law³, meanwhile, allows for asylum seekers' movements to be restricted to transit centres at border points pending a decision on their admissibility. Adequate facilities are required to be established for that purpose at border posts.⁴ Applicants may be held there for a maximum of six days. In 2000, the Constitutional Court ruled that detention of an applicant, whose claim was found to be inadmissible, in an airport transit zone beyond the otherwise general 72 hour detention deadline was not unlawful, as the person concerned was free to return to his or her country of origin, or to a third country. The Court therefore considered this kind of detention not to be a deprivation of liberty, but an administrative measure with a view to preventing aliens from entering Spanish territory after being denied admission into the Spanish asylum procedure.⁵

¹ The information presented herein is valid up to 31 March 2004.

² These concerns have been documented by, among others, Human Rights Watch and Amnesty International, as well as the National Ombudsman's Office.

³ Law 5/1984 of 26 March 1984 on the Right to Asylum and Refugee status, as amended by Law 9/1994 (henceforth "Asylum Law").

⁴ Art. 5, Law 9/1994 amending Law 5/1984.

⁵ *Tribunal Constitucional*, STC. 179/2000, 26 June 2000 (*BOE núm. 180, de 28 de julio*); see also the decision of the Constitutional Court of 27 February 2002.

The vast majority of applications at the border are registered at Madrid International Airport, where adequate facilities for the accommodation of applicants exist, having recently been renovated. Similar facilities have been set up at the international airports of Barcelona and Las Palmas in the Canary Islands.

Stowaways, likewise, have access to the asylum procedure and are subject to border admissibility procedures. Once they are admitted to the asylum procedure, they are allowed to disembark and move freely.

Leaflets given to persons held at a border or in an internment centre include information about the asylum procedure and appeals against non-admission but they do not contain information about how to challenge expulsion orders or detention. A person in a CIE is considered to be under administrative detention, which cannot be challenged in any case. Persons housed in the CIEs have access to legal assistance and *pro bono* lawyers, provided by the Bar associations, are expected to advise them on their rights. The Aliens Act requires the authorities *ex officio* to notify those detained pre-removal or 'who have entered an internment centre of a non-penal character of their right to free legal aid. The Spanish non-governmental organisation CEAR reports that this is often not done in practice.⁶

II. ALTERNATIVES TO DETENTION

A. Exceptional restrictions on freedom of movement

The Minister of the Interior may temporarily adopt restrictions on free movement on the basis of national security or public health.⁷ The Minister has to provide reasons to justify the adoption of any such restrictions. These powers are exceptionally exercised.

The Asylum Law 9/1994 also expressly authorizes the Minister of the Interior to impose compulsory residence (a restriction on freedom of movement, not detention) for the duration of the asylum procedure for applicants who do not possess the documents required to reside in Spain. Again, this measure is rarely used in practice.⁸

B. Open centres or monthly housing allowances

The general reception arrangements for asylum seekers in Spain are examined in this annex solely in order to consider whether they provide an alternative means of meeting State objectives (such as controlling the whereabouts of asylum seekers) that might be met by broader resort to detention in another country. It is acknowledged that they do not operate as 'alternatives to detention'. There is no basis for a direct trade-off between the two under Spanish law: that is, asylum seekers in detention at ports can not be released to an open centre prior to a decision on their admissibility and asylum seekers admitted to the procedure, as explained above, are not liable to be detained except in exceptional situations (for example, if they are involved in criminal activities and detained under the criminal law).

⁶ HRW Report, *Discretion Without Bounds: The Arbitrary Application of Spanish Immigration Law*, July 2002, Vol.14, No.6, p.4.

⁷ Art. 18(2), Implementing Decree 203/95 and art. 5(1), Asylum Law 1984 (as amended).

⁸ Art. 4(3), Asylum Law and art. 14, Asylum Regulations, as approved by Royal Decree No. 203/1995

Asylum seekers admitted to the procedure may stay at an open centre (*Centro de Acogida para Refugiados* or 'CAR'). It is not compulsory, but it is the main form of assistance for those without resources. Once admitted to the asylum procedure, asylum seekers confined to a border post (such as the one at Madrid International Airport) are released and usually referred to an open reception centre.

Allocation to the centres in Madrid is based on individual needs and is managed by IMSERSO (*Instituto de Migraciones y Servicios Sociales*, part of the Ministry of Labour and Social Affairs), through social workers assigned to the Office for Asylum and Refuge ('OAR'). Outside Madrid, allocation is usually co-ordinated between OAR and the Spanish Red Cross. In the past there have been problems with some vulnerable cases, who were transferred to hostels or provided with cash allowances.

There are four reception centres run directly by IMSERSO and they have a total capacity of 396. Services include counselling by an in-house social worker and psychologists. Persons with severe mental disorders or contagious diseases are not admitted⁹ and are found other alternatives more suitable for their specific needs.

In other centres run by nongovernmental organisations (CEAR, the Red Cross and ACCEM), the total capacity is 443 places. The general rule is that single asylum seekers may stay for six months, with a possible extension of three months, while families may stay for up to one year. If an asylum seeker moves out of the centre or loses contact, they are not re-admitted. The overall capacity of open reception centres in Spain (government- or NGO- run) is 839.

The alternative to residence in a reception centre is a monthly housing allowance from the Red Cross, however, this is exceptional. This underlines, however, the fact that these reception centres are not intended as any form of supervision or enforcement measure.

There are no centres exclusively for asylum seeking separated children but there are many centres for child migrants in general which are run by NGOs. OAR has registered only three applications of separated minors during 2003.¹⁰ A centre, managed by a religious congregation in Madrid, was created in 1987 to accommodate and provide specialised assistance to both asylum seekers' and immigrants' children.

C. Renewal of identity cards

Another alternative to detention, in terms of alternative administrative means of controlling asylum seekers' whereabouts, is an asylum seeker's obligation to regularly renew his or her identity card. This serves as a *de facto* reporting requirement.

III. CONCLUSIONS

A. Do alternatives ensure compliance?

Almost all asylum seekers stay in the Spanish asylum procedure until its conclusion. The nongovernmental organisation ACCEM attributes this to the fact that those who wish to transit Spain illegally are seldom detained and so do not need to claim asylum as a means of either evading

⁹ According to an IMSERSO resolution of July 1998.

¹⁰ There are no reliable statistics regarding the number of asylum seeking separated minors in Spain.

detention or delaying deportation.¹¹ The national reception system means that asylum seekers can live in Spain for almost one year, receiving pocket money and being entitled to work after six months. As a consequence, there is little reason why they should wish to abscond before the completion of the procedure.

Failed asylum seekers in-country have fifteen days to leave Spain or to lodge an appeal, however, there is no monitoring of their compliance with these orders and the police currently have limited capacity or incentive to find those who may not comply.

¹¹ Interview with ACCEM, October 2003-March 2004.

SWEDEN¹

I. DETENTION AND DOMESTIC LAW

Asylum seekers may be detained upon arrival, especially if they fall into the accelerated 'safe country of asylum' or 'manifestly unfounded' categories. In such cases, they may be detained for the entire duration of their stay in Sweden. The decision to detain must be made or confirmed after six hours by the Immigration Board ('SIB'), the Aliens Appeal Board ('AAB') or the Ministry of Foreign Affairs.

Chapter 6 of the Aliens Act imposes specific time limits on detention. An alien may be detained initially for up to 48 hours in order to check his or her status. If there are grounds to believe that deportation will occur or if there are serious doubts about the person's identity or nationality, he or she may be detained for up to fourteen days. With regard to the fourteen-day/likelihood of deportation category, there must also be a risk that the person will abscond, or reasons to suspect that he or she will participate in criminal activity.

Detention orders related to 'refusal of entry'² or an expulsion order must be reviewed within two months. The County Administrative Courts must thereafter review all orders periodically. Appeal against all types of detention is possible to the local court and subsequently to the AAB. However, failed asylum seekers who cannot be returned sometimes face lengthy or indefinite detention. Legal aid is available to detainees, except those in an accelerated procedure.

Aliens under 16 years of age can be detained under the Special Control of Aliens Act if (a) there is an expulsion decision according to this law; (b) it is likely that such a decision will be rendered and there is reason to assume that the alien will remain in hiding or commit crimes; or (c) his or her identity is unclear and there are exceptional reasons for detention. Situations of imminent deportation are considered such exceptional reasons.

The possibility to place a separated asylum-seeking child in detention is very limited. The only situation when the Swedish authorities have the right to place a minor in detention is when, at a previous attempt to enforce expulsion, the measure of supervision has proven to be insufficient. The possibility of placing a separated child in detention in these exceptional cases is considered to constitute protection of the child from potential abduction by traffickers or others whose intentions are not in the child's best interests.

Both asylum seekers and recognised refugees, like other foreigners in Sweden, may be subject to detention in preparation for expulsion from the territory under the Special Control of Aliens Act, on the grounds of protecting national security and combating terrorism. Both the UN Committee against Torture³ and the Committee on the Elimination of all Forms of Racial Discrimination⁴ have criticised Sweden for, *inter alia*, failing to provide a right of appeal to such persons. No 'alternatives' have been proposed with regard to such cases, with advocates instead concentrating on the need for greater legal safeguards in order to avoid the risk of discrimination against certain nationalities and, if expulsion is implemented in the case of an asylum seeker or refugee, the risk of *refoulement*.

¹ The information presented herein is valid up to 31 March 2004.

² According to the Aliens Act, Chapter 6 section 2, an alien may be detained when his or her identity cannot be verified or when he or she will most likely be rejected or expelled according to provisions contained in Chapter 4.

³ Conclusions and Recommendations of the Committee against Torture: Sweden, Twenty-eighth session, UN document: CAT/C/XXVIII.CONCL.1 of 6 May 2002 at paras 6(b) and 7(b).

⁴ Concluding observations of the Committee on the Elimination of all Forms of Racial Discrimination: Sweden, UN document: CERD/C/64/CO/8 of 12 March 2004 at para 15.

Around 100 asylum seekers are detained in Sweden each month.⁵

II. ALTERNATIVES TO DETENTION

A. Supervised release, reporting obligations, etc.

Asylum seekers may be granted supervised release from detention on a case-by-case basis as part of a review of the necessity of their detention. This review takes into account whether supervision may be sufficient to achieve the stated purpose. Under supervised release, an asylum seeker may be required to report to the police once or twice a week, or to surrender his or her passport or other identity documents, or to meet other special conditions. The conditions for placing an alien in detention or keeping him or her under supervision are all part of a single structure of considerations under section 5 of Chapter 6 of the Aliens Act. The starting point in any determination is that the authorities should take the least restrictive measures necessary in an individual case.⁶ In practice, it has been reported that the measure of supervision (in lieu of detention) is not resorted to at the same rate by all regions of the Migration Board.⁷

B. Open centres or own housing arrangements

Asylum seekers are detained in 'investigation' centres for the first few weeks after their arrival. They are issued with an identity card (the 'SIV card'), which is valid for the entire duration of the procedure. During 'investigation detention' an asylum seeker's right to be released into the community is considered. If release is approved, the asylum seeker is dispersed to a reception centre, overseen by the SIB, although residence within such a centre is not compulsory. There are furnished self-catering flats ('group homes'⁸) for families or for groups of single asylum seekers. Financial assistance is conditional upon participation in training courses but not upon residence in a centre. Asylum seekers may make their own housing arrangements, particularly if they have close relatives or family already residing in Sweden, and many choose to do so. Comparative statistics on the compliance rates of these two groups of asylum seekers – those living in centres and those living independently – are not available.

The Swedish Immigration Board faces difficulties in finding municipalities willing to host new reception centres for asylum seekers. The situation is especially difficult in the south of Sweden. The trend of increasing numbers of asylum seekers, combined with a severe shortage of available accommodation has in some instances obliged the SIB to use other forms of shelter, such as tourist, hotel and conference facilities.⁹

C. Alternatives for families

Agencies in Sweden find that, in most cases, parents who are given a choice opt to split the family rather than have their child or children remain in detention. In cases where there is only a father and

⁵ During the year 2002, spontaneous arrivals of asylum seekers to Sweden totalled 33,016 persons, which represented an approx. 40% increase from the previous year (23,515 in 2001).

⁶ This follows the pattern of the Swedish criminal justice system, which is similarly open to non-custodial alternatives wherever possible. Swedish nationals who are offenders sentenced to prison for up to three months (for example, many drink driving offenders) may be placed under a home curfew, with electronic tagging. It ought to be noted that this is used only as a support device in an intensive programme of supervision. Completion rates of over 90% have been achieved. J. Shackman, *Criminal Treatment: The Imprisonment of Asylum Seekers*, The Prison Reform Trust, 2002.

⁷ Information received from UNHCR Stockholm.

⁸ Note that 'group homes' are commonly used in other areas of Swedish social policy, e.g., for the disabled, drug rehabilitation, juvenile justice and for children and mothers released from prison.

⁹ Information received from UNHCR Stockholm.

child, and for extreme reasons the father will not be released, the child will normally be released into a group home for unaccompanied children with regular access to the father.¹⁰

Families are usually released into family accommodation at the Carlslund Refugee Reception Centre, subject to daily reporting requirements to the Immigration Department.

D. Alternatives for promoting return?

The Swedish authorities have been developing a number of innovative approaches to handling the problems of failed asylum seekers who have received a final refusal. Through a series of counselling efforts that may involve the applicant's legal counsel and other relevant actors, the Swedish authorities are trying to help asylum seekers reach their own decision that it may be best to consent to leave Sweden. This approach, although resource intensive, is resulting in positive outcomes with a larger percentage of failed asylum seekers choosing to depart Sweden in such a manner. As a consequence, such persons are spending proportionately less time in detention.

III. CONCLUSIONS

A. Do alternatives ensure compliance?

Between January and September 2003, 23,507 asylum claims were received by Sweden, and 22,314 cases processed, with 2,810 'annulled'.¹¹ This latter figure represents the upper limit on the number of asylum seekers who could have absconded during the course of the procedure, however, other causes such as voluntary return may be included in this figure.

No comparative statistical analysis has been undertaken regarding the different rates of appearance of those under supervised release and those who are released without reporting requirements or other conditions.

In October 2003, a report by Migrationsverket was published regarding children disappearing in Sweden. It found that, in 2002, as many as 103 children disappeared. Most were between fifteen and eighteen years of age and 70% went missing before receiving a final decision on their claim.

B. Cost effectiveness?

Asylum seekers who must wait for several months for a decision are granted permission to work and, if they then receive wages, they have to pay for food and accommodation in their reception centre. This not only makes their time in Sweden more productive but contributes towards making a cheaper-than-detention solution even more cost-effective for the State.

C. Export value?

Sweden is very often held up as 'best practice' thanks to the clarity of its legislation with regard to detention and alternatives to detention. A next step would be to study the implementation of this legislation in greater detail, to produce evidence of the alternative measures' effectiveness and on how adjudicators consider alternatives systematically before ordering detention. Meanwhile, with regard to its alternatives for protecting separated children, Sweden is as much in need of 'imported' ideas as many other European countries.

¹⁰ G. Mitchell, *The Swedish Model of Detention*, Asylum Seeker Project, Refugee Council of Australia.

¹¹ Migrationsverket, Swedish Migration Board, Statistical Section.

SWITZERLAND¹

I. DETENTION AND DOMESTIC LAW

The legal basis for ‘coercive measures’, including detention, in the Swiss legislation on asylum and immigration, is primarily the Federal Law on the Sojourn and Settlement of Aliens (‘LSSA’).² The relevant articles 13a to 13e were adopted in their current form by the Swiss Parliament and approved by a referendum in 1994; they entered into force in February 1995. Revisions of certain clauses entered into force in April 2004, as explained below.

The LSSA provides for two forms of detention. Both intend to ensure the execution of a deportation procedure, as foreseen in article 5(1)(f) of the European Convention on Human Rights and Fundamental Freedoms 1950 (‘ECHR’). Both also require the legal and factual possibility of implementing a deportation. One form of detention can be ordered before a decision on deportation is taken and can therefore take place during the asylum procedure (‘preparatory detention’). The other form is applicable after a deportation or expulsion order has been notified, for example, after the rejection of an application for asylum (‘deportation detention’). Both forms of detention must meet certain specific criteria, some of which are common to both,³ others specific to each form of detention.

A. Preparatory detention (art. 13a LSSA)

The grounds for a preparatory detention order, listed exhaustively, are if an alien (i) refuses to disclose his or her identity during the asylum or deportation procedure, submits several asylum applications under different identities or repeatedly ignores a summons without good reason, (ii) leaves the area to which he or she has been designated under article 13e or enters an area prohibited to him or her,⁴ (iii) enters Switzerland despite being barred from entry and cannot immediately be deported, (iv) submits an asylum application after the expulsion order has become final⁵ or after an unconditional expulsion from the country, or (e) has made grave threats towards or endangered life and limb of other persons and is therefore being prosecuted or has been convicted.

The maximum length of the preparatory detention is three months. As for deportation detention (see below), preparatory detention may come to an earlier end whenever the reason for detention no longer applies.⁶ The legality and appropriateness of the detention are to be examined after no more than 96 hours by a judicial authority in oral proceedings.

B. Deportation detention (art. 13b LSSA)

If a deportation or expulsion order has been notified at the first instance, the responsible Canton⁷ can, to ensure the execution of that order, (i) continue to detain the foreigner, should he or she already be in detention pursuant to article 13a, (ii) detain the foreigner if there are grounds to do so under article 13a(b), (c) or (e), or (iii) detain the foreigner if there are concrete indications that he or she intends to avoid deportation, in particular because his or her previous behaviour leads to the

¹ The information presented herein is valid up to 31 March 2004.

² *Loi fédérale sur le séjour et l'établissement des étrangers.*

³ See art. 13b(1)(b), LSSA that refers to art. 13a(a), (b) and (e), LSSA.

⁴ An ‘alternative’ measure – see below for further details.

⁵ By virtue of art. 10(1)(a) or (b), LSSA.

⁶ Article 13c(5)(a), LSSA.

⁷ Switzerland is divided into 26 Cantons.

conclusion that he or she defies orders given by the authorities.⁸ Under the latter, according to revisions that entered into force on 1 April, 2004, detention is permitted where the Federal Office has dismissed an application without entering into the substance of the claim because they deemed it to be ‘manifestly unfounded’.⁹ Article 13f of LSSA, another new revision, stipulates the duty of aliens to cooperate, notably by providing (i) correct and complete information of relevant facts regarding their sojourn, (ii) all necessary evidence without delay, and (iii) identity documentation.

It should be noted, therefore, that detention of an asylum seeker admitted to the full asylum procedure, prior to an initial decision on his or her claim, simply on grounds that he or she may be considered likely to abscond, is nowhere permitted under Swiss law. Once a deportation or expulsion order has been issued, however, following a first rejection of a claim but while an appeal may be pending, the individual can be detained on the grounds of a likelihood of resisting his or her removal from the territory, based on evidence of earlier actions and earlier levels of cooperation with the authorities. The Federal Council noted in March 2002 that this likelihood of an alien failing to remain available for removal was the most frequently invoked ground for deportation detention, indicated in approximately two-thirds of all cases where that form of detention was ordered.¹⁰

The duration of deportation detention must not exceed three months. Extensions may be permitted up to six months¹¹ to a total of nine months only if special obstacles should hinder execution of the deportation order (without making it impossible). Uninterrupted detention (from preparatory to deportation) is possible so long as the grounds are consecutively met.¹² The duration of detention is tested against the proportionality principle, which is part of Swiss constitutional and administrative law (see below).

Detained asylum seekers may submit a petition for release from detention to the local Canton’s judicial authority one month after the initial review of their detention. They may then continue to appeal the decision, if negative, every month if in ‘preparatory detention’ and every two months if in ‘deportation detention’.¹³

C. Legal aid

Free legal advice is generally ruled by cantonal legislation.¹⁴ The principle as such is contained in article 29(3) of the Swiss Constitution. According to this provision, ‘every person lacking the necessary means has the right to free legal assistance, unless the case appears to be without any chance of success. The person has moreover the right to free legal representation, to the extent that this is necessary to protect the person’s rights.’ Relevant factors include the complexity of the case as well as the individual situation of the applicant, for example his or her ability to understand and follow the procedure.¹⁵ With regard to administrative detention, the Federal Court held that when it

⁸ In particular because he or she does not abide by his or her duty to cooperate, pursuant to art. 13f of the LSSA and art. 8(1)(a) or (4), Asylum Act.

⁹ Pursuant to art. 32(2)(a) – (c) or art. 33, Asylum Act.

¹⁰ Message by the Federal Council on the Federal Aliens Law, of 8 March 2002, based on findings of the Federal Office for Refugees’ Survey on the Application of Coercive Measures.

¹¹ Art. 13b(2), LSSA.

¹² Art. 13b(1)(a), LSSA.

¹³ Art. 13c(2) to (4), LSSA.

¹⁴ For the conditions of free legal advice, see the article by *Andreas Zünd*, *Zwangsmassnahmen im Ausländerrecht: Verfahrensfragen und Rechtsschutz*, AJP/PJA 1995, p. 854 (856).

¹⁵ See, Federal Court judgment, BGE 120 Ia 46 E.3a.

comes to prolonging deportation detention beyond three months¹⁶ legal aid should not be denied.¹⁷ At the first examination of the legality of detention, legal aid must only be granted if the case is particularly complex (which is usually not deemed to be the case).¹⁸

D. Future amendments of the LSSA

Article 13b will be further amended,¹⁹ such that the responsible cantonal authority can, if a deportation or expulsion order has been notified at the first instance, and in order to ensure the execution of that order, detain the concerned person so long as (i) there are grounds to do so under article 72(1)(b), (c) or (g),²⁰ (ii) the responsible federal office has reached a decision of non-admissibility,²¹ (iii) there are concrete indications that the person concerned intends to avoid deportation, in particular because he or she has failed to fulfil his or her duties of cooperation,²² or (iv) his or her previous behaviour leads to the conclusion that he or she defies orders given by the authorities.

UNHCR has raised concerns about two of these new detention grounds. First, while, in general, non-admissibility decisions, as well as administrative detention, both pursue the aim of combating abuse of the asylum system, not all reasons for a non-admissibility decision may justify detention.²³ Second, the sanction of detention in the context of non-cooperation with the asylum procedure, is not limited to deliberate, gross violations²⁴ and may, therefore, be disproportionate in particular cases.²⁵

E. Detention at airports

Applicants for asylum arriving by plane at an airport may have no authorization to enter the country. According to article 23 of the Asylum Act, if entry is not authorized at the airport, the authorities may remove the asylum seeker as a precautionary measure if his or her further journey to a third country is admissible, reasonable and possible.²⁶

This decision must be delivered within fifteen days of filing an asylum application. Should proceedings take longer, the authorities will authorize entry to Swiss territory. In the event that the applicant is ordered to leave the country, he or she may not be held at the airport for longer than seven days. This does not include a 24-hour deadline in order to file an appeal for the restoration of

¹⁶ Art. 13b (2), LSSA.

¹⁷ See, Federal Court judgment, BGE 122 I 53 E.2c/cc.

¹⁸ See, Federal Court judgment, BGE 122 I 276 E.3b.

¹⁹ According to draft art. 73 (replacing art. 13b(1)(b)).

²⁰ Previously art. 13a.

²¹ Based on art. 32(2)(a) – (c) or art. 33, Asylum Act.

²² Under art. 85(1)(c) of LSSA, as well as art. 8(1)(a) or (4), Asylum Act.

²³ See the expert opinion of Prof. Dr. Walter Kälin commissioned by the UNHCR Liaison Service for Switzerland: *Rechtsfragen im Zusammenhang mit der geplanten Revision des Asylgesetzes* (13. September 2001) in: ASYL 2001, p. 3 (15). See also the position of SFH/OSAR (*Organisations Suisse d'Aide aux Réfugiés*): *Entwurf des Bundesgesetzes für Ausländerinnen und Ausländer (AuG), Stellungnahme der Schweizerischen Flüchtlingshilfe (SFH) zu asylrelevanten Punkten*, Bern 28. Mai 2002, p. 10.

²⁴ As is art. 32(2)(c), Asylum Act.

²⁵ *Ibid.* For a further comment on the legislative projects, see also Philip Grant, *Mesures de contrainte: quelle(s) évolution(s)? Réflexions sur les différents projets en cours d'élaboration*, SFH/OSAR, 7 septembre 2001, available at www.sfh-osar.ch, under 'asile' 'publications'.

²⁶ That is, if (a) another country is bound by a treaty to process his or her asylum application, (b) he or she had stayed there before and can return there and apply for protection, (c) he or she is in possession of a valid visa for a third country; or (d) near relatives or other persons with whom he or she has a close relationship live there.

suspensive effect, upon which the Asylum Appeals Commission has to decide in 48 hours.²⁷ After this maximum duration of 25 days of detention in the airport transit zone, the rejected asylum seeker may be transferred into deportation detention,²⁸ including the 96-hour deadline for a mandatory examination by a judicial authority.²⁹

According to the current version of a new draft Asylum Act, draft article 22(5) provides that an asylum seeker may be kept at the airport or, in exceptional circumstances, at another place for a maximum of 60 days. During this time, a first instance decision of non-admissibility may be taken, particularly in 'manifestly unfounded' cases. Should the procedure take longer, applicants will be referred to a Canton and the normal legal regime will apply. After a deportation or expulsion order has been notified, continued detention may take place in a deportation prison.

II. EXTENT OF DETENTION AND LIKELIHOOD OF RELEASE

In a survey conducted by the Federal Office for Refugees,³⁰ it was stated that preparatory detention was of little numerical importance and amounts to less than 2% of all administrative detention cases. Preparatory detention was ordered in a minimum of 32 and a maximum of 102³¹ cases yearly throughout Switzerland between 1995 and 2000. The average duration of detention was less than twenty days, well below the legal maximum duration of 3 months.³²

In the same Federal Office for Refugees survey, it was reported that deportation detention was ordered in a minimum of 5,500 cases and a maximum of 7,000 cases annually throughout Switzerland between 1995 and 2000. The average duration of detention was less than 23 days. An extension of deportation detention beyond 3 months was necessary in five to ten per cent of all cases. Thirty-eight persons were released after having been detained for the maximum possible duration of 9 months. Deportation was subsequently enforced in approximately 80% of cases held in deportation detention. Around 100 asylum applications were lodged from deportation detention, that is, one and a half to two per cent of all deportation cases.³³

Practice varies from one Canton to the other, which is linked to various objective but also political factors, such as the number of asylum seekers, location at a national border, rural or urban character, and the politics of the cantonal government.

III. ALTERNATIVES TO DETENTION

A. The proportionality principle and alternatives in cantonal legislation

Proportionality is a fundamental constitutional and administrative principle in Switzerland.³⁴ Each coercive measure, in particular detention, needs to be proportionate, with regard to the aim

²⁷ Art. 112, Asylum Act.

²⁸ On the basis of art. 13b, LSSA.

²⁹ Art. 13c(2), LSSA.

³⁰ The Federal Office for Refugees conducted this survey with data from 1995 to 2000. A summary is published in the Swiss Official Journal, *Bundesblatt* or *Feuille Fédérale*.

³¹ Information from the cantons based only on rough estimates was not considered.

³² See, message by the Federal Council on the Federal Aliens Law of 8 March 2002 in: *Bundesblatt* (BBl) Nr. 20 2002, S. 3709 (3766), *Feuille Fédérale* (FF) No. 20 2002, p. 3469 (3524).

³³ *Ibid.*

³⁴ Arts. 5(2) and 36(3), Federal Constitution. In the specific context of detention of asylum seekers, during the procedure or after rejection, it also derives from article 5(1)(f), ECHR.

pursued.³⁵ In this respect, article 13b(3) of the LSSA requires necessary measures for the execution of the deportation or expulsion to be taken without delay. In consequence, detention may become unlawful if this principle is violated.³⁶ Proportionality is also a principle that must be considered when applying any alternative measures.

The Federal Court has not yet developed significant jurisprudence with regard to reporting obligations or release on bail as possible alternatives to detention.³⁷ One reason for this may well be that they are not explicitly mentioned in the LSSA but have their legal bases only in cantonal law.

B. Restrictions on freedom of movement ('containment' and 'exclusion')

Under article 13e of the LSSA, the responsible cantonal authority can impose a condition on a foreigner, without a stay or residence permit and who disturbs or endangers public security and order, in particular by involvement in illegal dealing in narcotics, not to leave an area designated to him or her (containment) or not to enter a certain area ('exclusion'). According to the intention of the legislators, the notion of public security and order should not be interpreted narrowly. Moreover, non-compliance with an order under article 13e may have the consequence of detention, in so far as both 'preparatory detention' and 'deportation detention' may be applied, *inter alia*, to asylum seekers who leave an assigned area or entered a restricted area.³⁸

Measures taken under article 13e still need to be in conformity with the proportionality principle, that is, restrictions to one's freedom of movement need to be necessary for the aim pursued.³⁹

The above-mentioned survey of the Federal Office for Refugees stated that containment and exclusion were ordered far less frequently than deportation detention. In 1994, such measures were ordered in 184 cases. The number of such orders reached its peak in 1998, with 1,348. These developments go back to specific police operations targeting well-known drug scenes, and often the restrictions referred to a town centre or particular public place, such as a park or railway station. The urban centres of Zurich, Basel and Bern are primarily affected. An asylum seeker will be given a colour-coded card that indicates which parts of the city he or she may not enter. In recent years, the number of containments and exclusions has become stable at a somewhat lower level (1,033 orders in 2000). The number of punishments meted out due to the violation of containments and exclusions ranged between nine (1995) and 79 (1997).⁴⁰ While suspicion of involvement in activities threatening public order (in practice, drug-dealing) should not be the sole basis, without evidence, of a major restriction on a foreigner's freedom of movement, and while such orders should always be applied to an individual and never to a group or on any discriminatory basis, it

³⁵ See, explicitly, Federal Court, BGE 119 Ib 198 E.c.

³⁶ Based on the old law, the Federal Court ruled that the authorities must be actively pursuing removal of a rejected asylum seeker for it to be lawful detention, see BGE 119 Ib 425 E.4. For a recent Swiss case where forced deportation was deemed impossible (due to lack of cooperation by the rejected asylum-seeker and the country of origin) and detention therefore illegal, see Federal Court decision of 30 January 2004, 2A.611/2003.

³⁷ See in this regard *Thomas Hugli Yar*, *Zwangsmassnahmen im Ausländerrecht*, in: Uebersax, Münch, Geiser, Arnold (ed.), *Ausländerrecht*, p. 300, referring to unpublished judgments of the Federal Court.

³⁸ Pursuant to arts. 13a (b) or 13b(1)(b), LSSA or, if deportation is not possible (art. 13c(5), LSSA) pursuant to art. 23a, LSSA.

³⁹ See, on the application of containment and exclusion, the Circular by the Federal Office for Refugees and the Federal Office for Aliens of 31 January 1995: *Lettre circulaire du 31 janvier 1995 sur l'application de la loi fédérale sur les mesures de contrainte en matière de droit des étrangers*. On the proportionality principle regarding containment and exclusion see, for instance, *Walter Kälin*, *Zwangsmassnahmen im Ausländerrecht: Materielles Recht*, AJP/PJA 1995, p. 835 (852) with further references.

⁴⁰ See, the message by the Federal Council on the Federal Aliens Law of 8 March 2002 in: *Bundesblatt (BB1) Nr. 20 2002*, S. 3709 (3767), *Feuille Fédérale (FF) No. 20 2002*, p. 3469 (3524).

cannot be excluded that, as some Swiss NGOs argue, such orders have at times been based solely upon suspicions.

Some Cantons in Switzerland call for a wider range of legal measures by which to control the freedoms of asylum seekers and failed asylum seekers. In response, they have been asked to demonstrate that the above measures are not working effectively, but have so far failed to do so.

C. Dispersal and open centres

All in-country applicants in Switzerland are dispersed for registration purposes to semi-open reception/registration centres where they must obtain a permit to leave the premises and where there is a night curfew.

After registration, they are dispersed to individual Cantons. Accommodation methods vary, but usually they are housed in collective, open, State-run accommodation centres. Financial support is conditional upon residence in such centres, but this means that those who can support themselves with the help of friends or family may live elsewhere. The only *de facto* restriction on freedom of movement in these accommodation centres is the requirement to be present to collect their assistance if they wish to keep their place, and the risk that if they travel away from the centre for too long they may miss their notification of a decision from the Federal authorities and may also consequently miss the deadline for appealing against a rejection (30 days or in some cases 24 hours).⁴¹

This national system, which incorporates the vast majority of asylum seekers, means that the authorities can easily locate most asylum seekers at the centres throughout the determination procedure. Such reception arrangements are obviously not a direct alternative to the grounds for detention as defined by Swiss law (the LSSA). However, from a wider policy perspective, the highly-organised system of collective centres and the provision of social assistance to all who require it are likely factors in reducing the incidence of absconding in the earlier stages of the asylum procedure and, by that means, they reduce the Swiss authorities' need to legislate for detention to achieve this policy objective. Furthermore, in individual cases, non-cooperative actions described under article 13a(a), or leaving the centre without a forwarding address, may be taken as evidence that the person is likely to resist deportation at a later stage.

As of 1 April 2004, rejected asylum seekers who have received a decision of non-admissibility are excluded from automatic social assistance. However, these persons' basic socio-economic rights remain protected by article 12 of the Federal Constitution which provides that 'persons in distress and incapable of looking after themselves have the right to be helped and assisted, and to receive the means that are indispensable for leading a life in human dignity.'⁴²

⁴¹ The legal basis of the four initial reception centres (*Empfangsstellen/ centres d'enregistrement*) is article 26 of the Asylum Act. All other accommodation centres have their legal basis in article 28 of the Asylum Act. According to this provision, 'the Federal Office or the cantonal authorities may allocate asylum seekers to a place to stay. They may allocate asylum seekers to accommodation, in particular, to collective housing.' With regard to the conditions in such centres, the Swiss Conference on Social Aid has elaborated guidelines that Cantons are free to adopt. The majority have integrated these guidelines into their legislation or apply them in practice.

⁴² The future article 73(1)(b)(2) shall allow detention in cases of a decision of non-admissibility, and those who are not detained will be assigned to a Canton but deprived of automatic social assistance. Cantons may prefer to detain such non-admissible cases, if they have the capacity to do so, solely to avoid the social and hence political problem of having destitute foreigners on their streets. Such persons, however, must be released from detention if in fact they cannot be deported.

Those whose claims are rejected under the full asylum procedure, if not detained, and if deportation proves impossible, are provided with social assistance if necessary, and housed in an open centre which will be somewhat better equipped than most such centres, given the possible need for long-term stay there.

Certain political figures in Switzerland have called for the introduction of open collective centres for refractory failed asylum seekers who refuse to cooperate with re-documentation and return or are otherwise considered to be abusing the system, but who cannot lawfully be detained beyond the maximum period. The proposed centres would provide only very basic assistance and their regimes would be designed to encourage the residents to self-deport or to comply with the requests of the deporting authorities. One such centre was constructed in the Canton of Tessin (Italian: Ticino), for example, but its use was abandoned for financial reasons and because questions were raised as to its legality. It was proposed to allow its residents to leave the premises during the day (e.g. 8a.m. – 10p.m.), returning before a night curfew. It was, however, also foreseen that broader restrictions on the movements of residents, limiting them to vicinity of the centre, would also be imposed. In the absence of a direct threat to public security or order, which would have permitted restrictions under article 13e of the LSSA, there is no legal basis for such restrictions. The Federal authorities have further emphasized that, on the basis of a recent survey, such centres and related restrictions are not required to achieve the stated aim of an efficient system of mandatory return.⁴³

With regard to promotion of mandatory return, it should be noted that Switzerland has a highly developed network of ‘Returnees Counselling Offices’ (‘RCOs’) where counselling in favour of mandatory return with consent is offered to failed asylum seekers, as an alternative to their detention and forcible deportation. These projects, however, are not ‘alternative to detentions’ within the scope of the present study, but rather an alternative to forcible deportation.

D. Alternatives proposed by *Organisation Suisse d’Aide aux Réfugiés* (‘OSAR’)⁴⁴

In response to calls by certain Cantons and right-wing parties for a wider use of detention and a wider range of legal restrictions on asylum seekers, the nongovernmental organization OSAR has proposed several ideas, to be understood strictly in the sense of being preferable alternatives to any expanded use of detention. They suggest that the same regime as used in the registration centres – whereby a permit must be sought to leave the centre – could be imposed on an individual basis within the long-term accommodation centres, but only where there was evidence that the person was particularly likely to abscond. They recommend that, in the case of families, the head of household (or heads of household in turn) could be subject to such a regime, but not their children or other dependents.

As a strict alternative to any expanded use of detention, OSAR also suggested to this study that the existing measure for restriction of foreigners’ movements⁴⁵ could be applied where there is evidence of a likelihood of absconding, rather than only in drug-related situations as at present. Finally, they propose that an asylum seeker could be asked to report to the police every day if he or she were assessed to be at high risk of absconding. At present, local police do sometimes tell a failed asylum seeker to report to them, but there is no basis for this practice in Swiss Federal law.

⁴³ Message by the Federal Council on the Federal Aliens Law of 8 March 2002, Survey on the application of coercive measures (Conclusions).

⁴⁴ This information is based on an interview with staff of OSAR, October 2003-March 2004; it does not reflect the official views of the organisation.

⁴⁵ Art. 13e, LSSA.

IV. CONCLUSIONS

Articles 13*a* and 13*b* of the LSSA precisely and exhaustively define the permissible grounds for detention (unlike the general clause, for instance, in paragraph 57 of the German Aliens Law).⁴⁶ Moreover, with article 13*e* of the LSSA, there exists a useful alternative to detention which is being applied with some frequency, although critics would say sometimes without sufficient evidence in every individual case.

Swiss legislation expressly endorses the proportionality principle. The Federal law could benefit from explicitly incorporating other alternatives to detention, apart from containment and exclusion, as already included in certain pieces of cantonal legislation such as, reporting requirements or release on bail. These alternatives to detention could then be considered in each case to ensure full respect for the proportionality principle, and the Federal Court would certainly have an important role to play in determining harmonized practice among the Cantons.

Any establishment of semi-open centres with curfews, as a substitute deterrent in place of indefinite detention, and intended to compel failed asylum seekers into cooperation with the authorities, would require extremely careful assessment to determine whether or not they were *de facto* places of detention and, even if not, whether they were in compliance with other basic human rights obligations.⁴⁷ There is currently no legal basis for such restrictions on freedom of movement, short of detention, unless there is an additional element of a threat to public security or order. Furthermore, a recent national survey by the Federal Government concluded that such centres are unnecessary to achieve the efficient removal of those who can, in fact, be removed.

⁴⁶ Point made by *Walter Kälin*, *Zwangsmassnahmen im Ausländerrecht: Materielles Recht*, AJP/PJA 1995, p. 835 (843).

⁴⁷ The question of whether such semi-open centres would conform to the analogous standards (relating to respect for dignity, privacy, family life, etc.) applicable to non-custodial alternatives in the criminal field (that is, The Tokyo Rules) may be indicative. See section II.F of the main Study on Alternatives to Detention regarding "Analogous standards for non-custodial measures in the criminal justice field".

THAILAND¹

I. DETENTION AND DOMESTIC LAW

According to the Thai Immigration Act 1979, as amended in 1992, all illegal aliens, including asylum seekers and refugees who are not distinguished from other aliens by the law, may be detained on criminal charges. They can face a sentence of two months to two years for an offence such as the falsification of documents. In practice, illegal migrants are often detained until they are deported or until they self-deport. There is no independent and/or automatic or periodic review of the administrative detention decision and no appeal rights.

Any alien without proper travel documents or a visa is subject to detention, and detention of recognized refugees with UNHCR certificates or asylum seekers with UNHCR protection/registration letters² in hand is also not uncommon. As of 31 October 2003, for example, fifteen recognized refugees were reported to be held in the Immigration Detention Centre ('IDC') in Bangkok, the largest site of immigration detention in Thailand. Most were not charged with any criminal offence other than violations of the Immigration Act.³

UNHCR protection/registration letters issued to asylum seekers have never been enough to protect the holder from arrest. Since September 2001, asylum seekers are much more likely to be arrested due to an increased number of road checks and closer monitoring of foreign populations/visitors. As of 31 October 2003, there were 23 asylum seekers, a further 37 asylum seekers who had received a first rejection, and 12 failed asylum seekers in the IDC.⁴

Asylum seekers are also detained at Bangkok International Airport. Airline companies are responsible under Thai law (and under the Chicago Convention) for paying the costs of detaining any illegal alien whom they bring in (and are charged close to US\$ 25 per day for food and accommodation for this detention). The airlines therefore commonly attempt to return the person and sometimes 'orbit' situations can develop as a result. Much depends in practice on which airline company is involved. If the person cannot be returned, however, and if he or she asks to seek asylum, the airline should refer him or her (by fax) to the notice of UNHCR. During the time that UNHCR expeditiously processes his or her claim, with the aim of completion within one week, he or she may either continue to be detained in a room of the airport, or he or she may be transferred to the 'Special Detention Centre' ('SDC') at Bang Kaen run by the Special Branch Police (rather than the Immigration Bureau, like the IDC). Transfer to this Special Detention Centre means that he or she is not technically 'admitted' to Thai territory, though this has little practical impact upon his or her situation. The most significant effect of this legal distinction is that the detainee may not apply for bail.

A. Conditions of release: bail or bond, reporting and supervision requirements

Bail rights are a very limited remedy to immigration detention in Thailand because of the prohibitively large amounts of money demanded (minimum bail money is 50,000 baht, which is equivalent to approximately US\$1,250). In some cases, smugglers bail out their clients, but many detainees including refugees and asylum seekers are unable to make bail applications because they

¹ The information presented herein is valid up to 31 March 2004.

² Thailand is not a party to the 1951 Convention and does not have national asylum procedures. UNHCR conducts individual status determinations.

³ Statistics derived from information supplied by UNHCR Bangkok in December 2003.

⁴ Statistics derived from information supplied by UNHCR Bangkok in December 2003.

do not have access to the sums required. There is also a lot of red tape, with around seven or eight officers in the IDC and at higher levels of the Immigration Bureau having to sign the approval for each release.

At the original prosecution, where bail may be set, the detainee is likely to have no legal representation but the court generally provides interpreters. Nongovernmental organisations try to assist in filling the gap, but they are not always able to gain access.⁵

Bail is not a possibility for those detained at the Special Detention Centre or for asylum seekers prior to recognition. For those recognized refugees denied bail, the only other means of being released from detention are either self-deportation to another country or resettlement overseas.

Thailand's current immigration bail provisions have recently been threatened with cancellation, in order to demonstrate the Thai government's hard-line approach to illegal migration in the context of the war against terrorism and transnational crime. Since the APEC Summit in Thailand in October 2003, applications for bail, including UNHCR-supported applications (see below), have been more often refused. The Thai government claims that some of the refugees requesting bail are likely to participate in 'problematic' political activities if they were released (e.g., Falun Gong activists).

Article 17 of the Immigration Act gives the Ministry of the Interior, by the consent of the Cabinet, power to permit the stay of any individual 'under special circumstances'. The Thai Cabinet's approval in February 2004 authorised the right to stay of 1,834 individually recognised Myanmar refugees in border camps. This means that any detainee in the IDC or the SDC, identified to be among the 1,834, would be eligible for release and transfer to the border camps (see below).

B. Encampment Policy

Thailand allows, and increasingly applies pressure to, members of some Burmese ethnic minorities (e.g., the Karen and Karenni) to reside in large refugee camps on its borders. The Shan refugees in Chiang Mai are exempted from this policy.⁶

Since the late 1990s the government has ordered Burmese refugees in Bangkok to move to these camps. The Thai authorities also began restricting the freedom of movement of residents in and out of the camps, as well as restricting opportunities to work outside the camps despite their need to complement their basic rations and other necessities. Following the siege of the Burmese Embassy in October 1999 and the hostage taking in Rajburi Hospital in January 2000, the Thai government began to regard the Bangkok Burmese as a national security threat and the Maneeloy Camp, west of Bangkok, was closed in 2001. Some 400 residents who could not be resettled overseas in time were transferred to a Karen border camp named Tham Hin. Camp commanders in Tak Province permitted some freedom of movement to camp residents during 2001, but this has now been restricted.

As of late 2003, the Burmese camps would seem to be *de facto* open-air detention based on the 'substantial curtailment of the movements of those inside.' For this reason, this discussion falls

⁵ Interview with Jesuit Refugee Service (JRS) Bangkok, October 2003-March 2004.

⁶ Legally, the Shan living in their own unofficial camps in the north are regarded as merely illegal migrants. 'World Refugee Survey 2002', US Committee for Refugees, p.137. Ironically, in view of the increasing closure of the Karen and Karenni camps, the Shan may be relatively better off, in terms of freedom of movement, though without State assistance.

⁷ See, definition of detention in UNHCR Guidelines on Detention.

under 'Detention and Domestic Law', rather than 'Alternatives to Detention'. It is more difficult than before for camp residents to travel to Bangkok for work or other private reasons; they may only leave the camp parameters with permission and for particular purposes, such as urgent or sophisticated health care that is unavailable inside the camp. Those who break camp rules and leave without the permission of the Camp Commander are at risk of arrest and even summary deportation, requiring frequent UNHCR intervention with the authorities on such cases.

Today, if a Burmese asylum seeker tries to apply for asylum individually in Bangkok, the case will be registered, pending the screening mechanism to be agreed by the Thai government. Negotiations regarding this policy are ongoing.⁸ Following Cabinet approval in February 2004, the Thai government is expected to begin transferring 1,834 individually recognised Myanmar refugees to the camps during the first half of 2004. After this policy is implemented, any Burmese refugee trying to remain in the city will be at even greater risk of arrest and deportation. UNHCR policy has been to support such transfers, unless the applicant can show a fear of persecution in the camps, since there is at least greater freedom of movement and better material conditions in the border camps than in an overcrowded cell at the IDC. The encampment policy is also preferable to 'fast track deportation' of Burmese refugees after detention at the IDC.⁹

The Thai government's response to criticisms of the closed nature of the camps is that it is a national security necessity and a precondition for continuing to host very large numbers of Burmese refugees on its territory.

II. EXTENT OF DETENTION AND LIKELIHOOD OF RELEASE

The IDC in Bangkok has a high turnover of detainees but there are also cases of prolonged detention, mainly involving unclear nationality and stateless persons. Those detained are reported to be mostly African or Middle Eastern, but also include Vietnamese, Cambodians and Indonesians. In 2001, there were an estimated 200,000 persons, migrants, overstayers, asylum seekers, and refugees, arrested in Thailand for illegal presence.

The IDC is visited by an on-site UNHCR Field Officer responsible for detention issues and by the Jesuit Refugee Service. Asylum seekers' refugee status determination may be conducted in detention, and in 2001 there were a total of 61 such cases. In a snapshot statistic on 31 October 2003, as stated above, there were a total of 59 persons whose claims were still under determination being detained in the IDC. As of the same date, there were also reported to be two recognized refugees, four asylum seekers and one rejected asylum seeker detained at the Bangkok airport; and twenty refugees and some thirteen asylum seekers (including those to have already received a first rejection), mostly Burmese nationals, held at the Special Detention Centre.¹⁰ In addition, there were

⁸ Previously, UNHCR was able to conduct individual refugee status determinations for Burmese applicants in Thai cities, but this was halted on 1 January, 2004, with the understanding that the existing urban Burmese caseload (approx. 4,000 persons) shall be screened for resettlement to the United States.

⁹ There are two ways in which Burmese refugees may be deported from Thailand: either they are left across the border in Burma (large numbers every month) or they are subject to 'official or fast track deportation' directly into the hands of the Burmese authorities. Some 400 persons per month are subject to the latter. For an unregistered refugee (considered an illegal alien) to avoid 'official deportation' and claim asylum, they must self-identify themselves to UNHCR at the IDC, in front of Thai police and fellow detainees, which can carry risks of its own and ultimately may lead only to transfer to the SDC.

¹⁰ By way of comparison, at the end of 2001, UNHCR recorded that 38 recognized refugees were in detention (ten in the IDC, two at the airport and eight in the SDC).

a number of individuals held in Thai prisons, the majority on remand or serving sentences for non-immigration-related crimes, but listed as persons of concern to UNHCR.¹¹

III. ALTERNATIVES TO DETENTION

A. Interventions by UNHCR/Assistance with bail applications

Since 2001, UNHCR Bangkok has been trying to prevent recognized refugees from being arrested in the first place by writing to request visa renewals on their behalf.

The Office has also established a dedicated 'hotline' that registered asylum seekers and refugees can call if they are arrested. If UNHCR is able to intervene within 24 hours of an arrest then they are usually successful in negotiating release, but after 48 hours of detention the person has been prosecuted and become a 'permanent detainee'.¹²

After this point, since early 2002, UNHCR has been permitted to assist recognized refugees with their bail applications. During 2002-2003, UNHCR succeeded in securing the release on bail of some recognized refugees detained at the IDC, so long as they were not members of certain political groups. This is not a generalized policy but is considered on a case-by-case basis and on the understanding that all refugees will be submitted for resettlement to third countries. So far none of these persons released on bail have absconded while awaiting resettlement. Those released are informally considered to be under UNHCR's supervision or 'custody', and they must report at least once a month (every 30 days) so as to have their bail extended. UNHCR staff may escort them to these appointments and must report to the Thai authorities with information on the individuals' whereabouts and current means of support.¹³ In 2002, seven refugees were released on bail to UNHCR and six have since been resettled. In 2003, seven were again released and four have already been resettled. Release on bail can in principle only be extended for a maximum of eight months in total, giving some urgency to the resettlement process.¹⁴ In December 2003, the immigration authorities refused to extend the bail of one Afghan refugee (who had been on bail for 18 months) on the ground that he had failed to be resettled.

For an asylum seeker, if release cannot be secured, his or her claim will be processed swiftly by UNHCR so that he or she, if recognized, may become eligible for release on bail or for resettlement.

B. JRS 'Release Programme'

The Jesuit Refugee Service 'Release Programme' is a voluntary repatriation programme to facilitate the return of failed asylum seekers, migrants and refugees who decide that return to their home country is less of a risk to their health and well-being than indefinite detention in the IDC. Recently, for example, many Iraqi refugees decided to head home via Amman rather than remain in Thai detention centres or jails. A number of Liberians also opted to self-deport.

¹¹ Statistics derived from information supplied by UNHCR Bangkok in December 2003. Prisons for which UNHCR has statistics include: Bangkwang Central Prison, Nonthaburi Province; Thanyaburi Central Prison, Pratumthanee Province; Cholburi Central Prison; Rachaburi Central Prison; Phitsanuloke Central Prison; Klong Pai Central Prison; Central Women's Correctional Institution; Thonburi Remand Prison, Bangkok; Bangkok Remand Prison; and the Bangkok Central Prison.

¹² Interview with JRS Bangkok and with UNHCR Bangkok, October 2003-March 2004.

¹³ Those released receive financial assistance (a basic monthly stipend) from UNHCR, delivered via UNHCR's implementing partner, The Bangkok Refugee Centre ('BRC').

¹⁴ Statistics and information received from UNHCR Bangkok in December 2003.

The level of government co-operation is very high because the programme aids the Thai immigration authorities, that is, it saves them the costs of detention and deportation (JRS pays the return travel costs) and frees detention space for newer arrivals.

C. Release of children and other vulnerable persons

JRS also runs a 'Medical Programme' where there is a slim possibility of release on medical grounds, but only in the most severe cases. Some HIV cases are released to the custody of a hospital, though more commonly they are just placed together in a crowded room within the IDC, alongside other detainees with mental illnesses or other psychological trauma, tuberculosis, and any 'troublemakers'.

Children and women are routinely detained. NGOs have an office at the IDC, which provides some mitigation of detention conditions, but cannot secure their release. In 2001, however, six children detained with their parents were successfully released to Bann Kred Trakarn, a safe house run by the Public Welfare Department whilst their parents remained in detention.¹⁵ The National Catholic Commission for Migration runs a shelter for children, families and other illegal aliens but this 'alternative' is only partially tolerated by the authorities. In mid-August 2003, an urban sweep for illegal migrants by the Thai police included a raid on this shelter one evening. Its residents were detained and then, after some negotiation, re-released.

In 2002, Human Rights Watch called for the protection of former child soldiers (deserters) on Thai territory, who they found to be a particularly vulnerable group among the undocumented Burmese population in Thailand. The NGO called for their release from detention and detention-like conditions, and for UNICEF to establish a programme for both their rehabilitation and their family reunification.¹⁶

IV. CONCLUSIONS

A. Do alternatives ensure compliance?

Deterrence and national security concerns are the primary motives behind the Thai detention policy, with the government wanting to visibly crackdown on illegal migrants and potential terrorist/smuggling groups. Nonetheless, it is notable that asylum applicants in Thailand recently have a higher rate of compliance with the procedure than in other Asian transit countries. Of 1,854 claims that were either pending or received by UNHCR as at the end of March 2003, 256 were listed as 'otherwise closed' by the same date. That is, 14% as opposed to the 25% listed as closed (for a variety of reasons, including absconding) in Malaysia during the same period.¹⁷ On the other hand, the picture of statistics averaged over January 1999-October 2003, shows that approximately 24% of applicants in Thailand were 'no shows' – a figure which reflects Thailand's continuing role as a transit country during these years.

¹⁵ Information received from UNHCR Bangkok.

¹⁶ *'My Gun Was as Tall as Me,'* Human Rights Watch report, 2003.

¹⁷ Trends in Refugee Status Determination, UNHCR, 4 July 2003. Note that this high rate of compliance occurred despite the fact that twice as many claims were rejected as recognized by UNHCR Bangkok during the first three months of 2003. The larger number of applicants processed whilst in detention in Thailand does not explain this difference between Thailand and Malaysia of more than 10%.

B. Cost effectiveness?

Basic needs are not met in Thai detention centres and conditions are inhumane. For example, 100 persons are typically held in a single cell and given insufficient food and fresh water. It is, therefore, difficult to talk in terms of per capita costs, when these can be reduced simply by means of increased neglect. As the Thai State provides no assistance whatsoever to asylum seekers or refugees living without legal status outside of detention, it is incontestable that release, even release with reporting requirements and supervision, would be a cheaper option for the State budget than detention. The Thai government weighs this, however, against perceived political costs.

C. Export value?

Due to the deplorable conditions in most Thai prisons and centres where recognized refugees are held, UNHCR has played a more active role in helping to secure their release than it has in most countries. This arrangement should be commended in the absence of wider reforms by the Thai government to protect asylum seekers or recognized refugees from arrest and prosecution. It is not, unfortunately, an arrangement that the UN agency (or its resettlement partners) can afford to export broadly to other countries, but it should be noted as a possible model of action in similarly difficult situations.

UGANDA¹

I. OVERVIEW OF LAW AND PRACTICE

A. Designated settlements

Sudanese *prima facie* refugees in Uganda are subject to restrictions on their freedom of residence and movement under the Control of Aliens Act 1960 ('CARA') by the fact that they must by law reside in designated 'settlements' and in which they are provided with residential and agricultural land. If a refugee is found outside a designated refugee settlement without a permit from the settlement/camp commandant, he or she risks imprisonment for up to three months. It is also an offence to harbour a refugee outside any of the settlements. These latter provisions of CARA, however, are rarely enforced.

The official position of the Ugandan government is that the settlements/camps are 'closed', but in most districts in which such settlements are located, refugees may move freely within a wide area and authorisation to travel beyond these areas is normally granted by the settlement/camp commandants or Refugee Desk Officers.

Most refugees settled on agricultural land have taken up farming and are engaged in food production. Many are involved in trading or other income generating activities. Important numbers are employed by aid agencies operating in the settlements/camps. While the Control of Aliens Act does not permit refugees to work, they are in practice engaged in gainful employment both in the formal and informal sectors.

B. Permitted/tolerated residence in urban areas

The Government of Uganda has permitted many refugees to reside in urban areas, particularly Kampala.² For example, refugees who require medical attention not available in the settlements, refugees attending educational institutions, those with security/protection problems in the settlements, or those who are able to attain self-sufficiency in the cities, may receive such authorisation.³ With regard to the latter group, the refugee in question simply declares that he or she will attain self-sufficiency in order to be permitted to reside in an urban area.⁴

C. Issuance of identity cards to urban refugees

Identity cards and documents, without expiry date, are issued by the Ugandan government to recognised refugees who are permitted to reside outside the designated refugee settlement areas. During 2002, these documents were issued to each head of household and to all those over the age of eighteen years. UNHCR no longer issues identification letters since the Government of Uganda began issuing identification documents. It has been observed that law enforcement and other officials respect the government-issued documents.

¹ The information presented herein is valid up to 31 March 2004.

² There are an estimated 5,000 urban refugees in Uganda. This figure is only an estimate, as urban refugees were not included in the last, 2001 re-registration exercise.

³ These exemptions are not provided by law but are based on an administrative policy of the Directorate of Refugees, within the Office of the Prime Minister.

⁴ Information received from UNHCR Kampala.

D. Asylum seekers in Kampala

Asylum seekers in Kampala must also be registered at the Old Kampala Police Station. Most are registered within the first month of their arrival, on the basis of an interview, and in general the Ugandan police do recognize and respect this registration and thereafter refrain from detaining them as illegal aliens.

II. CONCLUSIONS

The use of settlements has maintained public order in the face of mass influx, without resorting to closed camps amounting to *de facto* detention. While urban refugees in Kampala face a host of other protection problems, the risk of arbitrary detention (and the related vulnerability to extortion and forced return) is avoided by an effective registration and identification system.

A. Export value?

The Ugandan example is very much a compromise 'alternative' that has export value only to States where the prolonged reception of a mass influx of refugees currently involves closed camps analogous to detention, or where urban refugees are unregistered and at risk of detention for illegal presence.

UNITED KINGDOM¹

I. DETENTION AND DOMESTIC LAW AND PRACTICE

A. Grounds for detention

Detention of asylum seekers in the UK is not mandatory, however, an immigration officer, usually at a port of entry, may order the detention of an asylum seeker in accordance with internal Home Office guidelines (see below). Detention is further used to ensure the removal of failed asylum seekers who have not been granted status or any other 'leave to remain'.

The Immigration Service Instructions on Detention² include a checklist for immigration officers regarding when detention may be necessary. Questions relate to the asylum seeker's previous compliance with immigration law, record of absconding, illegal entry or the use of false documentation, expectations regarding the outcome of the claim, the likelihood and ease of removal, family ties in the UK, compassionate circumstances and whether there are 'factors which afford an incentive for him [or her] to keep in touch with the port'. In relation to the latter, it is not explained what, apart from a belief in one's own need for protection, such factors might be. Immigration officers most commonly tick 'liable to abscond' as the ground for detention. In practice, the decision to detain will often rest arbitrarily upon whether the detention coordinating office tells the immigration officer at the port that there is detention space currently available. Independent researchers interviewed UK immigration officers and found inconsistent interpretation of the Service Instructions, such that some viewed illegal entry as an unavoidable norm and thus not evidence of an asylum seeker's likely future non-compliance with immigration law, whereas others found illegal entry directly equivalent to a high risk of absconding.³

The UK Immigration Service uses 'special exercise' detention when they decide they need to detain an asylum seeker who enters with his or her own passport and valid documentation. Research has revealed evidence of instructions to detain particular nationalities (for example, all Chinese asylum seekers at a certain time) in order to deter rising arrivals for a specific group.⁴

The Service Instructions state that detention should only be used when non-custodial alternatives are unavailable or have proven insufficient. Similarly, the UK's Operational Enforcement Manual⁵ states that alternatives are to be used 'wherever possible' so that detention should be only a measure of 'last resort'. The UN Human Rights Committee has observed that, in practice, alternatives to detention are applied only when detention space is unavailable, and that detention is frequently used for mere administrative convenience.⁶

Those whose claims are considered 'manifestly unfounded' are detained at Oakington Detention Centre near Cambridge, where they undergo a fast track determination procedure. If the case cannot be decided within seven days, the asylum seeker is supposed to be transferred or released, though sometimes this is not strictly observed. Nongovernmental critics have accused the immigration

¹ The information presented herein is valid up to 31 March 2004.

² IDI January 1997, Ch 31, Section 1.

³ L. Weber & L. Gelsthorpe, *Deciding to Detain: How decisions to detain asylum seekers are made at ports of entry*, Cambridge Institute of Criminology, 2000.

⁴ Weber and Gelsthorpe, *ibid.*, 2000, p.21.

⁵ As disclosed July 2001, Chapter 38.1. This Manual is apparently being rewritten now, but this edition remains valid in 2003 as far as legal representatives in the UK are aware.

⁶ Concluding Observations of the HR Committee: United Kingdom of Great Britain and Northern Ireland, UN Doc. CCPR/CO/73/UK and CCPR/CO/73/UKOT (Dec 6, 2001).

service of sending regular asylum cases to Oakington.⁷ In September 2001, the High Court found that the detention of three Iraqi Kurds at Oakington Detention Centre violated article 5(1) of the ECHR as they were detained solely for administrative convenience. This decision was overturned in October 2001 by the Court of Appeals.⁸ The case then went to the House of Lords,⁹ which held that detention at the Oakington Reception Centre was not *per se* unlawful as it fell within the article 5(1)(f) ECHR exception: 'detention of a person to prevent his [or her] effecting an unauthorised entry into the country'. It was significant, however, that the House of Lords applied a test of proportionality to measure the necessity of the detention.

There is no automatic independent review of a decision to detain, and there is no maximum period for detention under Immigration Act powers.

In November 2001, the Anti-Terrorism, Crime and Security Act was passed, along with a notification of derogation from article 5 of the ECHR. As of March 2004, the House of Lords was reviewing the legality of this Act and its related derogation. Under its provisions, the government's Special Immigration Appeals Commission ('SIAC') holds hearings to determine whether a particular detention order on national security grounds is 'reasonable'. There is, in other words, a distinct bail regime applied to cases involving an alleged threat to national security. As of August 2003, fifteen people had been detained under these powers, most of whom were asylum seekers held in high security prisons.¹⁰

Asylum seekers have also been criminally prosecuted for their mode of entry or transit. For example, Mr and Mrs B (Kosovars) were asylum seekers in transit to Canada via the UK in 1999 who were prosecuted in the UK for 'obtaining services by deception' because they were travelling without valid documents. However, the High Court ruled that such arrests were a violation of article 31 of the 1951 Convention, and Mr and Mrs B were awarded compensation of £130,600 for wrongful arrest. Some 500-1000 asylum seekers were prosecuted between 1994-1999 in a similar fashion and are now presumably eligible for compensation.¹¹

In late November 2003, the British government announced its intention to make destruction of travel documents en route to the UK, failure to produce travel documents without good reason, or refusal to cooperate with the authorities issuing replacement documents, criminal offences punishable by a two year prison sentence.¹² The proposed Asylum and Immigration (Treatment of Claimants) Act 2004 would amend the Immigration Act 1971 not only in this regard but it would further allow the Secretary of State to re-detain an alien to be deported, even if previously bailed by a court.

B. Means and conditions of release

There are five methods of obtaining release from immigration detention in the UK:

⁷ *Immigration Detention in the UK*, Bail for Immigration Detainees ('BID'), September 2002.

⁸ *Saadi, Maged, Osman and Mohammed v Sec of State for the Home Dept.* EWCA Civ. 1512 (Q.B. Case no. C2001/2021), 19 October 2001.

⁹ *R (Saadi) v Secretary of State for the Home Department* (2002) UKHL 41

¹⁰ In a high profile case in April 2004, SIAC released one such Algerian detainee 'G' for mental health reasons, though imposing stringent reporting and home curfew conditions. The UK government, in response, announced plans to amend and curtail SIAC's powers to examine bail applications.

¹¹ *The Guardian* (UK), 2 October, 2003.

¹² First reported in *The Telegraph* (UK), 28 October, 2003 and subsequently announced in The Queen's Speech, November 2003.

- (1) 'Temporary Admission'¹³ - release without bail but dependent on having a place of residence, with a prohibition on employment and a requirement to re-appear on a specified date. Such relatively unconditional release is entirely discretionary, and decisions are based on paperwork alone. An immigration officer or the Secretary of State may, as a condition of Temporary Admission, impose reporting restrictions.
- (2) Bail directly from the UK Immigration Service (otherwise known as 'Chief Immigration Officer bail' or 'CIO bail'). There is guidance that 'each case should be assessed on its individual merits but a figure of between £2,000 and £5,000 per surety will normally be appropriate'.¹⁴ Sureties should not be requested at all unless necessary to ensure compliance.¹⁵
- (3) Bail from an adjudicator or the Immigration Appeals Tribunal¹⁶
- (4) *Habeas corpus*
- (5) Judicial review

The last two methods provide the most rigorous oversight of detention but these are rarely used due to the time and costs entailed and because the detention must be proven unlawful. A bail application before the Immigration Appellate Authority ('IAA') is therefore the only independent oversight that is readily accessible to most detained asylum seekers in the UK. It does not require a challenge to the lawfulness of the detention.

A bail hearing may be requested after six days, and repeatedly requested thereafter, but asylum seekers do not have a statutory right to such a hearing. Bail is granted subject to other conditions, usually residence and reporting requirements. Procedural rules and bail application forms both require names and addresses of two potential sureties, even though there is no statutory requirement for this.¹⁷ An application made to the Immigration Appellate Authority or Tribunal (independent bodies)¹⁸ has a much higher chance of resulting in release, and is likely to require smaller sureties, than an application for Chief Immigration Officer bail. As a CIO bail decision is essentially a decision by the detaining authority, however, where it is in favour of release it will be more quickly implemented without challenge.

For those detainees who pass a means test, legal aid is available. However, legal representatives funded by the Legal Services Commissions are not required to present bail applications for their asylum clients. In fact, legal representatives are discouraged by an overly strict merits test, since they often – rightly or wrongly – view their chances of success as being 'less than 50%' (disqualifying the case for legal aid) unless the asylum seeker has two good sureties willing to offer substantial monies.¹⁹ In fact, British solicitors may be subject to a professional disciplinary mechanism if they submit bail applications without sureties, or which do not show a change of circumstances since the previous application (other than extended length of the detention). The result of all these constraints on legal representatives is that the majority of detainees without access to wealthy sureties are denied judicial scrutiny of their detention.²⁰

¹³ Immigration Act 1971 Sch 2 paras 21 & 22; Nationality Immigration and Asylum Act s.62(3) & (4). Not to be confused with the temporary protection statuses in other host countries.

¹⁴ Operational Enforcement Manual, 39.5.1.

¹⁵ Guidance Notes for Adjudicators, May 2003, para 2.2.2.

¹⁶ A March 2002 draft Guidance Note for Adjudicators emphasised the requirement for sureties offering substantial amounts of recognisance and, at paragraph 2.4.2, specifically warned adjudicators not to accept nominal amounts.

¹⁷ *BID Submission to the UNWGAD: Immigration Detention in the United Kingdom*, September 2002, p.29.

¹⁸ Asylum seekers detained under anti-terrorist powers are eligible to apply for release on bail to the Special Immigration Appeals Commission ('SIAC') rather than the IAT.

¹⁹ *BID Submission to the UNWGAD: Immigration Detention in the United Kingdom*, September 2002, p.30.

²⁰ *BID Submission to the UNWGAD: Immigration Detention in the United Kingdom*, September 2002 p.31.

There are also problems reported regarding detainees' access to information about their bail rights, particularly where they are held in prisons, and the vast majority of immigration detainees remain unrepresented or poorly represented. Lack of interpretation services mean that non-English speakers are severely disadvantaged in terms of understanding their right to apply for bail and the reasons for their detention.²¹

In a bail hearing, despite the presumption of liberty being a fundamental feature of British common law, the burden of proof is in practice placed on the asylum seeker. He or she must show that he or she will not abscond if released, rather than the UK government having to show why there is a high likelihood that he or she will do so. Immigration service bail summaries have been criticized by the High Court as inadequate and lacking in balance.²² One group of legal advocates, Bail for Immigration Detainees ('BID' – see below for a description of their work), reports that in their experience it is extremely rare for the Immigration Service to support allegations regarding the likelihood of an individual absconding with documentary evidence, and that frequently the grounds for detention are only disclosed on the day before the hearing, leaving inadequate time to prepare a rebuttal of the allegations. BID furthermore reports that very few bail summaries presented at hearings include consideration as to the possible sufficiency of alternatives to detention.²³ Adjudicators are not in fact required to provide written reasons for a refusal to grant bail, let alone reasons referring to the insufficiency of alternatives, so such refusals are almost impossible to challenge.

Provisions of the Immigration and Asylum Act 1999 introduced automatic bail hearings after seven and later 35 days, but the relevant provisions were never brought into force and were then repealed by the Nationality, Immigration and Asylum Act 2002. In relation to new proposals to expand the UK's detention capacity (see below), the government has argued that the 1999 provisions would impose too great an administrative burden.²⁴ This failure to provide automatic bail hearings accepts, in effect, an untargeted, and some would say arbitrary, use of the UK's detention space.

Recently, the amount of legal aid provided to asylum seekers has been cut from a maximum 100 hours per week to just five, with a further four hours to prepare an appeal. If the asylum seeker is in detention, they may receive up to fourteen hours of legal aid (that is, an additional nine hours in comparison to applicants who are not detained), but of course they have many additional difficulties in accessing legal representation of any sort. Many UK solicitors' firms are already being forced to pull out of legal aid work in the immigration field, as shown by the fact that the Detention Advice Service ('DAS') rota of solicitors used to contain 21 firms but now contains around seven. Increasingly, DAS is reliant on *pro bono* lawyers to assist the detainees it identifies as requiring urgent assistance with bail and/or asylum applications.²⁵

It should be noted that the Chief Immigration Officer is more likely than the Adjudicator or IAT to impose other alternative restrictions, such as reporting requirements, as a condition of granting bail. The most stringent cases of which DAS is aware are daily reporting to the police as well as weekly reporting to a new 'reporting centre' (see below).²⁶ If an asylum seeker misses even one 'sign on' or

²¹ J. Shackman, *Criminal Treatment: The Imprisonment of Asylum Seekers*, The Prison Reform Trust, 2002.

²² Ex Parte AKB (CO/2053/96).

²³ *BID Submission to the UNWGA*, p.13-14.

²⁴ Estimates of the number of bail hearings which would arise confirms NGO estimates that some 60% of those detained do not gain access to bail procedures.

²⁵ Interview with Detention Advice Service staff, October 2003-March 2004.

²⁶ Interview with Detention Advice Service staff, October 2003-March 2004.

hearing, he or she can be categorised as an absconder and may be re-detained. BID has had clients in hospital to whom this has happened and who have had to apply to re-open their cases. One study documented a case where a woman was detained because her asylum case was dismissed *in absentia* when the Home Office sent the papers to the wrong address, even though she was living at an address provided for her by another UK government agency, the National Asylum Support Service (NASS).²⁷

C. Pre-removal detention

British case law confirms the principle that pre-removal detention should only continue for the period reasonably necessary to effect the removal or deportation.²⁸

The British government's stated intention during 2002 was to shift the use of detention further towards the end of the asylum process, following refusal and in preparation for removal. Several detention centres were thus renamed 'removal centres'. However, there is much anecdotal evidence from NGO visitor groups that, as of May 2002, around half of the detainees in such centres continue to be new applicants or still in the process of appealing.²⁹ The government has not yet produced statistics on how many of those in the removal centres may have initial decisions or appeals pending.³⁰

D. Detention of families

The Operation Enforcement Manual³¹ states that the head of family may be detained where it would be disproportionate to detain the entire family, but recently UK policy has shifted toward the routine detention of families with children, on the same grounds as single adults,³² at both Dungavel Removal Centre in Lanarkshire³³ and Harmondsworth near Heathrow Airport. The average length of detention at Dungavel is three weeks, but some cases remain there for significantly longer. This policy shift has occurred regardless of nongovernmental evidence that families with children are extremely unlikely to abscond and without Home Office evidence to the contrary (see below Conclusions and UK Research Findings).³⁴ BID reports, for example, a case where a family with

²⁷ J. Mcleish, S. Cutler & C. Stancer, *A Crying Shame: Pregnant asylum seekers and their babies in detention*, September 2002, p.8.

²⁸ *Wasfi Mahmud* [1995] Imm AR 311.

²⁹ Lawyers Committee for Human Rights, *Review of States Procedures and Practices Relating to Detention of Asylum Seekers, Final Report*, September 2002, p.114.

³⁰ As of end of June 2003, 1,355 persons were detained under Immigration Act powers, excluding those in police cells. Home Office Asylum Statistics, 2nd Quarter 2003. As of 14 August, 2003, 130 asylum seekers were detained under the Immigration Act in prisons. The recent fall in detention figures is due solely to operational constraints such as the fire at Yarl's Wood (a detention centre only recently reopened) and the need to fireproof and remodel Harmondsworth Detention Centre.

³¹ S. 38.1.

³² '[F]amilies would be detained only after consideration of each individual case and where this was considered necessary in order to prevent unauthorised entry (i.e. whilst their identities and claims were being established and/or where there were reasonable grounds for believing that they would abscond if given temporary admission or release) or to effect removal.' Home Office letter, October 25, 2001, quoted in Lawyers Committee for Human Rights, *Review of States Procedures and Practices Relating to Detention of Asylum Seekers, Final Report*, September 2002, p.119.

³³ The European Commissioner for Human Rights has been asked to look into the situation of children detained at Dungavel.

³⁴ It is sometimes argued that the right to family life is best served by detaining the whole family. While there were severe obstacles to maintaining family life when families were split, with the head of household often in a detention centre in the south of England and the rest of the family sent to dispersal accommodation in the north and Scotland, depriving the whole family of its liberty is also a serious restriction and possible violation of their rights. If detention is

young children was detained for four months even though there was no imminent prospect of removal and the family had always kept in touch with the authorities.³⁵ Some of those advocating for the release of families make elaborate proposals for new 'alternative accommodations' and 'safe refuges' to house them, overlooking the fact that most were living at fixed addresses in the community prior to their detention, in almost all cases complying with conditions and appearing for appointments.

E. Detention of vulnerable persons

The Operation Enforcement Manual³⁶ states that the detention of pregnant women, those suffering from serious medical conditions or the mentally ill, and those for whom there is evidence that they are torture survivors, should occur 'in only very exceptional circumstances.' A small qualitative study of pregnant and new mothers, however, could not ascertain what allegedly exceptional circumstances could have led to their prolonged detention – indeed, one woman was released after four and a half months without any change in her circumstances, which the authors of the study suggest should cast doubt on the legitimacy of the original decision to detain.³⁷

The Medical Foundation for the Care of Victims of Torture also conducted a small-scale research study between 1 January 1999 and 23 June 2000 regarding seventeen of its torture-survivor clients who were detained. This study found no indication that medical evidence of torture was properly considered in the decision as to whether to extend detention or grant release.³⁸ New rules that became effective in April 2001 require medical practitioners in detention centres to report persons identified as torture survivors to management, but it is not clear that these rules are being implemented.

Generally, mental health concerns, documented by psychological reports, are rarely taken into consideration at bail hearings. A recent academic study documented instances of bail being opposed for those with mental health problems clearly acknowledged by the Immigration Service, and even one case where a suicide attempt was taken as evidence, bizarrely, that there was a risk of absconding. At one hearing, the argument was made by the government that the best available psychiatric help was to be found inside the detention centre (Tinsley House).³⁹ In April 2003, an inquiry report into the death of a Lithuanian asylum seeker at Harmondsworth highlighted general problems with detention procedures relating to identifying risk of suicide and self-harm.⁴⁰

II. ALTERNATIVES TO DETENTION

A. Alternatives for separated children

Separated or unaccompanied children continue to be granted 'temporary admission' as soon as they are identified as minors. The main controversy surrounds cases where the age of the asylum seeker

deemed necessary by the government, parents themselves should be able to choose whether they prefer to preserve family unity or release one parent to care for the children in the community.

³⁵ *BID Submission to the UNWGAAD: Immigration Detention in the United Kingdom*, September 2002, p.40.

³⁶ S. 38.8.

³⁷ J. Mcleish, S. Cutler & C. Stancer, *A Crying Shame: Pregnant asylum seekers and their babies in detention*, September 2002, p.11.

³⁸ S. Dell and M. Salinsky, *Protection Not Prison: Torture survivors detained in the UK*, Medical Foundation for the Care of Victims of Torture, 2001.

³⁹ I. Bruegel & E. Natamba, *Maintaining Contact: What Happens After Detained Asylum Seekers Get Bail?* Social Science Research Paper No.16, South Bank University, London, June 2002.

⁴⁰ LIBERTY press release, 'Official Investigation condemns care of suicidal asylum detainee', 8 April, 2003.

is in dispute, with the Children's Unit of the British Refugee Council estimating that some fifteen to twenty per cent of all cases they deal with were originally wrongly assessed.⁴¹ Those recognised as minors are the statutory responsibility of social services in the local government authority where they apply (or are referred on a rota basis to a London local authority by the Children's Unit). They are generally appointed a legal adviser and a guardian, though there are not enough guardians *ad litem* available for every separated child arriving.⁴² In some cases, referrals are not properly made. For example, a fourteen year old Angolan girl recently lodged an asylum claim but was permitted to leave the Immigration Service office with neither a legal representative, guardian or contact address recorded on her application form. She has since failed to appear for appointments and her whereabouts are presently unknown.⁴³

Separated asylum seeking children continue to disappear from care in the UK, sometimes into the hands of traffickers. UK social services had previously established a safe house in south-eastern England for children who were trafficked, mainly from West Africa, apparently for the purpose of prostitution. Adults were present 24 hours per day and children were chaperoned whenever they went out. Education was provided in-house and video cameras were located outside the premises. These supervision measures were explained to the children as being protective and as in their best interests – for example, through meetings with former victims of traffickers. The quality and motivations of staff prevented this safe house from becoming a correctional or punitive environment. This very expensive project was closed, however, in favour of placing such children in foster care or 'supported lodgings' (a cheaper version of foster care intended for sixteen and seventeen year olds, with host families receiving lesser subsidies).⁴⁴

B. Dispersal, reporting requirements, accommodation centres, biometric identity cards

In the late 1990s, pressure from overburdened local authorities in London and the southeast led to the introduction of an *ad hoc* and then, in April 2001, a centralized scheme for the dispersal of asylum seekers to other parts of the country. The National Asylum Support Service ('NASS'), a branch of the Home Office, was established to manage the allocation of asylum seekers to accommodation provided by local authorities, housing associations and private landlords, mostly in so-called 'cluster areas' in northern cities. Such restriction of asylum seekers' choice of residence was therefore originally conceived as a cost-sharing measure, not as an alternative to detention nor a means of ensuring greater compliance with the asylum determination system.⁴⁵ Asylum seekers who have the means or community ties to support themselves may still reside outside this dispersal system.

Part Two of the Nationality, Immigration and Asylum Act 2002 has now put into place a legislative framework for new accommodation centres, as described by the government in its 2002 White Paper.⁴⁶ The government intends to house approximately 3,000 asylum seekers, from the initial

⁴¹ Interview with Children's Unit of the British Refugee Council, October 2003-March 2004, which is fully funded by the British Government (Home Office) to act as advocates for separated children and assist them with access to services.

⁴² F. Brennan, *Tampering with Asylum*, University of Queensland Press, 2003, p.116.

⁴³ Interview with representative at the Children's Unit of the British Refugee Council in December 2003.

⁴⁴ S. 20, Children's Act 1989 (c.41).

⁴⁵ By locating asylum seekers in the north, the dispersal policy also hoped to spread the settlement of recognised refugees more evenly throughout the country (the falling birth rate in Scotland, for example, means they are encouraging newcomers).

⁴⁶ One by Migrant Helpline at Dover, a second in Yorkshire, and a third is soon to be opened by the Refugee Arrivals Project ('RAP') in west London, near the major London airports. Home Office White Paper: *Secure Borders, Save Haven* – Cm 5387 HMSO, February 2002.

application through to final appeal, in collective centres, with all services provided on site. Asylum seekers who wish to receive State support of any kind will be required to reside in one of these centres. The non-urban locations proposed for such centres would create a *de facto* restriction on the free movement of residents. During parliamentary debates, however, the government gave assurances that residence conditions imposed upon asylum seekers in these centres would not amount to situations of *de facto* detention. Residents will be free to come and go during the daytime, but will have to report to the administration office once a day and leave only with permission during set curfew hours.

No such centres have yet been built or opened. Plans to do so have run into public opposition in each local area, though the government has recently overruled local planning authorities and offered tenders for the first centre in Bicester, scheduled to open around November 2003. The curfew provisions seem partially designed to allay public anxiety about large numbers of asylum seekers living, without work or other occupation, near their towns.

So far, several 'Induction Centres' have been established, based on existing services.⁴⁷ These first reception centres conduct screening, health checks and rights orientation during seven days prior to dispersal.⁴⁸

[*Note on health screening:* At present, screening for serious infectious diseases is carried out at the induction centres, such as that now open at Dover. In January 2003, the British government announced the formation of a working group to look into the issue of imported infections and immigration, with a view to possibly introducing compulsory screening of all asylum seekers for diseases such as HIV/AIDS and active tuberculosis. However, one recent survey of medical research by a British centre-left think-tank, the Institute for Public Policy Research, concluded that '[t]he evidence base to support the use of detention as a tool in the public health armamentarium is limited.'⁴⁹ It also concluded that coercive/compulsory screening of all asylum seekers for HIV and TB was not warranted by the epidemiological evidence (they are not a high-risk category amongst travellers in general) and likely to prove counterproductive, discouraging infected persons from coming forward to the immigration authorities, for example. This study cited evidence that the current non-compulsory system in the UK was working adequately. Of 41,470 asylum seekers screened at Heathrow Airport between 1995-1999, 100 were found with active TB, only 24 in its infectious form, and only two persons absconded before further investigations could be

⁴⁷ Currently, when asylum seekers fly into a southeast airport, if they are destitute, they are referred to RAP. They are meant to stay with them for no more than seven days, but some cases have now been with RAP for up to a year because NASS could not find placements for people with special needs (for example, torture survivors as there are no torture trauma counselling organisations outside of London, or large families of ten or more, or nationalities who do not have a community 'clusters').

⁴⁸ Prior to the opening of the west London induction centre, RAP is using a hotel near Heathrow to house new arrivals. Residents must be there for meals and have no money, so their freedom of movement is *de facto* very limited. If they are not back at the hotel by 10pm at night then it is assumed they have left. Some people leave the NASS system with official notification after RAP helps them to trace and contact friends or family in London. Occasionally, at the airports, asylum seekers disappear in between the point at which they declare themselves to immigration officers as asylum seekers without community ties and therefore in need of NASS support and the point at which they are released to be collected by RAP at a desk in the arrivals hall. This is presumably because some new arrivals do not wish to give the names of friends and family living illegally in the UK. Though they have 'absconded' from the NASS system in such cases, saving the government the cost of their maintenance, they may not abandon the asylum procedure itself and may later supply an independent contact address to Immigration.

⁴⁹ R. Coker, *Migration, Public Health and Compulsory Screening for TB and HIV*, Asylum and Migration Working Paper No. 1, Institute for Public Policy Research, 20 November 2003.

concluded.⁵⁰ While having a reliable contact address for infected asylum seekers once they enter the UK was considered vital, and while having some form of non-coercive 'welcome screening' was recommended, quarantine detention was considered unnecessary in the case of HIV/AIDS and beyond the initial weeks required for treatment of TB. (See main study for summary of the UN position and other reflections on this issue.)]

Eight 'Reporting Centres' have also been established around the country, to which asylum seekers living independently within a 25 mile or 90 minute radius are now required to report regularly. They are not places of accommodation. As with the planned accommodation centres, failure to comply with reporting requirements may disqualify an asylum seeker from receiving State benefits. One significant problem of these new reporting requirements is that the 2002 Act provisions regarding payment of fares to travel to the reporting centres have not been implemented, so destitute asylum seekers are in many cases walking long distances in order to comply. Families, in particular, have problems either obtaining the fares or finding a place to safely leave their children while they report.⁵¹ Partly in response to this issue, the government stated in October 2002, 'Contact management will be further enhanced by the use of a mobile reporting centre, by immigration staff using specified police stations for reporting and by visiting asylum seekers at their accommodation.'⁵²

The same 2002 White Paper that announced the proposal of collective accommodation centres also announced a doubling in detention space (to 4,000 places).⁵³ Thus it must be questioned whether the new general restrictions on freedom of movement, by means of accommodation and reporting centres, will form legitimate alternatives to detention. The government promoted the new requirements in parliament in terms of their benefits for tracking people's whereabouts and thereby reducing absconding rates and increasing administrative efficiency. Similar reasons were also cited for the introduction of biometric identity cards ('smart cards'). The Application Registration Cards ('ARC') with photographs and biometric data were introduced as identity documents for asylum seekers, replacing standard letters. These cards enable asylum seekers to collect their NASS cash support at a local post office.⁵⁴

It remains to be seen whether the new reception arrangements (dispersal, reporting requirements, accommodation centres, biometric identity cards) will be efficient enough at monitoring asylum seeker's whereabouts to allow for the decommissioning of detention facilities. Many refugee advocates suspect that once the additional detention spaces are constructed there will be an inherent pressure to justify their costs by keeping them full to capacity. They oppose the introduction of generalized restrictions on freedom of movement as unnecessary because the government has not produced evidence that they are a proportionate response to high rates of absconding, identity fraud or any other public interest issue.

⁵⁰ Callister et al. 2002, in Thorax 57, pp.152-5. Cited by R. Coker, *Migration, Public Health and Compulsory Screening for TB and HIV*, Asylum and Migration Working Paper No. 1, Institute for Public Policy Research, 20 November 2003.

⁵¹ Interviews with British Refugee Council and Refugee Action, October 2003-March 2004.

⁵² Parliamentary Questions, Beverley Hughes, October 2002.

⁵³ The rise in immigration detention is mirrored by Britain's much higher rate of incarceration than ten years ago. Today around 13,000 people are currently held in prison on remand. In contrast to the immigration field, however, there have been many initiatives to promote the use of alternatives to detention on remand. See, e.g., an inquiry currently being conducted by Lord Coulsfield (to report in Summer 2004). *Exploring Alternatives to Prison* – www.rethinking.org.uk.

⁵⁴ 150,000 asylum seekers have been issued with identity cards including fingerprints and iris-scans. In some ways this is a pilot project for the possible future introduction of nationwide identity cards which has recently been under discussion in the British cabinet, but will not be introduced for some years to come.

Traditionally, legislative or administrative restrictions on the free movement of asylum seekers in the UK have been few.⁵⁵ Those temporarily admitted immediately upon entry are required to have a permanent contact address and may be required to report periodically to a local police station. The Secretary of State has wider powers that may be applied to a specific individual in exceptional circumstances.⁵⁶ Recognized refugees and those with exceptional leave to remain have full freedom of movement, though they must be registered, like all non-Commonwealth aliens, with the police.⁵⁷

C. Electronic monitoring

In late November 2003, the British government announced its intention to introduce electronic tagging, including satellite tracking, to the immigration field in order to monitor the whereabouts of failed asylum seekers liable for removal. This was presented as a cost-saving alternative to secure removal (detention) centres.⁵⁸ It has stated that, in line with human rights obligations, the least restrictive and onerous form of monitoring (voice recognition technology for long-distance reporting as opposed to tagging or satellite tracking) will be imposed wherever sufficient in the individual case. The proposal is currently included in the draft Asylum and Immigration (Treatment of Claimants) Act 2004, whereby such monitoring would be applied to persons over eighteen years of age only. No provisions are made concerning the resolution of age disputes in such cases.

The UK was the first country to experiment with electronic monitoring in the criminal justice field in 1989,⁵⁹ and today it operates the largest such scheme of any European country. One Home Office evaluation in 2001 found that 90% of Home Detention Curfews were satisfied successfully. The study looked at the first sixteen months of the scheme and found that only five per cent were recalled to prison because of a breakdown in their curfew. Breaches of curfew were considered to include not only absences, but also any threat or attack on a monitoring officer or any damage done to the monitoring equipment.⁶⁰ A breach does not automatically lead to a revocation of the order, however. If the order is infringed, the nature and seriousness of the breach, and any mitigating circumstances, are considered. This is an important point of good practice.

While two thirds of electronic monitoring in the UK is used under the Home Detention Curfew scheme, it is also used to monitor juveniles (aged twelve to sixteen) on bail and local authority remand. Firstly, checks are made that their home is suitable. The usual curfew is 7pm-7am to allow

⁵⁵ The 2002 Act provisions are more in the historical tradition of Britain's Poor Laws than that of its past laws controlling aliens, such as the first Aliens Act of Great Britain in 1793 which included provision for the registration of non-citizens or the war-time Aliens Restriction Act 1914.

⁵⁶ The Asylum and Immigration Act 1991 gave the Secretary of State the power to assign an asylum seeker to a certain place of residence, impose a curfew or to prohibit him or her from leaving a certain area. Ministers stated that this power would be used to prevent public order problems. UNHCR London reports that it is not aware of any cases when this power was invoked.

⁵⁷ The Aliens Order 1953 abolished restrictions on the movement of aliens but still required non-Commonwealth nationals to register with the police.

⁵⁸ 'Asylum seekers to be tracked by satellite', *The Times (UK)*, 28 November, 2003.

⁵⁹ During the first six-month trial, three courts released people on bail with ankle devices who had to be home for curfews, but only fifty people were monitored. This study had disappointing results. Eleven committed another offence while being monitored and eighteen broke the conditions of their bail in other ways. The system also proved extremely expensive and suffered frequent failures of technology, leading to unnecessary police alerts. Problems included tampering with the device, technological failures, and signal interference caused by electromagnetic fields from electrical appliances. It was also very difficult for those released to find or keep jobs, though that was mainly due to the long period in curfew. The systems have since been improved and today electronic monitoring is widely and successfully applied. For full evaluations see, www.probation.homeoffice.gov.uk - section on electronic monitoring.

⁶⁰ K. Dodgson et al., *Electronic monitoring of released prisoners: an evaluation of the Home Detention Curfew*, Home Office Research Series, March 2001, at www.probation.homeoffice.gov.uk.

people to work or to attend educational facilities, as well as so that it does not conflict with a person's religious practices. The maximum length of a curfew order is six months (or three months for minors aged ten to fifteen years of age). Contractor companies do the monitoring, unless there is also a community sentence or some wider probation supervision requirement imposed. This occurs only in 26% of cases, but evaluations suggest that the electronic monitoring system works best in combination with such an element of human supervision by a probation officer.⁶¹

The only notable complaints from those in the criminal justice schemes are the enforced togetherness imposed upon families of offenders during the curfew, and the sense of shame felt when the device is seen in public.⁶² The latter stigmatisation would be particularly acute for failed asylum seekers who have committed no criminal offence. This would be especially true if monitoring was applied not as a condition of release for high flight-risk cases but rather as an additional penalty and control imposed upon individuals who would otherwise have been released into the community. Even among persons who have received a final rejection of their asylum claim and are liable for removal, there will be many cases who pose little risk of absconding, for example, families with young children (see above), and for whom tagging would therefore fail the test of 'necessity'.

The Home Office calculates that an average 45-day curfew under the electronic monitoring scheme for remand prisoners costs approximately £1,300. It would therefore be – while more cost-effective than long-term incarceration of failed asylum seekers – a very expensive way to raise the compliance of a pre-removal caseload whom one British study has found to abscond at no more than a rate of 20% when released under ordinary bail conditions.⁶³

Finally, it should be noted that electronic monitoring involving a conventional 'tag' (as opposed to reporting involving voice recognition technology) depends upon those monitored having a fixed private home address, with a phone line. A minority of failed asylum seekers in the UK who would meet this requirement would likely be those most easily found for removal in any case, and those most likely to have citizen or resident family members able to vouch for them. In this sense, the debate surrounding electronic monitoring in the UK immigration field may be informed by the pilot projects currently running in the United States and the problems and limitations associated with them in Miami (see US section). In both cases, it may be argued that the measure fails to meet the test of necessity and proportionality required by any restriction on freedom of movement under international law, though the UK may perhaps have a stronger argument that the measure did so than the US government, which is now tagging some asylum seekers whom they admit to be low flight risks, prior to determination of their claims.

D. British Refugee Council proposal for community-based reception

While the above plans for collective accommodation centres of up to 750 beds certainly provide economies of scale, European research on best practice in the field of refugee reception suggests that, for accommodation of more than a few months, smaller accommodation centres are most successful.⁶⁴ If larger centres are easier for asylum seekers to abandon than smaller centres, or if the communal living standards and remote locations of the larger centres push asylum seekers to exit them and abscond, economies of scale may prove to be false economies.

⁶¹ *Briefing on Electronic Monitoring*, Prison Reform Trust, March 2003.

⁶² *Briefing on Electronic Monitoring*, Prison Reform Trust, March 2003.

⁶³ I. Bruegel & E. Natamba, *Maintaining Contact: What Happens After Detained Asylum Seekers Get Bail?* Social Science Research Paper No.16, South Bank University, London, June 2002.

⁶⁴ *Reception Standards for Asylum Seekers in the EU*, UNHCR, July 2000.

The British Refugee Council proposed a smaller, urban cluster-type model to the UK government.⁶⁵ It is not an 'alternative to detention' in so far as there is no suggestion that all destitute asylum seekers in the UK would otherwise be detained, but it does claim to meet the same concerns, regarding compliance and efficiency, as both detention and the above White Paper plans for large centres. It claims to do so at lower cost to both the State and asylum seekers.⁶⁶ While the proposals are not financially costed in detail, they are based upon previous experience of the British Refugee Council's member agencies with emergency settlement schemes of Vietnamese, Bosnian and Kosovar refugees, and such costs were relatively low.

The proposal is based on networks of centres, each with no more than 50-100 beds, housing 300-600 asylum seekers in all. The centres should be within easy distance of a 'central services core' and in or near diverse urban areas. Every resident would benefit from an individual casework management plan. This would include an 'appraisal element, including recording the client's compliance with the requirements of their residence in the hostel/centre.'⁶⁷

The Refugee Council proposes that their model will avoid: high capital costs (including high security costs); high management risks (including high insurance costs); local opposition; excessive staff emphasis on control; the likelihood that residents/clients will become institutionalised; isolation from local services, especially local schools for children (which would also save costs); the likelihood of bullying and exploitation in large-scale centres; difficulties ensuring safety and child protection within large-scale centres; and unnecessary disruption of the reception-to-integration continuum for those ultimately allowed to remain in Britain. It is argued that smaller centres would reduce the financial and social impact of the new reception system on any single local government authority. The social costs for asylum seekers themselves would be reduced by virtue of the supportive case-management structure. Further to this point, the proposal quotes the expert view of the Medical Foundation for the Care of Victims of Torture that large collective centres are inappropriate for torture survivors.⁶⁸

E. Bail for Immigration Detainees ('BID') and The Bail Circle

BID, with offices in London, Portsmouth and Oxford, is an organization that exists to provide a dedicated free bail service to immigration detainees.⁶⁹ As such, it exists for those asylum seekers who may fail the merits test of State-funded legal aid. It also advocates for greater access to bail for asylum seekers and migrants, raises awareness of detention issues and the effectiveness of the UK bail system,⁷⁰ as well as offering relevant training to solicitors.

⁶⁵ A. Griggs, *Asylum Seeker Accommodation Process – Refugee Council proposal for a community-based pilot*, May 2002.

⁶⁶ The stated objectives include: closer contact between the asylum seekers and the relevant authorities; efficiency of the procedure; to reduce illegal working; to reduce financial and housing fraud; to reduce community tension; to improve the integration of those granted status; to improve the rate of returns of those refused asylum. A. Griggs, *Asylum Seeker Accommodation Process – Refugee Council proposal for a community-based pilot*, May 2002, p.2.

⁶⁷ A. Griggs, *Asylum Seeker Accommodation Process – Refugee Council proposal for a community-based pilot*, May 2002, p.8.

⁶⁸ A. Griggs, *Asylum Seeker Accommodation Process – Refugee Council proposal for a community-based pilot*, May 2002, p.8.

⁶⁹ It was set up in 1998 by three nongovernmental organisations: the London Detainee Support Group, the Joint Council for the Welfare of Immigrants and the Churches Commission for Racial Justice.

⁷⁰ BID has documented numerous cases where the alternative of release on bail was not applied despite compelling grounds for release. See, for example, the four compelling cases outlined in BID's 'Briefing for Committee Stage NIA Bill – House of Lords – bail and detention'.

BID publishes a 48-page handbook for detainees or others preparing their bail applications, entitled 'Notebook on Bail'. BID's legal representatives are overwhelmed with cases, therefore, BID does not systematically advertise its services inside detention centres, though detention visitors' groups often refer people to BID. They are only able to assist a tiny proportion of the total population of asylum-seeking detainees in the UK.

The Bail Circle, run by the Church's Commission for Racial Justice, is a register of some 175 volunteer sureties. It too is overwhelmed by the number of asylum seekers who require help to gain release, and reports that it has no means of meeting the increased demand when the UK's detention capacity will be doubled to 4,000.

Neither organization is an 'alternative to detention' but both strive to make the bail system, the UK's primary means of release, both more equitable and available.

III. CONCLUSIONS

A. Do alternatives ensure compliance?

Most asylum seekers in the UK are not detained. Some 2,000 were held in detention in 2003, a significant rise since the early 1990s, but some 70-80,000 asylum seekers currently remain in the community at any one time.⁷¹ The British government states that it detains only one and a half per cent of those asylum seekers liable to be detained and justifies the expansion of detention capacity on these grounds.⁷²

There is no Home Office evidence that asylum seekers living in the community commonly abscond before completing the asylum procedure, despite that risk being the most common grounds for detention orders. The UK Immigration Service has not commissioned any research or pilot studies on either alternatives to detention or appearance/compliance rates in the past twelve years.⁷³ As a result, adjudicators are making decisions at bail hearings without any sense of what a 'normal risk' of absconding may be, though they are supposed to refuse bail only where there is a 'materially greater than normal risk of the appellant absconding.'⁷⁴

Crude data from British ports of entry regarding the non-appearance of those granted temporary admission finds a rate of between three to twelve per cent depending on the port.⁷⁵ These relatively low rates suggest that other, deterrent concerns lie behind the policy of routine detention during the asylum procedure.

One independent study by South Bank University⁷⁶ traced the actions of 98 detained asylum seekers subsequently released on bail between July 2000 and October 2001.⁷⁷ It found that 90% satisfied

⁷¹ As of 27 December 2003, the Home Office reported 1,285 persons were in detention who had claimed asylum at some stage (approx. 80% of all immigration detainees). Home Office Asylum Statistics, 4th Quarter, 2003.

⁷² Quoted in Lawyers Committee for Human Rights, *Review of States Procedures and Practices Relating to Detention of Asylum Seekers, Final Report*, September 2002, p.115.

⁷³ *BID Submission to the UNWGAAD*, quotes a letter from the Home Office Research and Development Statistics section to BID, May 2002, p.43.

⁷⁴ Guidance Notes for Adjudicators from the Chief Adjudicator, His Honour Judge Henry Hodge, Revised January 2002, Issued March 2002, p.11.

⁷⁵ L. Weber & L. Gelsthorpe, 'Deciding to Detain: How decisions to detain asylum seekers are made at ports of entry', Cambridge Institute of Criminology, 2000, p.43.

⁷⁶ I. Bruegel & E. Natamba, *Maintaining Contact: What Happens After Detained Asylum Seekers Get Bail?*, Social Science Research Paper No.16, South Bank University, London, June 2002.

the conditions of their bail, including reporting and attendance at hearings, despite the fact that they had been originally detained because of an allegedly high risk of absconding.⁷⁸ At most, eight to nine per cent of asylum seekers who were granted bail subsequently attempted to abscond, and of the fifteen per cent who were bailed while awaiting removal, 80% still complied.

The fact that so few of those studied absconded prevented the researchers from doing a 'risk/probability analysis' and drawing conclusions regarding which factors may predispose people to abscond. However, it is true that the absconders were more likely to have had a removal order issued than to be awaiting a final decision.

The 90% or higher compliance rate was achieved with a group where the median amount of sureties was only £250 in total. The average for the few who absconded was higher, at £420 (though ranging from £1 to £1700), but this merely correlates to the fact that a greater proportion of them were awaiting removal.⁷⁹ The group as a whole had very standard conditions attached to bail, involving regular reporting to the local police station and the requirement of a formal application for permission to change address. The only other factor that the absconders had in common was that many were individuals under particular personal stress.⁸⁰

Another research study by BID documented the reasons why families with children in the UK are even less likely to abscond.⁸¹ It found that receiving and understanding information about conditions of 'temporary admission' was crucial in raising the level of compliance.⁸² It also collected testimony that the educational and health care needs of children are a key incentive preventing families from absconding. Non-compliance is simply not an option for a woman with a new baby and no money. The study recommended that the Home Office should recognize these natural incentives and disincentives, and so refrain from ordering detention of families with children.⁸³

The explanation for the low (3-12%) rates of absconding, even for single adults, are several: the UK is not a transit country; decisions on asylum claims of those not detained for accelerated processing may take months before a final decision, but State support is provided throughout; more than half of current asylum seekers are ultimately permitted to remain in the country, either recognized as refugees or given leave to remain; and legal aid is available to assist destitute asylum seekers submit claims.

Recent cuts in legal aid have been described, by the Immigration Law Practitioners' Association and LIBERTY as likely to raise the rates of absconding: 'Should an asylum-seeker be unable to obtain effective legal advice, he or she is far more likely to decide that the best way not to lose at

⁷⁷ The sample had been previously detained in a range of centres, and originated from a wide range of countries.

⁷⁸ They were BID clients, whose release was opposed by the Home Office on grounds that they would abscond, not on grounds of unverified identity, though fewer than one in five of those studied had a copy of the form setting out the reasons for their detention.

⁷⁹ Like the Vera AAP research in the United States, this research did not monitor failed asylum seeker's compliance with removal – just rates of appearance during procedure.

⁸⁰ E.g., the wife of one man had committed suicide during his stay; one woman was a rape victim, etc.

⁸¹ E.K.H. Cole, *A Few Families Too Many: the detention of asylum seeking families in the UK*, BID, March 2003.

⁸² E.K.H. Cole, *A Few Families Too Many: the detention of asylum seeking families in the UK*, BID, March 2003, p.27.

⁸³ E.K.H. Cole, *A Few Families Too Many: the detention of asylum seeking families in the UK*, BID, March 2003, p.29.

Another less obvious incentive this study identified was that remaining in the system allowed relatives in countries of origin to contact the asylum seekers. It gave the example of a case where a woman's husband had been removed, leaving her and her two children behind in the UK. She had been unable to contact him, but the chance that he might be able to contact her created a clear incentive for her to stay in the system.

the hands of the system is to avoid it completely.’⁸⁴ One UK academic researcher found that the strongest factors encouraging asylum seekers to abscond were a sense that their claims would be unjustly rejected and a subjective fear of return to the country of origin remaining among failed asylum seekers.⁸⁵

B. Do alternatives ensure availability for removal?

The Home Office White Paper⁸⁶ refers to the ‘recurrent problem of not being able to locate a failed asylum seeker’ and ‘a high level of absconding on receipt of the determination.’ The Greater London Authority estimates that some 75,000 rejected asylum seekers (or 100,000 including dependents) are residing illegally in London.⁸⁷ Efficient removal of rejected asylum seekers is therefore a primary policy concern of the UK Immigration and Nationality Department, which is spending an estimated £5 million per day on achieving this objective.

The few independent studies on absconding in the UK acknowledge the possible need to detain people who have exhausted all appeals, though only after travel documents are secured and removal is imminent.⁸⁸ As described above, evidence suggests that alternatives to detention, such as reporting requirements, are almost always sufficient to ensure the availability of asylum seekers right up to receipt of a final rejection. Projects geared towards encouraging failed asylum to examine their choices and return voluntarily, such as that run by the nongovernmental agency Refugee Action, can reduce the frequency of pre-removal detention during the period when travel documentation is being obtained.

Researchers also recommend that there is a need to track the rate at which failed asylum seekers depart the UK voluntarily, without assistance and without notifying the Immigration Service. It is believed that this would show many ‘absconded’ failed asylum seekers have in fact gone home.

C. Do alternatives deter abusive claimants?

There are ‘alternative deterrents’, less expensive than detention, employed by the British government. In July 2002, an asylum seeker’s right to meet his or her basic needs was threatened by the repeal of the right to work after a six month waiting period, and by the fact that income support was maintained at 70% of that provided to citizens. Section 55 of the Nationality, Immigration and Asylum Act removed State benefits from asylum seekers who had failed to apply at the earliest opportunity after their arrival (that is, at a port of entry). Ironically, some asylum seekers may be deterred from doing precisely this because they fear that they will be detained.⁸⁹ A legal challenge of these provisions found them in violation of article 3 of the ECHR. However, a government

⁸⁴ LIBERTY, August 2003 response to the Lord Chancellor’s Department Consultation Paper ‘Proposed Changes to Publicly Funded Immigration and Asylum Work’, para 31.

⁸⁵ L. Weber, ‘Detention of Asylum Seekers on Arrival in the UK, Part One’, in *Tolley’s Immigration, Asylum and Nationality Law*, Vol. 15, no.3, 2002, pp.188-194.

⁸⁶ Home Office White Paper: *Secure Borders, Save Haven* – Cm 5387 HMSO Feb 2002.

⁸⁷ Quoted in M.J. Gibney & R. Hansen, *Deportation and the Liberal State: the forcible return of asylum seekers and unlawful migrants in Canada, Germany and the United Kingdom*, UNHCR Working Paper No.77, New Issues in Refugee Research, February 2003.

⁸⁸ I. Bruegel & E. Natamba, *Maintaining Contact: What Happens After Detained Asylum Seekers Get Bail?* Social Science Research Paper No.16, South Bank University, London, June 2002.

⁸⁹ It may well be that detention deters people from pursuing or even lodging asylum claims, but it does not stop them from coming to or staying in Britain. They are rather diverted into clandestine channels, preferring to risk apprehension and detention while living illegally, rather than volunteer for such detention at the outset by making a claim at a port.

appeal against this ruling in September 2003⁹⁰ was successful, and in November 2003 the government proposed to remove all benefits from families denied asylum (and take their children into care) if they refuse to accept the offer of a paid flight home.

Neither detention nor this denial of socio-economic rights, however, seems to have been effective as a deterrent. 85,865 applications were lodged in the UK in 2002, (representing approx. 110,700 persons), which was an increase of 20% over 2001 figures (80,600). It is perhaps this deterrence failure of domestic policy that has propelled the UK government towards considering extra-territorial processing of claims in countries of transit (and which has prompted the Tory opposition party to call for off-shore 'application centres' which would be mandatory detention centres for all asylum seekers, located on unspecified British islands.⁹¹)

The denial of benefits to asylum seekers has in fact led to a new category of asylum seekers in detention, according to the Detention Advice Service ('DAS').⁹² Its professional visitors have noted a recent rise in low-level criminality among asylum seekers, leading to a greater number imprisoned on criminal charges. DAS believes that this is also partly caused by the compulsory NASS dispersal policy, from which some asylum seekers drop out and turn to petty theft or begging. DAS also reports that it is currently finding some six to ten cases per month of failed asylum seekers who are arrested by police while trying to leave Britain on the basis that they were 'obtaining services [from the carriers] by deception'. This exit regime is linked to the carriers' liability legislation. The person in question is usually detained for several months and then, ironically, deported at State expense. The policy is based on a concept of reciprocal good neighbourliness within the European Union, as illegal exit from the UK often means illegal transit through or entry into another EU State.

D. Cost effectiveness?

Taking Haslar Removal Centre's weekly costs as the measure,⁹³ the independent research by South Bank University, which monitored 98 asylum seekers, would suggest that the Home Office spent some £430,000 detaining 73 people who would have complied anyway under alternative restrictions (reporting requirements to the police, etc.).⁹⁴

It has long been acknowledged that the UK detention regime is extremely expensive (the planned extension which would add another 44 places for single men to the Dungavel Reception Centre is expected to cost £3 million in capital costs alone), but centralized reception systems that – intentionally or incidentally – track asylum seekers' whereabouts in the community, are not cheap either. The UK government spent over £1 billion in 2002 on the National Asylum Support Service (serving over 100,000 asylum seekers).

The government considers both sets of costs worthwhile, compared to cheaper community-based reception or the provision of direct benefits to asylum seekers living independently, so long as

⁹⁰ *Case of T v Secretary of State for the Home Department*, Court of Appeal, 23 September 2003 [2003 EWCA Civ 1285]

⁹¹ Oliver Letwin MP (the former Tory opposition party leader) also proposed that *all* visitors to the UK, whether tourists or asylum seekers, should post a bond to ensure their later exit. Quoted in *The Guardian* (UK), October 7, 2003.

⁹² DAS is funded by private trusts, but the London prisons are now also funding it to employ one professional visitor per prison. In the prisons, DAS estimates that its visits are 60% to asylum seekers and 40% to aliens arrested under criminal code. It sees some 1500 people per year and makes some 4500 visits.

⁹³ Weekly costs per detention place in 2001 ranged from £364 in Haslar to £1620 at Oakington. House of Commons debate, 25 October 2001, C 333 W.

⁹⁴ I. Bruegel & E. Natamba, *Maintaining Contact: What Happens After Detained Asylum Seekers Get Bail?* Social Science Research Paper No.16, South Bank University, London, June 2002.

detention and dispersal are perceived by the British public to be 'managing' a threat to public order and deterring an unspecified number of future arrivals.

Finally, as already mentioned, the costs of electronic monitoring may be slightly less than detention (the Home Office calculates that an average 45-day curfew under the electronic monitoring scheme for remand prisoners costs approximately £1,300) but it will not be a cost-effective measure unless it meets the test of necessity in relation to the individuals to whom it is applied.

E. Export value?

Above all, the UK experience demonstrates clear limitations on bail as a fair and efficient means of release and as an alternative to detention. Many detained asylum seekers do not have access to bail and hence do not have access to independent oversight of their detention order. Even fewer would have access were it not for the existence of nongovernmental organizations such as BID, DAS, visitors' groups and The Bail Circle. A number of these obstacles to access would be removed if legal aid for bail hearings was not subject to such a strict merits test, if detention decisions and refusals of bail were written and properly substantiated with reference to the individual concerned, and if the provisions regarding automatic bail hearings in the 1999 Act were re-introduced. Countries thinking of utilizing bail or bond as a primary 'alternative to detention' should consider similar safeguards if they want the use of immigration detention to be targeted and fair.

The UK is also an interesting case study of a country with a traditionally *laissez-faire*, community-based approach to reception which is moving step-by-step towards a more continental (particularly Germanic and Scandinavian) model involving dispersal and collective centres. Such provisions should really be seen as 'alternatives to direct welfare benefits' and as alternatives to release into the community upon own recognizance, rather than as alternatives to detention, yet their effective implementation may in the future provide the political confidence to reduce the proportion of asylum seekers the UK detains to the point where it is more in line with the rest of the EU. Any system founded on open accommodation centres can be conceptualised as an alternative to detention in the sense that it is a policy of moderation in the face of calls for mandatory detention by certain political parties. It is notable, however, that concern with increased control through reception is only applied to those asylum seekers without their own means of support.

The growing body of independent research in the UK, by universities and advocates, on the issue of appearance/absconding is also of export value to other 'destination' countries. It highlights the Home Office's lack of such research and statistics in this area. Such government research, if conducted, might not only demonstrate that the widespread perception of frequent absconding is exaggerated, at least prior to the receipt of a removal order, but it might also identify more positive incentives (such as transparent decision-making and continued welfare provisions for children) which are just as effective as disincentives/penalties in ensuring that asylum seekers comply with the UK procedures until they are completed.

UNITED STATES OF AMERICA¹

I. DETENTION AND DOMESTIC LAW

A. Detention upon entry for those without valid documents and possibilities of release

Under 1997 amendments to the Immigration and Nationality Act 1980 ('INA'),² an individual who arrives at a port of entry without valid documents is placed in 'expedited removal' proceedings. If the individual expresses a fear of persecution or the desire to apply for asylum, he or she must be detained pending an initial screening interview to determine if he or she has a 'credible fear of persecution' (a 'credible fear interview').³

US Immigration and Customs Enforcement ('ICE'), a sub-entity within the Department of Homeland Security ('DHS'), and formerly the Immigration and Nationality Service ('INS'), has the authority to 'parole' (release) individuals found to have a 'credible fear', pending a hearing on the substance of their asylum claim before an Immigration Judge. The nature of this parole authority is defined by regulations and policy guidelines.

In 1990, the Asylum Pre-Screening Officer ('APSO') Parole Program was initiated which aimed to ensure that parole decisions were based on each individual asylum seeker's credibility and proof of identity, and on whether they had a place to live, means of support and a legal representative. The policy goal was to better identify those persons most likely to abscond and reserve continued detention for them. The APSO Program became permanent in 1992, yet UNHCR and others documented the government's failure to adequately implement it throughout the 1990s.⁴

DHS (formerly INS) Regulations instruct that parole may only be 'justified' for certain groups of aliens "on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit", provided the aliens present neither a security risk nor a risk of absconding..."⁵ In spite of this, DHS has also issued policy memoranda identifying preferred groups for parole. For example, in December 1997, an INS memorandum reminded District Directors that: 'Parole is a viable option and should be considered for aliens who meet the credible fear standard, can establish identity and community ties, and are not subject to any possible bars to asylum involving violence or misconduct.'⁶ These documents suggest a conflict between using detention except where justified under specific criteria under the former as opposed to promoting parole under the latter.

¹ The information presented herein is valid up to 31 March 2004.

² The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 amended the Immigration and Nationality Act 1980 ('INA') (amendments entered into effect in April 1997).

³ INA, s. 235(b)(1)(B)(iii)(IV). 'Credible fear of persecution' is defined by statute as 'a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under Section 208' of the INA.

⁴ See, for example, letter from UNHCR Representative to INS Commissioner Doris Meissner, 4 March, 1993.

⁵ ICE's parole authority is set out in INA, s. 212(d)(5)(A). The five groups considered eligible for parole in the Regulations are: (1) Aliens who have serious medical conditions in which continued detention would not be appropriate; (2) Women who have been medically certified as pregnant; (3) Juvenile aliens (see section regarding detention and release of asylum seeking minors); (4) Aliens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the US; and (5) Aliens whose continued detention is not in the public interest (as defined by the detaining authorities). For full details, see: 8 Code of Federal Regulations (CFR) 212.5(b).

⁶ Memorandum from INS Executive Associate Commissioner for Field Operations, 'Expedited Removal: Additional Policy Guidelines', 30 December, 1997. See, also, Memorandum from INS Executive Associate Commissioner for Field Operations, 'Detention Guidelines Effective October 9, 1998', 7 October, 1998.

Until late 2001, undocumented Haitians were granted virtually automatic parole from the Miami District. In December 2001, however, a grounded boatload of Haitian asylum seekers attracted negative public attention, after which discretion was removed from District Directors to grant parole to such arrivals except in the most urgent humanitarian cases. The INS Miami District's Chief of Staff stated to Florida asylum advocates that the District Director had decided not to release any Haitian asylum seekers from detention for reasons that included deterrence of future arrivals from Haiti. In November 2002, a policy announcement stated that 'all individuals who arrive illegally by sea will be placed in expedited removal proceedings and during their legal process will remain in detention at the discretion of the INS [now ICE] and Department of Justice.'⁷ This policy shift had the further effect of removing parole powers from Immigration Judges, who some would argue were more inclined to grant parole.

Anecdotal evidence suggests that parole rates among different Field Offices vary widely.⁸ Human Rights First (formerly the Lawyers Committee for Human Rights) has, for example, documented numerous cases of parole being denied without clear reasons, even to persons with US citizen sponsors.⁹

There is no possibility of appealing a denial of parole to an independent or judicial authority, although *habeas corpus* petitions to the Federal Court are permitted (see below section on *habeas corpus*). Parole may in some cases involve the payment of a bond or surety, and usually involves regular reporting requirements.

In practice, for many asylum seekers who make their claim at a port of entry, release from detention will come only with a grant of asylum or *non-refoulement* protection.¹⁰ ICE reports that, in fiscal year (FY) 2002, 65% of 'defensive' asylum seekers (that is, those who claim asylum only after having been apprehended, as opposed to 'affirmative' asylum seekers who lodge their claims without being apprehended for illegal presence and whose claims are therefore adjudicated administratively) were detained for 90 days or less.¹¹

B. Mandatory detention for convicted felons or suspected terrorists and possibilities of release

Under the 1996 amendments to the INA, ICE is required to detain individuals convicted of certain crimes¹² or who are suspected terrorists.¹³ Many individuals currently in such custody, having been formerly convicted of crimes, entered the US either seeking asylum or another form of protection, such as 'withholding of removal'. Under the law, such individuals are not eligible for release unless they are granted refugee protection or otherwise allowed to remain, or they have been held for more

⁷ Notice Designating Aliens Subject to Expedited Removal under Section 235(b)(1)(A)(iii) of the INA. 2002 Federal Register of Notices.

⁸ See analysis of INS data in: Arthur Helton, 'A Rational Release Policy for Refugees: Reinvigorating the APSO Program' 75 *Interpreter Releases* 685 (May 18, 1998). See also data in: US Immigration and Customs Enforcement Report to Congress: Detained Asylum Seekers, Fiscal Year 2002.

⁹ Lawyers Committee for Human Rights, *Refugees Behind Bars: The Imprisonment of Asylum Seekers in the Wake of the 1996 Immigration Act*, August 1999.

¹⁰ Protection against refoulement is granted through a status called 'withholding of removal', which does not give the alien the right to leave and re-enter the US, or to apply for permanent residence, but which will indefinitely suspend the threat of removal to the country where persecution is feared. See INA § 241(b)(3).

¹¹ U.S. Immigration and Customs Enforcement Report to Congress: Detained Asylum Seekers, Fiscal Year 2002.

¹² INA, s. 237. The crimes for which a person may be subject to mandatory detention include: an aggravated felony (which includes many minor offences), a crime involving moral turpitude (unless an exception applies), a controlled substance offence, a drug trafficking offence, prostitution, or a commercialised vice offence.

¹³ INA, s. 236(c).

than 90 days after a final order of removal has been issued. To be released, the individual is required to establish by clear and convincing evidence that he or she is not a danger to the community and is likely to comply with the removal order when it can be carried out. He or she is allowed to present evidence orally and/or in writing. If the individual cannot be removed within 90 days, which applies to many aliens whose countries of origin do not have diplomatic relations with the US or which do not cooperate in the return of their own nationals, the case must be reviewed by the local ICE Field Officer (formerly District Director) for possible release.¹⁴ In practice, many convicted felons whose criminal sentences have expired, are detained indefinitely as they are not able to return to their countries of origin. They are referred to as 'lifers'.¹⁵ In June 2001, the US Supreme Court ruled that such persons can no longer be detained indefinitely simply because the US government has nowhere to put them.¹⁶

C. Detention of non-citizens already in the US and release on 'bond' or own recognizance

Non-citizens who have already entered the US, either lawfully or unlawfully, but who do not have a valid visa or other status to remain in the US, may also be detained. DHS makes an initial decision whether they are to be held in custody or to be released on bond. They are eligible for release if they establish that they are not a threat to national security and are unlikely to abscond.¹⁷ DHS decisions take into account the following factors: local family ties; prior arrests, convictions, appearances at hearings; manner of entry and length of time in the US; immoral acts or participation in 'subversive activities'; and financial ability to post bond.¹⁸ In some Districts, asylum seekers apprehended within the territory are released on a bond of between \$1,500 and \$5,000, or, in some instances, on their own recognizance. Usually such release requires a sponsor to offer financial sureties and a place of accommodation. Such a sponsor is supposed to keep track of the former detainee's whereabouts and ensure appearance for all appointments and hearings. This includes ensuring compliance with any reporting requirements, which usually form a condition of release on bond.

Detainees, not subject to mandatory detention (see above),¹⁹ can also apply to an Immigration Judge for release on bond, or for their bond amount to be lowered. Immigration Judges are part of the

¹⁴ The District Director's release authority for long-term detainees is set forth in a 3 February 1999 memorandum from INS Executive Associate Commissioner Michael Pearson to Regional Directors, entitled *Detention Procedures for Aliens Whose Immediate Repatriation Is Not Possible or Practicable*, and a 30 April 1999 statement issued by INS Commissioner Doris Meissner. Under the 30 April 1999 statement by Commissioner Meissner, the District Director must review an individual's detention status before the 90-day removal period expires and every 6 months thereafter.

¹⁵ 'Lifers' (to use the lexicon of US immigration officers) include six categories of persons:

- (1) those from countries without diplomatic relations with the US;
- (2) stateless persons;
- (3) countries refusing to accept back their own nationals;
- (4) countries experiencing immense upheaval or with no functioning government;
- (5) persons whose country of nationality refuses to accept them back in particular;
- (6) persons entitled to protection under the Convention Against Torture.

Source: 'Throwing away the key: Lifers in INS Custody' Donald M Kerwin, *Interpreter Releases*, May 11, 1998.

¹⁶ On 28 June 2001, the Supreme Court ruled that aliens who have received final orders of removal may not be detained for a period beyond that necessary to carry out the removal – presumptively six months. See, *Zadvydas v. Davis*, 533 US 678, 121 S. Ct. 2491, (2001),

¹⁷ *Matter of Patel*, 15 I & N Dec. 666 (BIA 1976).

¹⁸ *Matter of Patel*, 15 I & N Dec. 666 (BIA 1976); *Barbour v. INS*, 491 F.2d 573 (5th Cir.), cert. denied, 419 US 873 (1974).

¹⁹ The US Supreme Court has held in *Demore v. Kim*, 538 U.S. 510 (2003) that, when a non-citizen is deportable on certain criminal grounds, the US Constitution does not prohibit his mandatory detention 'for the limited period of his removal proceedings.'

Executive Office for Immigration Review ('EOIR'), a government agency separate from ICE. Bond decisions by an Immigration Judge can be appealed to the Board of Immigration Appeals ('BIA'). An Immigration Judge may make a later bond re-determination if it is demonstrated that the individual's circumstances have changed materially since the prior determination.

To be released on bond, an individual must demonstrate that he or she 'would not pose a danger to property or persons and that [he or she] is likely to appear for any future proceedings.'²⁰ Other factors to be considered include, for example, family ties in the US; ties to the community; work history; criminal record; or failure to appear for criminal or immigration court proceedings.

D. Habeas Corpus

The United States' Constitution and statutory law provide that detained persons may challenge the lawfulness of their detention by means of a writ of *habeas corpus*.²¹ Such writs are brought before a federal district court, which may be appealed to higher federal appellate courts. Such writs are generally an ineffective remedy because proceedings can be lengthy, expensive and complicated for detainees without legal advice.

E. Detention of rejected asylum seekers pending removal

Rejected asylum seekers may also be detained pending removal, although subject to the June 2001 Supreme Court ruling (see above under 'Mandatory detention of convicted felons and suspected terrorists') they may not be detained for a period beyond that reasonably necessary to carry out their removal. The Supreme Court held that six months is a presumptively reasonable period.²² The US government, however, has taken the position that this ruling does not apply to individuals who were originally apprehended upon attempting to enter the US without authorisation.²³

F. Detention and conditions of release for separated or unaccompanied minors

The basis for custodial care of separated minors in the US is a 1997 consent decree known as the *Flores v Reno Settlement Agreement* ('*Flores*').²⁴ In short, it provides that detaining authorities must release children without unnecessary delay unless their detention is required to secure the child's appearance in court or to ensure their safety or the safety of others.²⁵ *Flores* lists the parties to whom a child may be released, in order of preference: (1) a parent; (2) a legal guardian; (3) an adult relative; (4) an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the child; (5) a licensed program willing to accept custody (which can include 'non-secure' shelter facilities, which are places of 'soft detention'); or (6), at the discretion of the Office for Refugee Resettlement,²⁶ an adult or entity seeking custody when there appears to be no likely alternative to long-term detention and family reunification does not appear to be reasonably possible.²⁷

²⁰ 8 Code of Federal Regulations ('CFR'), s. 236.1(c)(3).

²¹ U.S. Constitution, Art. I, Sect. 9, cl. 2; 28 U.S.C. § 2241.

²² *Zadvydas v. Davis*, 533 US 678, 121 S. Ct. 2491, (2001).

²³ This issue is now under consideration by the US Supreme Court in two cases.

²⁴ *Reno v Flores*, 507 U.S. 292 (1993). The settlement was reached in April 1997.

²⁵ *Flores*, para 14. Exceptions include children the state authorities believe to be over 18 years of age; and an emergency situation of mass influx (originally defined as over 130 arrivals, but this figure is now out of date given the existence of a much greater reception capacity).

²⁶ Previously at the discretion of the INS. 8 CFR, s. 236.3(b)(1).

²⁷ If a minor has identified an adult family member who is in INS (now ICE) custody, the INS/ICE must consider releasing the minor and the adult simultaneously. 8 CFR, s. 236.3(b)(2). If a parent or guardian is in INS/ICE custody

Flores has not, however, been consistently applied in practice. One problem was that, in making a recommendation to release, INS and later DHS demanded that undocumented parents come forward to claim their child, and then, once the parents presented themselves, they were placed in removal proceedings. NGOs reported that if the parents remained in hiding, the authorities did not release the child to any documented guardian further down the list of preferences but instead retained them in detention in the hope that it would force the parents to come forward eventually.²⁸

In May 2002, the Women's Commission for Refugee Women and Children ('WCRWC') reported that the INS took some 5000 children into its custody each year.²⁹ Less than half were represented by legal counsel and there was no systematic appointment of guardians *ad litem* who could protect the best interests of the child.

Under new arrangements, the Office for Refugee Resettlement ('ORR'), within the US Department of Health and Human Resources, is now responsible for assessing whether a separated or unaccompanied asylum-seeking child should be released and if so, recommending their placement. ICE remains responsible for implementing the release, however, and refugee advocates report the agency is sometimes slow to follow ORR's recommendations.

As of the time of writing, there were a dozen 'shelters' for unaccompanied asylum-seeking minors around the country, some as large as 60 beds. These so-called shelters are in fact places of 'soft detention' rather than alternatives to detention. Technically, the children remain in custody. NGOs have consistently expressed the view that those shelters run by social service agencies (such as those in Miami and Houston) provide a better environment than those run by enforcement agencies. Human Rights Watch and Amnesty International have strongly criticized conditions in some shelters, such as the shelter care linked to a secure detention wing in Berks County Youth Center. Children are monitored 24 hours a day, educated on site and only allowed to exit the premises with a chaperone. Doors are typically alarmed and security cameras and fences secure the premises. Discipline is enforced with the threat (and practice) of sending children who misbehave to a juvenile detention centre.³⁰

Under *Flores*, a minor may be held in or transferred to a county juvenile detention centre or a 'secure' detention centre if it is determined that the minor has committed a crime, has been adjudicated delinquent, has committed or threatens to commit a 'violent or malicious act', has engaged in disruptive behaviour in a 'non-secure' facility (i.e. a shelter), is an escape risk, or if the detention is for the minor's own safety (such as when there is reason to believe that a smuggler would abduct the minor). Minors may seek judicial review of such a placement determination in a US federal court.

or outside of the US, he or she may designate a person to whom the minor may be released. The designated person must execute an agreement to care for the minor and ensure his or her presence at all future hearings. 8 CFR, s. 236.3(b)(3). A minor may refuse to be released to the custody of his or her parent and be afforded the opportunity to present the reasons for such a refusal. 8 CFR, s. 236.3(e). If the parents are currently residing in the US, they must be notified if the minor is seeking a form of relief that could harm the parent-child relationship.

²⁸ Women's Commission for Refugee Women and Children (WCRWC), *Prison Guard or Parent? INS Treatment of Unaccompanied Refugee Children*, May 2002, p21.

²⁹ WCRWC, *Prison Guard or Parent? INS Treatment of Unaccompanied Refugee Children*, May 2002, Senate Testimony of INS official, quoted on p.1.

³⁰ Human Rights Watch, *Detained and Deprived of Rights*, Vol.10, No.4(G), December 1998; Amnesty International, *Unaccompanied Children in Immigration Detention*, 2003.

II. EXTENT OF DETENTION AND LIKELIHOOD OF RELEASE

In FY2002, the government reported that 9,027 of 10,844 'defensive' asylum seekers were detained and 163 of 80,097 'affirmative' applicants were detained. All 'credible fear' cases (9,749) were detained at least initially, as required by law.³¹ Taken together, these statistics suggest that some 19% of all asylum seekers in the US were detained at some time.³²

INS statistics from 2000 showed that 34% of children held in INS custody were confined to secure facilities. Of these 1,933 instances of secure detention, 277 were justified on grounds of flight risk, while the rest were justified on the exceptional grounds of a so-called 'influx'³³ overwhelming reception capacity or in relation to individual behavioural problems. In May 2002, the San Francisco INS juvenile coordinator told the WCRWC that it is the policy of the district to deem any child who has been issued a final order of removal a flight risk and move him or her to a secure facility, unless the child is very young. She conceded, however, that only one child in the custody of the District had ever absconded from (non-secure) shelter care.³⁴

The national average parole or release rate for asylum seekers is disputed, but was estimated in 1999 to range between 10-27%.³⁵ Since September 11, 2001, refugee advocates report that parole rates have dropped steeply from this already low level. In the New York City area, as of November 2003, legal representatives reported to this study that the only parolees they were seeing were pregnant women or people with serious physical illnesses.

An apparent obstacle to the parole of asylum seekers is that ICE often seems to believe that Asylum Officers grant 'credible fear' too liberally. Therefore, ICE tends to disregard this factor when making a parole decision regarding an asylum seeker, moving immediately on to consideration of the other pertinent criteria (a fixed address, community ties, etc).

Another reason for ICE reluctance to grant parole is the deterrent purpose which many refugee advocates fear lies behind US detention policy and practices. For example, at a hearing on detention before the US Congress in December 2001, New York District Director Edward McElroy stated in his testimony that he pursued a restrictive release policy so as to reduce the number of asylum seekers seeking entry in his District. Mr. McElroy further indicated that the more liberal parole policy in New York during the early 1990s, along with more liberal employment authorization rules, were 'magnets to attract people.'³⁶

In November 2003, legal representatives reported cases where an asylum seeker's identity had been fully authenticated by the US authorities but he or she continued to be denied parole on identity-

Benitez v. Wallis, 337 F.3d 1289 (11th Cir. 2003), cert. granted, 124 S. Ct. 1143 (2004), and *Suarez Martinez v. Ashcroft*, No. 03-35053 (9th Cir. Aug. 18, 2003), cert. granted, 124 S. Ct. 1507 (2004).

³¹ The published statistics (see below, footnote 32) reportedly contain an error when they suggest that not every 'credible fear' case was detained.

³² See, US Immigration and Customs Enforcement, Report to Congress: *Detained Asylum Seekers*, Fiscal Year 2002. Details on the detained asylum seekers' countries of origin, gender, locations and average durations of detention were also reported to Congress.

³³ Under *Flores*, INS/ICE may place a child in any kind of facility with space in the event of an 'emergency' or in an 'influx' of children WCRWC, *Prison Guard or Parent? INS Treatment of Unaccompanied Refugee Children*, May 2002, p.25.

³⁴ WCRWC, *Prison Guard or Parent? INS Treatment of Unaccompanied Refugee Children*, May 2002, p.25.

³⁵ Lawyers Committee for Human Rights, *Refugees Behind Bars: The Imprisonment of Asylum Seekers in the Wake of the 1996 Immigration Act*, August 1999, p.15.

³⁶ Oversight Hearing on a Review of Department of Justice Immigration Detention Policies, December 19, 2001. See www.house.gov/judiciary/immigration.htm.

related grounds. They also reported cases where the 'manner of entry' alone was taken as evidence of flight risk, even in one instance where the asylum seeker entered on a valid passport and a US-issued visa. The fact that the man claimed asylum upon arrival was viewed by ICE as invalidating his visa, as he was entering for a reason other than that stated on the visa, making him automatically an unlawful entrant who therefore, ICE argues, would be likely to abscond.³⁷ This indicates that ICE may regard any asylum seeker, regardless of manner of entry, as a flight risk.

Faced with these policies, refugee and human rights organizations have repeatedly called for the parole policy and practices of the US to be reformed. Human Rights First has recommended that parole decisions should be made by specially trained officers, such as asylum officers, and should be challengeable in a 'meaningful, independent and timely appeal process'. They furthermore recognize that 'adequate resources must be allocated to the parole determination process' if it is to function on a truly individualized basis. As overall policy, they propose greater use of non-custodial alternatives including accommodation centers, group homes, supervised release, release to a guarantor or release on bond.³⁸

Human Rights Watch has recommended that detention of asylum seekers in the US should be used only 'when an asylum seeker has a history of repeated or unjustified failures to comply with reporting requirements imposed by the INS [now ICE] or the immigration court, or has failed to leave the country following the exhaustion of all appeal procedures.' Another recommendation urges greater use of non-custodial alternatives of all kinds, including 'secure shelter care, group homes or individual sponsorship by nongovernmental organizations.' It calls for INS [now ICE] districts with low parole rates to have their policy reviewed, and emphasises that where someone is detained under immigration powers as a threat to national security then he or she should have an opportunity to rebut any evidence against him or her.³⁹

III. ALTERNATIVES TO DETENTION

A. Supervision programmes

1. The Vera Institute of Justice Appearance Assistance Program⁴⁰

The Vera Institute for Justice in New York ran the Appearance Assistance Program ('AAP'), a pilot project funded by the INS, from February 1997 to March 2000 (though it involved asylum seekers for just two years out of the three). The INS had reported that in 1996 only half of non-citizens released from detention appeared for their hearings and only eleven per cent of non-detained aliens with final removal orders complied with such orders.⁴¹ The AAP was, therefore, introduced as a means of increasing the compliance and appearance rates of parolees.

³⁷ Interview with legal representative from Lawyers Committee for Human Rights (now Human Rights First), October 2003.

³⁸ Human Rights First, *In Liberty's Shadow*, 2004, p.48; Lawyers Committee for Human Rights, *Refugees Behind Bars: The Imprisonment of Asylum Seekers in the Wake of the 1996 Immigration Act*, August 1999.

³⁹ Human Rights Watch, *Locked Away: Immigration Detainees in Jails in the United States*, Vol.10, No.1(G), September 1998.

⁴⁰ For a full description and self-evaluation of the Appearance Assistance Program (AAP), see, Vera Institute of Justice, *Testing Community Supervision for the INS: An evaluation of the Appearance Assistance Program*, Final Report to the Immigration and Naturalization Service, 1 August, 2000.

⁴¹ One of the most interesting findings of the AAP was that the INS was underestimating 'natural' appearance rates and underreporting the number of departures from the US. The former AAP Director regretted a 'tremendous looseness' in the INS statistics and a tendency to conflate rates of appearance for immigration court hearings with appearance

The project involved over 500 participants of three types: (1) asylum seekers arriving at ports of entry, (2) aliens convicted of crimes and awaiting removal, and (3) undocumented migrants.⁴² This summary focuses only on the findings related to asylum seekers arriving at ports of entry, however there were impressive results for the other groups that are also instructive regarding what makes an 'alternative to detention' successful.⁴³

To qualify for the AAP, participating asylum seekers had to pose no threat to the public, have a verified residence in the New York metropolitan area, and have strong ties (e.g., family) in the community, including an individual sponsor or guarantor who promised to maintain regular contact with both the participant and the AAP staff. They also needed a good record of past compliance if they were not newly arrived in the US. If an asylum seeker did not have family in the New York area, Vera arranged for a local immigrant organization to act as their 'designated sponsor' in a moral, though not legal or financial, sense.

Vera did not attempt to weigh the strength of the asylum claim in deciding whether to accept a potential participant, but accepted the 'credible fear' test as sufficient screening. They only excluded an asylum seeker from participation if he or she was excluded from a grant of asylum as defined under US immigration law,⁴⁴ or if he or she had committed a criminal offence in the US.⁴⁵ Most asylum seekers had been detained for one or two months before participating in the AAP.

The AAP had two different sets of participants: (a) voluntary participants who would in any case have been released by the INS on their own recognizance, based on humanitarian grounds (e.g., pregnant women, families with children, people with poor health, etc.); and (b) participants who would otherwise have been detained, but who were released directly into the AAP's supervision. There were 83 asylum seekers in group (a) and 24 asylum seekers in group (b). Finally, there were 222 asylum seekers in various comparison groups. These were individuals recommended for participation by Vera intake interviewers, but not allowed to participate in the Program by the INS, though later released from detention.⁴⁶

Group (a) was given 'regular' supervision, which was in fact mostly support and assistance, such as reminders of court dates by telephone and letter, legal assistance and referral, and access to a Resource Center which provided information about the US asylum system, about country of origin conditions, referrals to language classes, food pantries, health clinics and other available social services.

In comparison, group (b) received 'intensive' supervision, involving the same offers of assistance and referral, but also including mandatory reporting requirements to the AAP, both in person (once every two weeks) and by telephone (twice weekly); unannounced visits to their home address by

for/compliance with removal. When Vera talked to US Immigration Judges, the impression was that asylum seekers are generally very compliant and law abiding – so long as there is any hope of them receiving legal status in the US.

⁴² While asylum seekers might also fall into groups (2) and (3), those included in the AAP were not reported as so doing.

⁴³ AAP found that 91% of people who received intensive supervision (in all categories, not just asylum seekers) attended all required hearings, compared to 71% of people who were simply released on bond or parole. AAP supervision also virtually doubled the rate of compliance with final removal orders when looking across all three categories of participants.

⁴⁴ The US 'exclusion' criteria appear in several sections of the INA: ss. 101(a)(42)(B), 208(b) and 241(b)(3)(B).

⁴⁵ Interview with former Director of the AAP, October 2003-March 2004.

⁴⁶ INS officials at the Wackenhut Detention Center did not refer approximately 20% of the newly arrived asylum seekers who were eligible and whom Vera wished to supervise.

AAP staff and other frequent checks on their whereabouts; and close monitoring to evaluate any changes in potential flight risk. These participants faced the penalty of re-detention if they failed to comply with their obligations under the AAP (or if, like other asylum seekers, they failed to attend any of their scheduled interviews or hearings).

Results

84% of those asylum seeker participants under regular supervision (group a) appeared for all their hearings, compared to 62% of non-participant asylum seekers released on humanitarian parole. An intensive level of supervision, however, was found to make very little statistical difference to those asylum seekers' (group b) rate of appearance. It must be noted that most of the asylum cases were still pending by the time the pilot project finished, so these were only partial results and were inconclusive regarding the compliance rate of failed asylum seekers with deportation orders.⁴⁷ The AAP staff suspect that intensive supervision might have raised rates of appearance amongst asylum seekers in the latter stages of their claims or pre-removal, had the AAP continued to see them through, since they confirmed that the risk of flight increases dramatically once someone is ordered removed by an Immigration Judge.⁴⁸

The pilot project found that one subgroup of the studied comparison group (of non-participants who were released on humanitarian parole) absconded at a high rate because they had the clear intention of transiting to Canada. If this group were subtracted from the calculation, the comparison group's appearance rates increased significantly to almost match those achieved under the regular supervision of the AAP (group a). This suggests that the AAP had little independent impact on the behaviour of asylum seekers with equivalent community ties in the US: the majority would never have absconded in any case. The impact of AAP supervision was much more significant for those groups (the undocumented workers and criminal aliens) who had fewer natural incentives to comply than those seeking protection, of whom the majority were likely to be allowed to remain in the US.⁴⁹

The AAP also concluded that the average cost of supervision is 55% less than detention. It estimated that it cost only US\$3,300 to supervise each asylum seeker as compared to US\$7,300 to detain them over the same period.⁵⁰ (See below regarding future costing calculations.)

Factors contributing to results

According to Vera 'the most consistent factors [in ensuring appearances at hearings] are having community and family ties in the United States, and being represented by counsel...' They decided

⁴⁷ Of the 61 participants and comparison group members who were given removal orders when they appeared in court, only three had required departure dates before 31 March, 2000 and all three departed. Of the remaining 58, 45 were appealing the Judge's decision to the Board of Immigration Appeals or Federal Courts, and thirteen were awaiting a 'deportation surrender date' from the INS.

⁴⁸ Interview with former AAP Director, October 2003-March 2004.

⁴⁹ Over half the asylum seekers who received decisions before the end of the AAP were granted asylum or some other form of relief (48% of intensively supervised participants and 57% of the regular group). By way of comparison, only 40% of those asylum seekers who were released on humanitarian parole and did not receive supervision under the AAP were allowed to remain. The key factor here was most likely the number who had legal representation, since all the AAP participants were referred to competent asylum lawyers.

⁵⁰ The daily cost of supervision was budgeted to be US\$12 per day (including staff, rent/utilities, technology, vehicles and other equipment, and interpreter services). The staff to participant ratio was 1 to 23 and there was an average of 3.5 hours of staff time per participant expected on a monthly basis. Vera Institute of Justice, *Testing Community Supervision for the INS: An evaluation of the Appearance Assistance Program*, Final Report to the Immigration and Naturalization Service, 1 August, 2000, p.65.

that, for asylum seekers, the single most decisive factor in Vera's high appearance rates was Vera's effectiveness at screening for community ties.⁵¹

The AAP worked with a very diverse demographic group, and its evaluation determined that neither age, nationality nor gender were significant factors affecting an adult's likelihood of appearance. 'While it seemed that nationality was affecting successful completion, it turned out that the underlying factor was the strength of family and community ties...'⁵²

The AAP ensured that participants were making truly informed decisions, and its staff believes that this contributed to their increased appearance rates. They found that almost half of those asylum seekers interviewed when they entered the AAP did not understand that they would have to appear before a Judge. They had been given misinformation by smugglers or other detainees and lacked basic knowledge about the way the system worked.⁵³ The AAP could not give legal advice but it could correct misinformation. Even though every asylum seeker would be informed that their non-appearance would lead to being removed *in absentia*, very few seemed to understand what this really meant, perhaps due to the language gap or an overly legalistic manner of communication when the information was read aloud in court while they were nervous and disoriented. Sometimes the information was merely given on a sheet of paper, or they were notified verbally but then had the information repeatedly contradicted and erased by misinformed members of their communities following their release. Vera concluded that it was not only vital to tell people their obligations but to check that the obligations were understood.

The fact that the asylum seekers mostly had lawyers, or were able to find *pro bono* lawyers with the assistance of Vera, was highly significant and lessened their dependence on the AAP staff. The asylum seekers did, however, still need AAP assistance with a range of practicalities, such as making free international telephone calls, accessing free interpretation services, or finding out how and when to request documentation from their home countries.⁵⁴

When asked about their reasons for appearing consistently, some AAP participants mentioned quite subjective factors, such as their unwillingness to disappoint the AAP staff who had treated them with respect and consideration. For the asylum seekers (in group b) who were released directly from detention into Vera's supervision, facilitating that release was perceived as the primary purpose of the AAP. Some participants therefore expressed a sense of obligation about complying in order to preserve the opportunity of release for future detainees. Two people interviewed in the evaluation, for example, said that they understood 'their performance in the program could help other detainees get released in the future.'⁵⁵

An important component of the AAP, affecting other categories of participants more than asylum seekers, but still relevant, was departure planning and verification. Vera helped those ordered to

⁵¹ "Participants and comparison group members with equivalent community ties in the United States attended their hearings at about the same rate. Participant asylum seekers achieved a higher appearance rate than those released on parole because the program more effectively screened for community ties." Vera Institute of Justice, *Testing Community Supervision for the INS: An evaluation of the Appearance Assistance Program*, Final Report to the Immigration and Naturalization Service, 1 August, 2000, p.7.

⁵² Vera Institute of Justice, *Testing Community Supervision for the INS: An evaluation of the Appearance Assistance Program*, Final Report to the Immigration and Naturalization Service, 1 August 2000, p.22.

⁵³ Vera Institute of Justice, *Testing Community Supervision for the INS: An evaluation of the Appearance Assistance Program*, Final Report to the Immigration and Naturalization Service, 1 August 2000, p.55.

⁵⁴ Interview with former Director of the AAP, October 2003-March 2004.

⁵⁵ Vera Institute of Justice, *Testing Community Supervision for the INS: An evaluation of the Appearance Assistance Program*, Final Report to the Immigration and Naturalization Service, 1 August, 2000, p.59.

depart the US with obtaining travel documents and buying tickets, and went to witness their departure.⁵⁶ Participants received explanations on how to confirm their departures to the INS and, if required to pay a bond, how to get their money returned when they left.⁵⁷

The AAP concluded that the role of 'designated guarantors' in addition to the supervision of their own staff was 'definitely helpful' because the guarantors usually had the same language and culture as the asylum seeker and could act as an extra point of contact. It was not always easy to find volunteers to be guarantors and sometimes there were problems regarding how much the guarantors from community-based organizations had really 'bought into the program's supervision and enforcement aspects'.⁵⁸ Nonetheless, this aspect of the AAP proved that it is possible for an agency to artificially create community ties for detainees who have none of their own but are otherwise suitable for release.

Constraints on the AAP

The disincentive component of re-detention for failure to comply with AAP obligations was not successfully implemented, through no fault of the Vera Institute but due to some non-cooperation on the part of local district INS staff with the pilot project. The authorities acted upon only eleven of Vera's 52 recommendations for re-detention.⁵⁹ In the 41 cases where Vera recommended re-detention and were ignored by the INS, those participants absconded soon afterwards.⁶⁰

The AAP Director observed that, in his experience, the INS worked with the defeatist attitude that if someone was released from detention then they were 'as good as gone'. He was unable, for example, to get the New York authorities to re-detain someone who had broken the terms of his or her parole except with very great effort, even when the person was sitting in the Director's own office awaiting the police.⁶¹

Conclusions of the AAP

Vera concluded that: 'Asylum seekers do not need to be detained to appear for their hearings. They also do not seem to need intensive supervision. Detention of asylum seekers is particularly unnecessary and unfair since they are so willing to attend their hearings...'⁶²

The significant impact of intensive supervision on the appearance rates of those with fewer incentives to appear than asylum seekers suggests that this form of 'alternative to detention' may be more suitable for asylum seekers who are in the final stages of appealing against a negative decision or for failed asylum seekers. The AAP findings, however, suggest caution about trying to use

⁵⁶ An interesting statistical point was that, by these means, the AAP was able to confirm the departure of five participants whom the INS classified as 'absconders'.

⁵⁷ Vera Institute of Justice, *Testing Community Supervision for the INS: An evaluation of the Appearance Assistance Program*, Final Report to the Immigration and Naturalization Service, 1 August, 2000, p.16. Lawful departure was important to the undocumented migrants, in particular, because they wanted to preserve the possibility of returning legally to the US in the future.

⁵⁸ Interview with former AAP Director.

⁵⁹ To ensure the highest level of accountability, every decision to re-detain was reviewed by the highest level by the AAP Director. Source: Interview with former AAP Director, October 2003-March 2004.

⁶⁰ Interview with former AAP Director, October 2003-March 2004.

⁶¹ Interview with former AAP Director, October 2003-March 2004.

⁶² Vera Institute of Justice, *Testing Community Supervision for the INS: An evaluation of the Appearance Assistance Program*, Final Report to the Immigration and Naturalization Service, 1 August 2000, p.31-2.

community supervision to enforce orders to leave a country.⁶³ As already stated, the results regarding rejected asylum seekers were inconclusive because most cases were still pending, but the project's evaluators acknowledged that forced return to a dangerous or underdeveloped home country was likely to carry more weight than any US penalty such as a forfeited bond.⁶⁴

The AAP model shows that the question is not what level of supervision of asylum seekers is required for 100% compliance, but rather what level is required for compliance at an acceptable level.⁶⁵ The Vera staff noted that, even if a person under any AAP-style programme did abscond, it would be a great deal easier to trace and re-detain them (were there the will to do so) because of all the information and contacts with friends and family obtained during the course of the programme.⁶⁶

Export value of the AAP?

There are a number of specifics that made the AAP successful and which may not exist in another context, limiting the replicability of the programme:

- More than half the asylum seekers came into the AAP with a legal representative and Vera was able to find *pro bono* attorneys for those without one. Results from other US 'alternative to detention' projects described below suggest that access to a legal representative may be the single best way to ensure compliance, yet there are of course many places within the US, let alone in other countries, without either State-funded legal aid, trained asylum lawyers or *pro bono* legal resources.
- The above point raises questions about whether an AAP-style programme could be run by the detaining authorities of the state, since they would then have to refer clients to legal advisers and provide impartial information that asylum seekers could use to prepare their cases. This was one of several reasons why the AAP evaluation was in favour of such supervision programmes being run by nongovernmental entities, although there were efficiency arguments on both sides.⁶⁷ The Vera Institute for Justice, while not unique, is a rare example of an impartial entity in the immigration field. The former AAP Director was of the opinion that it would be 'very difficult' for a real refugee advocacy organization to run a programme like Vera's, both because they would have to work so closely with the government and because they would have to have a willingness to request the re-detention of participants. This would be difficult both in terms of organizational mission and in terms of ensuring the commitment of staff to the work.
- The length of proceedings in the US suited the style of assistance and supervision provided under the AAP; asylum seekers in much more accelerated procedures would not need to

⁶³ Vera Institute of Justice, *Testing Community Supervision for the INS: An evaluation of the Appearance Assistance Program*, Final Report to the Immigration and Naturalization Service, 1 August 2000, p.71.

⁶⁴ Vera Institute of Justice, *Testing Community Supervision for the INS: An evaluation of the Appearance Assistance Program*, Final Report to the Immigration and Naturalization Service, 1 August 2000, p.62.

⁶⁵ By way of comparison, in 1996, 78% of felony defendants in the US who were released before their trials complied with their bail conditions. [Source: US Department of Justice Statistics, *Felony Defendants in Large Urban Counties 1996, 1999*.] A 2002 US Bureau of Justice study found that 42% of criminal parolees in a managed programme successfully completed their term of supervision, while 10% completely absconded. [Source: US Department of Justice, *Re-entry trends in the US: Success Rates for State Parolees, 2002*.] Both these figures are lower than the rate of appearance achieved by AAP as well as lower than that achieved by asylum seekers with equivalent community ties but without the AAP's supervision. The asylum appearance levels discovered and produced by the Vera Institute may thus be regarded as 'acceptable levels'.

⁶⁶ Interview with former AAP Director, October 2003-March 2004.

⁶⁷ Vera Institute of Justice, *Testing Community Supervision for the INS: An evaluation of the Appearance Assistance Program*, Final Report to the Immigration and Naturalization Service, 1 August 2000, p.74.

have their long-term appearance ensured in the way the programme offered, but might also have a greater reason to abandon the procedure.

- The US legal provision that, if an asylum seeker misses a hearing, he or she automatically loses his or her case is an absolutely key variable in the high appearance rates. An order of deportation *in absentia* can be reopened if the asylum seeker can convince an adjudicator that he or she had reasonable grounds for his or her absence. The courts have, however, been quite restrictive when considering such motions to reopen. There have certainly been cases where an asylum claim was dismissed because the applicant was stuck in traffic or lost wandering inside the courthouse and the attorney was later unable to get the case reopened.
- There is virtually no nationality or culture unrepresented in the New York metropolitan area, so it was relatively easy for Vera to find interpreters, multiethnic staff, and community contacts willing to be housing providers and act as ‘designated guarantors’.

The AAP is a ‘best practice’ model in terms of tracking its results and evaluating them rigorously. This evaluation included, notably, comments from participants themselves regarding their experiences. Some stated, for example, that they had found the supervision overbearing and intrusive, while others said that it had been a positive experience and regarded their supervisors more as counsellors. Participants told evaluators that AAP supervisors accompanying them to their court hearings or other appointments had been very reassuring and helpful.⁶⁸ This beneficial effect of the programme may be regarded as inherently valuable, regardless of its impact on appearance rates.

Some critics question the value of the AAP results with regard to asylum seekers, since they argue that all those released to the Program should have been paroled anyway, were the INS to properly follow its own procedural guidelines. It is clear, however, that those detainees released directly into the AAP (group b) would likely have been held by the INS if the AAP had not been pushing for their release, and in particular if the AAP had not created ‘designated guarantors’ for cases where there were no family or other ties.

In either case, perhaps the most significant AAP results for asylum seekers were those relating to the control group because these results showed that the vast majority of asylum seekers (virtually all except the group who absconded to Canada) complied with the US procedure of their own accord and that the INS officials’ estimates exaggerated the problems of non-compliance, at least prior to final refusal of claims.⁶⁹

2. The Lutheran Immigration and Refugee Service (‘LIRS’) proposed model, and experience with ‘The Ullin 22’⁷⁰

The Lutheran Immigration and Refugee Service (‘LIRS’) identifies detainees who are in need of alternatives to detention as (a) asylum seekers without sponsors for parole and (b) people whose removal orders are over ninety days old and who pose no danger to the community.⁷¹ It argues that organisations with expertise in the settlement of refugees and immigrants are best suited to

⁶⁸ Vera Institute of Justice, *Testing Community Supervision for the INS: An evaluation of the Appearance Assistance Program*, Final Report to the Immigration and Naturalization Service, 1 August 2000, p.57.

⁶⁹ Again, see Conclusions for Department of Justice figures confirming a high rate of compliance.

⁷⁰ ‘The Ullin 22: Shelters and Legal Service Providers Offer Viable Alternatives to Detention,’ Detention Watch Network News, Issue 16, Aug-Sept 2000. All information relating to this project is based on this article and interviews with LIRS staff, October 2003-March 2004.

⁷¹ Lutheran Immigration and Refugee Service, *Proposed Alternatives to Detention and Legal Orientation*, 2001, unpublished document provided to the author on 16 September 2003.

implement alternatives to detention, and as evidence they refer to the success of several past and present NGO alternatives, including a programme run by Catholic Charities in New Orleans (see below), and a LIRS programme which managed a specific group of 25 Chinese asylum seekers released from detention in the remote location of Ullin, Illinois, in 1999. At the request of the government, LIRS managed the dispersal of these asylum seekers to open shelters around the country, mainly in Chicago, and ensured that they were referred to attorneys. The locations were not publicly disclosed, due to trafficking concerns. The INS paid the travel and lodging costs for a dozen attorneys to go to Ullin to give a legal rights presentation to 33 Chinese, followed by individual interviews, and several charities donated the transport costs to the shelters of those who were released. For several months after they were released, LIRS coordinated conference calls every two weeks with legal representatives and shelter managers, to monitor the cases and address any problems. Frequent updates were sent to the government by LIRS.

Of the 25 released, two moved from the shelters to live with family members and one disappeared, but the remaining 22 appeared consistently for INS check-ins and court dates. This small initiative, therefore, had a 96% appearance rate. LIRS also believes that the asylum seekers achieved a higher than expected asylum grant rate because they were better able to present their claims than if they had been left detained and/or unrepresented. The costs of detaining the 22 for a year, at an average of \$63 per night per person, would have totalled close to \$500,000, whereas the shelters cost far less. One reported that their cost per resident per night was only \$2 – at which rate a year's housing for all 22 people was less than \$16,000 (some 3% of the cost of detention).⁷²

The alternative to detention model currently proposed by LIRS would involve:

Step One: Group legal orientations for detainees, followed by individual interviews. They note that in the case of the Chinese asylum seekers, information gathered at the interviews following an initial orientation proved vital in evaluating release options.

Step Two: Individual screening of those to be released, including checks on whether their family ties should supersede use of an NGO sponsor for parole.

Step Three: Provision of integrated services, that is, legal, social, medical, mental health and job placement. LIRS notes that work authorization for the parolees would be essential so that they could support themselves and cover the costs of their accommodation. LIRS makes the pointed observation that '[i]t takes a good deal of work to find out what legal, social and pastoral services a person needs, and to help them to access them... Merely giving released individuals a list of available services is not sufficient.' Above all, facilitating referral to good legal representatives is assessed as a critical factor: 'Locating quality representation was a time-consuming process, and was only possible because of the long-established relationships that the nonprofit agencies had with bar associations, law firms and the *pro bono* legal community.' Even after an attorney was found, the nonprofit agency played a key role in liaison and communication between clients and lawyers.

Step Four: Ongoing assistance, monitoring and provision of information, including explanations of the consequences of not attending a court hearing. LIRS argues that it is important that this information should come from a 'neutral party'. In the case of the Ullin parolees, they were actually accompanied by shelter staff to their hearings.

⁷² Detention Watch Network Newsletter, Issue 16, Aug-Sept 2000.

Step Five: Enforcement of final deportation orders. It is noted that fewer people are likely to receive such orders because evidence demonstrates higher chances of recognition for asylum seekers with representation (around six times that of those unrepresented). LIRS is thus willing to play a referral role when it comes to enforcement.

If applied to some 2,500 people eligible for release, at a cost of \$7.3 million, LIRS predicts that there would be a cost saving of at least \$11.6 million under their proposed model.

3. New federal government funding for 'alternatives': the Intensive Supervision Appearance Program ('ISAP')

In response to the success of the Vera programme, Congress appropriated US\$3 million to fund alternatives to detention in FY2002-2004. However, in FY2002, most of these funds were spent on a shelter care detention facility for families that was acknowledged to be more an alternative, softer form of detention than an alternative to it (see below). The latter appropriations were spent on several pilot projects involving electronic monitoring of asylum seekers (again, see below). These pilot projects were perceived, by advocates in the three sites where implemented, as raising rather than lowering restrictions on asylum seekers.

In FY2003, appropriators clarified that the funds should be spent on alternatives to detention, that is, on an Intensive Supervision Appearance Program ('ISAP'). The DHS issued a solicitation for projects to be established in eight cities, namely Baltimore, Denver, Kansas City, Miami, Philadelphia, Portland, San Francisco and St Paul. Detention and removal operations ('DRO') within ICE, a sub-entity of the DHS, will retain sole authority over deciding whom to release, and the implementing partner agency will only be paid *per capita* for each supervised person who appears for all appointments throughout the procedure and possible removal. According to a DHS announcement launching ISAP: 'To be eligible for this pilot program, an alien must be an adult with a confirmed identity who does not pose a threat to the community or national security. Additionally, it will be available only to aliens who are not subject to mandatory detention, who are pending immigration court proceedings or awaiting removal on a final order of removal and who will be residing within the managed area.'⁷³

In May 2003, non-profit organisations in the Detention Watch Network wrote to the DHS to re-state their reasons for believing that community-based options are preferable to enforcement models.⁷⁴ Community-based options are defined as those that facilitate ties in the community, in combination with the provision of good asylum lawyers and the meeting of basic needs. The Network believes that such conditions should be sufficient to make the overwhelming majority of asylum seekers compliant with US asylum procedures. They base these assertions in large part upon the findings of the Vera Institute's AAP (described above).

The DHS solicitation's terms, however, require that those running ISAP projects play a significant enforcement role on behalf of the Department – meaning that the agencies must be willing to recommend re-detention or present someone for forced removal if so required. In particular, the DHS solicitation requires that all projects should be willing and capable of using electronic monitoring as a component in their supervision regime, at least in certain cases.⁷⁵ Several community-based organizations were therefore deterred, on principle, from applying for the funds.

⁷³ ICE Media Advisory, 21 June 2004.

⁷⁴ Comment Letter on 'Intensive Supervision Appearance Program' from the Detention Watch Network to the Bureau of Citizenship, 29 May 2003.

⁷⁵ ISAP, SF 1449, Section I, p.24.

The Vera Institute's bid to replicate the AAP project in six of the eight proposed sites was not accepted. It would have been interesting, if both Vera and the private prison/probation companies had been awarded contracts, to compare their effectiveness and quantify the impact of Vera's rights-supportive environment as opposed to a more enforcement-oriented approach.

Another non-profit organization that made a bid for the ISAP funds was the Volunteers of America in Minneapolis/St Paul.⁷⁶ This is a local charter affiliate of a national social service agency that has been in operation for 107 years, but which has no previous experience with refugees or asylum seekers. It does have previous experience in the criminal justice/probation field and, in fact, manages a 'soft', rehabilitative jail for women in St Paul. Their bid included an element of electronic monitoring, and as a direct result of this feature, all the asylum seekers they proposed to assist would have resided in the private homes of sponsors, usually family members. This fact suggests that the Volunteers of America project would have provided an alternative to detention only to those who would be eligible for parole in any case, even without the additional imposition of supervision.

The agency offered to provide a low staff to caseload ratio of 1:16 or 1:18, for 200 people over the course of five years. Participants were expected to be drawn from local jails in the seven counties of the Minneapolis/St Paul metropolitan area, or indeed from anywhere in the US so long as the person had a sponsor resident in the twin cities. The agency had no intention to 'create' a community sponsor for anyone who did not already have one, so would not have widened the pool of potential parolees by that means. They state that they had proposed to specialize in assistance to women who may be former victims of trafficking, to utilize local services – including a torture counselling centre and *pro bono* lawyers – in order to assist the asylum seekers, and to open an office storefront.

As of March 2004, however, it is reported that the ISAP funding for projects in all eight locations will go to a private company named Behavioral Interventions, Inc. ('BI') of Boulder Colorado, which has a history of implementing electronic monitoring in the criminal justice field.⁷⁷ They are to launch ISAP, involving the use of electronic monitoring but also supervision by home and work visits and reporting by telephone, in the eight pilot cities on 21 June 2004.⁷⁸

It is expected that a further US\$11 million will be granted to ICE for spending on 'alternatives to detention' in the FY2005 budget. It is understood that this is likely to be spent on replicating and expanding electronic monitoring and ISAP projects throughout the country (see below for further details on electronic monitoring pilot projects).

B. NGO projects to maximise the release of asylum seekers on bond and parole

Throughout the US, a wide variety of local and national nongovernmental organisations, mainly legal advice projects, advocate to make release on bond or humanitarian parole a more accessible option for asylum seekers and other persons in immigration detention. In some cases, their staff will pro-actively seek sponsors for vulnerable individuals, help to find them a fixed address at which to stay, or sometimes informally vouch for the appearance of the person released. A number of

⁷⁶ All information based on an interview with the proposed manager for this project at Volunteers of America, October 2003-March 2004.

⁷⁷ See www.bi.com for further information on this company, which declined to comment to this study on their plans for ISAP in accordance with instructions from the Department of Homeland Security.

⁷⁸ ICE Media Advisory, 21 June 2004.

examples of such work are therefore included here as 'alternatives', though that is not their sole or primary purpose. Information regarding the many benefits of free legal advice are also included.

1. The Florence Immigrant and Refugee Rights Project, Arizona

Since 1989, this nongovernmental agency has been permitted entry to immigration detention facilities (Florence INS Service Processing Center) to give daily legal rights presentations to between 20-40 detainees at a time prior to their first hearing before an Immigration Judge. The presentations assist detainees in evaluating whether to go forward with their case, increasing the efficiency of the immigration court process and reducing the overall costs of detention. The group orientations are followed by individual interviews with those who request them. The Project also provides instructions for writing supporting/bond letters for parole hearings and directly represents a portion of those applicants at their bond hearings.⁷⁹

In 1998, based on the success of the Florence Project, the US government (administered via EOIR) funded legal orientation projects in three different sites, with three different agencies, for three months each. The Department of Justice's findings from these pilot projects were that providing such rights information to immigration detainees made the immigration proceedings more efficient and reduced overall bed days in detention by 4.2 days per detainee. Such legal orientations have now been funded nationwide.⁸⁰ At an estimated cost of detention of \$65.61 per day, such orientations should lead to a \$12.8 million saving. If the legal orientations cost \$2.8 million, the government will still save \$10 million.⁸¹

2. Catholic Charities, New Orleans

In New Orleans, Catholic Charities has helped paroled asylum seekers since 1999 to find legal representation and housing. The project does not receive government funding but believes that its work has saved the government substantial costs by providing a fixed office address through which asylum seekers can be contacted and thereby providing a practical alternative to their detention. The project acts as more than simply a 'mailbox' for their clients however, as they also informally monitor their whereabouts and appearance, though they are not formally responsible as sponsors or sureties. They have 1.25 staff members who have assisted and monitored the compliance of 42 released asylum seekers (as well as 57 criminal aliens, including refugees, with removal orders older than ninety days). None of these cases had any legally present family members or other contacts in the US at the time of their release, though sometimes such persons surfaced later. They were all released on parole, with no bond or surety required.

Of the 42 asylum seekers released to the project, only one person has ever disappeared during the asylum procedure, to go to Canada. It should be noted, however, that these clients were only tracked by the Catholic Charities project to the point when their asylum decisions were delivered, not to the point of removal if their asylum claims were rejected.

⁷⁹ C. Nugent, 'Strengthening access to justice: Pre-hearing rights presentations for detained respondents', *Interpreter Releases*, Vol.76, no.27, 19 July 1999.

⁸⁰ During FY2002-04, Congress appropriated \$US1 million annually to fund legal orientation programs for immigration detainees. With the FY2002 funding, six sites were contracted to give legal orientation programs, which were expected to reach over 21,000 detainees.

⁸¹ Source: Florence Immigrant and Refugee Rights Project and LIRS, *Legal Orientation for Immigration Detainees: Program Implementation Plan*, unpublished document provided to the author on 16 September 2003.

Most of their clients find beds in ordinary homeless shelters, but even these applicants have had almost perfect appearance rates, suggesting that quality of accommodation is not a decisive factor in ensuring appearance. The manager of the project believes the decisive factor has been referrals to diligent attorneys who remind their clients of dates and deadlines. Another key factor, simply in terms of making the project financially viable, was the agreement of INS to grant all those released to the supervision of Catholic Charities an early work authorization, commencing from the day of their release rather than after six months. This was based on discretion granted to local District Directors in cases of parole. Catholic Charities reports that this kind of concession was only achievable thanks to the constructive dialogue they have established in quarterly meetings with the local INS (now ICE) in Louisiana. Since 2001, however, due to the drop in the number of persons paroled by DHS, the project has not had any asylum seekers released to its supervision. It is aware of only two Cuban asylum seekers paroled in the District in January 2002.⁸²

3. Pennsylvania Immigration Resource Center ('PIRC')⁸³

PIRC provides legal services to detainees in York, Pennsylvania, including a special programme to encourage self-identification of torture survivors. They give legal rights orientations, in conjunction with local law schools, at York Detention Center (900 beds). However, grants of parole remain extremely rare, even if PIRC helps find a sponsor and fixed address of accommodation to submit to ICE. If an asylum seeker is paroled, PIRC tries to refer the applicant to a lawyer who can pursue the claim and will network with other local NGOs (e.g., the Pennsylvania Immigration and Citizenship Coalition) to ensure that basic needs are met.⁸⁴ According to PIRC, the only detainees currently being paroled in its area are pregnant women or separated children and families with young children, though not in all cases.⁸⁵

4. Florida Immigrants Advocacy Centre ('FIAC')

FIAC's proposals for community-based 'alternatives to detention' in Florida emerged as a result of a scandal at Krome Detention Center several years ago. Female detainees in Krome made serious allegations of sexual abuse, which prompted an investigation by the Department of Justice and the FBI. While the abusive staff members were not removed from the Center, the victims were removed to a maximum security jail (Turner Guilford Knight Correctional Center) in downtown Miami. NGOs complained that this was grossly inappropriate and, as a result, the women were transferred to Broward County Detention Facility, which at the same time was given \$1 million of monies appropriated by Congress for implementing alternatives to detention, though Broward is clearly a place of (soft) detention. Later some of these vulnerable women were released with a requirement to report every 30 days.⁸⁶

FIAC does not provide accommodation to asylum seekers, but has a staff of 45 who supply free legal services to them. Though it does not have the capacity to track the precise rate of compliance

⁸² There are some 200-250 immigration detainees in Louisiana at any point in time, with an estimated 20-30 being asylum seekers without criminal convictions. Interview with manager of Catholic Charities, New Orleans, October 2003-March 2004.

⁸³ Interview with PIRC, October 2003-March 2004.

⁸⁴ Families who are released on bonds can live at whatever address they supply, without supervision. Those who are released to live with relatives or other bondspersons sometimes face problems when hospitality wears thin before the end of the asylum procedure, at which point PIRC may have to help find them emergency housing (see below section on shelters).

⁸⁵ The latter two categories are detained not at York but in Berks County.

⁸⁶ Women's Commission for Refugee Women and Children, *Innocents in Jail: INS Moves Refugee Women from Krome to Turner Guilford Knight Correctional Center, Miami*, June 2001.

of its non-detained clients, it reports that most do comply and confirms the view that legal representation is the single best guarantee of compliance, if only because it promotes understanding that non-appearance will lead to the court issuing a deportation order *in absentia*.⁸⁷ Most of FIAC's clients in Miami have relatives or friends to stay with, but in those cases where emergency housing needs arise, this can be very difficult to secure. FIAC's proposed alternatives to detention, especially in cases such as the vulnerable women described above, are open shelters and community-based assistance programmes. Though it has not cost these alternatives, FIAC asserts with confidence that it would be cheaper than the current use of electronic monitoring on released asylum seekers in Florida (see below).

C. Shelters for accommodation of asylum seekers released on bond or parole

A number of nongovernmental and state-funded shelters offer themselves as accommodation addresses in applications for release on bond or parole. Though these two means of release are legally separate, they are related in so far as both require a fixed address and an element of reporting to the authorities. The following are examples of shelters that specialise in assisting released detainees with meeting such conditions. Often they cooperate with legal services organisations such as those named above.

1. International Friendship House, Pennsylvania⁸⁸

International Friendship House is an emergency housing resource available in York, Pennsylvania. It is funded through donations and government funds for emergency housing, and can accommodate seventeen adult residents at one time. It accepts former detainees from York and Berks Counties, as well as from other Districts as far afield as New Jersey and Illinois. Since 2001 such releases have slowed down to a trickle. Twice, in difficult parole cases, the manager of the House has personally signed an affidavit of support, meaning a commitment to support the person financially over 40 quarters (10 years). Even so, both cases were refused parole.

The House only accepts those seeking refugee protection, or who have been denied such protection but cannot be removed. The detainee cannot have a criminal record, and must be willing to agree to a set of written House rules as a pre-condition of their stay. The staff of the House report constructive relations with the local detention managers who allow them to visit detainees inside the facility and interview them prior to release. Representatives of the House, including interns from local colleges, usually visit the nearby facility four days per week.

The House operates a case management model, with a trilingual case manager who first does an 'intake' – a review of all psychological health issues, the underlying claim for refuge (either by talking to their attorney or finding them an attorney if they do not already have one), the need for language classes, high-school entry or other training, and their immediate needs for clothing and other basic supplies. To meet all these needs, the project depends on a tight informal network of attorneys, NGOs, churches and mosques in the local area.

If eligible to work, the case manager helps the asylum seeker to find a job in the local area and afterwards the House will charge them rent of \$25 per week (two thirds of which is refunded if they later move to their own apartment). If not permitted to work for income, they are required by the

⁸⁷ The manager mentioned the example of a sixteen year old Haitian boy who was recognized as a refugee but then had the finding reversed. He reported for his last appointment although fully aware that he was to be detained and deported. Interview with FIAC, October 2003-March 2004.

⁸⁸ Information based on an interview with International Friendship House, October 2003-March 2004.

management of the House to do volunteer work in the community as a gesture of thanks for their free room and board. This is one of the rules of the House to which they must agree, by signing a contract, before they are released into its care. Other House rules include an 11pm curfew, with preference for everyone to be back before 10pm unless they have to work a late shift; and no alcohol and no smoking. In the rare cases where the rules are broken, the resident may be expelled from the House but they will always be referred to another homeless shelter or charitable rescue mission. There has only been one case in the past four years (approximately 100 residents in total) where a resident has disappeared and cut contact.

The manager of the House also runs a community 'circle' which has housed 45 parolees over the past five years, providing an address or sponsor necessary for their release when they do not have family or friends in the US. Instinctive trust of the detainee is the only selection criteria for this highly informal alternative, and there is admitted to be a natural limit on its potential scale since only trusted friends of the Coordinator, not strangers, are invited to become involved. For example, the Coordinator once hosted a family of five sisters from the Democratic Republic of Congo where the eldest girl was over eighteen and therefore the family was not considered eligible for foster care. A wider network of volunteer sponsors would create a heavy responsibility to pre-screen host households.

Parolees stay in these host households for varying periods of time, ranging from one night to fifteen months. If they move out to their own private accommodation they do so with the Coordinator's cooperation, requesting permission from the authorities for a change of address. None of the 45 former detainees hosted by the circle has ever disappeared or failed to appear for their asylum hearings.

2. Freedom House, Detroit⁸⁹

This shelter of 37 places accommodates asylum seekers and recognised refugees. As of November 2003, ICE was not paroling any asylum seekers to its care, but it is the kind of place that would happily receive and supervise them if ICE were willing to grant parole to those without community ties. Since 1983, Freedom House has provided support services and transitional housing to recognised refugees released when, and its own in-house legal department visits the two county jails in Michigan on a regular basis. They give group legal orientations and assist detainees with applications for asylum. Funds for the House come from federal, state and local government grants for homelessness, as well as some twenty private foundations and donors.

3. Refugee Immigration Ministries ('RIM'), Boston

RIM, with two full-time staff, three part-time staff and interns, currently organises seven 'cluster groups' made up of church congregation members and other volunteers to support an individual parolee. The clusters provide host homes necessary for parole to be granted. They then work on a case management model to ensure that each asylum seeker is provided with whatever he or she needs (based on *pro bono* arrangements with attorneys, Boston Medical Centre and local community organisations). There is a strict non-proselytising policy, to ensure that applicants' own spiritual beliefs are respected by the church volunteers. The case management structure is also needed to ensure that the asylum applicants are allowed to become self-sufficient in the longer term.

⁸⁹ Information based on an interview with an attorney for Freedom House, October 2003-March 2004.

Potential parolees are identified by RIM-organised volunteer visitors to detention centres. The training programme for these visitors is funded by ICE. Those selected to be offered a placement in a cluster group have sufficiently strong asylum claims to attract a *pro bono* attorney. RIM considers there to be far more detainees deserving of parole than cluster placements, so they try to select the most urgent cases. In the past three years, RIM has assisted 45 people and it is currently assisting seventeen or eighteen people. What is striking is that, of the 45, only one asylum seeker did not receive refugee status. None absconded or failed to comply with the procedure in which they had confidence of recognition, though the one rejected applicant did abscond to Canada the day before his deportation.⁹⁰

Since September 2001, RIM has not been successful in assisting a single asylum seeker to be paroled into their care, though they continue to assist asylum seekers paroled to family members who later find that they need to move out of the relative's home. This is partly due to an overall drop during 2002-2003 in the number of asylum seekers in the expedited removal process in the Boston area, but equally it appears to reflect DHS' greater unwillingness to release asylum seekers from detention since late 2001.⁹¹

The total costs of the RIM project are approximately \$2800 per client per cluster, with nine times that amount of donated time (valued at \$15.39 per hour) and additional donations in kind. At this rate, even without knowing the precise costs of detention in Boston, it is clear that, for the government, this is an extremely cost-effective alternative.

D. Alternatives for separated minors and other vulnerable persons

1. Alternatives for separated minors

As already mentioned, the Office for Refugee Resettlement ('ORR') is now responsible for the release of separated asylum-seeking children from detention (see earlier introduction on the rules governing detention and release of asylum seeking children in the US). If a child is released to foster care – in practice, the single true 'alternative to detention' arrangement operating in the US – ORR remains responsible for their care.

ORR is expanding the use of foster care, instead of 'shelters' (soft, or non-secure detention facilities), and foster placements rose some 200% in the six months prior to March 2003. Juvenile jails have been identified for closure, and other positive placements are being explored, including in cases where there may be a risk of abduction. The proposed Unaccompanied Alien Child Protection Act includes several promising provisions that would promote such children's access to legal counsel, give ORR the power to conduct age determinations, and codify the status of appointed guardians *ad litem*. It is hoped that this Act will be passed in 2004.

ORR is also in the process of contracting a pilot project with the Women's Commission for Refugee Women and Children, in conjunction the Heartland Alliance in Chicago, which aims to test the benefits of legal guardianship for minors who have been released.⁹² One corollary benefit of this

⁹⁰ Interview with manager of RIM, October 2003-March 2004.

⁹¹ This inexplicable decrease in numbers is confirmed by the Political Asylum/Immigration Representation Project ('PAIR'), Boston.

⁹² Interview with representative of the Women's Commission for Refugee Women and Children, October 2003-March 2004.

project, relevant to the present study, is that a legal representative, based near the minor's foster family, can help to ensure that the child appears for all his or her proceedings.⁹³

2. Alternatives for other vulnerable cases

Several NGOs reported to this study that particularly vulnerable adults, such as those with serious medical problems or pregnant women, have been paroled, primarily to reduce a state's healthcare costs and the potential liability of the detaining authorities/companies. Managers of shelters have sometimes recognised that they have leverage in such cases where the ICE has contacted them in search of a sponsor. In such cases this leverage has sometimes been used to obtain early work authorisation for the parolee. Without the possibility of earning income such persons would have to live in a general homeless shelter where their health or, in the case of a pregnant woman, the health of a baby might be at risk.

The LIRS Detainee Torture Survivor Legal Support Program operates in conjunction with several of the above-described legal services projects in New York, New Jersey, York Pennsylvania, New Orleans, Arizona and Miami. Ten different groups provide legal orientations to detainees in these areas, and part of this orientation is promoting the self-identification of torture survivors by informing them of available services. Psychological reports may be submitted as part of an individual's parole petition, but LIRS reports very little success with release on these humanitarian medical grounds. Trauma from torture is considered a relevant factor, but other criteria for release must also be established. This is particularly evident since September 2001 and the subsequent decline in parole rates in several districts. One of the objectives of the LIRS Program is to promote better cooperation between lawyers, psychologists and the authorities, so that release on psychological grounds can be more often achieved.

To submit a psychological assessment in a parole petition, an NGO or family member must be willing to pay for the expert's time or find an expert willing to do an assessment *pro bono*. In many detention facilities, the conditions for conducting an assessment will be far from ideal, for example, a guard may be required to remain in the room or a lack of privacy for the physical examination of scars. Some jails may not allow an outside physician to conduct examinations. Access and the conditions of an examination depend very much upon the local advocate's relationship with the facility management.

For those torture survivors who are paroled, usually with a family sponsor, they receive treatment at centres or programmes with funding from the government (i.e., ORR), through LIRS or some depend entirely on *pro bono* work by medical practitioners. Finding enough appropriate psychologists in New Orleans is especially difficult, and it is rare to get *pro bono* assistance in Miami and Los Angeles. In New York this is easier because there is an alliance with a supportive medical association.⁹⁴

E. Electronic monitoring as an alternative to detention?

As explained above, the new government monies appropriated to fund alternatives to detention of asylum seekers are being spent on projects ('ISAP') that are required to include at least some

⁹³ Note that at present the US government does collect data (marked with a J for juvenile) to track appearance rates of minors, though the data is unavailable. EOIR attributes this to the fact that the courts do not always input such data consistently.

⁹⁴ Interview with Coordinator of the LIRS Detainee Torture Survivor Legal Support Program, October 2003-March 2004.

capacity for electronic monitoring. There are already pilot projects running to test such monitoring in several locations of the US. For example, since August 2003, ICE has introduced 'Electronic Monitoring Devices' ('EMDs') as a parole condition for 'low risk' parolees, mostly asylum seekers, in Miami and other parolees in Anchorage, Seattle and Detroit. Those released from Krome Detention Center in West Miami-Dade County are on a six-month trial.⁹⁵

There are two types of EMD pilot projects underway: (1) electronic ankle-bracelets (or 'tags') and (2) voice recognition technology ('VRT'). A third type of electronic monitoring by means of global positioning ('GPS') devices, also worn as bracelets, has not yet been piloted in the US.

The electronic tag looks like a large black watch worn on the ankle and sends a signal to a receiver placed in the parolee's home. By calling into this receiver it is possible to check whether the asylum seeker is near to the home between certain hours of each day. In Miami, most tagged asylum seekers are only allowed to leave their homes between 9am-2pm Sunday to Friday, and not at all on Saturday. After a period of consistent compliance, this may be relaxed to a 12-hour curfew between Sunday and Friday. A Deportation Officer is responsible for monitoring each case, and is in charge of deciding whether the conditions of the curfew should be relaxed or restricted.

Voice recognition technology, on the other hand, requires no 'set-up' effort or cost but only that the person should call in at certain times, usually once a month. It is mainly being used in relation to persons with final removal orders who cannot be removed to their home country, as an alternative to indefinite detention. It has been tested in the cities of Seattle and Portland.

In the US criminal justice system, electronic monitoring is classified as a form of custody, and there are certainly many who would regard the form involving ankle-bracelets and home curfew as 'detention'. DHS officials responsible for such monitoring of asylum seekers in Miami, for example, have explained to refugee advocates that they do not make exceptions to the curfew in cases where a detainee would not be temporarily released from detention – for example, to attend a funeral. On the other hand, there is also no question that many asylum seekers in detention would regard electronic monitoring as a form of 'release', albeit a restriction on their free movement, allowing them to live with their relatives in a private home.

The crux of the debate is whether electronic monitoring is used for asylum seekers and other aliens who are considered real flight risks and who would otherwise be in detention, or whether it is applied to those who would otherwise have been allowed to reside in the community without supervision or any other serious restrictions on their freedom of movement. To date, in the Miami pilot project, NGOs believe it has been used in the latter manner, and this is what provokes them to condemn the policy as a 'dramatic step backward' and an 'unnecessary and ineffective use of resources' because 'it is an expansion of detention for a population that used to benefit from a rational parole policy [in Miami].'⁹⁶

Advocates in Florida note that, in practice, the long curfew hours are obstructing the ability of asylum seekers to work, practise religion, visit family and meet with their lawyers – especially where the asylum seeker lives outside the city and is dependent on public transport. (Again, access to lawyers is comparatively easier than while in detention, but those in the scheme are considered by their lawyers to be those who, before August, would have been paroled without a curfew.) While curfew hours may be relaxed over time based on an individual's behaviour, advocates in Miami

⁹⁵ 'Pilot Program Frees Detainees', *Miami Herald*, 27 September 2003.

⁹⁶ Letter from the Women's Commission for Refugee Women and Children to the Secretary of Homeland Security, 22 August 2003.

believe that the initial hours of free movement for some participants of 9am-2pm Sunday-Friday are overly restrictive

There have been concerns raised regarding inflexible implementation of the EMD project's rules. FIAC cites the example of a Haitian asylum seeker who went to immigration court for a scheduled hearing during a time when he was supposed to be at home, not understanding that his presence was not required. He was re-detained on the ground of a breach of his curfew conditions, even when the explanation was provided. ICE, however, states that while it has the authority to re-detain a monitored person at any time, it has a flexible policy with regard to justifiable violations of EMD release (such as failure to return home in time due to traffic, a child accidentally unplugging the phone, etc.) and that it will look for a pattern of violations before deciding to re-detain. When the Board of Immigration Appeals confirms an asylum seeker's removal order, he or she will usually be re-detained on the very same day. Refugee advocates have asked for release with an EMD to be treated more formally as release from detention in the sense that alleged violations be documented and provided to the participant and his or her attorney so that there is an opportunity to respond and challenge any decision to re-detain.

The other major complaint from Miami is that the conditions of EMD release, though now always supposed to be provided to the monitored person in writing, are often not explained in a language the asylum seeker understands, relying instead on his or her often faulty understanding of English.⁹⁷ Changes in conditions – for example in curfew hours – do not have to be provided in writing. Lawyers report that their clients are often confused, and have sometimes been too scared to even go into their own back yards for fear of violating the terms of their release. There have also been phone calls to the home receivers at all hours of the night, which wakes the whole household, including children. People in the house cannot make long phone calls in case the Deportation Officer is unable to get through and considers this non-contact to be a violation.

There have not been any reports of similar complaints from other pilot project locations (Detroit, Seattle or Anchorage). NGOs in at least two of the pilot sites face strict parole policies and would actually like to have asylum seekers released using bracelets. They feel it would be better than continued detention.

The stigmatising impact of an electronic ankle bracelet that may make the asylum seeker look like a criminal released on remand is often criticized. This feeling of stigmatisation is somewhat subjective – while some asylum seekers may indeed be traumatised or at least feel demeaned by wearing the device, others emphasise that it is far less stigmatising, traumatising and demeaning than remaining in detention. The more important human rights' argument is whether the restriction on freedom of movement involved in home curfew is proportionate and necessary in each individual case. One appropriate question might be whether reporting requirements (by means, perhaps, of voice recognition technology) or any other less restrictive alternative have been tried or even considered in the individual case.⁹⁸ Evidence regarding the statistical non-appearance rates for released asylum seekers and rejected asylum seekers of different profiles is essential in answering

⁹⁷ Those on EMD release must sign a consent form, allowing access to the home for installation of the receiver, and promising to pay the phone bill. This form does not contain the conditions of their release.

⁹⁸ Unfortunately, at present such voice recognition systems, as tested in Seattle and Portland, have one serious difficulty with regard to the immigration field in that they do not recognise accents. Source: *The Seattle Times*, 26 February 2004. The same article quotes a field Director of the Detention and Removal Operations of ICE saying that electronic monitoring is only suitable for those with strong community ties and who are a low flight risk – confirming the assessments of some NGOs who argue that these cases can safely be released on parole or bond, without the intrusive application of home curfew.

such questions at a broader policy level; no statistics that are currently available support the view that a blanket policy of electronic monitoring for all or even most released asylum seekers is necessary to improve appearance rates anywhere in the US. Furthermore, advocates in Miami point out that, as of March 2004, in the cases of electronically monitored persons who were later re-detained for violations in the conditions of their release, none of the said violations related to a failure to attend an immigration appointment or court hearing. This may be assumed to indicate that electronic monitoring works well, but such a statement is untested against a control group of a similar case profile released without monitoring.

In Florida, the stated aim is to release up to 200 parolees with EMDs within the next few months. Advocates are trying to shift the project to criminal aliens now held in indefinite detention, and away from asylum seekers who could, they argue, safely continue to be released without curfews and without such devices.

EMDs have also been given to immigration parolees (not asylum seekers) in Detroit, where the devices are known as 'tethers'. ICE uses a matrix of eligibility criteria to decide who is suitable. It contains a check list with numerical scores matching the answers to questions regarding the type of alien (with asylum seekers a preferred category), their prior record, their supervision history, the possibility of a history of substance abuse, the suitability of their home address and phone line, and lastly their attitude. These scores are totalled to decide whether the person should be classed as 'desirable' / 'acceptable' / 'undesirable' / 'unacceptable' for the programme.⁹⁹

ICE has approached Freedom House in Detroit (see above) to enquire whether they would accommodate paroled asylum seekers with EMDs. Freedom House did not feel that they could have 'tethered' residents mixed amongst others who were unconditionally released and did not wish to change the House's 'environment of sanctuary' such that the police or ICE officers could enter without a warrant and at any time to re-detain those who may have breached EMD conditions.¹⁰⁰ The practical difficulties faced by Freedom House indicate a key limitation on the use of electronic monitoring: it can only be efficiently applied to asylum seekers who have family or community ties willing to accept the receivers into their homes. For those without such ties, currently assisted by NGOs, a new shelter designed to suit the technology would have to be built and this would reduce the cost savings to be gained by the use of EMDs. ICE has proposed that asylum seekers who are living alone should be tethered, but with a volunteer worker of Freedom House living with each asylum seeker as well. The organization did not agree to this proposal on both principled and practical grounds.

As already mentioned, a large budget is likely to be allocated to ICE for expansion and replication of these EMD release projects throughout the United States and the private company Behavioral Interventions Inc. has won the contract to implement such projects in eight cities.

⁹⁹ INS Alternative to Secure Detention Program – Title of example form provided by ICE to NGOs considering cooperation with electronic monitoring release. Unpublished report.

¹⁰⁰ Freedom House did offer, however, to take one 'tethered' applicant whose receiver unit would be located within the staff office, for a limited period and under a number of other conditions including refusal to assume civil, criminal or administrative liability. Reply from Freedom House to Roy M. Bailey, ICE, 7 September 2003.

IV. CONCLUSIONS

A. Do alternatives ensure compliance?

Statistics as to the appearance rates of released or non-detained asylum seekers in the US are difficult to obtain, but several evaluations have produced data suggesting that these rates have, during various time periods since the late 1990s and in various locations, ranged between 75%-95%. In general, therefore, as one would expect in a major destination country, these rates have been consistently high.

The US Department of Justice has supplied this study with national statistics which show that 15% of 'released' and 'never detained' asylum seekers (grouped together to represent all asylum seekers non-detained at the point in time when they received a decision from an Immigration Judge) failed to appear for their hearings in US immigration courts during FY2003.¹⁰¹ With regard to this 85% appearance rate, it should be noted that this figure does not include 'affirmative' asylum claims, lodged in-country by persons who are not apprehended for illegal presence, which are adjudicated administratively. This latter group, given their profile, would likely have an even higher rate of appearance for their interviews and appointments during the asylum procedure, raising the overall national figure for 'compliance with the asylum procedure' higher than 85%.

In September 2000, a US government report found that between April 1997 and September 1999 5,320 'aliens' (asylum seekers who passed the 'credible fear' test), were released from detention. Of these, 2,351 had received an Immigration Judge's decision and of this number, 1,000 (approximately 42%) did not appear for their hearing and so were ordered removed *in absentia*. However, the report goes on to explain that this figure was exaggerated because 2,969 of those released had not yet had their merits hearings, so that, for example, by August 2000, the figure had dropped to 34% and was predicted to fall as low as 25% when all 5,320 cases had been heard. The final appearance rate for the 29-month period in question was therefore expected to be around 75%. The recommendation of the report was that the (then) INS should analyse the characteristics of those aliens who appeared and those who did not, in order to make more informed decisions as to who should be released in the future.¹⁰²

In April 1990, the 'INS Pilot Parole Project' (later to become the Asylum Pre-Screening Officer Parole Program or 'APSO'),¹⁰³ released on parole 647 (32% of 2016) asylum seekers who had

¹⁰¹ That is, 9,705 non-detained asylum seekers failed to appear, out of a total 63,611 non-detained asylum seekers whose cases were completed within FY2003. 'Failed to appear' here includes cases ordered deported *in absentia* and those closed administratively due to the absence of the applicant at the time of the hearing. Of cases completed in the courts in FY2003, there were 8,910 'released' asylum applicants, of whom 521 received deportation orders *in absentia* and another 122 had their cases closed. There were 54,701 asylum seekers who were 'never detained' – that is, either released from detention before the proceedings began, or literally never detained – of whom 7,542 received deportation orders *in absentia* and another 2,265 had their cases closed. More broadly, EOIR also reports to this study that there was a total of 252,822 immigration proceedings completed in the courts in FY2003, of whom 68,215 were asylum applications – including detainees. Of that subgroup there were 9,804 failures to appear. The difference between this figure of 9,804 and the 9,705 figure from which the above '15%' is derived can be explained by the fact that 102 detainees were recorded as having failed to appear. This fact is explained either by data entry errors or, in 69 cases, the authorities being unable to locate the detainee or present the asylum seeker for his or her hearing. Source: Data received from EOIR, Department of Justice Bureau of Statistics, via emails on file with author.

¹⁰² US General Accounting Office Report to Congressional Committees, *Illegal Aliens – Opportunities Exist to Improve the Expedited Removal Process*, 1 September 2000, (2000 WL 1408947 F.D.C.H.).

¹⁰³ This pilot project began as a result of collaboration between UNHCR, the INS, the Lawyer's Committee for Human Rights, and church and community groups. The New York, Miami, San Francisco and LA districts were chosen to participate in the project, as they are the main ports of entry for undocumented asylum seekers.

passed the credible fear test, based on certain criteria.¹⁰⁴ Of those released in New York (127) and Miami (52), it was found that 95% had appeared for their hearings and appointments, based on data collected through August 1991 when only 24 of these persons still had un-adjudicated claims.¹⁰⁵ Only one individual failed to appear for deportation. The then INS Commissioner had been willing to consider the project worthwhile if the quarterly compliance rates were anything above 80%, so the project's much higher results led to the establishment of a permanent release authority in the US in 1992. ICE might now argue that the original Pilot's impressive compliance rate was only achieved because 68% remained in detention, but another pertinent conclusion might be that the 32% released did not require intensive supervision, such as a traditional curfew or electronic monitoring, in order to comply. Mere reporting requirements and the support of guarantors and legal representatives proved sufficient.

The current compliance and appearance rates reported by all the nongovernmental 'alternatives to detention' projects described above are all above 80%, and in most cases above 95%. The most carefully evaluated 'alternative' programme, that of the Vera Institute, achieved an appearance rate of 86% for asylum seekers it assisted and supervised non-intensively, even though its caseload included some people without pre-existing community sponsors. Factors common to the NGO projects, and which are considered to be decisive by those who manage or evaluate them, include:

- (a) Initial selection of participants with strong asylum claims or clear vulnerabilities;
- (b) Provision of competent legal counsel ensuring that applicants understand their rights and duties and remember their appointments;
- (c) Ensuring that applicants understand, in particular, the very serious legal consequences of non-appearance (that is, an order of deportation *in absentia*).

In the rare instances when an asylum seeker disappeared from the accommodation and supervision projects described above, they were primarily known to be persons intent on transiting to Canada for the purposes of family reunion. In the course of the Vera Institute's Appearance Assistance Programme, they monitored a comparison group of non-participant asylum seekers also released from detention by the INS, without special supervision, and discovered that if the persons intent on transiting to Canada were removed from that group, the appearance rate was close to the 84% appearance rate achieved by their Programme. This is some 10% higher than the 75% rate suggested by the GAO report, as interpreted by EOIR, in September 2000 (see above). The reasons for this discrepancy are not clear, though the GAO report presumably included some persons intent on transit to Canada among those it tracked and if they were subtracted from the calculation, the figures may possibly become closer. The 10% discrepancy in the opposite direction, when comparing Vera's appearance rate with that reported nationally for FY2003 (94%), is also impossible to explain with certainty, but may relate to the increasing reluctance of DHS to grant parole and a higher threshold as to 'flight risk' applied since late 2001.

¹⁰⁴ Eligibility criteria for parole included: (1) an application for parole after 1 May 1990; (2) established and verified identity; (3) a *prima facie* case for recognition as a refugee; (4) not subject to any exclusions from refugee protection nor otherwise present a threat to public safety. All those released had to be represented by attorneys, have a fixed address at which to live, a means to support themselves and the ability to post a bond of between \$500-\$2,500. They were required to report on a monthly basis, in person (or by mail if so allowed by INS) and required to report for removal if ultimately their claim was rejected.

¹⁰⁵ A.C. Helton, 'Reforming Alien Detention Policy in the United States', in *Protection or Punishment?* Dr. Mary Crock (ed.) (The Federation Press, Australia, 1993).

No statistics supplied by the various US 'alternatives', however, allow firm conclusions to be drawn about their effectiveness in ensuring compliance of rejected asylum seekers with final deportation orders. There are currently said to be 400,000 active cases nationwide involving migrants (not solely rejected asylum seekers) who have absconded after being issued deportation orders.¹⁰⁶ This is a major policy concern for the US government who argue that removals must be effected to preserve the integrity of the asylum procedure and deter unfounded claims. It has motivated, for example, the 'Hartford Pilot Project' involving increased use of detention in Connecticut, where *all* persons issued with removal orders are detained when they receive their deportation orders in court, until their removal.¹⁰⁷ Attorneys in Connecticut, however, have argued that such a system merely encourages their clients to abscond earlier and fail to appear for receipt of the final decision if they fear it will be negative. It is a system where a removal order is automatically equated with a likelihood to fail to comply, regardless of individual evidence or circumstances. In March 2004, ICE announced that it is expanding this pilot project to the cities of Atlanta and Denver.¹⁰⁸

B. Cost effectiveness?

The Vera AAP final report, in late 2002, stated the average cost of detention was US\$78 per day. This means that the average cost of detaining an asylum seeker up to the point when they receive their initial decision will be US\$7,259. Based on current numbers of applicants, therefore, detention of asylum seekers in the US is costing at least US\$42.7 million per year.¹⁰⁹

The Vera model included a labour-intensive reporting requirement that was found, in the final evaluation, not to contribute to the appearance rate of asylum seekers. If this cost were removed it has been estimated that the cost of providing the other support services which Vera provided to parolees would amount to US\$710,000 for each of the eight sites currently proposed by the Department of Homeland Security (that is, approximately US\$7.1 million for 2,500 people). An additional US\$200,000 might be required to run a national coordinating centre to conduct training and maintain quality control in all the different sites. Alternatives could thus be delivered at a total of \$7.3 million.

Based on these estimates, the cost of community alternatives, including the cost of detention applied briefly at the point of arrival and the cost of possible re-detention immediately prior to removal, has been totalled as an average of US\$2,626 per capita (compared to the US\$7,259 cost for detention). It is noted that even greater savings would be achieved in the cases of unremovable rejected asylum seekers who might otherwise be detained indefinitely. However, in the absence of clear statistics relating to such cases, the above estimate is based conservatively upon asylum seekers in procedure and who can be removed within a reasonable period.¹¹⁰

ICE in Miami has reported significant cost-savings through the use of electronic monitoring instead of detention in that District. Release on EMD costs only US\$10-20 per person per day if the cost of the monitoring staff (Deportation Officers) is included,¹¹¹ as contrasted to an average of US\$70-80 per person per day for detention.

¹⁰⁶ Source: Chris Bentley, US Bureau of Immigration and Customs Enforcement.

¹⁰⁷ The Associated Press, 16 September 2003.

¹⁰⁸ DHS News Release, *'ICE Expands Pilot Project to Detain Deportable Aliens'*, 26 March 2004.

¹⁰⁹ Costing information supplied to the Vera Institute by the then INS.

¹¹⁰ Comment Letter on 'Intensive Supervision Appearance Program' from the Detention Watch Network to the Bureau of Citizenship, 29 May 2003.

¹¹¹ Figures mentioned in conversation between ICE and local refugee advocates in February 2004.

The limited usefulness of this clear evidence of cost-efficiency in terms of shaping policy should, however, be acknowledged. One limitation is that there are certain parties who profit from the maximum use of detention, and these profits are sometimes realised to the benefit of local communities. Local jails (which, as mentioned above, hold 60% of immigration detainees) were found to charge the INS between \$35 and \$100 per day per detainee in 1998, though the actual cost per detainee was lower. As a result, in some US states, 'local taxes have been eliminated due to the profit made through housing the INS's detainees.'¹¹² York County, Pennsylvania revenue from the INS in 1998 was \$6 million, of which \$2 million was profit. Euless City Jail in Texas lowered its per diem rate from \$68 to \$55 in order to receive more immigration detainees and 'be more competitive.'¹¹³ Less materially, large immigration detention facilities can become vested interests for those who work there, and facility managers can have a career interest in ensuring that their facilities are always kept filled to capacity.

Another potential limitation to the cost argument is the (unquantifiable) deterrent impact of the US detention policy. An expanded use of alternatives could, arguably, result in the arrival of more asylum seekers and subsequently an increase in costs, both financial and political. Periodic declines in the numbers applying for asylum in the US since 1993 might be seen as evidence that the expedited removal and detention policy has worked as an effective deterrent, saving untold asylum processing and removal costs. However, many other variables during the same period, not only in the causes and sources of refugee flight and migration, but also in US law and policy (such as the elimination of the right to work from most asylum seekers until asylum is granted or until at least 180 days have passed), can probably explain the declining arrival numbers. Detention does not, in any case, deter only those with unfounded claims but also many *bona fide* refugees in need of protection, giving rise to fundamental questions about international responsibility-sharing. Nonetheless, the deterrent motive is probably the single greatest reason why cost-savings arguments in favor of alternatives will have limited appeal to certain policy makers and constituents.

C. Export value?

The US experience of experimenting with alternatives, particularly with regard to electronic monitoring in recent years, shows that great care must be taken to ensure that alternative restrictions are only applied to those who would otherwise be detained and not to asylum seekers eligible for parole in any case and who have demonstrated very little propensity to abscond. How this can be ensured is a complex question, however, the clearest indicator would be a measurable rise in the asylum applicant parole rate of a district that implemented an alternative to detention project. Another method of ensuring that alternatives to detention are genuinely deserving of that name may be to demonstrate a clear transfer of federal and local resources *from* detention *to* the alternative projects (that is, treating the budget for detention and its alternatives as a 'fixed pot'). With regard to the use of electronic monitoring, another way to ensure its proper use for those individual cases who pose a significant flight risk may be to require that a parole decision be reached in each case *prior to* a decision as to whether release with an electronic tag and home curfew is required.

In the current counter-terrorism environment, US advocates concede that some initial period of detention for the purposes of establishing identity may be required, but they believe that this can be accomplished in a few hours in some cases and within several days or weeks at most in others. There will always be exceptions that take longer, but much depends on the standards of verification

¹¹² Human Rights Watch, *Locked Away: Immigration Detainees in Jails in the United States*, Vol.10, No.1(G), September 1998, p.4.

¹¹³ Human Rights Watch, *Locked Away: Immigration Detainees in Jails in the United States*, Vol.10, No.1(G), September 1998, pp.16-17.

required, administrative efficiency, and whether a common sense, flexible approach is taken to this verification.

The key lesson from the US experience, despite the fact that there is no State-funded legal aid for asylum seekers, is that legal representation is a vital guarantee of appearance and compliance.¹¹⁴ In the US context, where most asylum seekers are without social support and without work authorisation for at least 180 days, they often move regularly between accommodations. The US government is not always able to promptly input notifications of change of address, so the system itself loses people, even if the asylum seeker acquits himself or herself of all duties of notification. Lawyers, however, tend to know where to contact their clients and may make efforts to do so that the immigration authorities can or do not make.¹¹⁵ They also ensure that people understand their rights and duties, particularly the crucial fact that their case will be automatically dismissed if they fail to appear at a hearing in a US immigration court. Where absconding is the stated government concern, investment in the training and funding of legal advice for asylum seekers must therefore be viewed as a legitimate and highly effective factor contributing to the success of alternatives to detention.

¹¹⁴ This is just one argument amongst many in favour of increased access to legal representation. An estimated 90% of non-citizens in removal proceedings are currently unrepresented, curtailing their ability to challenge their detention and pursue a possible asylum claim. With regard to the latter point, it was estimated in 2000 that a represented asylum seeker in the US is six times more likely to be granted asylum than an unrepresented claimant. Source: Memorandum from Andrew Schoenholtz, Institute for the Study of International Migration, Georgetown University, 12 September 2000.

¹¹⁵ One advocate and shelter manager explained that he had an ingeniously simple method of keeping track of his own clients when they moved elsewhere: he simply taught them, if they did not already know, how to use a 'Hotmail' account and explained all the places where, in the US, one can get free internet access (public libraries etc.). He sent them important informational messages often enough to ensure that they would keep opening up their email account. By this method, he can keep track of people even when they leave the state to visit relatives, for example.

ZAMBIA¹

I. OVERVIEW OF LAW AND PRACTICE

A. Encampment and designated settlements

The Refugee (Control) Act 1970 ('RCA') provides for restrictions on freedom of movement and residence, on the grounds of protecting public order.² Such restrictions were placed upon refugees from Angola and the Democratic Republic of Congo ('DRC') as a result of Zambia's 'creeping emergency' influx of refugees during 1999 and 2000. The restrictions are designed, in particular, to segregate ex-combatants from civilians.³ According to a Memorandum of Understanding signed between the Government of Zambia, UNHCR and IOM in November 2000, former combatants are sent to a special camp, Ukwimi, in the Eastern Province. Ukwimi was initially designed to cater for the 350 former combatants who had arrived from Angola in Mwinilunga. Soon after this first group moved to Ukwimi, both UNHCR and the Government of Zambia decided to transfer more former combatants, as well as persons benefiting from past amnesties, to this site. Hutus and Tutsis are restricted to two separate camps in order to prevent conflict between these rival ethnic groups.

Asylum seekers arriving singly are required by the RCA⁴ to obtain a permit from a formal border entry point within seven days of arrival in order to remain lawfully in Zambia and to avoid arrest. The asylum seeker is issued with an Immigration Report Order⁵ and asked to re-appear before an Immigration Officer within a specified period of time. The Immigration Officer will in turn refer the individual to the Office of the Commissioner for Refugees where they undergo refugee status determination.

B. Exceptions for urban refugees

The Zambian policy states that all refugees, once recognised individually or on a group basis, must reside in the designated refugee centres/camps unless they obtain specific dispensation in writing from the Commissioner for Refugees. A government committee (subcommittee of the National Eligibility Committee⁶) meets twice weekly to hear applications for urban residency based upon set criteria. A refugee is only permitted to stay outside the camps and settlements when she has: (a) a work permit either for self-employment or formal employment;⁷ (b) a study permit; (c) a

¹ The information presented herein is valid up to 31 March 2004.

² Cap. 120 Laws of Zambia, s.12. At the time of writing, the Ministry of Home Affairs is in the process of presenting a Bill to the Zambian Parliament aimed at amending this Act.

³ In the refugee impacted border districts, District and Provincial Joint Operations Committees have been established to receive and screen asylum seekers. New asylum seekers are brought from the border to a centre where they can be screened. Most refugees screened by these Committees are accorded refugee status on a *prima facie* basis under the 1969 OAU Convention. These Committees are therefore primarily pre-occupied with the question of security. The Committees identify those refugees who should be separated from the mainstream refugee population. This includes combatants, former combatants, and persons benefiting from past amnesties. Historically, the Committees' role did not extend to the determination of the status under the 1951 Refugee Convention. They now screen in some 1951 Convention refugees while referring most such cases to the Commissioner for Refugees office in Lusaka.

⁴ Section 11(1)(a).

⁵ The Report Orders are documents accorded the same value as entry permits and which should, in theory, guarantee protection from arrest during refugee status determination procedures.

⁶ UNHCR and one of its implementing partners have observer status on this Committee.

⁷ Zambia has made reservations to the 1951 Convention with regards to Article 17(2) according refugees the right to paid employment. While refugees may take up paid or self-employment, the government has greatly restricted this right. Refugees seeking paid or self-employment must first obtain an employment permit from the Office of Immigration.

refugee camp/settlement gate pass;⁸ or (d) a Report Order while awaiting determination of status by the National Eligibility Committee.

Despite the fact that refugees in the camps generally have access to community services such as education⁹ and medical treatment, refugees are also permitted to move to or remain in Lusaka or other cities in Zambia if they need medical care not available in the camps, have special security problems, are elderly, have family already in a city, are enrolled in a school in a city, or are awaiting resettlement to a third country.

Urban refugees must seek permission from the Commissioner for Refugees to travel both within and outside the country.

Refugees who are found by the urban residency committee not to be eligible for exemption from encampment are assisted by the YMCA (a UNHCR implementing partner) with transportation to relocate to one of the six designated camps and settlements.

C. Detention for failing to have appropriate documentation

As a result of the legislated restrictions on freedom of movement, a refugee may be detained for moving or residing outside the camps and settlements without authorisation. Anyone failing to show the requisite local travel documents and registration cards needed to travel internally may be taken into custody, pending deportation. UNHCR is often informed about the detention of refugees and asylum seekers by immigration authorities, nongovernmental organisations, or other refugees, or finds such persons in detention during routine prison visits. The reasons for their detention vary from having committed a crime to a lack of identity documentation. Most of the detentions affect individuals who have relocated to or resided in urban areas without authorisation.

The *Zambian law* gives the Immigration Department wide powers to detain refugees pending investigation of their identity or status. It is often the case that asylum seekers awaiting determination of their claims by the Eligibility Committee spend their time in Lusaka as vagrants, either sleeping in trailers and old unused cars at the YMCA Refugee Project or at bus and train stations where they risk being detained despite the fact that they have Report Orders and other documents.

The Jesuit Refugee Service ('JRS') is involved with reducing the incidence of arbitrary detention through the Christian Initiative for Refugees in Prison (CIRP) in Lusaka and other cities. This is a programme that includes visits to prison and regular assessment of cases, mediation before the authorities, weekly follow-up on every case, and collaboration with partners in each location where refugees are detained without criminal charges.¹⁰

⁸ In refugee settlements and camps, the Refugee Officer issues gate passes to anyone authorized to move outside of the settlements. These passes are not valid for travel to border areas.

⁹ While Zambia has made reservation to Article 22(1) and does not consider itself bound to provide elementary education as is provided to nationals, refugee children residing in designated areas attend primary schools with Zambian children.

¹⁰ Interview with JRS Zambia, October 2003-March 2004.

D. Registration/regularisation programme

The principal means of protecting urban refugees from arbitrary detention remains the programme, established in 2000, to provide selected refugees with un-forgeable documentation of their urban residency status.

Electronic identity cards are issued to all eligible urban refugees, and these documents have greatly reduced the quantity of arbitrary and otherwise impermissible detention of refugees and asylum seekers over the past three years.¹¹ Those in the cities with authorisation are generally protected from detention by their identity cards or very swiftly released if mistakenly detained. Previously, identity cards issued to refugees were often forged or copied and therefore lost credibility with the police and immigration officials. Now the electronic cards cannot be copied or forged. All details are stored on a database, which includes everything from biometric data to information on the case and assistance received. The cards themselves contain photographs and a statement of the reason why the person is exempt from encampment.

Although many refugees have come forward to register with the committee on residency status, a number are unwilling to do so because either they know they do not meet the criteria for urban refugee status and prefer to remain underground and/or because they have been residing in Lusaka under the immigration provisions and do not wish to be considered as refugees but rather as migrant workers.

The registration and documentation of rural refugees has been somewhat more complicated, since refugees from the DRC and Angola were granted refugee status on a *prima facie* basis and because substantial numbers settled spontaneously along the borders. Registration was extended to all designated settlements during 2002. The database created may be used to issue all adult refugees with picture identity cards similar to those issued to urban refugees. It assists UNHCR in finding durable solutions, including the management of voluntary repatriation, and protects refugees who exit the designated settlements against arbitrary arrests and detention.

II. CONCLUSIONS

The 'export value' of the Zambian system is its clear demonstration that the regularisation/registration of urban refugees, using an effective electronic system, can reduce the incidence of detention (while at the same time meeting State objectives such as tracking of irregular movers and promoting orderly repatriation).

On the other hand, the confinement of those who fail to qualify for urban residency to the camps and settlements is a severe restriction on their freedom of movement. While provided for by law, and justified as proportionate to the scale of the refugee arrivals and to the threat they have posed to public order and national security, especially with regard to former combatants, these restrictions should not be: (a) maintained indefinitely, (b) applied discriminately, or (c) allowed to interfere with other basic civil and political rights of the refugees involved. The current system does not fully afford the refugees the rights enshrined in the international refugee conventions – Zambia has, for example, entered a reservation regarding article 26 of the 1951 Refugee Convention so that it can not be found in breach of that provision.

¹¹ Reports received from UNHCR.

Mission Report
Mission to Champlain, NY / Lacolle, Quebec Ports of Entry
25-26 July 2002

On 25-26 July 2002, (b)(6) Legal Counselor, UNHCR Washington, and (b)(6) (b)(6) Regional Legal Officer, UNHCR Montreal, conducted a mission to Plattsburgh, NY and to the Champlain, NY / Lacolle, Quebec Ports of Entry to speak w/ representatives of Vermont Refugee Assistance/Vermont Immigration Project (VRA) and the Plattsburgh Salvation Army, and to observe INS and CIC POE procedures for the processing of Canada-bound asylum-seekers. The mission was conducted in the wake of a surge of asylum-seekers approaching the Canadian border in May/June 2002 due to the impending implementation of the new Canadian immigration law, the Immigration and Refugee Protection Act (IRPA), on 28 June, and (unfounded) rumors that a Canada-US "safe third country agreement" would go into effect the same day.

I. Meeting with VRA & Salvation Army - 25 July 2002

On the afternoon of 25 July, we met with representatives of Vermont Refugee Assistance / Vermont Immigration Project (VRA) and the Plattsburgh Salvation Army. Participants at the meeting included (b)(6) Executive Director, VRA; (b)(6) Legal Services Coordinator, VRA; Captain (b)(6) Pastor/Corps Officer, Salvation Army; (b)(6) Director of Human Services, Salvation Army; and, (b)(6), Salvation Army.

A. June Arrivals in Plattsburgh

VRA received notice from VIVE in late May 2002 that the number of asylum-seekers approaching the border was increasing. By that time, VIVE was already becoming overwhelmed. In early June, CIC Lacolle agreed to take some of the cases seeking entry at the Ft. Erie POE. The numbers at the Lacolle POE soon also began to grow and CIC began directing asylum claimants back to the US on Wednesday, 19 June in the afternoon. That evening, Captain (b)(6) from the Salvation Army received a call at his home from (b)(6) at the US POE advising that 12 people had been directed back. (b)(6) had read about the Salvation Army in the newspaper and asked if he could direct the asylum-seekers to the Salvation Army. (b)(6) agreed, even-though the Salvation Army was not a shelter facility.

On Friday, 21 June, a meeting was held with several Plattsburgh community organisations and Vermont Refugee Assistance (VRA) regarding the increased arrivals of asylum-seekers in Plattsburgh. The Red Cross (RC), the Department of Social Services (DSS), and the Crisis Centre (CC) (funded by DSS) wanted to have nothing to do with the reception of asylum-seekers. These organisations had been involved in assisting a large number of Guatemalan asylum-seekers in 1987 who remained in Plattsburgh much longer than expected. In general, Central Americans had been travelling to Canada throughout the 1980s due to low acceptance rates in the US. The Plattsburgh NGOs had expected to assist the Guatemalan refugees in 1987 for only a short time, but the situation lasted for over three years due to a change in Canadian law/policy that prevented their entry to Canada. This is why the NGOs were so adamant about not getting involved and encouraged the Salvation Army not to get involved either. The feeling among these groups was that the asylum-seekers should simply go elsewhere, in particular Vermont.

During the period from 19 June to 15 July, the Salvation Army housed as many as 84 individuals at one time on its premises. The highest numbers of arrivals happened in the first week, with 12, 31, 14, 10, 0, 5 and 15 persons arriving. By 15 July, the last of the asylum-seekers had left for Canada. About 112 of the 189 direct-backs (59%) passed through the

Salvation Army for accommodation. CIC later advised that 184 of the 189 individuals directed back to the US (97%) did in fact appear for their appointments at CIC.

Although no specific statistics were available, the Salvation Army estimated that 60-70% of the asylum-seekers staying at the Salvation Army were from Latin America. Most were from Peru (60-70%), with others from Venezuela, Uruguay, Russia, Turkey, Burundi. The Salvation Army considered their experience with the asylum-seekers highly positive. Most of them were from the middle and upper-middle classes and took responsibility for cooking all meals, cleaning and security (watching over their luggage). The Salvation Army received immense support from the Plattsburgh community and faith groups. A local Catholic Church down the street from the Salvation Army allowed asylum-seekers to use their showers and donated 10% of their offerings to the Salvation Army for a three-week period. Cregan estimated that it cost \$2500-3000 per week to feed the asylum-seekers. The Salvation Army had an army of volunteers and even had to turn down offers of help. In the afternoons, French language courses and Spanish language teaching was offered. A presentation on human rights was also given on one occasion. The Red Cross provided cots and hygiene kits.

The Salvation Army and the situation of the asylum-seekers received positive press coverage on a daily basis and one editorial criticised the other groups (Red Cross, Crisis Centre & DSS) for not getting involved. Media reported on some local taxi drivers who grossly overcharged asylum-seekers for trips to the border (up to \$600 for a 20 minute cab ride) and two individuals were brought up on criminal charges.

VRA was in close contact both with the Salvation Army, INS and CIC throughout this crisis. VRA arranged to house some asylum-seekers in Vermont and made appointments for them with CIC and transported them to the Phillipsburg port of entry. Many of them were individuals or families with special or medical needs that CIC accepted to process on an urgent basis. VRA was also actively engaged in identifying bed space and mobilising resources in Vermont, especially since the arrivals had not abated and it appeared that, after the meeting of the 21st, Plattsburgh organisations would be unwilling to assist large numbers of asylum-seekers. VRA was prepared to have asylum-seekers transferred from the Salvation Army in Plattsburgh to Burlington where they had found bed space for 83 persons (at a school and the Burlington Salvation Army) but this did not prove to be necessary. VRA and Salvation Army have developed a cooperative relationship and have already been discussing how to handle the next rush of asylum-seekers expected prior to the implementation of the safe third country agreement with the US.

VRA and Salvation Army are pleased with the level of communication and cooperation they have with CIC (b)(6). They were somewhat less satisfied with INS and Border Patrol but nevertheless felt they were cooperative (b)(6). (b)(6). It was the NGOs' impression that there was little communication between the INS and CIC and that the little communication that did exist was at the initiative of CIC.

B. Outlook for future crisis

VRA and Salvation Army believe that there is little doubt that there will be a large number of asylum-seekers in Plattsburgh between the time the safe third country agreement is announced and the time it is implemented.

VRA has already set out its position regarding a strategy for dealing with directed-back claimants to the US in a written document entitled "Developing a strategy to keep refugee claimants in status in the US while awaiting processing appointments with CIC". Essentially, this position urges the American authorities to parole individuals with CIC appointments into the US rather than issuing Notices to Appear and placing them in proceedings. Individuals

would be issued Voluntary Departure orders to leave the country within a certain period of time. It is anticipated that Canada might seek to direct back persons without legal status in the US and VRA's approach would avoid detention and unnecessarily placing Canada-bound asylum-seekers in US proceedings.

VRA said that the INS District Director in Portland, Maine (b)(6) was supportive of VRA's plan of issuing Voluntary Departure orders given INS' limited personnel to handle the issuance of charging documents and the limited bed-space in the area to detain people. Ouellette apparently informed VRA, however, that the NGOs needed to get support from INS HQ.

With regard to the reception of a large number of asylum-seekers in Plattsburgh, the Salvation Army and VRA are clearly willing to be actively engaged in assisting asylum-seekers and have already had some discussions with CIC on the issue. VRA and the Salvation Army believe it would be possible to transfer claimants from Plattsburgh to Vermont if necessary. As mentioned above, VRA has already identified 83 beds in Burlington and expects to have 200 beds available by August.

The Salvation Army mentioned the possibility of using empty army housing units (owned by the Plattsburgh Airbase Redevelopment Corporation (PARC)) that can lodge up to 1500 people, which were renovated 8 years ago but are now scheduled to be demolished. The Salvation Army is also looking into purchasing a larger building (a mental health agency building) with a capacity of 250-300. This would allow the Salvation Army to establish a permanent shelter in the area. The Salvation Army has also offered to provide CIC with mobile feeding units for refugee claimants if CIC sets up trailers at the POE to process claims. Despite the Salvation Army's obvious commitment to assist, it believes that the Crisis Centre and DSS (with government funds) should be involved the next time and will seek to pressure them to get involved.

Finally, VRA and the Salvation Army discussed the possibility of setting up a reception house like Vive La Casa at the Salvation Army. Ideally, they would get the word out to asylum-seekers that they should go there before going to the border. This would limit the danger for asylum-seekers of being detained by the American authorities if directed back by CIC. It was unclear whether they could successfully disseminate this information to claimants to avoid them going to the border but it appeared to be an option the Salvation Army was considering. In this context, the Salvation Army would want assurances from US Border Patrol that they would not be coming to the Salvation Army looking for persons without legal status in the US.

As a general matter, the Salvation Army was concerned about providing assistance to a large number of asylum-seekers over an extended period of time. The June 2002 crisis was manageable because of the outpouring of community support. The Salvation Army does not expect that it could maintain this level of support for more than a month or so, such that an infusion of funds from elsewhere would be necessary. Both VRA and the Salvation Army are also quite concerned that the next surge of asylum-seekers could occur during the winter, increasing individual needs (clothes, etc) and the possibility of illness.

C. Possible UNHCR Assistance

The NGOs proposed two specific ways that UNHCR could assist if individuals are directed-back by CIC and detained by the INS: (1) Obtain from INS the names and locations of any persons detained when directed-back and provide to them self-help materials and the names of local service providers; and, (2) Encourage CIC to expedite interviews of anyone who is detained by the INS and encourage INS to release the person so that s/he can attend the interview.

(It is noteworthy that, to date, the US NGOs, INS and CIC have not had a joint meeting at the border to discuss a coordinated response to the next surge. This is another area where UNHCR could possibly play a role.)

D. Next Steps

All agreed that the pre-MOU rush to the border is an issue that should be placed on the agendas of CIC and INS and discussed as soon as possible.

II. Meeting with US Customs / US Border Patrol / INS - 25 July 2002

On the morning of 25 July, we met with (b)(6), (b)(7)c Chief Inspector, US Customs; (b)(6), (b)(7)c Assistant Chief Patrol Agent, US Border Patrol; (b)(6), (b)(7)c, US Border Patrol Agent; (b)(6), (b)(7)c Area Port Director, INS; and (b)(6), (b)(7)c Supervisory Inspector, INS.

Champlain is the "master-port" for six other Class A POEs and three Class B POEs spanning a 60-mile section of the border from Fort Covington, NY to Rouses Point, New York. The Champlain POE is one of the busiest commercial POEs on the US-Canada border. The number of trucks crossing the border in FY2001 was 369,645. The number of passenger vehicles inspected was 725,559.

A. Outbound Inspections

1. *US Customs Procedures*

Immediately post-9/11, US Customs began conducting outbound inspections 24 hours/day, 7 days/week. Currently, due to staffing constraints, they conduct outbound inspections at the POE (b)(2)High

(b)(6), (b)(2)High During outbound inspections, Customs will inspect everybody departing the US for Canada (both vehicular and pedestrian). All outbound traffic is directed through one "choke-point" at the POE, where the inspection occurs. Customs will ask questions to ascertain identity, money being transported, and purpose of travel. (b)(6), (b)(7)c stated that Customs is certainly "looking at" persons from the Middle East, but is not "profiling."

(b)(6), (b)(7)c noted that taxis will often drop people off near the border, starting around 6:45 am, who will walk to the POE. Customs does not necessarily know if a particular individual (in a vehicle or walking) is an asylum-seeker. Anyone who does not have proper travel documentation will be referred to the US Border Patrol for further action.

(b)(6), (b)(7)c stated that he is currently increasing his staff at the POE and hopes to be able to conduct one or two outbound inspections a week within a few months.

2. *Border Patrol Procedures*

Unlike at the Buffalo POE, US Border Patrol, and not INS, continues the outbound inspection of anyone referred by US Customs for lack of documentation.

Border Patrol will interview the persons referred by Customs to ascertain alienage and if they are in the US lawfully. If a person is in unlawful status, Border Patrol will bring the person into the Border Patrol office building for further checks. Border Patrol will run name, fingerprint and pictures through various USG databases (b)(2)High to see if the person applied for any benefits in the US, has a criminal record, etc.

We also asked about increased smuggling and illegal entries into Canada post-MOU. Border Patrol noted that this would have little effect on their operations since the traffic would primarily be going northward. It would be more of an issue for the Royal Canadian Mounted Police (RCMP). Border Patrol liaises closely with RCMP at the Champlain/Lacolle POE. RCMP can access Border Patrol's radio frequency and Border Patrol can monitor RCMP's border sensors. (b)(6), (b)(7)c suggested we speak with (b)(6), (b)(7)c with the RCMP for more information on its procedures.

B. Inbound Procedures

INS has 73 authorized staff positions at the Champlain POE. This includes: Port Director (1); Supervisory Immigration Inspectors (7); Senior Immigration Inspectors (3); Special Operations Inspectors (19); Immigration Inspectors (42); Part-Time Immigration Inspectors (12); Immigration Aides (3); Free Trade Specialists (1); Computer Specialists (1).

1. *"Direct-Backs"*

a. *June 2002 Direct-Backs*

INS stated that it has had good relations with CIC in the processing of direct-backs. The INS does not want to detain anyone unnecessarily given the limited detention bed-space in the area. In June, when CIC began direct-backs, it was INS' understanding that CIC was referring back to the US only those with lawful status in the US, usually determined by whether they had a valid I-94. CIC would transport these people back to the US POE, where they would be inspected by INS and allowed to enter.

If CIC had any questions about the status of an individual in the US, it would call INS. INS said that CIC called them "frequently". (b)(6), (b)(7)c estimated that INS probably received more than a hundred calls, if not 200-300 calls, from CIC in June 2002. If the person's status could not be ascertained over the phone, CIC was allowed to physically bring the person to the US POE so that the INS could run the person's information through the (b)(2)High system. (b)(6), (b)(7)c thought this only happened three or four times. If the person had lawful status in the US, s/he would be handed over to the INS for entry into the US. If it looked like the person would be detained in the US, CIC would take him/her back to the Canadian side. INS justified its policy of not apprehending persons in unlawful status at this time on the basis that the person was not seeking admission to the US and was not coming to the POE voluntarily (since s/he was being escorted by the CIC).

(b)(6), (b)(7)c could only remember two Pakistani nationals who had "hits" on US databases b/c they had applied for asylum in the US. (It is unclear if they were returned to Canada.) They also recalled a Russian (actually a Ukrainian) who had grown frustrated while waiting for his CIC interview and "self-directed-back" by simply returning to the US POE. He was placed in US removal proceedings after assaulting a truck driver at the POE. It appeared he had mental health issues. (NB - UNHCR is already aware of this case.)

b. *INS Detention Policy*

INS was unaware of any cases directed-back from the CIC that INS has detained. All detention decisions are made on a case-by-case basis with consideration of various factors, including criminal history, extended unlawful presence in the US, repeated apprehensions by the INS, UAMs, etc. All detention decisions are made by the Assistant District Director in Buffalo or his deputy.

(b)(6), (b)(7)c stated that they could not issue Voluntary Departure orders to asylum-seekers who were directed-back to the US and who were in unlawful status. They stated that

the INS District does not allow this. When asked if they would use Voluntary Departure in such cases if it were available to them, they initially said they would, but Racine then stated that, since September 11, she "would not feel comfortable giving voluntary departure to a Pakistani guy who was out of status." As a practical matter they noted that Voluntary Departure is only available to those who have a valid travel document (on which they can leave). Most individuals seeking asylum in Canada without lawful status in the US lack valid travel documents.

When asked if INS would continue to co-operate with CIC to avoid direct-back detentions if there was another "rush to the border," (b)(6), (b)(7)c both said that they would.

c. Care / Transportation of Persons Directed-Back to US POE

INS stated that Floren Gergeskew, an officer with the Federal Protective Services (FPS) at the POE, had been involved in responding to the care/transportation of persons directed-back by CIC to the US. FPS is part of the General Services Administration (GSA), which is the landlord of the POE property. FPS was confronted with the situation of persons being directed-back to the POE, but who had no place to stay. At its peak, the POE was receiving back 20-30 people in an afternoon. Buses run from the POE to Plattsburgh only about 8 times a day. If an asylum-seeker missed a bus, or the bus was full, s/he would have to wait at the POE. (Apparently Trailways instructed its buses to take indigent asylum-seekers to Plattsburgh (the first bus-stop) for free if the individuals could not pay the bus fare and if there was room on the bus.

(b)(6) is a member of a church that was involved in assisting those directed-back, and he took it upon himself to organize their onward transportation from the POE to the Salvation Army, where they could receive shelter. CIC would inform him of how many people were being directed-back and he would then call the Salvation Army so that they could come and pick them up at the US POE.

It appears that communication broke down between the NGOs and CIC/INS at some point late in June. At the NGO-UNHCR meeting the day before, NGOs stated that by the end of the rush, the INS was no longer calling the Salvation Army with information on expected arrivals. NGOs stated that the INS was simply putting people on the bus to Plattsburgh without even giving them contact information for the Salvation Army once they got there. At the INS meeting the following day, INS told UNHCR that the Salvation Army had requested that the INS not give out its number directly to those directed-back because it was being overwhelmed by the numbers.

2. "Arriving Aliens"- Expedited Removal

"Arriving aliens" who present themselves at the Champlain POE will be placed in expedited removal proceedings if they have false or no travel documents. Those who express a fear of returning to their country of origin or who request asylum are scheduled for a credible fear interview. All persons placed in expedited removal proceedings are subject to mandatory detention until a credible fear of persecution is established, unless they withdraw their request for admission.

It is UNHCR's general understanding that expedited removal procedures are being applied only to those "seeking entry" into the US from Canada, and not to those directed-back from Canada after transiting through the US. Racine, however, stated that persons who entered the US without inspection ("EWIs") and apprehended at the POE (presumably including direct-backs from Canada) would be considered "arriving aliens" subject to expedited removal. RO Washington believes that Racine is mistaken on this point, but will clarify with INS.

INS provided statistics on the number of "arriving aliens" at the POE from 1 July 2001- June 2002 who had been placed in expedited removal proceedings, expressed a fear of returning to their country of origin, and referred to the INS Asylum Office for a "credible fear" interview. During this one year period, only nine (9) individuals were referred for a credible fear interview from the following countries: Cuba (1); Guyana (2), Haiti (4), Russia (1), Rwanda (1). INS did not have available the total number of persons who were placed in expedited removal proceedings for having no documents or false documents who then withdrew their claim for admission. (INS Buffalo District statistics indicate that 23 individuals were referred for a credible fear interview at the Champlain POE from 1 October 2000 to 30 September 2001. During this same period, 95 individuals were actually removed under expedited removal proceedings.)

For those placed in expedited removal, established national expedited removal procedures would apply.

III. Meeting with CIC - 26 July 2002

A. Statistics

(b)(6), (b)(7)c shared the June and July statistics with us, which confirm the sharp drop in arrivals at the border. Of the 375 claims processed at Lacolle between July 1st and 25th, 80 claims (21%) were received that month, 184 (49%) were processed by appointment after directed-back to the US and the rest (30%) were part of the June backlog. 21 persons (5.6%) were detained to establish identity and 11(3%) were found ineligible. The 80 arrival between July 1st and 25th 2002 compares to 500 arrivals in July last year.

B. Tuberculosis scare at Lacolle

(b)(6), (b)(7)c spoke a long time about the TB scare at Lacolle. He said 9 CIC staff had tested positive and that at least one Customs Canada staff member had as well. Because of confidentiality rules, Health Canada did not divulge the names of those who tested positive but all but one have identified themselves to him. (b)(6), (b)(7)c believes that before the next border rush, he and CIC will have to contend with an outcry relating to the TB tests. He feels that his staff is handling the news well and that many seem to consider this an inherent risk to their work. However, Customs staff is much more upset by the news and he expects these employees to demand that some changes be made. A second TB test is supposed to be performed on all staff again in early August and results are expected around 7 August. He is concerned that more staff will test positive.

C. Perspective on a pre-MOU rush to the border

(b)(6), (b)(7)c reiterated what he has said before – that a future increase in applicants will have to be managed very differently than the June applicants for asylum were. He would like to see claimants wait in the US and schedule an appointment from there. With regard to direct-backs, he anticipates that individuals without lawful status in the US would also be directed back if Lacolle were faced with a similar situation.

We asked (b)(6), (b)(7)c about the possibility of housing asylum-seekers on the Canadian side of the border. He said there were few options close to the border. In June, he used a community centre in Lacolle with 65 beds but this proved insufficient. He also had doubts as to whether the town would be willing to rent it out again. There are no other buildings nearby that could serve his purposes and (b)(6), (b)(7)c was also reluctant to move asylum-seekers too far from the border.

Except for Canadian citizens and those w/ landed immigrant status in Canada, everyone apprehended by Border Patrol who is in unlawful status will be issued a Notice to Appear (NTA) and placed in US removal proceedings. For those issued NTAs, Border Patrol will either release the person on his/her own recognisance (O/R) or will issue a warrant of arrest, resulting in his/her detention. Factors for detention include: (1) criminal convictions or warrants; (2) flight risk; (3) lack of valid address in the US; and (4) length of stay in the US.

For those issued an NTA and released on their own recognisance, Border Patrol will provide a date to appear in immigration court. If apprehended in Vermont, the hearing will be in Portland, Maine. If apprehended in New York, the hearing will be in Buffalo, NY. The hearings are generally scheduled three to four months in the future.

For those detained, Border Patrol will generally place a bond of \$5,000 or more (including release with no bond). The Immigration Judge can later reduce the bond at a bond re-determination hearing. Most people detained by Border Patrol are initially held at either the Clinton County Jail (Plattsburgh??), the Franklin County Jail (Malone, NY), or the Franklin County Jail (St. Albans, VT). They are eventually sent to the York County Prison in York, PA unless they are criminal aliens, in which case they are sent to the Batavia Federal Detention Center outside of Buffalo, NY.

(b)(6), (b)(7) stated that Border Patrol must detain UAMs. UAMs are sent to the Berks County Juvenile Shelter in Berks, PA.

Border Patrol will not issue Voluntary Departure orders (allowing the person to leave the country within a designated time with no penalty) (Form I-210) unless the person is a Canadian citizen or has landing in Canada. Voluntary Departure orders are not issued to asylum-seekers heading to Canada because their claims may eventually be rejected, resulting in their return to the US.

3. *Other "Outbound" Border Patrol Enforcement Activities*

In addition to direct-backs, Border Patrol enforces US immigration laws between the POEs and near the border area. This includes, for example, the Plattsburgh, NY bus station and the highway leading up to the POE (where many asylum-seekers are dropped off by taxis). As a result, Border Patrol may apprehend an outbound individual before s/he reaches the POE. Since March 2002, Border Patrol has apprehended 10 individuals as part of these enforcement activities. Five were initially apprehended by the State Police (likely b/c they were walking on the highway after being dropped off by a taxi) and turned over to Border Patrol; three were apprehended near the Plattsburgh, NY bus station; and two were apprehended near the POE. The nationality breakdown of these ten persons was: Pakistan (5); Guatemala (3); Sri Lanka (1); and, Mexico (1).

Of these ten individuals, seven were detained by Border Patrol. Three members of a Pakistani family were not detained. Border Patrol was unable to provide reasons as to why the seven persons were detained.

4. *Border Patrol Activities Post-MOU*

We raised the issue of Border Patrol response to the proposed MOU, in particular the NGO idea of establishing a shelter (perhaps the Salvation Army in Plattsburgh) where asylum-seekers would go before approaching the border so as to schedule their CIC interviews in advance (a la VIVE). When asked how Border Patrol would respond to such an idea, (b)(6), (b)(7)c said that Border Patrol would not "go out of its way to raid the Salvation Army." He also noted that he speaks to VRA about once a week on enforcement matters.

When asked about the danger of detention in the US for persons without legal status there, he seemed to assume that the US authorities would see the logic and benefit of not detaining individuals who have appointments with CIC a few weeks later. We pointed out that during our discussions with INS that morning, INS seemed very reluctant to abstain from detaining persons who were in unlawful status in the US – even if they were headed North in a couple of weeks. We encouraged (b)(6), (b)(7)c to place this management issue on the internal CIC agenda as soon as possible if he hoped to negotiate assurances that people without lawful status in the US would not be detained.

When asked how UNHCR could assist him, he stated that support in convincing the American authorities in see the benefit in cooperating with CIC on this matter would be appreciated. He also suggested that UNHCR meet with him and his INS counter-part in Champlain to discuss coordination efforts.

Regarding timelines, (b)(6), (b)(7)c anticipated that an announcement would probably be made in September and that implementation would happen for 1 January. The added burden associated with processing a large increase in claimants in winter and during the holiday period was noted. The Lacolle POE has traditionally seen an increase in refugee claimants in the month of December. The increase could be even greater this year if the MOU is to go into effect on 1 January 2003. We raised the concerns expressed by one US Customs Officer of taxis dropping off asylum-seekers on the highway for fear of having their taxis impounded if they were to approach the POE directly. The US Customs Officer had noted that it was often cold and rainy and dangerous for these individuals, especially families with children, to be walking on the highway in such conditions. (b)(6), (b)(7)c acknowledged the problem and said that he was looking into what could be done.

(b)(6) Legal Counselor, UNHCR Washington
(b)(6) Regional Legal Officer, UNHCR Montreal
13 August 2002

**UNHCR REGIONAL OFFICE WASHINGTON
MISSIONS TO US DETENTION FACILITIES
(1993-2006)**

From 1993 through 2006, UNHCR Regional Office Washington conducted site visits at the following detention facilities.

A) ADULT FACILITIES

1) California

- El Centro Service Processing Center (September 1998)
- San Pedro INS Detention Center (c. March 1994)
- Oakland City Jail (February 1998)
- Otay Mesa Facility (February 2001 & October 2002)

2) Florida

- Broward County Detention Center (December 2002)
- Comfort Suites Hotel (December 2002)
- Krome Service Processing Center (April 2002, April 2001)
- TGK Detention Center (April 2002, April 2001)

3) Illinois

- Ozaukee County Jail (September 2003)
- Dodge County Detention Center (September 2003)
- Kenosha County Detention Center (September 2003)
- Broadview Service Staging Area (September 2003, August 2001)
- McHenry County Jail (September 2003, August 2001)
- Tri-County Detention Center (August 2001)
- Racine County Jail (August 2001)

4) Louisiana

- Avoyelles Parish Jail (April 2001)
- Avoyelles Parish Women's Correctional Center (May 2004, April 2001)
- Oakdale Correctional Facility (April 2001)
- Orleans Parish Prison Women's Facility (May 2004)
- Pine Prairie Correctional Facility (April 2001)
- Tangipahoa Parish Jail (May 2004, April 2001)
- Tensas Detention Center (May 2004)

5) Massachusetts

- Coast Guard Facility (c. March 1994)

6) Michigan

- Monroe County Jail (April 2003)
- Wayne County Jail (October 1998)

7) New Jersey

- Elizabeth Detention Center (June 2002)

8) New York

- Varick Street (c.1994)
- Wackenhut Detention Center (June 2002)

9) Puerto Rico

- Aguadilla Service Processing Center (May 2005)
- Metropolitan Detention Center (May 2005)

10) Texas

- Denton County Detention Center (October 2001)
- George Allen Facility, Dallas County Jail (October 2001)
- Grayson County Detention Center (October 2001)
- Laredo Processing Center (September 2006)
- Lou Sterrett Facility, Dallas County Jail (October 2001)
- Navarro County Detention Center (October 2001)
- Rolling Plains Regional Detention Center (November 2003)
- South Texas Detention Complex (September 2006)
- Suzanne L. Kays Detention Center (November 2003)

11) Virginia

- Pamunkey Regional Jail (August 2005)
- Piedmont Regional Jail (July 2001)

B) FAMILY FACILITIES

1) California

- Casa de San Juan (February 2001 & October 2002)

2) Pennsylvania

- Berks Juvenile & Family Shelter Care Center (August 2001)

C) JUVENILE FACILITIES

1) California

- San Diego County Juvenile Hall (October 2002)
 - Southwest Key—San Diego (February 2001)
 - Casa de San Juan (February 2001 & October 2002)
- 2) Florida
- Boystown Juvenile Facility (December 2002)
- 3) Illinois
- Travelers & Immigrants Aid Intl. Children's Center (Aug. 2001)
- 4) Pennsylvania
- Berks County Youth Center (August 2001)



UNHCR

United Nations High Commissioner for Refugees
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09/LG/102

3 February 2009

Dear Director Hayes,

Subject: UNHCR Mission to Laredo Area Detention Facilities

Please find enclosed the report of the Office of the United Nations High Commissioner for Refugees (UNHCR) on its visits to the Laredo Processing Center (CCA Laredo) in Laredo, Texas on 12 September 2006 and the South Texas Detention Complex (STDC) in Pearsall, Texas on 13 September 2006. We wish to thank you and your staff for facilitating the visit of (b)(6) Senior Protection Officer, and (b)(6) Protection Officer, to these facilities.

These visits were undertaken as part of UNHCR's regular monitoring of detention conditions for asylum-seekers in the United States. A full report containing our observations, comments, and recommendations is attached for your review. We highlight below some of the report's specific findings for each facility visited. Please note that we have included as an attachment to this report references to the international standards implicated by the conditions and procedures we observed. We hope that these international standards will be useful for you and your staff in assessing the adequacy of Immigration and Customs Enforcement (ICE) detention conditions. Copies of the underlying international instruments and policy guidance materials were forwarded to your office in September 2003.

Laredo Processing Center (CCA Laredo): CCA Laredo has the capacity to hold 385 detainees. At the time of UNHCR's visit, it primarily housed detainees in expedited removal proceedings and functioned as a staging facility for detainees awaiting transfer to other facilities or removal aboard Justice Prisoner and Alien Transportation System flights. Ninety-five percent of the detainees were Central American and remained at the facility for an average of 15 to 16 days. Typically, about 80 to 85 of the detainees were asylum-seekers who have been served with Notices to Appear and were in removal proceedings.

James T. Hayes, Director
Office of Detention and Removal Operations
U.S. Immigration and Customs Enforcement
500 12th SW
11th Floor
Washington, D.C. 20536

Positive aspects of the facility's operations included the designation of two ICE officers to assist asylum officers in processing credible fear cases.

Primary issues of concern included inadequately maintained legal resources; limited use of interpreters to communicate essential information to detainees; inadequate telephone access to non-governmental organizations (NGOs), consulates, and UNHCR; and limited access to outdoor recreation.

South Texas Detention Complex (STDC): STDC is one of the largest ICE contract facilities and was built exclusively to house immigration detainees. Its contract requires that it comply with DHS detention and American Correctional Association (ACA) standards. At the time of our visit, the facility had 1,700 beds available and housed mostly individuals in expedited removal proceedings. While the majority of the detainees were subject to removal, some were seeking asylum. Most of the population was from Central America; although, there were over 200 detainees originating from countries outside the Americas region.

Positive aspects of the facility's operations included an acute awareness of and commitment to meeting DHS detention standards; an ICE officer exclusively responsible for credible fear case management; a liberal outdoor recreation policy; a well-equipped law library; and the recruitment of Chinese-speaking staff to facilitate communication with Chinese detainees.

Primary issues of concern included problems with the functioning of the telephone system; unsatisfactory acoustics in interview rooms used for credible fear screenings; inconsistent use of interpreters to communicate essential information to detainees, and complaints regarding responses to detainee requests.

In closing, we reiterate our continued concerns about the detention of asylum-seekers in the United States. As you are aware, UNHCR's Executive Committee has stated that asylum-seekers normally should not be detained (*see, e.g., Conclusion No. 44*). This principle is also found in UNHCR's Detention Guidelines. We encourage ICE to release individuals who should not be detained and to pursue appropriate alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Yours sincerely,



Thomas Albrecht
Deputy Regional Representative

cc: Brandon Prelogar, Special Advisor for Refugee and Asylum Affairs
U.S. Department of Homeland Security

Lori Scialabba, Associate Director
Refugee, Asylum, and International Operations Directorate
Citizenship and Immigration Services
U.S. Department of Homeland Security

(b)(6), (b)(7)c Acting Field Office Director
San Antonio Field Office
Immigration and Customs Enforcement
U.S. Department of Homeland Security

Rebekah Tosado, Office of Civil Rights and Civil Liberties
U.S. Department of Homeland Security

**UNHCR Mission to Berks County Youth Center
and Berks Juvenile and Family Shelter Care Center**

UNHCR Legal Counselors (b)(6) and (b)(6) visited the Berks County Youth Center (BCYC), in Leesport, Pennsylvania, and the Berks Juvenile and Family Shelter Care Center (Juvenile / Family Center), in Wyomissing, Pennsylvania, on 16 August 2001. At various times during the tour, the following INS staff accompanied the UNHCR representatives: (b)(6), (b)(7)c Assistant District Director; (b)(6), (b)(7)c Deputy Assistant District Director, Detention & Removal; (b)(6), (b)(7)c Director for Program Services for BCYC and the Juvenile and Family Shelter Care Center; (b)(6), (b)(7)c Deportation Officer; (b)(6), (b)(7)c Deportation Officer; and, (b)(6), (b)(7)c Assistant Superintendent for Shelter Care and Director of Programs at BCYC.

General Overview

Both BCYC and the Juvenile / Family Center are operated by Berks County, Pennsylvania, under IGSA contracts, and in the charge of Superintendent (b)(6), (b)(7)c, who is the County equivalent of an INS District Director. The buildings are a short drive from each other and about one hour's drive from Philadelphia and York, PA. An Immigration Judge circuit rides from York to the Juvenile / Family Center, where INS detainees attend Immigration Court. BCYC and the Juvenile / Family Center house two juvenile programs (shelter care and secure) and a family detention facility. The juvenile shelter care program is operated in both facilities, with INS detainees co-mingled with county children in BCYC, and housed in a separate wing in the Family Shelter.

Juvenile Detention Program: The secure juvenile facility (on the second floor of BCYC) was operated from a "paramilitary" approach, with INS detained children co-mingled with county children awaiting trial on criminal charges. Rules were extremely rigid, with harsh penalties for those who violated them. Given these problems and the facility's general prison-like atmosphere, discussed below, UNHCR recommends that children asylum-seekers not be detained in the BCYC secure facility. With regard to the Berks non-secure (shelter care) facilities, unlike the Travelers & Immigrants Aid International Children's Center (TIA/ICC), a Chicago juvenile facility that UNHCR visited in August 2001, the Berks County shelter care facilities were much more institutional in nature and had more limited interaction between the children and staff. TIA/ICC had caring staff and an open atmosphere which, of all the juvenile detention centers UNHCR has visited, most approached a home-like setting for the children detained there. UNHCR recommends that TIA/ICC serve as a model for the unaccompanied minors detained in the Berks shelter care facilities.

Family Detention Program: The Berks family care facility, established in March 2001, is the first such facility in the United States. UNHCR appreciates this development, which is clearly preferable to separating families or housing them in secure facilities or hotel rooms. Families detained in hotel rooms have been isolated from any contact with other families, have no recreational or educational programs available, and are not allowed to leave their rooms, thus

being deprived of outdoor activity and fresh air. A secure setting is always inappropriate for the detention of families. While UNHCR appreciates INS' efforts to avoid such treatment and ensure the unity of those families that are detained, this alternative form of detention should not be mistaken as an alternative to detention. As a general matter, asylum-seekers should not be detained. This principle is especially true for families, many of which include small children. Should the INS choose to continue to detain families, the Berks family care facility is a clear improvement over previous detention options. Though families remain detained, they are not separated, conditions of confinement are less restrictive, and the trauma of detention is lessened. One issue of concern, however, is the limited privacy afforded family units.

This report is divided into a discussion of the Berks detention facilities as follows: (1) secure facility for juveniles (at BCYC); (2) shelter care (non-secure) facilities for juveniles (at both BCYC and the Juvenile / Family Center); and (3) family facility at the Juvenile / Family Center. It is followed by an Annex (pp.15 *et seq.*) that includes an index to international instruments and policy guidance materials and the specific international standards on detention of asylum-seekers that are relevant to the Berks detention facilities.

Secure Facility for Juveniles
(BCYC)

1. Background & Placement: The secure facility is on the second floor of BCYC. It holds male and female juveniles awaiting hearings on juvenile delinquency charges, as well as INS detainees. INS pays Berks County \$168 a day per minor for housing in both the secure and non-secure facilities. Two clinical social workers work almost daily on family reunification counseling for the county children and will confer with INS and PHS on children in INS custody. Two Deportation Officers are on-site three times a week and exchange information with caseworkers. The staff/child ratio is 1:6 minimum and usually 1:4 or 1:5. There are separate staff for the secure and non-secure juvenile facilities. The training for staff who work in secure and non-secure is similar. With respect to staff of the non-secure facility, however, the emphasis is on building rapport, whereas the staff for the secure facility are more enforcement oriented.

The Regional Coordinator must approve placement in the secure facility if it is for more than 72 hours. According to the Assistant District Director, generally the only INS juveniles kept in the secure facility are ones with juvenile charges. One of the officers, however, later mentioned that smuggled Chinese children are put in the secure facility for their own protection. If a child has criminal charges, INS will look at the circumstances around the crime before placement. We were told that all three of the INS juveniles at the facility during our visit had criminal charges or had been adjudicated delinquent by a criminal court. One of the children we interviewed, who was being held in the Behavioral unit (Pod A), said that charges against him had been dropped.

Comments & Recommendations: As a general matter, and for reasons described in greater detail below, UNHCR recommends that children in INS custody not be detained at the BCYC secure juvenile facility. Not only does secure detention at BCYC run contrary to the general principle that children asylum-seekers not be detained, but it also subjects children asylum-seekers to harsh, prison-like conditions. Detention in such conditions is clearly not in the best interest of the child.

2. Conditions: There is a control booth in a common area that separates two living areas or “pods.” The common area has tables and chairs, and is used as an open visiting room for attorneys and families and also for admissions. The pods are locked by both key and remote. Pod A is the “Behavioral Unit” and Pod B is the “Non-Behavioral Unit.” Pod B is for those who are compliant, follow the rules and do not have serious crimes/charges. INS detainees can be placed in either pod, depending on their behavior. All detainees receive uniforms (blue sweats; orange uniforms for trustees). Both pods are co-ed. The facility is licensed to hold a total of 30 juveniles; when necessary, they “double up” in individual cells. At the time of ROW’s visit, there were 36 juvenile inmates. Three were INS detainees, one of whom was in the Behavioral Unit.

The pods consist of an open living area in the middle with cells along two walls. They appeared to be clean. When we visited one of the pods, the detainees were in the common area, most sitting and lying on mats on the floor watching TV. There were several officers, who were clearly acting in an enforcement capacity, standing in the pod at different places watching the detainees. According to our guides, there are usually three officers in the pods. During the school year, detainees attend classes full-time on the same schedule as non-detained children. When school is not in session, detainees are normally in the pods half the day. There was a bookcase in the living area with paperbacks. Every morning there is one hour of “silent sustained reading” (SSR). It is not clear what those who cannot read due to language barriers do during this hour.

The cells are small (estimated 10 feet x 5 feet) two-person concrete cells. They were extremely stark, containing nothing but two beds with a bible on the pillow of each. The mattresses were very thin. The cells had two small windows. A dimmed light is on all night. There are room checks at night – conducted on an irregular schedule, every 5 to 15 minutes. There are no toilets in the cells. Detainees must use the intercom to ask to use the bathroom. Detainees spend time in their cells to sleep and during shift changes. Cell doors are locked at night. According to the staff, the detainees are only in their rooms during the day if they are feeling ill or for occasional SSR with the doors open. Their theory is that it is better to keep them active so they will not think too much and get depressed.

Comments & Recommendations: UNHCR recommends that children asylum-seekers not be subject to prison-like conditions, such as detention in a secure facility for juveniles charged or adjudicated delinquent. Children asylum-seekers should not be kept in locked cells, under guard, with no access to personal property or clothing. UNHCR further recommends that asylum-seekers not be co-mingled with inmates subject to criminal proceedings.

3. Staff Training: Staff at BCYC receive no training on working with immigrant and refugee children, nor on human rights and refugee rights in general.

Comments & Recommendations: UNHCR recommends that staff who work with children asylum seekers be trained on international human rights and refugee law, as well as on the particular needs of children seeking asylum. UNHCR is willing to assist with such training to the extent resources allow.

4. Regimen: All detainees must line up in single file, military style, when going anywhere. They must keep their heads up and keep their shirts tucked in. This “at attention” military form is required during “count” or any movement from one area to another, e.g., for meals, or during “PT” (physical training). Upon arrival, all juveniles undergo medical screening. Following medical clearance, all are required to take part in “PT,” an exercise regimen which begins at 6:30 a.m. every day. It is usually outside in a recreation area on the roof unless the weather is bad, and includes calisthenics such as jumping jacks, push ups, toe to ankles exercises, and running. It lasts thirty to forty minutes. One staff member referred to the regimen as “paramilitary,” like a “boot camp.” They said that the juveniles must be “at attention” while doing PT. There must be no movements not directed. Staff fears that if a child is moving, s/he

might be trying to hit someone. There was an order posted on the wall stating that the punishment for an unauthorized “wipe” or “scratch” is 15 push-ups. Later when other staff were asked about the regimen, they said the place was not a boot camp and the reason for walking everywhere single file was for safety and security. One detainee told us that some children have “given up” seeking relief in court because the conditions at the facility are too harsh.

Comments & Recommendations: A military-style regimen, in a prison-like setting, is inappropriate for detained children asylum-seekers and incompatible with their special needs.

5. Discipline: The facility has four cells with toilets that can be used for isolation/seclusion when someone is “acting out” or is a threat to themselves or others. Any child placed in isolation must wear shorts and a T-shirt, rather than the regular uniform. If a child is placed in isolation for more than four hours, staff must receive the approval of medical personnel. No more than eight hours of seclusion in any 48-hour period can be enforced without a court order. No phone calls are allowed. According to staff, however, arrangements will be made for attorney calls. If a child acts out, a counselor will first talk to him/her to try and resolve the problem. If the behavior is severe enough, the child is forced to do 15-25 push-ups. If the behavior continues, the child will lose privileges and could be made to run laps. If a child is aggressive, he will be “taken to the floor” and handcuffed until he calms down. By regulation, staff can only handcuff a child for up to two hours. Staff try to limit it to one hour and have rarely gone to two hours. If there is still a problem, the child will be put in seclusion. Discipline is at the discretion of the officer. There are generally no hearings before punishment is imposed due to the “immediacy of what is happening.” According to staff, if a child wants to make a grievance, s/he can call the “child line” of the Department of Public Welfare. During our visit, an INS detainee was in isolation for being “non-compliant, flailing, and spitting.” According to staff, it had been the fourth or fifth time that he had acted up.

Comments & Recommendations: UNHCR is concerned about the traumatic effect that the BCYC disciplinary process can have on children asylum-seekers. The use of handcuffs for one to two hours (after having been “taken to the floor”), and the use of prolonged isolation, could be especially harmful for those children who have suffered past violence and trauma. UNHCR recommends that other, less traumatic, methods of discipline be developed.

6. Restraints During Transportation: The use of restraints during transport of children detainees is at the discretion of the transport officer. Handcuffing is common.

Comments & Recommendations: UNHCR is concerned about the traumatic effect that the use of restraints will have on children, especially on those who may already have suffered past trauma. UNHCR recommends that the INS not handcuff and/or shackle children asylum-seekers during transport, except in truly exceptional cases where all other control methods have been exhausted and failed. If there are concerns that the children will flee or act out, UNHCR urges INS to examine other more dignified measures of prevention.

7. Language: Detainees are not allowed to speak to each other in any language other than English. According to INS, this is necessary because officers need to know what the detainees

are saying, as they could be plotting something together. If there is no staff person who speaks a child's language, they use telephonic language services. The County has an account number it uses when it accesses the interpreter services, at a cost of \$85 per hour. One detainee told us, however, that he had not been able to communicate with the guards because he speaks Spanish, and they do not.

Comments & Recommendations: Children should be able to communicate in their mother tongue and should have easy access to interpreter services when necessary. UNHCR is not aware of any other detention facility holding INS detainees, adult or juvenile, that imposes an "English-only" rule.

8. Telephone Access: Detainees are allowed to make calls from the caseworker's office that have to do with legal or family reunification matters. If they ask to call a lawyer, they are not limited to a specific number of calls. Calls other than for legal, consular or religious reasons, are limited to one call per week for up to 15 minutes. Calls used to be limited to five minutes, but this policy was changed due to NGO criticism. Children can call overseas at INS expense.

Comments & Recommendations: UNHCR appreciates that detainees can speak to family members overseas, have telephone access to their attorneys, and that time limits have been increased. We assume that requested calls to UNHCR would be allowed, which we also appreciate. UNHCR urges the facility to be flexible in the number and length of phone calls to family members. Unaccompanied children need regular contact with family members or other persons close to them.

9. Recreation: There is a multipurpose room (also used as a dining area) that the juveniles may use twice a week. There is also an area outside on the roof, with barbed wire ringing the top of the walls, with a basketball hoop. Children generally receive a minimum of 45 minutes per day outdoor recreation. There is no set schedule for outdoor recreation. Behavior can disrupt any plans for recreation. Evenings are the primary time for outdoor recreation.

Comments & Recommendations: UNHCR recommends that at least one hour of outdoor recreation a day be offered. If weather does not permit outdoor recreation, indoor recreation should be made available as an alternative.

**Shelter Care (Non-Secure) Facilities for Juveniles
(BCYC and Juvenile / Family Center)**

1. **Background / Placement:** As with the secure and family facilities, Berks County officials operate the two juvenile shelter care facilities. INS pays \$168 a day per minor. The shelter programs are generally the same, but are housed separately, with one on the ground floor of BCYC and the other in the unaccompanied minor wing of the Juvenile / Family Center.

At the BCYC shelter facility, the county detains county juveniles who cannot live with their families, either because of abuse, neglect or behavioral problems, and has a contract with INS to accept a limited number of unaccompanied minors. It has eighteen beds, of which INS is generally guaranteed five. INS and county children are co-mingled, an arrangement that officials said had not caused any problems.

The Juvenile / Family Center opened in March 2001 and is housed in part of a converted nursing home. Families are housed in one wing (C Wing) and unaccompanied or “separated” children are housed in another wing (D Wing). The juvenile wing can accommodate 32 children. Some common areas, including the outdoor recreation area, are shared by the unaccompanied children and the families, although at different times to avoid co-mingling of unaccompanied minors with adults. As there is no female wing for unaccompanied minors, unaccompanied girls are only detained at BCYC.

Per the *Flores* agreement, juveniles are not held in INS custody if they have family, financial support, a stable environment and no criminal background. INS will not release a minor to an undocumented parent unless the parent is placed in proceedings, but once in proceedings, the parent generally will not be detained. INS will often delay issuance of an NTA if it appears that a parent will be claiming the child in case the family lives in another jurisdiction. This avoids the need for a change of venue.

Comments & Recommendations: UNHCR appreciates the efforts made to provide detained children with a normal routine in a positive setting, given the constraints of a detention facility. The contrast with the secure facility is obvious. Unlike the TIA/ICC shelter facility in Chicago, however, the Berks facilities were quite institutional in nature and did not provide as much of a home-like environment. UNHCR reiterates its recommendation that TIA/ICC be used as a model in this regard. To the extent that conditions at the Juvenile / Family Center are better for unaccompanied minors than at BCYC, UNHCR recommends that BCYC adopt those features.

UNHCR appreciates that parents who may be unlawfully in the US but who come forward to accept custody of their children, are generally not detained by the INS. UNHCR notes, however, that the requirement that parents be placed in removal proceedings if in unlawful status may serve as a disincentive for family members to come forward. The former general policy in the San Diego area of not placing family members in removal proceedings greatly facilitated family reunification efforts and merits consideration. The use of discretion to delay the issuance of an NTA is also appreciated.

2. **Living Conditions:** Both facilities limit the amount of personal items that children may keep in their rooms, a policy which INS explained reduces claims of theft and the potential use of objects as weapons. As a result, most of the rooms appeared bare and institutional. No pens or pencils are allowed in the rooms. Upon admission, personal belongings are inventoried and de-loused, and children can select seven sets of clothing. They can wear their own clothes and can receive clothing from outside. Common areas had couches, a television, and books, and game rooms were well equipped. Outdoor recreation areas were sufficient and equipped with a variety of games. Staff take children on field trips such as baseball games, hiking, museums, and zoos.

During shift change, all detainees must go to their rooms. After shift change, “bathroom call” is given. Children line up in military fashion; arms down, no talking. Several children who were interviewed complained about restrictions such as not being allowed to read in their rooms; collective punishment if others misbehave; restrictions on bathroom use; and, not enough reading material, except in Spanish or Chinese. The children in general liked the staff and the food.

Comments & Recommendations: UNHCR appreciates the availability and variety of activities and the fact that children can wear their own clothes. Unlike TIA/ICC, however, the Berks facilities were quite institutional in nature and did not provide as much of a home-like environment. UNHCR reiterates its recommendation that TIA/ICC be used as a model in this regard.

3. **Restraints During Transportation:** Children are not shackled during transportation.

Comments & Recommendations: UNHCR appreciates this policy, which has been successfully used both at Berks and at TIA/ICC. UNHCR recommends that this policy be replicated at other children's facilities in the US to the extent possible.

4. **Staff and Staff Training:** There are clinical social workers on staff as well as INS deportation officers present at least 3 times a week. The staff/child ratio is generally 1:6 and at times 1:4. Line staff must have an “Associates Degree” or 60 college credits and be 21 or older. An attempt is made to recruit staff with a solid interest in social work. Supervisors must have 3 years of work experience with children or a B.A. degree and one year of work experience with children. INS explained that for staff at the non-secure facilities, the emphasis is on building rapport with detainees. In general, the children we interviewed said most staff was respectful and helpful. It does not appear that any training is given on working with immigrant and refugee populations, or on refugee or human rights standards as they apply to children.

Comments & Recommendations: UNHCR appreciates efforts to recruit staff with a background in social work and children's issues. UNHCR recommends that staff who work with children asylum seekers be trained on international human rights and refugee law, as well as on the particular needs of children seeking asylum. UNHCR is willing to assist with such training to the extent resources allow.

5. **Access to Services / Programs:** In the Juvenile / Family Center, there were sign up sheets on a hall bulletin board in Chinese, English and Spanish for children to sign up for a social worker, attorney, sick call, spiritual advisor, doctor, or INS. Sign-up sheets were not available at the BCYC non-secure facility. In both facilities, many positive aspects were visible: ESL classes and educational classes (though in English only) were available, field trips were organized, children were transported without shackles, and Know Your Rights presentations were provided. Everyone who was interviewed enjoyed the classes, although with some frustration over classes in English only.

The Pennsylvania Immigrant Resource Center (PIRC) has access to both facilities and makes weekly Know-Your-Rights presentations. PIRC also has access to interview detainees, and attempts to find legal representation for them.

Comments & Recommendations: UNHCR appreciates that children have access to Know Your Rights presentations. The fact that PIRC is able to interview children and tries to find representation is vital.

UNHCR views the availability of educational and rehabilitative programs as positive. UNHCR appreciates the use of sign-up sheets in different languages as it effectively informs children (at least those who can read) of the services that are available to them. Such a simple mechanism can help ensure that children are able to exercise their basic rights (e.g., right to religion, medical treatment, and access to a legal representative). UNHCR recommends that sign-up sheets be used in BCYC as well, especially given that girls are detained only at BCYC.

6. **Language:** The facilities' manuals had been translated into Spanish, Chinese, Swahili, Russian, Albanian, French, Tamil, Hindi and Arabic. The Director said that over the last six years, the language needs have grown and the manual has not been translated into every language represented by the INS detainees. The Juvenile / Family Center has some Spanish-speaking staff members; BCYC has Punjabi and Chinese-speaking staff. If there are no staff who speak a child's language, they use telephonic language services. The County has an account number it uses when it accesses the interpreter services. Initial orientations are done through telephonic interpreters. If necessary, the manual is explained by interpreters, either in-house or telephonically. Some of the children interviewed, however, said that they did not receive orientation in their languages, were unable to communicate with staff, and never had the use of an interpreter to talk to staff. One child mentioned that at a previous shelter, they had used an interpreter, unlike at Berks; she added that she had to learn the rules by watching other girls.

Comments & Recommendations: The ability to communicate with staff and INS officials in a child's own language can be critical for a separated child seeking asylum. UNHCR appreciates that efforts have been made to accommodate language needs by translating orientation materials into several languages and by hiring multilingual staff. UNHCR recommends that orientation materials be translated into additional languages as needed. To the extent that this may not be current practice, UNHCR also recommends that telephonic interpreters be used whenever necessary to accommodate those who are unable to communicate.

7. **Length of Detention:** At the time of our visit, six INS juveniles were detained at BCYC and approximately 37 at the Juvenile/Family facility. One boy from Ghana had been detained for two years and a boy from India for 500 days.

Comments & Recommendations: UNHCR recommends that juveniles not be detained and that efforts be made to find appropriate alternatives to detention. Should detention be necessary, it should be for the shortest time possible.

8. **Religious Services and Items:** Children may keep bibles or other religious texts in their rooms. With regard to other items, if there are security concerns but the item is absolutely necessary for religious reasons, they will allow the child to keep the item. If needed, the children may have a quiet, separate space to pray. There is a Spiritual Care and Resident Development Coordinator (Father Tom, a Jesuit priest), a recently created position. Once a week, the chaplain organizes a non-denominational religious service. Members of a Chinese church also visit once a week. At times, children will leave the facility to attend church services. Access to denominational services, either at the facility or outside of the facility, must be requested. Several children informed us that while they would like to attend services of their particular faith, they either did not know that they could and/or were reluctant to ask about the possibility because they did not speak English. It is not in the orientation that children have a right to request attendance at religious services. Staff agreed with ROW that it would be a good idea to include this in the orientation.

Comments & Recommendations: UNHCR recommends that children be advised of their right to practice their religion and that they be given access to denominational religious services. If there is a sufficient number of juveniles of a given religion, qualified representatives of the religion should be appointed or approved to hold regular services and make private pastoral visits.

9. **Access to Telephones:** Detained children are allowed to make calls from the caseworker's office regarding legal or family reunification matters. Overseas calls to families are allowed. Calls must be to pre-approved numbers. Children had previously been limited to two calls per week for five minutes each; but as of the week of our visit, they were beginning to allow 15-minute calls. This might mean a reduced number of calls allowed. We were told that calls require a lot of staff time, so there are time constraints. If there are special reasons for more calls, staff will accommodate.

Comments & Recommendation: UNHCR appreciates that detainees can speak to family members overseas, have telephone access to their attorneys, and that time limits have been increased. We assume that requested calls to UNHCR would be allowed, which we also appreciate. UNHCR urges the facility to be flexible in the number and length of phone calls to family members. Unaccompanied children need regular contact with family members or other persons close to them.

Family Shelter Care Facility (Juvenile / Family Center)

1. **Background:** The Berks Juvenile and Family Shelter Care Center (Juvenile / Family Center) is the first INS detention center in the US for immigrant families seeking asylum. Families are housed in one wing (C Wing) of a converted nursing home. At the time of UNHCR's visit, there were 10 families at the facility, comprising 18 females and 13 males. The facility's capacity is 40 beds. Common areas had couches, a television, and books; game rooms were well equipped, and outdoor recreation areas were sufficient.

Comments & Recommendation: As a general principle, UNHCR objects to the detention of asylum-seekers, in particular families with children. If detention is to be used, however, UNHCR appreciates efforts to keep families together in one location in a non-secure environment. Keeping families seeking asylum intact undoubtedly reduces the anxiety of parents and children during detention. UNHCR emphasizes, however, that a family detention center is not an alternative to detention. UNHCR urges INS to implement true alternatives to detention for families seeking asylum, such as the use of community-based organizations that can provide services and support. If families are detained, detention should be for the least amount of time necessary.

2. **Admissions:** At intake, all are given pamphlets, which have been translated into many languages, explaining rights and rules. If necessary, they are explained by interpreters, either in-house or telephonically. If a nurse is at the facility, a medical assessment is done; if not, it is done within 24 hours. Personal belongings are inventoried and de-loused. Children can select 7 sets of clothing and can receive clothing from outside. Only one of the women UNHCR interviewed said that she had received no orientation in her language. She said that she had learned the rules from another family from her country, who had since left the facility.

Comments and Recommendations: UNHCR appreciates the positive steps the facility has taken with respect to translations of the rules into various languages and encourages it to extend these efforts to other nationalities. UNHCR also appreciates the facility's use of interpreters, which is in stark contrast to the practice at most county jails UNHCR has visited. UNHCR is concerned that some asylum-seekers with language barriers may not understand facility rules and encourages use of interpreters when needed to facilitate essential communication between facility staff and INS detainees.

3. **Family Unit Privacy:** Every night, on a rotating basis, family units can spend time together alone in one of the common rooms. This is limited to two families a night, for approximately one hour. At the time of UNHCR's visit there were 10 families, so that every family should have had "private time" once every five days. Several families interviewed, however, were not aware of this policy. One woman complained that she did not have enough time alone with her child, which was limited to time breast feeding. Families cannot sleep together as a unit. Parents are separated from each other. Children from the ages of 7-17, including siblings, can sleep in a room together if they are the same sex. A mother or father can

sleep with an infant or child under 7 in the same room, but not in the same bed, regardless of gender. Exceptions to these rules are possible when necessary. INS separates the families out of concern that the individuals in the "family unit" might not actually be related (e.g., traffickers posing as a family unit). The INS was concerned about possible sexual and physical abuse. The INS did not seem to contemplate allowing a family unit to sleep together once their relationship had been established. Staff check dorms every 15 minutes at night.

Comments & Recommendations: UNHCR considers it critical that States ensure, to the best of their ability, the integrity of the family unit while one or more of the family members is seeking asylum. While the Family Shelter Care Facility ensures that, if detained, family members will remain together, the current arrangement at the facility does not allow for sufficient privacy in interactions between the family members. UNHCR recommends that families be allowed to share a private room, as a unit, while residing at the facility. Such an arrangement will allow for greater privacy and also ease the detention experience for any children in the family. Should security concerns prevent such an arrangement, then families should be allowed to reside in a private room once the family relationship has been sufficiently established. Absent co-habitation, UNHCR recommends that all families be ensured sufficient time to interact alone, as a family, during the week. All families residing at the facility should be informed of this right at the time of their admission and during their stay, as necessary.

4. Disciplining of Children: Staff do not allow parents to decide when and how their children should be disciplined. Physical punishment is not allowed, which is explained to parents. Staff decide how children will be disciplined, *i.e.*, by making them spend hours in the hall on a chair facing the wall. ROW observed two children facing the wall as punishment for their behaviour. ROW is aware of concerns raised by some parents at the facility of losing control over their families while residing at the facility.

Comments & Recommendation: UNHCR recognizes that the disciplining of another parent's child, while the parent is present, raises a number of difficult and sensitive issues, most notably the extent to which a parent retains control over his family and differing societal norms regarding what is appropriate punishment. Alternatives to family detention that would allow families to discipline according to cultural and societal norms (within the bounds of US law), rather than feel a loss of authority, would be preferable and should be pursued. UNHCR saw positive examples of disciplinary actions ICC/TIA in Chicago. UNHCR recommends that these options be explored more fully.

5. Access to Services / Programs: There are sign-up sheets on a hall bulletin board in Chinese, English and Spanish for families to sign up for a social worker, attorney, sick call, spiritual advisor, doctor, or INS. Families generally noted that access to medical care was good. A "life skills" program is available for adults which provides life skills information and information on US societal norms. Children can accompany parents to these classes. Children attend classes, both ESL and general school curricula, with unaccompanied minors from D Wing. INS intends to incorporate Montessori classes and parenting classes into the facility's program. Everyone who was interviewed enjoyed the classes, although with some frustration over classes in English only.

The Pennsylvania Immigrant Resource Center (PIRC) has access to the facility and makes weekly Know-Your-Rights presentations at the facility. PIRC also has access to interview detainees, and tries to find representation for asylum proceedings from the Philadelphia or York legal community. A law library is available to detainees, with no limitation on the amount of time they can spend there. It has two computers and materials recommended by the American Bar Association (ABA).

Comments & Recommendation: UNHCR appreciates that detainees have access to Know Your Rights presentations and a law library. The fact that PIRC is able to interview detainees and try to find representation is very positive.

UNHCR views the availability of educational and rehabilitative programs as a positive aspect of the Berks family program. UNHCR appreciates the use of sign-up sheets in different languages as it effectively informs families (at least those who can read) of the services that are available to them. Such a simple mechanism can help ensure that detainees are able to exercise their basic rights (e.g., right to religion, medical treatment, and access to a legal representative).

6. Average Stay/Release Policy: We were informed that most families remain at the facility for only a few weeks. Current policy is to release families after a credible fear of persecution is established, but some families remain detained while their asylum claims are pending in court. INS officials informed us that the longest period of time that a family had been detained at the facility was four months. An attorney later informed us, however, that she represented two families that were detained for approximately nine months before being released.

Release pending removal proceedings does not have to be to a family member, although INS prioritizes family and friends. All that is necessary for release is that the sponsor provide lodging and board. The Detention Resource Project works to identify sponsors for release. INS officials stated that they would prefer not to release people to a "program," although the Assistant District Director said that INS would consider releasing families to refugee shelters (such as VIVE and Freedom House), but was unfamiliar with their operations.

Comments & Recommendations: UNHCR recommends that asylum-seekers not be detained and that efforts be made to find appropriate alternatives to detention. The best interests of the child should be considered in any decision to detain a family. Should detention be necessary, it should be for the shortest time possible.

7. Telephone Access: Two public telephones are available for collect or phone card calls. UNHCR's telephone number was posted, but it was the wrong number (1-800-272-1913 instead of 1-888-272-1913). A call placed to UNHCR using the correct number was successful. Detainees can also use INS telephones when necessary.

Comments & Recommendations: UNHCR appreciates that the facility includes a notice informing detainees how to contact UNHCR and that the phone system allows for toll-free calls to UNHCR. UNHCR requests that its toll-free number be corrected on the notice, if this has not already been done. Given that the high costs of collect calls from detention centers often impede the ability of detainees to contact legal representatives and family members, UNHCR appreciates the fact that INS detainees are allowed to use INS telephones as necessary and urges INS to allow free calls to family members on a regular basis.

8. Interpretation: The facility's manual had been translated into Spanish, Chinese, Swahili, Russian, Albanian, French, Tamil, Hindi and Arabic. Sign up sheets are also available in several languages. The Director said that over the last six years, the language needs have grown and the manual has not been translated into every language represented by the INS detainees. The Juvenile / Family Center has some Spanish-speaking staff members; a Chinese interpreter is available 35 hours/week; Spanish, Hindi, and some French, Italian, and German are also available. If there is no one on staff to serve as a translator, they use telephonic language services. The County has an account number it uses when it accesses the interpreter services. Initial orientations are done through telephonic interpreters. If necessary, the manual is explained by interpreters, either in-house or telephonically.

Despite orientation material being available in many languages, one woman said that she had received no orientation in her language. Another woman, however, who spoke Arabic, said that she had communicated with staff via telephonic interpreter four or five times since her arrival, primarily regarding medical treatment for her child.

Comments & Recommendations: UNHCR appreciates that efforts have been made to accommodate language needs by translating orientation materials into several languages and by hiring multilingual staff. UNHCR recommends that orientation materials be translated into additional languages as needed. To the extent not already current practice, UNHCR recommends that telephonic interpreters be used whenever necessary to accommodate those who are unable to communicate.

9. Training: To UNHCR's knowledge, staff do not receive training on working with a refugee population.

Comments & Recommendations: UNHCR recommends that training be provided for staff on working with immigrant and refugee populations. UNHCR is willing to assist with such training to the extent resources allow.

ANNEX

**UNHCR Mission to Berks County Youth Center
and Berks Juvenile and Family Shelter Care Center**
(16 August 2001)

Relevant International Standards on Detention of Asylum-Seekers

1. Index to International Instruments and Policy Guidance Materials
2. Relevant International Standards on Detention of Asylum-Seekers

Index
International Instruments and Policy Guidance Materials

1. **1967 Protocol to the 1951 Refugee Convention** Protocol relating to the Status of Refugees, *adopted* 31 January 1967, *entered into force* 4 October 1967, 606 U.N.T.S. 267 (1967); Convention relating to the Status of Refugees, *adopted* 28 July 1951, *entered into force* 22 April 1954, 189 U.N.T.S. 137 (1951).
2. **Basic Principles** Basic Principles for the Treatment of Prisoners, *adopted* 14 December 1990, G.A. res. 45/111, annex, U.N. Doc. A/45/49 (1990).
3. **Body of Principles** Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, *adopted* 9 December 1988, G.A. res. 43/173, U.N. Doc. A/RES/43/173 (1988).
4. **CRC** Convention on the Rights of the Child, *adopted* 20 November 1989, *entered into force* 20 September 1990, G. A. res. 44/25, U.N. Doc. CRC/C/97 (1989).
5. **Declaration of the Rights of the Child** Declaration of the Rights of the Child, *adopted* 20 November 1959, G.A. res. 1386(XIV), U.N. Doc. A/RES/1386 (1959).
6. **ECRE, Position Paper on Detention of Asylum-Seekers** European Committee on Refugees and Exiles, *Position on Detention of Asylum Seekers* (April 1996).
7. **ECRE, Position Paper on Refugee Children** European Committee on Refugees and Exiles, *Position on Refugee Children* (November 1996).
8. **ICCPR** International Covenant on Civil and Political Rights, *adopted* 19 December 1966, *entered into force* 23 March 1976, G.A. res. 2200A (XXI), UN Doc. A/6316 (1966).
9. **Report of the Special Rapporteur on Violence against Women** Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1997/44; Addendum, Report of the mission to the United States of America on its issue of violence against women in state and federal prisons, U.N. Doc. E/CN.4/1999/68/Add.2 (4 January 1999).
10. **Standard Minimum Rules** Standard Minimum Rules for the Treatment of Prisoners, *adopted* 1955, First U.N. Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva (1955), *approved* 31 July

1957, ECOSOC res. 663 C (XXIV) and 13 May 1977, ECOSOC res. 2076 (LXII).

- 11. UDHR** Universal Declaration of Human Rights, *adopted* 10 December 1949, G.A. res. 217 A (III), U.N. Doc. A/810, (1948).
- 12. UN Rules for Protection of Juveniles** UN Rules for the Protection of Juveniles deprived of their liberty, *adopted* 14 December 1990, G.A. res. 45/113, U.N. Doc. A/RES/45/113 (1990).
- 13. UNHCR Detention Guidelines** UNHCR Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers, Geneva (February 1999).
- 14. UNHCR EXCOM** Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme.
- 15. UNHCR Guidelines on Children Seeking Asylum** UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, Geneva (February 1997).
- 16. UNHCR Guidelines on the Protection of Refugee Women** UNHCR Guidelines on the Protection of Refugee Women, Geneva (July 1991).
- 17. UNHCR Handbook** UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Geneva (January 1979)
- 18. UNHCR Training Module, Interpreting in a Refugee Context** UNHCR Training Module, Interpreting in a Refugee Context (June 1993).
- 19. UNHCR Training Module, Interviewing Refugee Applicants** UNHCR Training Module, Interviewing Applicants for Refugee Status (1995).
- 20. UNHCR's Refugee Children's Guidelines** Refugee Children: Guidelines on Protection and Care, UNHCR, Geneva (1994).

Relevant International Standards on the Detention of Asylum-Seekers

Detention of Children Seeking Asylum

General: CRC, Article 3(1) ("in all actions concerning children,...the best interests of the child shall be the primary consideration") and 37(b) (detention of refugee children should be used only as a last resort and for shortest appropriate time); UNHCR Guidelines on Children Seeking Asylum, Guideline 1.5 (embracing Article 3(1) of CRC), Guideline 7.6 (children should not be detained, especially unaccompanied children), and Guideline 7.7 (detention of refugee children should be used only as a last resort and for shortest appropriate time; if children cannot be released from detention, special arrangements must be made for living quarters suitable for children; the underlying approach should be 'care' and not 'detention'; facilities should not be located in isolated areas where culturally-appropriate community resources and legal access may be unavailable); UNHCR Detention Guidelines, Guideline 6 (unaccompanied minors should not be detained as a general rule; if detained, it should not be in prison-like conditions); UNHCR Guidelines on Protection and Care of Refugee Children, p. 87 (refugee children must not be held in prison-like conditions) and p. 126 (unaccompanied children should be with a continuous care-giver who is loving and nurturing); ECRE Position Paper on Detention of Asylum-Seekers, para. 45 ("In those rare cases where children have to be detained in order to maintain family unity, they should never be held in prison-like conditions"); Declaration on the Rights of the Child, Principle 6 (children should grow up in an atmosphere of affection and of moral and material security).

Detention of Families Seeking Asylum

General: UNHCR Detention Guidelines, Guideline 6 ("All appropriate alternatives to detention should be considered in the case of children accompanying their parents. Children and their primary caregivers should not be detained unless this is the only means of maintaining family unity...All efforts must be made to have [children] released from detention and placed in other accommodations."); UNHCR Guidelines on Children Seeking Asylum, Guideline 7.4 (children who arrives with adult relatives should be allowed to stay with relatives) and Guideline 7.7 (all efforts must be made to release children from detention; if release proves impossible, special arrangement must be made for living quarters which are suitable for children and their families; the underlying approach should be 'care' and not 'detention'; facilities should not be located in isolated areas where culturally-appropriate community resources and legal access may be unavailable); ECRE, Position Paper on Detention of Asylum-Seekers, Art. 40 ("[H]usbands and wives and other family members in detention should be permitted to live together."); ECRE, Position Paper on Refugee Children, para. 21 (children together with their primary care-givers should not be detained unless the sole primary care-giver must be detained for national security or other exceptional reason and detention is the only means of maintaining family unity, in the best interests of the child; such detention should be rare and of very short duration).

Admissions

General: Standard Minimum Rules, Rule 35 (right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations) and Rule 51(2) (whenever necessary, the services of an interpreter shall be used); Body of Principles, Principle 14 (right of detainee to receive information about his rights in detention in language he understands); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints to be made available to detainees in different languages); ECRE Position Paper on Detention of Asylum-Seekers, paras. 20, 29 (right of asylum-seeker to information on detention in language s/he understands).

Co-Mingling

General: Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from persons imprisoned by reason of a criminal offense); UNHCR Detention Guidelines, Guideline 10(iii) (asylum-seekers should not be co-mingled with convicted criminals); UNHCR EXCOM Conclusion No. 44, para. (f) ("refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as common criminals"); UNHCR EXCOM Conclusion No. 85, para. (ee)(noting concern that asylum-seekers are often held with common criminals); Body of Principles, Principle 8 (same).

Children: Refugee Children: Guidelines on Protection and Care, p. 87 ("Asylum-seekers and refugees should never be placed with common criminals.").

Discipline

Children: UN Rules for the Protection of Juveniles, 66 (disciplinary measures and procedures "should be consistent with the upholding of the inherent dignity of the juvenile"), 63 and 64 (instruments of restraint should be prohibited except in exceptional cases where all other control methods have been exhausted and failed; when used, medical and other relevant personnel should be immediately notified, as well as higher administrative authorities), and 67 (closed or solitary confinement that may compromise the physical or mental health of the juvenile is prohibited as constituting cruel, inhuman or degrading treatment).

Families: ICCPR, Art. 23 ("The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."); Art. 17(1) ("No-one shall be subjected to arbitrary or unlawful interference with his...family."); CRC, Art 14 ("States Parties shall respect the rights and duties of the parents...to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child."), Art. 18 ("States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.

Parents...have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.")

Family Reunification

General: CRC, Article 3(1) ("in all actions concerning children,...the best interests of the child shall be the primary consideration"); UNHCR Guidelines on Children Seeking Asylum, Guideline 1.5 (embracing Article 3(1) of CRC); Guideline 10.5 (family reunion is the first priority and it is essential that unaccompanied children are assisted in locating and communicating with their family members; all attempts should be made to reunite the child with his/her family or other person to whom the child is close, when best interests of the child would be met by such a reunion).

Family Unit Privacy

General: UDHR, Art. 16(3) ("The family is the natural and fundamental group unit of society and is entitled to protection by society and the State"); ECRE, Art. 40 ("[H]usbands and wives and other family members in detention should be permitted to live together."); CRC, Art 3 ("In all action concerning children, the best interest of the child shall be a primary consideration."); ICCPR, Art. 17(1) ("No-one shall be subjected to arbitrary or unlawful interference with his privacy, [and]...family.").

Language / Interpretation

General: UNHCR EXCOM Conclusion No. 8 (asylum-seekers to be given necessary facilities, including interpreter services, to submit claim to authorities); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints to be made available to detainees in different languages); ECRE Position Paper on Detention of Asylum-Seekers, paras. 20, 29 (right of asylum-seeker to information on detention in language s/he understands); Standard Minimum Rules, Rule 35 (right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations) and Rule 51(2) (whenever necessary, the services of an interpreter shall be used); Body of Principles, Principle 14 (right of detainee to receive information about his rights in detention in language he understands).

Children: UNHCR Guidelines on Children Seeking Asylum, Guideline 7.13 (children seeking asylum have the right to maintain their cultural identity and values, including maintenance and development of their mother tongue); UN Rules for Protection of Juveniles, para 6 (juveniles not fluent in language of detention personnel shall have right to interpreter services, in particular during medical examinations and disciplinary proceedings) and Rule 24 (detained juveniles should be provided copy of rules of facility and written description of rights and obligations in language they can understand; if illiterate, information should be conveyed in a manner ensuring full comprehension.)

Length of Detention / Release Policy

Children / Families: CRC, Articles 3(1) ("in all actions concerning children,...the best interests of the child shall be the primary consideration") and 37(b) (detention of refugee children should be used only as a last resort and for shortest appropriate time); UN Rules for Protection of Juveniles, Rule 2 (same); Declaration on the Rights of the Child, Principle 6 (children should grow up in an atmosphere of affection and of moral and material security); ECRE: Position Paper on Refugee Children, paras. 21 (children together with their primary care-givers should not be detained unless the sole primary care-giver must be detained for national security or other exceptional reason and detention is the only means of maintaining family unity, in the best interests of the child; such detention should be rare and of very short duration) and 23 (detention of asylum-seekers should be for the minimum time necessary).

Living Conditions

Children: CRC, Article 3(1) ("in all actions concerning children,...the best interests of the child shall be the primary consideration"); UNHCR Detention Guidelines, Guideline 6 (unaccompanied minors should not be detained as a general rule; if detained, it should not be in prison-like conditions); UNHCR Guidelines on Protection and Care of Refugee Children, p. 87 (Refugee children must not be held in prison-like conditions); ECRE Position Paper on Detention of Asylum-Seekers, para. 45 ("In those rare cases where children have to be detained in order to maintain family unity, they should never be held in prison-like conditions"); UNHCR Guidelines on Children Seeking Asylum, Guideline 7.6 (same), Guideline 7.7 (if children cannot be released from detention, special arrangements must be made for living quarters suitable for children; the underlying approach should be 'care' and not 'detention'); Declaration on the Rights of the Child, Principle 6 (children should grow up in an atmosphere of affection and of moral and material security); UN Rules for Protection of Juveniles, Rule 36 (right to wear own clothing).

Families: UNHCR Detention Guidelines, Guideline 10 ("Conditions of detention for asylum-seekers should be humane with respect shown for the inherent dignity of the person."); UNHCR Guidelines on Children Seeking Asylum, Guideline 7.4 (children who arrive with adult relatives should be allowed to stay with relatives) and Guideline 7.7 (all efforts must be made to release children from detention; if release proves impossible, special arrangement must be made for living quarters which are suitable for children and their families; the underlying approach should be 'care' and not 'detention'); ECRE, Position Paper on Detention of Asylum-Seekers, Art. 40 ("[H]usbands and wives and other family members in detention should be permitted to live together.").

Recreation

General: UNHCR Detention Guidelines, Guideline 10(vi) (right to physical exercise through daily indoor and outdoor recreational activities); Standard Minimum Rules, Rule 21 (right to at

least one hour suitable exercise in open air daily, weather permitting); CRC, Article 31 (right to rest and leisure, to engage in age-appropriate play and recreational activities and to participate in cultural life and the arts).

Regimen

Children: UNHCR Detention Guidelines, Guideline 6 (unaccompanied minors should not be detained as a general rule; if detained, it should not be in prison-like conditions); UNHCR Guidelines on Children Seeking Asylum, Guideline 7.6 (same), Guideline 7.7 (if children cannot be released from detention, special arrangements must be made for living quarters suitable for children; the underlying approach should be 'care' and not 'detention'); Declaration on the Rights of the Child, Principle 6 (children should grow up in an atmosphere of affection and of moral and material security); UNHCR Guidelines on Protection and Care of Refugee Children, p. 126 (unaccompanied children should be with a continuous care-giver who is loving and nurturing); UN Rules for Protection of Juveniles, Rule 47 (appropriate recreational and physical training should normally be provided).

Religious Services and Items

Children: CRC, Art. 14 (right of children to freedom of religion; freedom to manifest religion or beliefs); UN Rules for Protection of Juveniles, Rule 48 (right to satisfy needs of religious and spiritual life; if sufficient number of juveniles of a given religion, qualified representatives of religion should be appointed or approved to hold regular services and make private pastoral visits).

Restraints During Transportation

Children: UN Rules for the Protection of Juveniles, Articles 26 (conditions of transport of children should not cause hardship or indignity), 63 and 64 (instruments of restraint should be prohibited except in exceptional cases where all other control methods have been exhausted and failed).

Services / Programs, Access to

General: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5(ii) (where possible detained asylum-seekers should receive free legal counsel) and Guideline 5 (detention should in no way constitute an obstacle to the asylum-seekers' possibilities to pursue their asylum application).

UNHCR Detention Guidelines, Guideline 10(vii) (detained asylum-seekers should have opportunity to continue further education or vocational training); ECRE Position Paper on Detention of Asylum-Seekers, para. 46 (during prolonged detention, adult education and training should be provided and it should attend to cultural and linguistic needs; it is crucial for detainees' mental health to not be deprived of access to constructive activities during prolonged

detention); Basic Principles, Principle 6 (prisoners shall have right to take part in education aimed at full development of human personality).

Children: UNHCR Guidelines on Children Seeking Asylum, paras. 5.14 (children should be informed in an age-appropriate manner about procedures, decisions that have been made about them, and possible consequences of their refugee status) and 5.15 (views and wishes of the child should be elicited and considered); UNHCR Detention Guidelines, Guideline 10(vii) (detained asylum-seekers should have the opportunity to continue further education or vocational training).

Telephones, Access to

General: UNHCR EXCOM Conclusion No. 44, para. (g) (detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR EXCOM Conclusion No. 44, para. (g) (detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Detention Guidelines, Guideline 5 (detained asylum-seekers should be able to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate); UNHCR Detention Guidelines, Guideline 10 (asylum-seekers should have the opportunity to make regular contact and receive visits from friends, relatives, religious, social and legal counsel); ECRE Position Paper on Detention of Asylum-Seekers, para. 29 (asylum-seekers should have access to telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counsellors).

Children: UNHCR Guidelines on Protection and Care of Refugee Children, p. 129 (it is important that unaccompanied children are assisted in maintaining communication with family).

Training

General: Standard Minimum Rules, Rule 47 (personnel shall receive on-going training to maintain and improve their knowledge and professional capacity); ECRE Position Paper on Detention of Asylum-Seekers, para. 51 (staff should receive proper training on asylum matters, causes of refugee movements, relevant cultural factors, and methods of recognizing and responding to stress-related illnesses; and authorities should request training from UNHCR and specialized NGOs).

Children: UN Rules for Protection of Juveniles, Rule 81 (detention personnel should be qualified and include sufficient number of specialists, such as educators, vocational instructors, social workers, psychologists and psychiatrists), and Rule 85 (detention personnel should receive necessary training to carry out responsibilities, in particular training on child psychology and international standards and norms of human rights and the rights of the child).

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



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15 February 2002

BY HAND DELIVERY

Joseph R. Greene
Acting Deputy Executive Associate Commissioner
Enforcement, Field Operations
Immigration and Naturalization Service
425 Eye Street, NW
Washington, DC 20536

Re: Report on UNHCR Mission to Chicago

Dear Mr. Greene:

I wish to thank you and your staff for facilitating the visit of UNHCR Legal Counsellors (b)(6) and (b)(6) to various detention facilities in the Chicago district and to the Chicago O'Hare Airport. As you know, (b)(6) and (b)(6) visited the Chicago area during the week of 6 August 2001. During this time, they visited the Racine County Jail in Racine, WI (6 August), Tri-County Detention Center in Ullin, IL (7 August), Broadview Service Staging Area in Broadview, IL (8 August), McHenry County Jail in Woodstock, IL (9 August), Travelers and Immigrants Aid International Children's Center in Chicago, IL (10 August) and the Chicago O'Hare Airport (10 August). I have been informed that INS and local staff at each location were extremely courteous and accommodating of our visits. I very much appreciate both the time that they devoted to our visits, and their full and forthright answers to our many questions about facility and port operations.

A full report containing our observations, comments and recommendations is attached for your review. You will note that we have included in this report references to the international standards implicated by the conditions and procedures we observed. We hope that these international standards will be useful for you and your staff in assessing the adequacy of INS detention conditions and port of entry operations. For your reference, we are also providing copies of all of the international instruments and policy guidance materials referenced.

We highlight below some of the report's specific findings and suggestions for each facility visited. We would like to note, however, the following issues regarding

detention practices in general in the Chicago district. UNHCR is concerned about INS overall reliance on local and county jails in the Chicago district. At each of the facilities we visited, we met asylum-seekers who had active cases before the immigration courts in Chicago. Conditions at these jails vary widely and the distance of many of them from Chicago significantly impacts on the ability of asylum-seekers to obtain legal assistance. The distance also impedes INS' ability to visit jails regularly, monitor conditions and respond to detainee requests for case and/or custody information.

UNHCR appreciates the relatively liberal parole policy of the INS Chicago district with respect to asylum-seekers and encourages INS to pursue alternatives to detention whenever possible. If detention is to be used, however, we recommend that INS centralize its operations in the Chicago district to a facility under the full control of the INS and subject to all INS detention standards. Application of the INS detention standards would better ensure that the conditions in which asylum-seekers and others of concern to UNHCR are held meet international requirements.

Racine County Jail: UNHCR is quite concerned about conditions at the Racine County Jail. Most of the detainees with whom we spoke and who have been detained at Racine County Jail state that it is one of the worst jails in the area. The facility lacks any outdoor or indoor recreation facilities and has inadequate legal resources. Detainees complain that guards at the jail often abuse their authority and treat them poorly. For these reasons and others enumerated in the report, we recommend that INS cease using the Racine County Jail to house asylum-seekers in its custody.

Tri-County Detention Center: UNHCR appreciates the generally positive treatment of asylum-seekers and others of concern to UNHCR at the Tri-County Detention Center. The availability of educational and rehabilitative programs and the placement of a full-time INS officer at Tri-County are positive aspects of its operations. We are concerned, however, about the adequacy of medical treatment at Tri-County, the lack of an established recreation schedule and the availability of legal materials.

Broadview Service Staging Area: As Broadview is largely a processing center and not a detention facility, our comments and recommendations are more limited. We recommend ensuring that asylum-seekers have telephone access to UNHCR and legal advocates and that INS provide more orientation to asylum-seekers transiting through Broadview, using interpreters when necessary.

McHenry County Jail: UNHCR appreciates the accommodations McHenry County Jail has made to meet the needs of Chinese asylum-seekers detained there and recommends that this practice be extended to asylum-seekers from other countries. The number of medical staff available at the facility is also appreciated, although we are concerned that confusion regarding the facility's co-payment policy may cause asylum-seekers to refrain from seeking medical treatment. We are also concerned with the facility's lack of outdoor recreation and the paucity of legal materials available to asylum-seekers.

Travelers and Immigrants Aid International Children's Center (TIA/ICC): We were very impressed by the operations at the TIA/ICC shelter-care facility and consider it one of the best children's facilities visited by UNHCR over the past year. The facility's success in achieving a home-like setting for those detained there is noteworthy. Positive aspects of the facility's operations include its general policy of not restraining children during transport, the high calibre of its professional staff, and the accessibility of legal assistance. We recommend that TIA/ICC make available, when appropriate, female doctors for medical examinations of girls at the facility, and that it use telephonic interpreter services, rather than its own staff, to translate during private medical examinations.

Chicago O'Hare Airport: Positive aspects of operations at the Chicago O'Hare airport include the relatively comfortable environment in the secondary inspection waiting area, easy access to water and bathroom facilities, and the use of private interview rooms for secondary inspection interviews. UNHCR is concerned, however, about the adequacy of interpretation provided during secondary inspection interviews and the use of airline personnel for interpretative services. The incident we observed at the airport of INS officials aggressively dissuading a Colombian national from seeking asylum in the US, and the use of airline personnel to interpret, is of special concern and was the subject of a separate letter to you on 28 August 2001.

In closing, we reiterate our continued concerns about the detention of asylum-seekers in the United States. As you are aware, UNHCR's Executive Committee (*see, e.g., Conclusion No. 44*), has stated that asylum-seekers should normally not be detained. This principle is also found in UNHCR's Detention Guidelines. We encourage the INS to release individuals who should not be detained and to aggressively pursue alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Best regards,

Guenet Guebre Christos
Regional Representative

Cc: Mr. Joseph Langlois (by first class mail)
Director of Asylum
Immigration and Naturalization Service
US Department of Justice

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21 June 2002

BY HAND DELIVERY

Mr. Tom Schiltgen
Deputy Executive Associate Commissioner
Enforcement, Field Operations
Immigration and Naturalization Service
425 Eye Street, NW
Washington, DC 20536

Re: Report on UNHCR Mission to Dallas

Dear Mr. Schiltgen:

I wish to thank you and your staff for facilitating the visit of UNHCR Legal Counsellors (b)(6) and (b)(6) to various detention facilities in the Dallas district and to the Dallas Fort Worth International Airport. As you know, (b)(6) (b)(6) and (b)(6) visited the Dallas area during the week of 22 October 2001. During this time, they visited the Dallas Fort Worth International Airport (22 October), Dallas County Jail System (George Allen and Lou Sterrett) (23 October), Denton County Jail (24 October), Grayson County Jail (24 October) and Navarro County Jail (25 October). I have been informed that INS and local staff at each location were extremely courteous and accommodating during the visit. I very much appreciate both the time that they devoted to our visits, and their full and forthright answers to our many questions about facility and port operations.

A full report containing our observations, comments and recommendations is attached for your review. We would like to note, however, the following issues regarding detention practices in general in the Dallas district. UNHCR is concerned about INS' overall reliance on local and county jails in the Dallas district. At each of the facilities we visited, my staff met asylum-seekers who were detained in Dallas area jails throughout their cases which typically last several months or more. The conditions at the jails used by INS varied significantly, with some lacking essential services and the distance between many of them, and the city of Dallas, where most legal service providers practice, are a cause of concern.

Given UNHCR's own observations and detainee complaints, UNHCR is particularly concerned about the conditions at the George Allen and Lou Sterrett facilities, both part of

the Dallas County Jail system. Areas of particular concern at George Allen include the lack of outdoor recreation, unsanitary living conditions, and complaints regarding poor medical treatment by jail staff. **UNHCR recommends that INS cease holding asylum-seekers there until these problems are resolved.** With regard to Lou Sterrett, UNHCR received repeated complaints from detainees about the non-responsiveness of the jail staff, the inadequate medical treatment, and the lack of relevant legal resources. UNHCR recommends that INS investigate conditions at the facility and, if detainee complaints are accurate, require immediate improvements.

Unfortunately, out of all the jails used by INS in the Dallas area, George Allen and Lou Sterrett are the only ones located in Dallas, where the court and the majority of legal service providers are located. The distance of the other jails visited impacts the ability of asylum-seekers to obtain legal assistance and impedes INS' ability to visit jails regularly, monitor conditions and respond to detainee requests for case and/or custody information. At all of the jails my staff visited, they received complaints regarding the lack of INS' responses to questions about their cases or custody and complaints about conditions. Local INS informed us that there is only one liaison officer to visit all of the jails in the area (at least five), the majority of which are not located in the Dallas metropolitan area. This raises a concern that INS may lack the resources to visit the jails as often as needed to effectively respond to detainee requests for case and custody information.

With respect to other overall concerns, UNHCR appreciates that INS detainees tend to be housed separately from county inmates in all of the facilities we visited. UNHCR recommends that the jails continue to keep asylum-seekers separate from county inmates in all aspects of the jails' operations. **UNHCR also appreciates that INS is preprogramming many essential phone numbers into all of the jails' telephone systems, and requests that UNHCR's number be included as well.** All of the jails visited are in need of a greater amount of immigration law materials to assist asylum-seekers in preparing their cases. Finally, most or all of the facilities either provided no outdoor recreation areas and/or provided access at a frequency that does not meet international standards. This situation is particularly problematic for detainees in the Dallas district due to the length of time that some of the detainees are held there.

UNHCR appreciates that in the Dallas district, asylum-seekers who establish a credible fear are typically paroled out of INS custody and that women with small children tend to be released by INS and not detained. While these are positive aspects, UNHCR interviewed several asylum-seekers who had been detained for significant periods of time within the jails in the Dallas area. For instance, UNHCR encountered a number of asylum-seekers detained throughout the pendency of their immigration cases, which often last for many months, which is an inappropriate length of time to be held in a secure jail, absent exceptional circumstances. UNHCR encourages INS to pursue alternatives to detention whenever possible. When detention is used, we recommend that INS centralize its operations in the Dallas district to a facility under the full control of the INS and subject to all INS detention standards. Application of the INS detention standards would

better ensure that the conditions in which asylum-seekers and others of concern to UNHCR are held meet international requirements.

Regarding our visit to the Dallas Fort Worth International Airport, positive aspects of operations include the relatively comfortable environment in the secondary inspection waiting area, easy access to water and bathroom facilities, and the use of private interview rooms for secondary inspection interviews. UNHCR is concerned, however, about the regular use of airline personnel for interpretative services.

In closing, we reiterate our continued concerns about the detention of asylum-seekers in the United States. As you are aware, UNHCR's Executive Committee (*see, e.g.,* Conclusion No. 44), has stated that asylum-seekers should normally not be detained. This principle is also found in UNHCR's Detention Guidelines. We encourage the INS to release individuals who should not be detained and to aggressively pursue alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Best regards,

Guenet Guebre Christos
Regional Representative

cc: Mr. Joseph Langlois (by first class mail)
Director of Asylum
Immigration and Naturalization Service
US Department of Justice

Dallas County Jail System: George Allen Facility

On the morning of 23 October 2001, UNHCR representatives, (b)(6) and (b)(6) Katzman, visited the George Allen Jail, also known as Government Center or Dallas County Detention Center, located at 133 N. Industrial Boulevard, Dallas, Texas. UNHCR representatives were accompanied by (b)(6), (b)(7)c INS Supervisory Detention and Deportation Officer for the Dallas District and (b)(6), (b)(7)c, INS Deportation Officer for the Dallas District. Captain (b)(6), (b)(7)c conducted the tour of the facility. This report is based on information received from INS and jail officials, the observations of the UNHCR representatives, and information received from detainees, both during the tour and from written correspondence received at the UNHCR Office in Washington, DC.

General Comments: The Dallas County Jail system consists of four to five buildings located in Dallas. INS uses two of these buildings, George Allen and Lou Sterrett, to hold INS detainees. Female INS detainees are typically held at the Lou Sterrett facility, although they can be housed at George Allen, particularly if they have medical issues. Many of the asylum-seekers with whom UNHCR has communicated, by mail or in person, have stated that the Dallas County jails are the worst in the area. With regard to George Allen, the major complaints include: the non-responsiveness of the jail staff, the unsanitary living conditions, the inadequate medical treatment, the substandard quality of the food, and the lack of outdoor recreation. UNHCR confirmed through its own observations that the living conditions were unsanitary and that there were few relevant legal resources available to asylum-seekers.

Comments & Recommendations: UNHCR is very concerned about the conditions at George Allen. Given the complaints received and UNHCR's own observations, UNHCR recommends that INS cease holding asylum-seekers at the George Allen facility until these problems are resolved. The following recommendations are made to improve standards in the interim.

International Standards Implicated: Body of Principles, Principle 1 (persons under detention should be treated in humane manner with respect for inherent dignity of the person).

Facility Background and Location: George Allen was constructed in 1965 and is located in downtown Dallas close to the immigration court. George Allen has a capacity of 810 beds. At the time of UNHCR's visit, there were only 429 individuals being held at the jail, 102 of them male INS detainees. Individuals with major medical problems are typically held at George Allen because there is an infirmary on-site and the jail is close to Parkland Hospital.

Dallas County inmates include those convicted of misdemeanor offenses who may be held at George Allen for a maximum of two years. Those convicted of felonies are only held at George Allen pre-trial or post-trial awaiting transfer to state prison. Currently George Allen houses 140 county female inmates.

Comments & Recommendations: UNHCR appreciates the fact that George Allen is located in a large city, close to the Immigration Court where immigration cases are heard. The location makes it easier for asylum-seekers to access legal assistance and receive visits from family members, friends or others providing support. The proximity also should make it easier for INS staff to visit the facility regularly. (See "Access to INS/Jail Staff" below.) UNHCR is concerned,

however, that the Dallas County jails used by INS, while the closest to the Immigration Court, have the worst living conditions out of the jails in the Dallas area (based on the jails visited by UNHCR).

International Standards Implicated: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to asylum-seekers' possibilities to pursue asylum applications).

Commingling: Individuals detained at George Allen are held in “tanks,” which are living areas and vary in size and number of beds. The number and variety of tank sizes gives the jail the flexibility to keep INS detainees in one tank separate from county inmates, regardless of the number of detainees on any given day. According to jail staff, with regard to the living quarters, there is no commingling of INS detainees and inmates serving criminal sentences. It appears that commingling may occur in other aspects of the jail’s operations such as the infirmary and outdoor recreation.

Comments & Recommendations: UNHCR appreciates the fact that George Allen has the ability and the inclination to house INS detainees separately from inmates held in connection with criminal charges. As INS is aware, UNHCR objects to the commingling of asylum-seekers with persons serving their criminal sentences. UNHCR recommends that the jail continue to make all efforts to ensure that the two populations are separated in all aspects of its operations.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, Section (f) (“refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as common criminals”); UNHCR EXCOM Conclusion No. 85, para. (ee) (noting concern that asylum-seekers are often held with common criminals); UNHCR Detention Guidelines, Guideline 10(iii) (asylum-seekers should not be co-mingled with convicted criminals); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from those imprisoned for criminal offenses); Body of Principles, Principle 8 (same).

Interpretation: The Dallas County Jail System provides an Inmate Handbook in both Spanish and English. George Allen does not use interpreters during the initial intake process. The Captain was not aware of the availability of telephonic interpreters through INS. She said they are not able to explain the rules to detainees who speak languages other than Spanish and English. Those detainees learn the rules from others. She also said it is rare that someone has a “huge” language barrier. With regard to medical treatment, according to jail staff, the doctor speaks several languages. If there is a language barrier, the medical staff uses other staff or other detainees for interpretation needs. The staff indicated they had not had a medical situation where they could not communicate with the patient. One asylum-seeker interviewed by UNHCR who does not speak English or Spanish related difficulty communicating with jail staff.

Comments & Recommendations: UNHCR is concerned that asylum-seekers with language barriers may lack orientation as to jail rules and privileges and may have difficulty accessing medical treatment. UNHCR appreciates the medical staff’s use of telephonic interpreters. To preserve doctor-patient confidentiality, UNHCR recommends that the use of other detainees or

non-medical staff as interpreters in the medical setting only occur with the patient's consent and that patients be provided the choice of an outside interpreter. UNHCR recommends that the INS take any necessary measures to ensure that the George Allen staff have easy access to interpreters (including, if necessary, INS' telephonic interpreter services) and that the use of interpreters be encouraged whenever necessary. UNHCR appreciates that the Inmate Handbook is provided in Spanish but recommends that the jail's rulebook be translated into other languages spoken by its detainee population. Efforts should begin with translations into the most common languages spoken among the INS detainee population.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8 (asylum-seekers to be given necessary facilities, including interpreter services, to submit claim to authorities); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints to be made available to detainees in different languages); ECRE Position Paper on Detention, paras. 20, 29 (right of asylum-seeker to information on detention in language s/he understands); Standard Minimum Rules, Rule 35 (right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations) and Rule 51(2) (whenever necessary, the services of an interpreter shall be used); Body of Principles, Principle 14 (right of detainee to receive information about his rights in detention in language he understands).

Access to Jail Staff and Training of Jail Staff: All of the detainees interviewed by UNHCR indicated that they get no response to their complaints from jail officers. The consensus among the detainees interviewed was that jail staff does not consider their requests or concerns worthy of attention. UNHCR is not aware of any training being provided to jail staff on working with immigrant detainees and/or refugees.

Comments and Recommendations: UNHCR is concerned about the number and consistency of complaints regarding the unresponsiveness of jail staff to detainee requests and complaints. The extent of detainee complaints on this issue at Dallas County jails far exceeded those received at the other Dallas area jails we visited. UNHCR recommends that jail officials fully respond to detainee requests for assistance and complaints regarding detention conditions. UNHCR further recommends that training be provided for jail staff on working with immigrant and refugee populations if not already provided. UNHCR is willing to assist with such training to the extent resources allow.

International Standards Implicated: Body of Principles, Principle 33 (right to make request or complaint about treatment to appropriate authorities); Standard Minimum Rules, Rule 36 (right to make request or complaint to director of institution or designated officer and right to receive prompt reply); UNHCR Detention Guidelines, Guideline 10(x) (right of access to a complaints mechanism); Standard Minimum Rules, Rule 47 (personnel shall receive on-going training to maintain and improve their knowledge and professional capacity); ECRE Position Paper on Detention, para. 51 (staff should receive proper training on asylum matters, causes of refugee movements, relevant cultural factors, and methods of recognizing and responding to stress-related illnesses).

Access to INS: At all of the jails UNHCR visited, including George Allen, we received consistent complaints regarding the unresponsiveness of INS to detainee questions about cases, custody issues and complaints about detention conditions. According to INS, there is only one liaison officer to visit all the jails in the area. This raises a concern that INS may lack the resources to visit the jails on a regular basis and to effectively respond to detainee requests.

Comments & Recommendations: UNHCR is concerned about the difficulty that asylum-seekers expressed in submitting requests and/or complaints to INS officials about their cases or conditions of confinement. To effectively represent their interests, access to case and custody status information is critical. Lack of information also fuels anxiety and a sense of isolation. UNHCR recommends that INS officers meet with INS detainees at George Allen on a regular basis to facilitate communication, which should be feasible given the proximity of the facility to the INS district office.

International Standards Implicated: Body of Principles, Principle 33 (right to make request or complaint about treatment to appropriate authorities); Standard Minimum Rules, Rule 36 (right to make request or complaint to central prison administration or other proper authorities, and right to receive prompt reply); UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to asylum-seekers' possibilities to pursue asylum applications).

Living Quarters: County inmates and INS detainees are held on four floors. As mentioned previously, the “tanks” or living areas vary in size and number of beds. The tanks include a day area, bathrooms, sinks and showers. The day areas are small and include one or two steel picnic-style tables, a television, and telephones for outside calls. The detainees eat at the tables in the day area. Their food is provided to them on trays through a slot in the door to the tank. There are small windows in the common area with telephone handsets used for family visitation.

UNHCR representatives visited a 20- person tank of INS detainees. The tank was dark and had a generally run down appearance. The tank was a rectangular room with bunk style beds along one wall and regular beds alongside the opposite wall. The day area was at the front end of the tank. There were two showers, two toilets, and two sinks near the day area. The showers and toilets did not look clean. There were also two telephones for outside calls. The back wall of the tank was made of bars. Outside the bars there was a “catwalk” which surrounds the tanks in the area. Behind the catwalk, there were external windows that allowed a limited amount of natural light to enter the area. The jail officers patrol the catwalk periodically to observe detainees and inmates. UNHCR representatives were able to walk along one of the catwalks, which was full of food crumbs and trash. The floors in the tank and the catwalk did not appear clean.

Several detainees complained that the living areas are not clean, that they are not provided with cleaning solutions to keep their living area sanitary, and that the bathroom areas are moldy or falling apart. Several detainees also complained that there were roaches in their living area. Others complained that the temperature was too cold and that the clothing and blankets that they are provided are insufficient to guard against the cold air.

Comments & Recommendations: UNHCR recommends that jail officials ensure that asylum-seekers are housed in sanitary living conditions that are clean and free of health hazards, such as roaches. UNHCR further recommends that the housing areas be maintained at an appropriate temperature and that the bathing and toilet facilities are clean and in working order.

International Standards Implicated: Standard Minimum Rules, Rule 10 (accommodations for prisoners shall meet all health requirements, including necessary heating, lighting and ventilation), 11 (windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation); 13 (adequate bathing and shower installations should be provided at a temperature suitable to the climate), and 19 (every prisoner should be issued sufficient bedding).

Recreation: There is no opportunity for outdoor recreation at George Allen. George Allen provides one hour of indoor recreation per day, five days a week, in an indoor exercise room. The recreation area was a fairly large room with a low, closed ceiling. The walls of the room were barred, similar to the tanks. There were windows along the back wall behind the bars. There were a few weight/exercise machines in the room. The jail staff indicated that there were usually enough INS detainees so that they could have their own recreation time apart from the county inmates. Several detainees complained that they were commingled with county inmates during recreation. Several of the detainees interviewed had been detained at George Allen for significant amounts of time, from several months to over a year, and had not had any opportunity for outdoor recreation during this time.

Comments & Recommendations: UNHCR objects to the placement of asylum-seekers in a jail that does not offer outdoor recreational facilities. UNHCR recommends that at least one hour of outdoor recreation a day be offered. Indoor recreation should be provided only if weather does not permit outdoor recreation. Frequent access to the outdoors can be especially critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement. It is also critical to those of concern to UNHCR who remain in detention for extended periods of time.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(vi) (right to physical exercise through daily indoor and outdoor recreational activities); Standard Minimum Rules, Rule 21 (right to at least one hour suitable exercise in open air daily, weather permitting).

Telephone Access: Telephones are located in each day room. Only collect calls are permitted, and detainees are not able to use phone cards. The rate for collect calls is \$4.20 for 15 minutes. According to jail staff, international calls are permitted. Both UNHCR's toll-free and regular phone numbers were posted on the wall and calls to UNHCR's Washington office were successful. The phone numbers for the local immigration court, the toll-free immigration information line, and Catholic Charities were also posted. INS officers indicated that they have begun the process of asking jails in the Dallas area to preprogram local legal service providers' numbers.

Comments & Recommendations: UNHCR appreciates that several numbers for several legal resources are posted. UNHCR further appreciates that it is possible to place collect calls to UNHCR and that INS has asked jails to preprogram many essential telephone numbers such that the calls are free to detainees. UNHCR recommends that its number in the Washington office be included. Given that the high costs of collect calls from detention centers often impede the ability of detainees to contact legal representatives and family members, UNHCR recommends that the INS ensure the lowest telephone rates possible to INS detainees. Given that many private attorneys do not accept collect calls, UNHCR further recommends that INS detainees be allowed to use phone cards.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, para. (g) (detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv)(asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (detained asylum-seekers should be able to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate; ECRE Position Paper on Detention, para. 29 (asylum-seekers should have access to telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counsellors); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons).

Library: The library was a separate room with tables and chairs and three typewriters. Access to computers is not provided. Materials produced by the Florence Immigrant and Refugee Rights Project regarding pro se representation were available, as were Interim Decisions of the Board of Immigration Appeals, Black's Law Dictionary, the Code of Federal Regulations (current only through 1998), and an outdated 1996 edition of the Immigration and Nationality Act. The library is open five days a week but individuals have access only one hour per week. Individuals are allowed more time in the library if there are impending deadlines, and must write a request in order to visit the law library. One detainee complained that sometimes he does not receive a response to his requests to go to the library.

Comments & Recommendations: Given that the majority of those detained typically do not have legal assistance and must prepare their own cases, UNHCR appreciates that some immigration law materials are available at George Allen. However, UNHCR is concerned that detainees do not have frequent access to the library and some of the materials available are outdated. We encourage INS to expand the immigration law resources available to detainees to include country of origin materials and other current general immigration law resources that might be useful to asylum-seekers preparing their own cases, such as the materials listed in the INS Detention Standards on Access to Legal Material. UNHCR is willing to provide any international legal resources that might be available through our Office. UNHCR further recommends that INS detainees be provided more frequent access to the library.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention

Guidelines, Guideline 5 (detention should in no way constitute an obstacle to asylum-seekers' possibilities to pursue asylum applications).

Photocopies: Detainees stated that it is not possible to obtain photocopies of legal documents.

Comments and Recommendations: UNHCR would appreciate further information regarding detainees' access to photocopies, which are often essential when preparing an immigration court case, particularly as many detainees represent themselves.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to asylum-seekers' possibilities to pursue asylum applications).

Medical: INS tries to place those detainees in the Dallas area, with medical needs, including pregnant women, at George Allen because it has an infirmary and is close to Parkland Hospital if hospitalization is necessary. At George Allen, there is a physician on-site once a day. He or she sees people that have requested attention or those referred by the nurse. At least two nurses and a supervisor are present at any time, and there is a psychiatrist on-site once a week. LPN's distribute medications three times a day and, outside of scheduled hours, if headaches, pains, or the like occur. If a detainee needs medication more frequently or spontaneously, such as blood pressure medication, they are allowed to keep it on their person. A dentist is on-site on Saturdays and every other Sunday. Only extractions are performed. No fillings, root canals, or bridgework are offered.

According to jail staff, detainees write a request to seek medical attention, and have an average wait of one to two days. Emergency medical requests can be given to a guard for more immediate needs. There is an infirmary located on the 10th floor. The infirmary was a fairly large open room with approximately 30 to 40 single beds. There was a television in the room. The room appeared dirty and depressing. Pregnant women and others with serious medical problems, which could include INS detainees, are kept there.

Unlike the majority of the facilities in the Dallas area visited by UNHCR representatives, at George Allen we heard numerous and serious complaints about the medical treatment. Detainees consistently reported that medical staff were non-responsiveness to medical requests and provided inadequate medical treatment. The worst case we learned about involved a grave back problem that according to the detainee, was ignored for months until it became so bad he could barely stand up and was eventually taken to a hospital.

Comments & Recommendations: UNHCR is extremely concerned about the quality of the medical treatment at George Allen and detainee complaints about the unresponsiveness of jail staff to requests for medical assistance. UNHCR is especially concerned about these issues given that George Allen is where INS seeks to place detainees with medical problems. UNHCR is also concerned about the lack of dental services for treatment beyond extractions when medically necessary. UNHCR recommends that INS ensure that detainees receive quality medical treatment as needed.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(v) (asylum-seekers shall receive appropriate medical treatment and psychological counselling); Standard Minimum Rules, Rule 22(2) (sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals; if institution has hospital facilities, its resources shall be proper for necessary medical care), Rule 25(1) (medical officer should care for physical and mental health of prisoners); Rule 22(3) (services of a qualified dental officer shall be available to every prisoner).

Food: Meals for all of the Dallas County jails are prepared off-site by one provider. An off-site dietician prepares the menus and special needs diets are available for people with medical issues such as low-salt and diabetic diets. According to the jail staff, vegetarian diets are arranged only with prior approval of the chaplain. None of the meals contain any pork products, but this fact is not advertised. The staff will tell inmates/detainees if they inquire.

Unlike at the other facilities in the Dallas area visited by UNHCR, detainees at both George Allen and Lou Sterrett, which are served by the same food provider, voiced consistent complaints about the quality of the food. They complained, in particular, that the bread used for their sandwiches at lunch (sandwiches are served almost every day) is often moldy and inedible. Commissary food is available but is expensive and some cannot afford it.

Several detainees interviewed indicated that they do not eat pork for religious reasons. None knew that there was no pork in the food. One did not bother asking for a non-pork diet assuming his request would be ignored given the overall lack of responsiveness to detainee requests. Despite jail staff's statements that vegetarian diets could be arranged, one detainee indicated that he had requested a vegetarian diet for religious reasons repeatedly for the nine or ten months he had been detained at George Allen and his requests had been ignored. This matter was brought up with the Captain and one of the jail officers on our tour. In response, they agreed that the diet could be provided but warned that individuals given "special diets" might have to be isolated from the general population because having a different diet might cause problems. UNHCR representatives checked later to ensure that the detainee had not been isolated. The detainee wrote to UNHCR in late May 2002, seven and a half months after our visit, to state that he still had not received a vegetarian diet.

Comments & Recommendations: UNHCR is concerned that, given the number and consistency of detainee reports, the food provided in the Dallas County Jail system is not of sufficient quality. UNHCR is also concerned about George Allen's reluctance to readily satisfy reasonable requests for religious diets and to ensure that those who do not eat pork for religious reasons are aware that the jail's menu does not include pork. Providing notice of the food content would alleviate anxiety and confusion on the part of detainees who do not eat pork for religious reasons. UNHCR is further concerned about the jail staff's statements regarding the potential segregation of those who request a vegetarian diet. Asylum-seekers should be allowed to exercise their religious beliefs without being subjected to punishment.

International Standards Implicated: Standard Minimum Rules, Rule 20(1) (right to food at usual hours of nutritional value adequate for health and strength); UNHCR Guidelines, Guideline

10(viii) (asylum-seekers should have the opportunity to exercise their religion); UNHCR Guidelines, Guideline 10(viii) (asylum-seekers should have the opportunity to exercise their religion).

Religious Services: At George Allen, access to Bibles, in English or Spanish, is allowed. The chaplain provides or will obtain religious items for detainees, including the Koran and rosaries. Families are also free to provide these items. However, individuals are not allowed to have with them religious items that may be used as a weapon. Religious services of several different denominations are held weekly. Services of any denomination held by a voluntary group could be requested. The staff indicated that they do not get a lot of requests of this nature.

Comments & Recommendations: UNHCR appreciates the fact that INS detainees are provided access to religious items and that INS detainees have access to some religious services. UNHCR encourages that George Allen continue to provide detainees access to religious leaders and services as appropriate given the religious profile and demand of the INS detainee population.

International Standards Implicated: UNHCR Guidelines, Guideline 10(viii) (asylum-seekers should have the opportunity to exercise their religion); Standard Minimum Rules, Rule 41 (if institution contains sufficient number of prisoners of same religion, a qualified representative of that religion shall be appointed or approved and made available to hold regular services and pay private pastoral visits) and Rule 42 (as far as practicable, every prisoner shall be allowed to satisfy his religious needs by attending religious services).

Dallas County Jail System: Lou Sterrett Facility

On the afternoon of October 23, 2001, UNHCR representatives (b)(6) and (b)(6) (b)(6) visited the Lou Sterrett Detention Center located in downtown Dallas, Texas. The facility is also referred to as the North Tower, and is operated by Dallas County. The visit included a tour of the facility conducted by Captain (b)(6), (b)(7)c Dallas County Sheriff's Police Department, and individual interviews with detained asylum-seekers. The UNHCR representatives were accompanied by (b)(6), (b)(7)c INS Supervisory Detention and Deportation Officer for the Dallas District, and (b)(6), (b)(7)c INS Deportation Officer for the Dallas District. This report is based on information received from INS and jail officials, the observations of the UNHCR representatives, and information received from detainees, both during the tour and from written correspondence received at the UNHCR Office in Washington, DC.

General Comments: The Dallas County Jail system consists of four to five buildings located in Dallas. The Lou Sterrett facility is one of two buildings that INS uses to hold detainees. It is located in downtown Dallas, close to the immigration court. Lou Sterrett has a total capacity of 3,292 beds. At the time of UNHCR's visit, the jail was full to capacity. INS tends to place female detainees at Lou Sterrett.

Many of the asylum-seekers with whom UNHCR has communicated, by mail or in person, have stated that the Dallas County jails are the worst in the area. With regard to Lou Sterrett, the UNHCR received numerous and consistent complaints regarding the attitude of the jail staff, the inadequate medical treatment, the substandard quality of the food, and the almost non-existent legal resources available to detainees.

Comments & Recommendations: While there are some positive factors to Lou Sterrett's operations including its close proximity to the Immigration Court and the provision of some outdoor recreation, the numerous and consistent detainee complaints cause us great concern. These complaints were consistent with those received by detainees held at George Allen, which is part of the same jail system as Lou Sterrett. Given the serious nature of the complaints, UNHCR recommends that INS investigate conditions at Lou Sterrett and if the complaints are accurate, UNHCR recommends that INS require immediate improvements.

International Standards Implicated: Body of Principles, Principle 1 (persons under detention should be treated in humane manner with respect for inherent dignity of the person).

Commingling: The jail is divided into twelve zones. Four of the zones are used to hold females and eight are used to hold males. There are 10 "tanks" per zone and 18 to 24 individuals held in each tank. At the time of our visit, there was only one tank being used to hold immigration detainees, all of whom were female. Dallas county inmates include those convicted of misdemeanor offenses who can be held in the Dallas County Jail System for a maximum of two years. Those convicted of felonies are only held at Dallas County Jails prior to trial or post-trial awaiting transfer to state prison. INS detainees are not commingled with county inmates with regard to living areas.

Comments & Recommendations: UNHCR appreciates the fact that Lou Sterrett keeps INS detainees in separate living areas from inmates being held in connection with criminal charges. As INS is aware, UNHCR objects to the commingling of asylum-seekers with persons serving their criminal sentences. UNHCR recommends that the jail continue to make all efforts to ensure that the two populations are separated during all aspects of the jail's operations.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, Section (f) ("refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as common criminals"); UNHCR EXCOM Conclusion No. 85, para. (ee) (noting concern that asylum-seekers are often held with common criminals); UNHCR Detention Guidelines, Guideline 10(iii) (asylum-seekers should not be co-mingled with convicted criminals); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from those imprisoned for criminal offenses); Body of Principles, Principle 8 (same).

Interpretation: The Dallas County Jail System provides an Inmate Handbook in both Spanish and English. According to Lou Sterrett's Captain, many of the INS detainees do not speak English. Usually another detainee interprets for them or sign language is used. There are a few Spanish-speaking officers as well. The Captain reported that they had had one detainee who spoke an "exotic" language, and they were not sure how to communicate with him, but he did not stay too long. With regard to communication during medical treatment, the staff uses a staff member, a telephonic interpreter, or other detainees to interpret. Two detainees reported that Spanish-speaking staff members are only on-site a couple of times a week.

Comments & Recommendations: UNHCR is concerned that asylum-seekers with language barriers may lack orientation as to jail rules and privileges. UNHCR appreciates the medical staff's use of telephonic interpreters. To preserve doctor-patient confidentiality, UNHCR recommends that the use of other detainees as interpreters in the medical setting only occur with the patient's consent and that patients be provided the choice of an outside interpreter. UNHCR recommends that the INS take any necessary measures to ensure that the Lou Sterrett staff have easy access to interpreters (including, if necessary, INS' telephonic interpreter services) and that the use of interpreters be encouraged whenever necessary. UNHCR appreciates that the Inmate Handbook is provided in Spanish but recommends that the jail's rulebook be translated into other languages spoken by its detainee population. Efforts should begin with translations into the most common languages spoken among the INS detainee population.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8 (asylum-seekers to be given necessary facilities, including interpreter services, to submit claim to authorities); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints to be made available to detainees in different languages); ECRE Position Paper on Detention, paras. 20, 29 (right of asylum-seeker to information on detention in language s/he understands); Standard Minimum Rules, Rule 35 (right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations) and Rule 51(2) (whenever necessary, the services of an interpreter shall be used); Body of Principles, Principle 14 (right of detainee to receive information about his rights in detention in language he understands).

Access to and Training of Jail Staff: All detainees interviewed indicated that they get no response to their complaints from jail officers. UNHCR is not aware of any training of jail staff on working with an immigrant or refugee population.

Comments & Recommendations: UNHCR is concerned about the difficulty that asylum-seekers expressed in submitting requests and/or complaints to jail officials about their cases or conditions of confinement. UNHCR recommends that jail officials fully respond to detainee requests for assistance and concerns regarding detention conditions and that training be provided for jail staff on working with immigrant and refugee populations. UNHCR is willing to assist with such training to the extent resources allow.

International Standards Implicated: Body of Principles, Principle 33 (right to make request or complaint about treatment to appropriate authorities); Standard Minimum Rules, Rule 36 (right to make request or complaint to director of institution or designated officer and right to receive prompt reply); UNHCR Detention Guidelines, Guideline 10(x) (right of access to a complaints mechanism); Standard Minimum Rules, Rule 47 (personnel shall receive on-going training to maintain and improve their knowledge and professional capacity); ECRE Position Paper on Detention, para. 51 (staff should receive proper training on asylum matters, causes of refugee movements, relevant cultural factors, and methods of recognizing and responding to stress-related illnesses).

Access to INS: At all of the jails UNHCR visited, including Lou Sterrett, the unresponsiveness of INS to detainee questions about cases, custody issues and complaints about detention conditions. According to INS, there is only one liaison officer to visit all the jails in the area. This raises a concern that INS may lack the resources to visit the jails as often as needed and to effectively respond to detainee requests.

Comments & Recommendations: To effectively represent their interests, access to case and custody status information is critical. Lack of information also fuels anxiety and a sense of isolation. These difficulties are exacerbated if the asylum-seeker does not speak English. UNHCR recommends that INS officers meet with INS detainees at Lou Sterrett on a regular basis to facilitate communication.

International Standards Implicated: Body of Principles, Principle 33 (right to make request or complaint about treatment to appropriate authorities); Standard Minimum Rules, Rule 36 (right to make request or complaint to central prison administration or other proper authorities, and right to receive prompt reply); UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to asylum-seekers' possibilities to pursue asylum applications).

Living Quarters: UNHCR representatives observed the “tank” used to house female INS detainees. The tank was divided into cells and there were six to seven bunks per cell. Each cell had one toilet-sink units. The cells also contained intercoms for communicating with officers. There was a common area within the tank, which had four picnic-style tables, three telephones for outside calls and three showers. Detainees are restricted to their cells from midnight until

4:30 a.m. At other times, detainees can come in and out of the cells and use the day area as they wish. Detainees are responsible for cleaning their own living area. Unlike the George Allen facility, the living areas appeared generally clean. Several asylum-seekers reported that the air temperature was kept much too cold to sleep well and that they are provided with only one thin blanket. Several asylum-seekers said that they had sent in repeated requests regarding this issue for five months and it is still too cold.

Comments & Recommendations: UNHCR recommends that the temperature in the tanks be properly regulated and that detainees be provided with sufficient clothing and bedding for the air temperature.

International Standards Implicated: Standard Minimum Rules, Rule 10 (sleeping conditions shall meet all health requirements, including necessary heating), 19 (every prisoner should be issued sufficient bedding).

Recreation: Detainees have access to recreation five days a week, for one hour a day. Recreation takes place in a large, open-air room for recreation. In the winter, if the temperature is below freezing, the jail has an indoor room used for recreation. Detainees reported that recreation is very early in the morning and that most skip it as a result.

Comments & Recommendations: UNHCR recommends that asylum-seekers be provided at least one hour of outdoor recreation seven days a week, weather permitting, at a time of day that allows asylum-seekers meaningful access to recreation. Given detainee complaints, UNHCR would appreciate additional information on what time recreation occurs. Frequent access to the outdoors can be especially critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement. It is also critical to those of concern to UNHCR who remain in detention for extended periods of time. UNHCR interviewed asylum-seekers that had been detained at Lou Sterrett for many months.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(vi) (right to physical exercise through daily indoor and outdoor recreational activities); Standard Minimum Rules, Rule 21 (right to at least one hour suitable exercise in open air daily weather permitting).

Telephone Access: Telephones are located in each day room. Only collect calls are permitted, and detainees are not able to use phone cards. The rate for collect calls is \$4.20 for 15 minutes. According to jail staff, international calls are permitted. Several asylum-seekers reported, however, that they could not call the toll-free Immigration Court information line and could not make international calls. Others reported that they could not contact their lawyers because their lawyers did not accept collect calls due to the expense. INS officers indicated that they have begun the process of asking jails in the Dallas area to preprogram local legal service providers' numbers.

Comments & Recommendations: UNHCR appreciates that INS has asked jails to preprogram many essential telephone numbers such that the calls are free to detainees. UNHCR recommends that its number in the Washington office be included. Given that the high costs of collect calls from detention centers often impede the ability of detainees to contact legal

representatives and family members, UNHCR recommends that the INS ensure the lowest telephone rates possible to INS detainees. Given that many private attorneys do not accept collect calls, UNHCR further recommends that INS detainees be allowed to use phone cards.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, para. (g) (detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv)(asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (detained asylum-seekers should be able to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate; ECRE Position Paper on Detention, para. 29 (asylum-seekers should have access to telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counsellors); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons).

Library: Due to time constraints, UNHCR did not observe the law library at Lou Sterrett. One detainee who is representing herself in her removal proceedings indicated that the law library does not have any immigration law materials and that despite her requests on the subject, there has been no change.

Comments & Recommendations: UNHCR would appreciate further information on the immigration materials available to detainees at Lou Sterrett and how often these materials may be accessed. Given that the majority of those detained typically do not have legal assistance and must prepare their own cases, UNHCR encourages INS to make available relevant immigration law resources available to detainees such as country of origin materials, and other current general immigration law resources that might be useful to asylum-seekers preparing their own cases such as the materials listed in the INS Detention Standards on Access to Legal Material. UNHCR is willing to provide any international legal resources that might be available through our Office.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); and Guideline 5 (detention should in no way constitute an obstacle to asylum-seekers' possibilities to pursue asylum applications).

Medical: There are five or six nurses present on each shift and nurses on-site 24 hours a day, seven days a week. A physician is on-site 8:30 a.m. to 4:30 p.m. and on-call 24 hours a day, seven days a week. Individuals with medical emergencies are sent to Parkland Hospital, which is nearby. There is a psychiatrist on staff in another building who is on-call. A detainee must get a court issued subpoena in order to get copies of his or her medical records.

UNHCR received numerous complaints, more than at other facilities besides the Dallas County jails, about the medical treatment at Lou Sterrett. Asylum-seekers consistently cited the lack of timely response to requests and the inadequacy of the medical treatment. The most serious

complaint that UNHCR received was the jail's failure to examine someone for a fever that turned out to be related to tonsillitis.

Comments & Recommendations: UNHCR is concerned about the quality of the medical treatment at Lou Sterrett and detainee complaints about the non-responsiveness of jail staff to requests for medical attention. UNHCR recommends that INS ensure that detainees receive quality medical treatment. UNHCR is also concerned that detainees lack access to their own medical records absent a court order. There are times when asylum-seekers may need to present copies of medical records as evidence in support of their cases and as many are unrepresented, requiring a court order could negatively impact their ability to present their cases.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(v) (asylum-seekers shall receive appropriate medical treatment and psychological counselling); Standard Minimum Rules, Rule 22(2) (sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals; if institution has hospital facilities, its resources shall be proper for necessary medical care), Rule 25(1) (medical officer should care for physical and mental health of prisoners); Guideline 5 (detention should in no way constitute an obstacle to asylum-seekers' possibilities to pursue asylum applications).

Food: Meals are prepared off-site by the same food provider for all of the Dallas County jails. An off-site dietician prepares the menus and special needs diets are available for people with medical issues such as low-salt and diabetic diets. Vegetarian diets are arranged only with prior approval of the chaplain. None of the meals contains any pork products, but this fact is not advertised.

Unlike at the other facilities in the Dallas area visited by UNHCR, detainees at George Allen and Lou Sterrett, which are served by the same food provider, voiced consistent complaints about the quality of the food, in particular the lunches. Detainees complained that the bread used for sandwiches, which are served almost every day for lunch, is often moldy and inedible. Commissary food is available but is expensive and some cannot afford it.

Comments & Recommendations: UNHCR is concerned that, given the number and consistency of detainee reports, the food provided at Lou Sterrett is not of sufficient quality.

International Standards Implicated: Standard Minimum Rules, Rule 20(1) (right to food at usual hours of nutritional value adequate for health and strength).

Religious Services: Church services of several denominations are available. The Captain was not aware of many INS detainees who had requested access to the services. One detainee reported that bibles in Spanish were available and that there were Catholic and Jehovah's Witness services available.

Comments & Recommendations: UNHCR is encouraged that INS detainees are provided access to the bible in Spanish and that some INS detainees have access to religious services. UNHCR encourages that such services be extended to all faiths as appropriate given the religious profile and demand of the INS detainee population.

International Standards Implicated: UNHCR Guidelines, Guideline 10(viii) (asylum-seekers should have the opportunity to exercise their religion); Standard Minimum Rules, Rule 41 (if institution contains sufficient number of prisoners of same religion, a qualified representative of that religion shall be appointed or approved and made available to hold regular services and pay private pastoral visits) and Rule 42 (as far as practicable, every prisoner shall be allowed to satisfy his religious needs by attending religious services).

Educational Opportunities: According to the Captain, most immigrants do not take classes due to language problems and the short period of time they are detained. Several of the asylum-seekers interviewed by UNHCR who had been detained for many months at Lou Sterrett reported that there are no educational classes available for non-English-speakers.

Comments & Recommendations: It is not clear to UNHCR whether INS detainees at Lou Sterrett are allowed to attend educational classes. UNHCR recommends that if not already provided, asylum-seekers have access to whatever educational and rehabilitative programs the jail offers, given that some may remain there for many months.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(vii) (detained asylum-seekers should have opportunity to continue further education or vocational training); ECRE Position Paper on Detention, para. 46 (during prolonged detention, adult education and training should be provided and it should attend to cultural and linguistic needs; it is crucial for detainees' mental health to not be deprived of access to constructive activities during prolonged detention); Basic Principles, Principle 6 (prisoners shall have right to take part in education aimed at full development of human personality).

Denton County Detention Center

On the morning of 24 October 2001, UNHCR representatives, (b)(6) and (b)(6) visited the Denton County Detention Center in Denton, Texas. They were accompanied by (b)(6), (b)(7)c INS Supervisory Detention and Deportation Officer for the Dallas District and (b)(6), (b)(7)c INS Deportation Officer for the Dallas District. Providing the tour was (b)(6), (b)(7)c Assistant Chief Deputy of the Denton County Sheriff's Department. This report is based on information received from INS and jail officials, the observations of the UNHCR representatives, and information received from INS detainees, both during the tour and from written correspondence received at the UNHCR Office in Washington, DC.

Facility Location: Denton County Detention Center is located approximately 40 miles from downtown Dallas.

Comments and Recommendations: UNHCR is concerned that Denton County Jail is located so far from Dallas, where the immigration court and most immigration lawyers and non-profit legal service providers are located. The distance from Dallas makes it difficult for asylum-seekers to access legal assistance, receive visits from family members, friends or others providing support. The distance also makes it difficult for INS staff to visit the facility regularly. (See "Access to INS/Jail Staff" below.) To the extent that INS detains asylum-seekers in the Dallas District, UNHCR recommends that INS use adequate detention facilities closer to the Immigration Court.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to asylum-seekers' possibilities to pursue asylum applications).

Facility Background: The Center has a total capacity of 1,000 beds. Denton County inmates include pre-trial detainees, those awaiting transfer to prisons (most of whom are convicted of felonies), and those convicted of misdemeanors, who can be held for a maximum of two years. The Center has three distinct types of holding areas: (1) old wing of main jail, (2) new wing of main jail, and (3) the "barracks." The majority of INS detainees are held in the "barracks," which is an area separate from the main jail building. Only INS detainees are held in the barracks. If number of INS detainees exceeds the number of beds in the barracks, detainee could be held in either the old or new wing of the main jail building. In that situation, the jail would seek to place INS detainees in the new wing, which holds mainly minimum-security inmates and only occasionally, maximum-security inmates.

Main jail (old wing): The main jail was built in 1968 and has 10 housing units or "tanks" with 8 to 32 beds in each tank. It also has single cells for disciplinary cases. It is a medium-maximum security facility. The facility holds only males. INS detainees are not typically held in the main jail unless they have medical issues, are being disciplined or are "special interest" cases, which include those detained pursuant to the events of September 11. At the time of our visit, there were four or five INS detainees housed with the general jail population, including at least one special interest case. Those in single cells are locked down 22 hours a day. They are allowed to shower and be in a day room for the two hours they are out. They can visit with their lawyers at

any time. There were tables and chairs and televisions in the day rooms. Smoking is permitted inside the main jail and there was a pervasive smell of smoke throughout the building.

New wing (pods): This area is attached to the main jail but is a much newer wing. Each living unit or pod was a very large room with 48 bunk beds. There were small lockers with combination locks for each detainee. There was a very large day area that was carpeted, well lit, and contained three tables with chairs and two televisions. There were four showers, six sinks, and six toilets. Showers were available 10 hours per day. There was a side room that contained two computers with educational software, books and magazines. There was a small room for sick call and another side room that was a multi-purpose room. It had a washer and dryer that inmates and detainees could use for free, though inmates and detainees must buy detergent unless they are indigent. There is an officer inside the pod 24 hours a day, every day. Smoking is not allowed inside the pods, and the pod UNHCR visited was very clean. If space is needed, INS detainees may be housed in the new wing if they matched the security level of the county inmates in the pod, which tends to be minimum security.

Barracks: This area was separate from the main jail. The barracks contained four living units. Each unit was a long rectangular room, with bars at the front. The units had 24 bunks, twelve along each side wall. At the front of the unit, there were three tables and two telephones. At the back of the unit, there were two showers, three toilets, and three sinks. Each detainee had a crate for personal storage and there was a microwave in each unit. Smoking is allowed at the front of each unit. The barracks were opened in February 2001, specifically to house INS detainees. The total capacity of the barracks is 96 beds, and the average number of INS detainees at Denton County Detention Center is 100 to 120.

Comments & Recommendations: UNHCR appreciates the fact that, as a general matter, Denton County Jail separates INS detainees from criminal inmates. UNHCR objects to the commingling of asylum-seekers with any persons serving their criminal sentences to the extent that it occurs. UNHCR recommends that the jail make all efforts to ensure that appropriate space is available for the two populations to remain separated. If INS detainees must be housed in either the main jail or the new wing, UNHCR recommends that asylum-seekers be placed in the new wing. The living space in the new wing is lighter, more open and generally less restrictive than that of the tanks in the main jail, provides for greater outdoor recreation, and does not allow smoking indoors.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, Section (f) ("refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as common criminals"); UNHCR EXCOM Conclusion No. 85, para. (ee) (noting concern that asylum-seekers are often held with common criminals); UNHCR Detention Guidelines, Guideline 10(iii) (asylum-seekers should not be co-mingled with convicted criminals); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from those imprisoned for criminal offenses); Body of Principles, Principle 8 (same).

Recreation:

Old wing: Each detainee gets one hour of recreation, three times per week. The recreation area consists of two outdoor basketball court-sized spaces with basketball hoops.

New wing: Each pod has its own outside recreation area adjacent to the pod, which is approximately 20 x 20 feet in area and is half-covered. The area contains a basketball hoop and a light for recreation after dark. Those housed in the new wing have 18-hour access to the recreation area. Detainees in the new wing get much longer daily access than those in the main jail or the barracks because they do not need a guard with them as the area is adjacent to the pod. For those in the main jail and the barracks, an officer must be present during recreation at all times.

Barracks: The recreation area is outdoors and is approximately 20 by 20 feet in space. It is half-covered and a basketball hoop is supposed to be installed in the future. Recreation is provided three times per week for one hour.

Comments & Recommendations: UNHCR views the availability of outdoor recreation as a positive aspect of the jail's operations. UNHCR is particularly impressed by the layout of the new wing and the significant amount of access to outdoor air. However, UNHCR recommends that at least one hour of outdoor recreation a day, weather permitting, be provided to all INS detainees held in Denton. Frequent access to the outdoors can be especially critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement. It is also critical to those of concern to UNHCR who remain in detention for extended periods of time. UNHCR encountered detainees at Denton who had been detained for eight months or more.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(vi) (asylum-seekers should have opportunity for daily indoor and outdoor recreational activities); Standard Minimum Rules, Rule 21(right to at least one hour suitable exercise in open air daily weather permitting).

Telephone Access:

New wing: Inmates and detainees can make collect calls or use phone cards, which are sold at \$20 for 40 minutes. Toll free calls are not allowed. The telephones were located in the general purpose room, which allows calls to be private. No one else is allowed in general purpose room while a detainee is talking with an attorney. There were phone numbers posted in the day area including: UNHCR, Dallas INS, Honduras consulate, and NGO's. The staff informed UNHCR that it is trying to program in free calls. The list in the new wing appeared to be an old list because it still had Proyecto Adelante, a Dallas NGO which had closed the previous year. UNHCR representatives were not able to successfully call collect to the Washington office of UNHCR.

Barracks: There are two telephones for each barrack of 24 persons. Telephone numbers for INS, UNHCR, and the toll-free court information line were posted, but numbers for legal service providers were not. Detainees expressed concern to UNHCR about the high cost of phone calls.

INS officers indicated that they have begun the process of asking jails in the Dallas area to preprogram local legal service providers' numbers.

Comments & Recommendations: UNHCR appreciates that many essential phone numbers were posted in some places but recommends that they be updated. UNHCR also appreciates that INS has asked area jails to preprogram many essential telephone numbers such that the calls are free to detainees. UNHCR recommends that its number in the Washington office be included. Given that the high costs of collect calls from detention centers often impede the ability of detainees to contact legal representatives and family members, UNHCR recommends that the INS ensure the lowest telephone rates possible to INS detainees.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, para. (g) (detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv)(asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (detained asylum-seekers should be able to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate; ECRE Position Paper on Detention, para. 29 (asylum-seekers should have access to telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counsellors); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons).

Law Library:

Old wing: The old wing contained a fairly good-sized law library that had federal case reporters, including Federal Supplement, Federal Reporter and Supreme Court Reports. It was unclear how current the reporters were. There were no immigration materials available. A paralegal maintains the library. Individuals have access to the library at least twice a week for about 1 ½ hours per visit. It is not clear if this includes the INS detainees held at the barracks.

New wing: There is no library in the new wing. Immigration law materials can be brought from the barracks to the new wing if requested. The computers in the classroom adjacent to the pods can be used to type briefs. Immigration material on CD roms could be used if provided to the jail.

Barracks: The barracks had immigration materials on a rolling cart, parked in the hallway in front of the housing units. The cart contained Benders (published 11/99), Immigrant Legal Resource Center Immigration Advocate Guide, Board of Immigration Appeals Interim Decisions (up until 1998), occasional Interpreter Releases and INS regulations (not clear if current). It did not contain pro se materials written by the Florence Immigrant and Refugee Rights Project. The cart is rolled into each housing unit in the barracks twice a week.

Comments & Recommendations: Given that the majority of those detained typically do not have legal assistance and must prepare their own cases, UNHCR recommends that all INS detainees, regardless of where they are housed within Denton, have equal and frequent access to any relevant available legal resources, including federal reporters and state law resources held in the library in the main jail. UNHCR also recommends that the materials in the barracks be updated and include country of origin materials and other current general immigration law resources, such as the materials listed in the INS Detention Standards on Access to Legal

Material and the Florence Immigrant and Refugee Rights Project pro se materials. UNHCR is willing to provide any international legal resources that might be available through our Office.

Interpretation: For those with language barriers, the jail has a contract with North Texas University, which provides interpreters by phone, or in person. Only recently did the medical staff hear about the possibility of using INS translators.

Comments & Recommendations: UNHCR appreciates that the facility provides interpreters through a contract with a local resource. UNHCR recommends that the INS take any necessary measures to ensure that the Denton staff have easy access to interpreters (including, if necessary, INS' telephonic interpreter services given that local resources may be limited) and that the use of interpreters be encouraged whenever necessary.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 5(i)(asylum-seekers should receive prompt, full communication of detention order, reasons for order, rights in connection with order, in language they understand); Body of Principles, Principle 11(2) (detained person shall receive prompt and full communication of detention order and the reasons therefor); Principle 13 (upon detention, information on and explanation of rights and how to avail oneself of rights will be provided); Body of Principles, Principle 14 (entitled to receive information in Principle 11 and 13 through interpreter free of charge); Standard Minimum Rules, Rule 51(2) (whenever necessary, interpreter services shall be used).

Access to INS: At all of the jails UNHCR visited, including Denton, we received consistent complaints regarding the unresponsiveness of INS to detainee questions about cases, custody issues and complaints about detention conditions. According to INS, there is only one liaison officer to visit all the jails in the area. This raises a concern that INS may lack the resources to visit the jails as often as needed and to effectively respond to detainee requests.

Comments & Recommendations: UNHCR is concerned about the difficulty that asylum-seekers expressed in submitting requests to INS officials about their cases or conditions of confinement. To effectively represent their interests, access to case and custody status information is critical. Lack of information also fuels anxiety and a sense of isolation. UNHCR recommends that INS officers meet with INS detainees at Denton on a regular basis to facilitate communication.

International Standards Implicated: Body of Principles, Principle 33 (right to make request or complaint about treatment to appropriate authorities); Standard Minimum Rules, Rule 36 (right to make request or complaint to central prison administration or other proper authorities, and right to receive prompt reply); UNHCR Detention Guidelines, Guideline 10(x) (right of access to a complaints mechanism); UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to asylum-seekers' possibilities to pursue asylum applications).

Education/Work Opportunities: County inmates can serve as “trustees” who are used for work detail on a voluntary basis. INS detainees are not eligible for this at Denton County jail.

When asked about the reasons for this, jail officials responded that they felt that there would be no incentive for INS detainees to volunteer, given that they are detained for indefinite periods.

Comments & Recommendations: It is UNHCR's view that asylum-seekers should have access to educational and rehabilitative programs as well as other constructive activity such as vocational opportunities, given that some may remain detained for many months.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(vii) (detained asylum-seekers should have opportunity to continue further education or vocational training); ECRE Position Paper on Detention, para. 46 (it is crucial for detainees' mental health to not be deprived of access to constructive activities during prolonged detention).

Observance of Religious Practices: Special religious diets can be requested through the chaplain. The facility tries to accommodate requests for religious services by using volunteers from the community. For example, volunteer Muslim clerics have come into the facility. The provision of services depends on the need. UNHCR learned of one detainee who complained that he was not being provided a copy of the Koran. On the tour, the facility informed UNHCR representatives that it had ordered Arabic Korans for the "special interest" cases a week prior.

Comments & Recommendations: UNHCR appreciates that INS detainees are provided access to religious materials in other languages and that INS detainees have access to various religious services. UNHCR's recommends that Denton continue to provide detainees access to religious leaders and services as appropriate given the religious profile and demand of the INS detainee population.

International Standards Implicated: UNHCR Guidelines, Guideline 10(viii) (asylum-seekers should have the opportunity to exercise their religion); Standard Minimum Rules, Rule 41 (if institution contains sufficient number of prisoners of same religion, a qualified representative of that religion shall be appointed or approved and made available to hold regular services and pay private pastoral visits) and Rule 42 (as far as practicable, every prisoner shall be allowed to satisfy his religious needs by attending religious services).

Grayson County Jail

On the afternoon of 24 October 2001, UNHCR representatives, (b)(6) and (b)(6) visited the Grayson County Detention Center in Sherman, Texas. They were accompanied by (b)(6), (b)(7)c INS Supervisory Detention and Deportation Officer for the Dallas District and (b)(6), (b)(7)c INS Deportation Officer for the Dallas District. Providing the tour was Sheriff (b)(6), (b)(7)c and Lt. (b)(6), (b)(7)c. This report is based on information received from INS and jail officials, the observations of the UNHCR representatives, and information received from INS detainees, both during the tour and from written correspondence received at the UNHCR Office in Washington, DC.

Facility Background and Location: Sherman is located approximately 60 miles from downtown Dallas. The detention center consists of two facilities, the main jail and an auxiliary facility at the site of a closed air force base. Most INS detainees are kept at the auxiliary site, which is several miles from the main facility. Grayson County has a total capacity of 380 beds. Of this, 96 beds at the auxiliary site are designated solely for male INS detainees. County inmates are not held at the auxiliary site. No female INS detainees are held at Grayson. One detainee reported that he does not get any visits because the jail is too far from Dallas, whereas he did receive visits when he was detained at a jail closer to the metropolitan area.

Comments and Recommendations: UNHCR is concerned that Grayson County Jail is located so far from Dallas, where the immigration court and most immigration lawyers and NGO's are located. The distance from Dallas makes it difficult for asylum-seekers to access legal assistance, receive visits from family members, friends or others providing support. The distance also makes it difficult for INS staff to visit the facility regularly (See section on "Access to INS" below). UNHCR recommends that INS use adequate detention facilities closer to the Immigration Court.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to asylum-seekers' possibilities to pursue asylum applications).

Living Quarters: In the main facility, living units are referred to as "tanks." The sleeping areas are in cells within the tank. There are 24 beds per tank and two showers, three toilets, and three sinks. The outer walls of the tanks are metal bars.

At the auxiliary site, individuals are held in pods. Each pod was a long rectangular room, with a wall of metal bars at the front. The units had 24 bunks, twelve along each side wall. At the front of the unit, there were four tables and two telephones. At the back of the pod, there were two showers, three toilets, and three sinks. Smoking is not allowed.

The county population includes individuals classified in the following categories: minimum security - pre-trial; medium security – parole re-arrests; and maximum security – those with misdemeanor and felony convictions. Usually only a few INS detainees are kept in the main jail and would be housed with minimum-security county inmates in a single living unit.

Comments & Recommendations: UNHCR appreciates the fact that, as a general matter, the Grayson County Jail separates INS detainees from criminal inmates. However, UNHCR objects to the commingling of asylum-seekers with any persons serving their criminal sentences to the extent that it occurs. UNHCR recommends that the jail make all efforts to ensure that appropriate space is available for the two populations to remain separated.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, Section (f) ("refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as common criminals"); UNHCR EXCOM Conclusion No. 85, para. (ee) (noting concern that asylum-seekers are often held with common criminals); UNHCR Detention Guidelines, Guideline 10(iii) (asylum-seekers should not be co-mingled with convicted criminals); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from those imprisoned for criminal offenses); Body of Principles, Principle 8 (same).

Recreation: INS detainees are allowed recreation three times per week for one hour. At the main facility, there is a large outdoor recreation area. At the auxiliary site, there is a fairly large uncovered outdoor area, and detainees can also play soccer in front of the building in an unfenced area when four guards are available to monitor. Detainees commented to UNHCR that they would like more recreation time.

Comments & Recommendations: UNHCR appreciates that detainees are provided access to large, outdoor recreation areas. However, UNHCR recommends that asylum-seekers be provided at least one hour of outdoor recreation seven days a week, weather permitting. Frequent access to the outdoors can be especially critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(vi) (asylum-seekers should have opportunity for daily indoor and outdoor recreational activities); Standard Minimum Rules, Rule 21(right to at least one hour suitable exercise in open air daily weather permitting).

Law Library: There is a library in the main facility only. Due to time constraints UNHCR representatives were not able to see the library, but were informed by jail staff that no immigration materials are provided there. We were also told that, if there is a request from an INS detainee, the jail asks INS to do the research for them. Some books are put on a cart and rotated to the auxiliary site twice a week. Presumably, these are not immigration-related books. The staff provides photocopies as needed for legal purposes.

Comments & Recommendations: Given that the majority of those detained typically do not have legal assistance and must prepare their own cases, UNHCR is concerned that the jail lacks materials related to immigration or asylum law. We encourage INS to make immigration law resources available to detainees, including country of origin materials self-help materials produced by the Florence Project on Immigrant and Refugee Rights, available in both English and Spanish. UNHCR also encourages the facility to include other general immigration law

resources that might be useful to asylum-seekers preparing their own cases, such as the materials listed in the INS Detention Standards on Access to Legal Material. UNHCR is willing to provide any international legal resources that might be available through our Office.

The provision of adequate and up-to-date materials is especially critical for the Grayson County Jail in light of the distance from the facility to Dallas and the consequent challenges that INS detainees face in obtaining free- or low-cost legal representation.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case) UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to asylum-seekers' possibilities to pursue asylum applications).

Medical: Upon arrival, detainees receive medical and TB screening and a mental health evaluation is completed. A physician is always on call and is present at least once a week, as needed. Two paramedics or nurses are on-site at all times. There are no medical personnel at the auxiliary site. Any INS detainee who is on prescription medication or is being monitored for medical reasons, stays at the main facility.

There is very limited mental health help available. At the time of our visit, the jail had not had any on-site assistance for seven months. The staff tends to refer these needs out; however, there are only two psychiatrists in the city of Sherman, and there is no psychiatric hospital nearby. We were told that, as a result, INS tries to send individuals with mental health issues to other detention facilities.

Comments and Recommendations: UNHCR is concerned about the shortage of mental health staff available to treat detainees. UNHCR supports INS efforts to place asylum-seekers in need of mental health services in appropriate facilities.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers shall have opportunity to receive appropriate medical treatment and psychological counselling); Standard Minimum Rules, Rule 22(1) (services of medical officer with some knowledge of psychiatry should be available) and Rule 22(2)(sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals; if institution has hospital facilities, its resources shall be proper for necessary medical care).

Interpretation: One detainee commented to UNHCR that the rules are easy to understand and are repeated in Spanish. In the medical context, medical staff uses volunteers from local colleges for interpretation and interpreters through the INS telephonic services, especially for medical emergencies. They do not use other detainees to interpret, for confidentiality reasons.

Comments & Recommendations: UNHCR appreciates that Grayson County draws on local resources and the national INS services for interpretation services instead of other detainees. It is UNHCR's view that in order to preserve doctor-patient confidentiality, the detainees should only be used as interpreters in the medical setting with the patient's consent and that patients should be provided the choice of an outside interpreter.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8 (asylum-seekers to be given necessary facilities, including interpreter services, to submit claim to authorities); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints to be made available to detainees in different languages); Standard Minimum Rules, Rule 35 (right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations) and Rule 51(2) (whenever necessary, the services of an interpreter shall be used); Body of Principles, Principle 14 (right of detainee to receive information about his rights in detention in language he understands).

Access to INS: At all of the jails UNHCR visited, including Grayson, we received consistent complaints regarding the unresponsiveness of INS to detainee questions about cases, custody issues and complaints about detention conditions. According to INS, there is only one liaison officer to visit all the jails in the area. This raises a concern that INS may lack the resources to visit the jails as often as needed and to effectively respond to detainee requests.

Comments & Recommendations: UNHCR is concerned about the difficulty that asylum-seekers expressed in submitting requests to INS officials about their cases. To effectively represent their interests, access to case and custody status information is critical. Lack of information also fuels anxiety and a sense of isolation. These difficulties are exacerbated if the asylum-seeker does not speak English and/or is not represented by legal counsel. UNHCR recommends that INS officers meet with INS detainees at the Grayson County Jail on a regular basis to facilitate communication.

International Standards Implicated: Body of Principles, Principle 33 (right to make request or complaint about treatment to appropriate authorities); Standard Minimum Rules, Rule 36 (right to make request or complaint to central prison administration or other proper authorities, and right to receive prompt reply); UNHCR Detention Guidelines, Guideline 10(x) (right of access to a complaints mechanism); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to asylum-seekers' possibilities to pursue asylum applications).

Telephone Access: At the main facility, calls may only be placed collect. At the auxiliary facility, calls may be made collect or with phone cards. At both the main and auxiliary facilities, jail staff indicated that detainees could put in requests for free calls to attorneys, non-profit legal service providers, and consulates if necessary. Detainees commented to UNHCR on the high cost of calls. INS officers indicated that they have begun the process of asking jails in the Dallas area to preprogram local legal service providers' numbers.

Comments & Recommendations: UNHCR appreciates the jail's willingness to allow free calls to attorneys and that INS has asked jails to preprogram many essential telephone numbers such that the calls are free to detainees. UNHCR recommends that its number in the Washington office be included. Given that the high costs of collect calls from detention centers often impede the ability of detainees to contact family members, UNHCR recommends that the INS ensure the lowest telephone rates possible to INS detainees. Given that many private attorneys do not accept collect calls, UNHCR appreciates that detainees held at the auxiliary facility are able to

use phone cards and we recommend that INS detainees housed at the main facility be given this same option.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, para. (g) (detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv) (asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (detained asylum-seekers should be able to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate; ECRE Position Paper on Detention, para. 29 (asylum-seekers should have access to telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counsellors); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons).

Religious Activities: At the auxiliary site, there are non-denominational services offered and regular Catholic services. One detainee commented that he is able to attend Catholic services and that a priest comes every two weeks.

Comments & Recommendations: UNHCR appreciates the fact that INS detainees have access to some religious services. If not already being done, UNHCR encourages that such services be extended to all faiths as appropriate given the religious profile and demand of the INS detainee population.

International Standards Implicated: UNHCR Guidelines, Guideline 10(viii) (asylum-seekers should have the opportunity to exercise their religion); Standard Minimum Rules, Rule 41 (if institution contains sufficient number of prisoners of same religion, a qualified representative of that religion shall be appointed or approved and made available to hold regular services and pay private pastoral visits) and Rule 42 (as far as practicable, every prisoner shall be allowed to satisfy his religious needs by attending religious services).

Education/ Work Opportunities: INS detainees apparently have access to some work opportunities. One detainee reported that he works preparing meals for detainees and enjoys having something constructive to do with his time.

Comments & Recommendations: UNHCR appreciates that Grayson jail officials provide the opportunity for some detainees to work. It is UNHCR's view that asylum-seekers should have access to educational and rehabilitative programs as well as other constructive activity such as vocational opportunities, given that some may remain detained for many months.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(vii) (detained asylum-seekers should have opportunity to continue further education or vocational training); ECRE Position Paper on Detention, para. 46 (during prolonged detention, adult education and training should be provided and it should attend to cultural and linguistic needs; it is crucial for detainees' mental health to not be deprived of access to constructive activities during prolonged detention).

Navarro County Detention Center

On the morning of 25 October 2001, UNHCR representatives, (b)(6) and (b)(6) visited the Navarro County Detention Center in Corsicana, Texas. They were accompanied by (b)(6), (b)(7)c INS Supervisory Detention and Deportation Officer for the Dallas District and (b)(6), (b)(7)c INS Deportation Officer for the Dallas District. Providing the tour was Captain (b)(6), (b)(7)c and (b)(6), (b)(7)c the daytime sergeant. UNHCR representatives also met briefly, in the middle of the visit, with the county sheriff. This report is based on information received from INS and jail officials, the observations of the UNHCR representatives, and information received from attorneys and from INS detainees, both during the tour and from written correspondence received at the UNHCR Office in Washington, DC.

Facility Background and Location: Navarro County Detention Center is located approximately 60 miles from Dallas. It has a total capacity of 298 beds. At the time of our visit, there were 65 male INS detainees and 14 female INS detainees at the facility.

Detainees are held in pods, containing cells and a day room area. Each cell has four beds, a small table, toilet, and shelves under the bed. The dayrooms have a television and a larger table. There is full access all day to the day room, although detainees are confined to their cells from 10:30 p.m. until 5:30 a.m.

Comments and Recommendations: UNHCR is concerned that Navarro County Jail is located so far from Dallas, where the immigration court and most immigration lawyers and non-profit legal service providers are located. The distance from Dallas makes it difficult for asylum-seekers to access legal assistance, receive visits from family members, friends or others providing support. The distance also makes it difficult for INS staff to visit the facility regularly. UNHCR recommends that INS use adequate detention facilities closer to the Immigration Court.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to asylum-seekers' possibilities to pursue asylum applications).

Commingling: INS detainees are housed separately from county inmates but could be commingled if placed on suicide watch.

Comments & Recommendations: UNHCR appreciates the fact that Navarro houses INS detainees separately from inmates in connection with criminal charges. As INS is aware, UNHCR objects to the commingling of asylum-seekers with persons serving their criminal sentences. UNHCR is concerned about the commingling of those on suicide watch. See section on "Medical" below. UNHCR recommends that the jail continue to make all efforts to ensure that the two populations are separated.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, Section (f) ("refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as

common criminals"); UNHCR EXCOM Conclusion No. 85, para. (ee) (noting concern that asylum-seekers are often held with common criminals); UNHCR Detention Guidelines, Guideline 10(iii) (asylum-seekers should not be co-mingled with convicted criminals); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from those imprisoned for criminal offenses); Body of Principles, Principle 8 (same).

Recreation: Individuals are entitled to recreation three times a week for 45 - 60 minutes. According to jail officials, however, most detainees get recreational time every day if they wish and if there are no scheduling problems. The recreation area is an enclosed area that is open-air. An indoor space is used if it is rainy or cold. Detainees informed UNHCR that the frequency of recreation depends on the officers' schedules and that, the previous week, there was no recreation for five to six days.

Comments & Recommendations: UNHCR appreciates that Navarro provides detainees access to recreation areas that are outdoors. However, UNHCR recommends that asylum-seekers regularly be provided at least one hour of outdoor recreation seven days a week, weather permitting. Frequent access to the outdoors can be especially critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement. It is also critical to those of concern to UNHCR who remain in detention for extended periods of time. UNHCR encountered one detainee who had been detained at Navarro for over four months.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(vi) (asylum-seekers should have opportunity for daily indoor and outdoor recreational activities); Standard Minimum Rules, Rule 21(right to at least one hour suitable exercise in open air daily weather permitting).

Telephone Access: There is just one phone in each day room (for up to 16 people). A posted list has the phone numbers for Catholic Charities, the Dallas Immigration Court and the Board of Immigration Appeals. The jail pre-programmed these numbers into the phones so that the calls are free. UNHCR representatives entered one living area, and detainees did not understand the posted instructions regarding how the pre-programming worked. The phones are turned off at 9:30 p.m. Detainees informed UNHCR that they have told the staff that this is a problem when they are calling a country many time zones away. Captain (b)(6), (b)(7) who was with us at the time, agreed to leave the phone on longer. Collect calls are also possible and phone cards and international calling cards are available.

Detainees expressed concern to UNHCR representatives about the high cost of domestic and international phone calls, phones not being in working order and that one telephone for a pod of sixteen people was not sufficient.

Comments & Recommendations: UNHCR appreciates Captain Holt's agreeing to have the telephones remain operable until a later hour each evening. UNHCR also appreciates the fact that the facility has already pre-programmed its phones for free calls to resource agencies. UNHCR recommends, however, that posted instructions for using the telephones be clear and complete and in several languages and that UNHCR's number be preprogrammed as well.

UNHCR also recommends that all telephones be maintained in working order. Given that the high costs of calls from detention centers often impede the ability of detainees to contact legal representatives and family members, UNHCR recommends that the INS ensure the lowest telephone rates possible to INS detainees. Given that many private attorneys do not accept collect calls, UNHCR appreciates the fact that INS detainees are allowed to use phone cards at Navarro.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, para. (g) (detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv)(asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (detained asylum-seekers should be able to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate; ECRE Position Paper on Detention, para. 29 (asylum-seekers should have access to telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counsellors); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons).

Law Library: There was a small library that contained Federal Supplement reporters (with updates) and Texas statutory reporters with pocket parts through 1994 but no immigration materials. It also contained a computer with a printer, which is available for writing legal briefs. Scheduling is on a 'just ask' policy. The detainees can use the library every day if they want to, especially if there is a hearing or appeal coming up.

Immigration materials are kept in the male INS detainee housing area at a desk near the central control booth in the center of the housing area, which consisted of four separate pods. The materials included: Interim Decisions (full current set); Black's Law Dictionary; National Lawyers Guild's Immigration Law and Detention Handbook; 8 US Code (with current updates); and the Immigrant Legal Resource Center's Guide for Immigration Advocates. We were told that the Florence Immigrant and Refugee Rights Project self-help materials were also available. There are no similar materials in the women's housing area and a female detainee reported that she did not know there were any immigration materials at the jail.

The detainees must make a request to access the immigration materials. Some detainees complained that their requests to use the materials are sometimes denied for no appropriate reason.

Comments & Recommendations: Given that the majority of those detained typically do not have legal assistance and must prepare their own cases, UNHCR appreciates the fact that there are several current immigration law resources available to detainees at Navarro. UNHCR recommends that the detainees also be provided country of origin materials and other general immigration law resources that might be useful to asylum-seekers preparing their own cases, such as the materials listed in the INS Detention Standards on Access to Legal Material. UNHCR is willing to provide any international legal resources that might be available through our Office. The provision of adequate and up-to-date materials is especially critical for the

Navarro County Jail in light of the distance from the facility to Dallas and the consequent challenges that INS detainees face in obtaining free- or low-cost legal representation.

UNHCR would like more information regarding how female INS detainees are notified of the existence of immigration law materials and how they access these materials. UNHCR recommends that all detainees be made aware of the immigration legal materials that are available and, if necessary, that methods be developed to assure adequate and equal access by all detainees.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case) UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to asylum-seekers' possibilities to pursue asylum applications).

Medical: Jail staff informed us that individuals who are suicidal are put on 24-hour watch in a detoxification cell at the front of the jail and may be commingled with others who are in the cell for detoxification reasons. Individuals in the detoxification cell sleep on mattresses on the floor. Detainees held in the cell are closely monitored and might remain there for weeks. The nurses would call in someone trained in mental health issues if the person is a threat to him or herself. Those who are no longer a threat to themselves might be taken to a single medical cell. This cell has a concrete bed with a mattress, a shower, toilet, and sink. It did not appear clean.

Comments & Recommendations: UNHCR is concerned about the policy of placing those with suicidal tendencies in a detoxification unit with individuals who may be intoxicated and providing only a mattress on the floor to such individuals. UNHCR recommends that individuals with psychological issues not be held at Navarro but at an appropriate facility where they have access to more appropriate accommodations.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers shall have opportunity to receive appropriate medical treatment and psychological counselling); Standard Minimum Rules, Rule 22(2)(sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals; if institution has hospital facilities, its resources shall be proper for necessary medical care); UNHCR Guidelines, Guideline 10 (detention conditions should be humane with respect shown for inherent dignity of person); Basic Principles, Principle 1 (same).

Interpretation: The rulebook is provided in Spanish and English. There is a staff member who is bi-lingual (Spanish-English) on each shift, and staff sometimes use volunteer interpreters from Navarro College. Jail officials indicated that they have not had any problems with “esoteric” languages. In the medical context, the medical staff is not bilingual but will frequently use other staff who speaks the relevant language. According to the jail staff, detainees often request that another detainee interpret for them, and the medical staff generally honors these requests. The medical staff also uses volunteers from Navarro College. The nurse seemed aware of the availability of telephonic interpreters through INS, but is unclear how often this service may be used.

Comments & Recommendations: UNHCR is concerned that other detainees are being used to interpret in the medical setting. To preserve doctor-patient confidentiality, UNHCR recommends that in the medical context, detainees should only be used as interpreters with the patient's consent and that patients should have the choice of using an outside interpreter. UNHCR recommends that the INS take any necessary measures to ensure that the Navarro staff have easy access to interpreters (including, if necessary, INS' telephonic interpreter services) and that the use of interpreters be encouraged whenever necessary. UNHCR appreciates that the Inmate Handbook is provided in Spanish but recommends that the jail's rulebook be translated into other languages spoken by its detainee population. Efforts should begin with translations into the most common languages spoken among the INS detainee population.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8 (asylum-seekers to be given necessary facilities, including interpreter services, to submit claim to authorities); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints to be made available to detainees in different languages); Standard Minimum Rules, Rule 35 (right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations) and Rule 51(2) (whenever necessary, the services of an interpreter shall be used); Body of Principles, Principle 14 (right of detainee to receive information about his rights in detention in language he understands).

Access to INS: At all of the jails UNHCR visited, including Navarro, we received consistent complaints regarding the unresponsiveness of INS to detainee questions about cases, custody issues and complaints about detention conditions. According to INS, there is only one liaison officer to visit all the jails in the area. This raises a concern that INS may lack the resources to visit the jails as often as needed and to effectively respond to detainee requests.

Comments & Recommendations: UNHCR is concerned about the difficulty that asylum-seekers expressed in submitting requests and/or complaints to INS officials about their cases or conditions of confinement. To effectively represent their interests, access to case and custody status information is critical. Lack of information also fuels anxiety and a sense of isolation. UNHCR recommends that INS officers meet with INS detainees at Navarro on a regular basis to facilitate communication, which should be feasible given the proximity of the facility to the INS district office.

International Standards Implicated: Body of Principles, Principle 33 (right to make request or complaint about treatment to appropriate authorities); Standard Minimum Rules, Rule 36 (right to make request or complaint to central prison administration or other proper authorities, and right to receive prompt reply); UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to asylum-seekers' possibilities to pursue asylum applications).

Work Opportunities: INS can serve as trustees on their side of the facility and are not mixed in with county inmates when they work.

Comments & Recommendations: UNHCR recommends that asylum-seekers have access to educational and rehabilitative programs as well as other constructive activity such as vocational opportunities, given that some may remain detained for many months.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(vii) (detained asylum-seekers should have opportunity to continue further education or vocational training); ECRE Position Paper on Detention, para. 46 (during prolonged detention, adult education and training should be provided and it should attend to cultural and linguistic needs; it is crucial for detainees' mental health to not be deprived of access to constructive activities during prolonged detention); Basic Principles, Principle 6 (prisoners shall have right to take part in education aimed at full development of human personality).

Dallas Fort Worth International Airport

On 22 October 2001, UNHCR representatives, (b)(6) and (b)(6) visited the Dallas Fort Worth International Airport (DFW) located in Dallas, Texas. The visit included a tour conducted by (b)(6), (b)(7)c who has been the Port Director at DFW since 1976. The visit also included observations of the secondary inspection process.

Port of Entry Background and Statistics: DFW has three terminals (A, B and E) that process international arrivals. UNHCR visited terminals A and B. Terminal A has the greatest volume. Generally, DFW processes almost 5,000 inspections per day on average. At the time of our visit, only a month and a half had passed since the terrorist attacks of 11 September 2001. DFW had not had any credible fear cases since 11 September, except for five Eritreans who arrived the week before UNHCR's visit and stated immediately at primary inspection that they were seeking asylum.

Based on the Expedited Removal Approval Log provided by Port Director (b)(6), (b)(7)c from January 2001 until 18 August 2001, there have only been ten out of 159 expedited removal cases in which the individual was referred for a credible fear interview. It is not clear if this log was for every international terminal or just Terminal A. No asylum-seekers presented themselves during UNHCR's visit, so we were not able to observe the complete secondary inspection process.

Secondary Inspection Area:

Terminal A: Terminal A is the busiest international terminal at DFW and serves American Airlines. Terminal A's inspection area has 8 primary booths on either side of the secondary inspection area. The secondary inspection area is enclosed and contains a row of seats along one wall, a desk in the middle and one interview room. The waiting area was well-lit and air-conditioned. The squad room and supervisor's office can also be used for secondary interviews.

Terminal B: Terminal B is solely an international terminal. Airlines with flights arriving at this terminal include: Japan Air Lines, Korean Airlines, Lufthansa and British Air. On average, 55% of travelers are US citizens and 45% are non-citizens. During the summer, around 60% are US citizens. Secondary inspection occurs in a glassed off area behind the booths. Inside the Secondary Inspection area, there is a long desk where the officers sit and a waiting area with chairs. There were two interview rooms, with windows facing the waiting area. There was also a bathroom. The waiting area was well lit and air-conditioned.

Comments & Recommendations: UNHCR appreciates the fact that the secondary inspection waiting rooms in both Terminal A and B were relatively comfortable (i.e, well lit and air-conditioned) and that asylum applicants have access to a bathroom facilities as needed. UNHCR also appreciates INS' efforts to ensure that asylum applicants are interviewed in the least intimidating environment possible and with an adequate degree of privacy. The use of individual interview rooms is a positive aspect of INS operations at DFW.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(ix) (right of access to basic necessities, including basic toiletries); UNHCR Training Module, Interviewing

Refugee Applicants, pp. 7-8 (need to provide interview setting that encourages communication, including comfortable and private physical environment),

Interpretation: According to the Port Director, the INS uses airline interpreters or INS-approved interpreters to communicate with individuals during the secondary inspection process.

Comments & Recommendations: UNHCR recommends that the INS cease using airline interpreters during secondary inspection. Some countries continue to operate national airlines, such that asylum applicants may be either afraid to present their claim at the airport if an airline staff person is asked to interpret or may place themselves, or others, in danger if the claim is presented. Aside from these immediate security concerns, airline staff may also not be sufficiently trained to act as interpreters, and are not subject to any confidentiality agreements with INS.

International Standards Implicated: UNHCR Training Module, Interviewing Refugee Applicants, pp. 6-7 (interpreter must be neutral and objective and must maintain confidentiality of information conveyed); UNHCR Training Module, Interpreting in a Refugee Context, p. 37 (same).

Holding areas: No one is held overnight at DFW. In Terminal A, there was a holding cell that was approximately 12 feet by 6 feet in area and contained benches. The holding cell contained a bathroom, blankets and an Intercom for communicating with officers. Individuals can be held there from 6:30 a.m. to 9 p.m. maximum. INS Standards do not require meals unless the person is there over seven hours. Individuals are provided food from McDonald's through meal vouchers. If someone requires a special diet, they find whatever is available such as beans and tortillas.

Local county jails are used for overnight stays but do not house juveniles. If there is a parent and child who must be housed, they are put in a hotel room or they are released on their own recognizance. If there is an unaccompanied minor, INS attempts to find a suitable placement for them.

Comments & Recommendations: UNHCR appreciates the special efforts that are made to ensure that children and families with children are not detained in secure facilities. With regard to the holding cell at the airport, UNHCR appreciates the efforts of INS to ensure that the airport holding area is as comfortable as possible, that bathroom facilities are easily accessible and that blankets are available when needed. However, UNHCR encourages INS to find alternatives to the detention of asylum-seekers in holding cells, especially children and families with children, at the airport.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 2 (as a general principle, asylum-seekers should not be detained); UNHCR Detention Guidelines, Guideline 6 (detained unaccompanied minors, including those detained at airports, should not be held under prison-like conditions); UNHCR Detention Guidelines, Guideline 10(ix) (right of access to basic necessities, including basic toiletries).

Access to Telephones and Legal Assistance: The Port Director indicated that if requested, individuals are given access to a telephone, even for long distance calls. Calls could be denied, however, if there is not enough time or it would interrupt processing significantly. A list of free legal service providers is given out to asylum-seekers.

Comments & Recommendations: UNHCR appreciates the fact that efforts are made to ensure that asylum-seekers have access to communication with family and legal service providers by telephone. UNHCR recommends that telephone access to UNHCR, as well as local service providers, be ensured to all asylum-seekers. UNHCR further recommends that UNHCR contact information be provided to all INS detainees if this is not already being done.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, para. (g)(detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv)(asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (the means shall be made available for detained asylum-seekers to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons).

**Report
Laredo Processing Center
12 September 2006**

**South Texas Detention Complex
13 September 2006**

**submitted by the Regional Representation for
the United States of America and the Caribbean
Office of the United Nations High Commissioner for Refugees**



UNHCR
The UN
Refugee Agency

Laredo Processing Center 12 September 2006

On 12 September 2006, (b)(6) Senior Protection Officer, and (b)(6) (b)(6) Protection Officer, visited the Laredo Processing Center. The Laredo Processing Center is operated by the Corrections Corporation of America (CCA) and will be referred to in this report as CCA Laredo. UNHCR met with (b)(6), (b)(7)c Immigration and Customs Enforcement (ICE) Officer-in-Charge (OIC) and (b)(6), (b)(7)c Warden, CCA Laredo. (b)(6), (b)(7)c and Chief Security Officer (b)(6), (b)(7)c accompanied UNHCR staff on the tour of the facility. At the time of UNHCR's visit, the CCA Laredo's last inspection was in September 2005, and its next inspection was scheduled for late September 2006.

Background: CCA Laredo has been operating for 20 years, and was an Immigration and Naturalization Service (INS)/ICE contract facility until the South Texas Detention Center (STDC) opened in Pearsall, Texas in 2005. Since then, CCA Laredo has operated under an Inter-Governmental Service Agreement. Under the new agreement, ICE no longer guarantees payment for a particular number of beds. Rather, it maintains a contract for a specific number of beds but only pays for those beds filled. CCA Laredo has a population capacity of 385 detainees.

The facility is primarily used to hold detainees with expedited removal orders and as a staging facility for either transfer to another facility (STDC for extra-regional asylum-seekers, and the Port Isabel and Raymondville facilities for Salvadorans) or removal aboard Justice Prisoner and Alien Transportation System flights. Ninety-five percent of the detainees are from Central America and stay at the facility an average of 15 to 16 days. However, some of the detainees are asylum-seekers who have been issued notices to appear (NTAs) and will undergo full removal proceedings. CCA Laredo receives persons apprehended at three Laredo ports of entry (the Lincoln-Juarez Bridge, and Bridges One and Two) and generally does not house criminal detainees. Individuals who were apprehended and criminally prosecuted for unlawful entry in the Del Rio sector are also transferred to CCA Laredo after serving their sentences.

On the day of UNHCR's visit, ICE was holding 369 people at CCA Laredo and 100 people at the nearby CCA Webb facility. CCA Webb is a 500-bed facility which is used primarily by the United States Marshals Service. CCA Laredo had an unusually high number of Salvadoran female detainees (168), who were brought there because the facility in Port Isabel lacked available bed space. At the time of UNHCR's visit, some detainees were at the Pearsall facility visiting their consulates.

UNHCR Comments and Recommendations: UNHCR appreciates the fact that, as a general rule, CCA Laredo does not house immigration detainees with criminal inmates. UNHCR objects to the commingling of asylum-seekers with any persons serving their criminal sentences.

Intake/Booking: Upon arrival, detainees undergo a pat search, a metal search, and a property search. Staff also confirms whether detainees are in good health. If an

interpreter is needed during the intake process, facility staff may call Texas A & M University. The OIC reported that facility staff could use the Department of Homeland Security (DHS) telephonic interpreter service if it is needed. However, several detainees who did not speak English or Spanish, the common languages spoken by facility staff, indicated that the only time an interpreter was used to speak with them was during their credible fear interview.

UNHCR Comments and Recommendations: UNHCR appreciates that detainees are not subject to strip-search upon entry because asylum-seekers (especially former victims of trauma and other vulnerable populations) may suffer undue trauma when undergoing strip-searches. However, UNHCR is concerned that detainees may not understand essential information such as jail rules and recommends that the detention center take any necessary measures to ensure that CCA staff who do not speak the language of the detainee use interpreters when conveying such information.

Medical: Staff includes six licensed practical nurses, one registered nurse, a psychiatrist who is on site every weekend, a dentist who is on site every Monday and a doctor who is on site Monday, Wednesday, and Thursday. Full-time medical staff is on-site until 10:00 pm, with one nurse remaining on shift after that. Initial medical examinations, including screening for tuberculosis and a medical intake, occur within 24 hours of booking. Detainees are not charged for nurse/doctor visits, and medical records are available with a signed consent form. The facility has approved independent medical exams in the past, and ICE has provided transportation to these medical examinations.

Full physicals occur within two weeks of arrival. ICE indicated that it provides interpreters for medical staff to use when necessary. However, several detainees who did not speak English or Spanish reported that during medical examinations or appointments, there was no interpreter used. They reported that, instead, information was communicated by the use of hand gestures, simple English, or fellow detainees.

UNHCR Comments and Recommendations: UNHCR appreciates CCA Laredo's facilitation of independent medical examinations, which can be useful to asylum-seekers in documenting their cases. However, UNHCR is concerned that asylum-seekers with language barriers may not be able to effectively communicate with medical staff during examinations or appointments and, as a result, may not receive proper medical treatment. To ensure effective communication, UNHCR recommends that necessary measures be taken to ensure that CCA medical staff uses interpreters during medical examinations and appointments whenever the staff does not speak the language of the detainee. To preserve doctor-patient confidentiality, UNHCR further recommends that medical staff require a patient's consent before another detainee is used to translate.

Telephones: According to CCA and ICE, detainees often complain about the telephones. Calls can be placed to national or international numbers either collect or with phone cards available for purchase. A list of pre-programmed phone numbers was posted in the living units visited by UNHCR. The numbers included those for UNHCR, consulates, the Executive Office for Immigration Review (EOIR) and local legal service providers.

Unlike other facilities, the phone system did not use codes, but rather the phone numbers themselves. The telephone service provider is Inmate Calling Solutions (ICS). Calls attempted from one of the housing units (Dorm One) to UNHCR, the Ethiopian Embassy and a local legal services provider were unsuccessful.

Attempted calls from another housing unit (Dorm Five) were equally unsuccessful. When UNHCR attempted to call the toll-free ICS Assistance Line at 888-506-8407, the phone message stated that the number was blocked and could not be called from this facility. Calls to EOIR had some success. OIC (b)(6), (b)(7)c stated that the telephone system would be examined.

UNHCR Comments and Recommendations: UNHCR appreciates that CCA Laredo preprograms many essential telephone numbers, posts telephone lists for detainees, and makes calling cards available for purchase. Given the high cost of collect calls from detention centers, calling cards enable detainees to contact legal representatives and family members at lower cost. UNHCR is concerned, however, about the inadequate performance of the telephone system. UNHCR appreciates OIC (b)(6), (b)(7)c commitment to examining its operations. UNHCR recommends that measures be taken to ensure that all of the telephones are maintained in working order and that the ICS telephone assistance line is unblocked so that malfunctions can be reported.

Library: Detainees are allowed one hour per day in the library, seven days a week. Requests for library use are made to ICE officers and not CCA staff. One detainee reported she did not know how to make a request. The library is under the direction of the facility's Recreation Director, and has a capacity for 15 visitors at a time. CCA Laredo pays an immigration attorney to assist detainees in a manner similar to that of a librarian. The hard copy resources available to detainees included: The Immigration Procedures Handbook (2006); section 8 of the United States Code (1987); the Immigration and Nationality Act (2006); section 8 of the Code of Federal Regulations (2002); and self-help materials prepared by the Florence Immigrant & Refugee Rights Project (1999). The more up to date version of the self-help materials was kept in an administrator's office and was made available to detainees upon request. A LexisNexis CD-ROM was available, but was the 2004 edition which had expired and could not be accessed. The OIC stated that the CD-ROM would be reactivated.

UNHCR Comments and Recommendations: Given that the majority of those detained do not have legal assistance and must prepare their own cases, UNHCR appreciates that the CCA Laredo library contains some immigration law materials and makes an attorney available to answer immigration questions. However, UNHCR is concerned that requests for library use must go through ICE officers rather than CCA staff, and that the majority of the materials are out of date or located out of immediate reach in the administrator's office. UNHCR appreciates the OIC's commitment to reactivate the LexisNexis CD-ROM and recommends that updated copies of the Florence Immigrant & Refugee Rights Project's self-help materials be made more accessible. UNHCR also recommends that CCA Laredo expand the immigration law resources available to

detainees to include country of origin materials, including human rights reports from governmental and non-governmental sources.

Credible Fear Processing: CCA Laredo has a separate area for the processing of credible fear cases, with a small V-Tel interview room for credible fear and dissolution interviews with asylum officers in San Antonio. UNHCR was informed that asylum officers used to come to CCA Laredo to serve NTAs in person. However, due to a backlog of cases and processing delays of up to 90 days, the Officers have begun conducting credible fear interviews by V-Tel. Since the change, asylum officers have been conducting interviews regularly and the backlog has disappeared.

ICE has two officers, working on 30-day details, designated to assist asylum officers in processing credible fear cases.

UNHCR Comments and Recommendations: UNHCR appreciates efforts by the Asylum Office to reduce delays in conducting credible fear interviews and that ICE officers have been designated to assist in facilitating the processing of asylum cases. It is in everyone's interest for asylum cases to be resolved in a timely manner.

Outdoor Recreation: CCA Laredo's policy at the time of UNHCR's visit was to provide detainees one hour of outdoor recreation three days per week. The Inmate Orientation Handbook which was revised in January 2006 reflected this policy. The outdoor recreation area includes a basketball court and a small shaded area. Water jugs are available.

During its visit, UNHCR expressed surprise that detainees did not receive outdoor recreation five days per week as required by the DHS detention standards. OIC (b)(6), (b)(7)c indicated that the policy at CCA Laredo would be changed immediately to comply with the Standards.

UNHCR Comments and Recommendations: UNHCR appreciated the OIC's assurance that CCA Laredo's outdoor recreation policy would be changed immediately. Access to the outdoors can be critical for asylum-seekers and refugees who often have experienced personal trauma and have particular difficulty with extended periods of confinement.

South Texas Detention Complex 13 September 2006

On 13 September 2006, Senior Protection Officer (b)(6) and Protection Officer (b)(6) visited the South Texas Detention Complex (STDC) in Pearsall, Texas. The facility is operated and managed by the Geo Group, Inc. (GEO), a private contractor. UNHCR was accompanied by (b)(6), (b)(7)c Supervisory Detention Officer and Officer-in-Charge (OIC), and (b)(6), (b)(7)c Warden of STDC employed by GEO.

Background: Before the tour, UNHCR met with (b)(6), (b)(7)c Supervisory Detention and Deportation Officer/Acting Assistant OIC; OIC (b)(6), (b)(7)c and Warden (b)(6), (b)(7)c. STDC is the largest ICE contract facility to date (although the 2,000-bed Raymondville Texas facility will surpass it in size), and was built to house only immigration detainees. The facility took its first detainees on 29 June 2005, and (b)(6), (b)(7)c has been the OIC since 16 February 2005. The facility was built from the ground up to ensure compliance with DHS detention and American Correctional Association standards, and its contract with GEO specifically states that it must meet DHS detention standards. According to (b)(6), (b)(7)c the facility has put into practice many lessons learned. For example, it is designed to minimize internal movements by concentrating functions in the living units and reducing contact between different classes of detainees.

At the time of UNHCR's visit, the facility had 1,700 beds and was utilizing 1,413 of them. ICE expected a flight of 100 additional detainees to arrive from Miami later that day. The facility has the capacity for up to 1,904 beds and can house adult men and women; however, because of the difficulty in obtaining qualified staff, the remaining 200 beds will be brought online when feasible. There are 23 dorms, of which two have fewer than 10 beds, twelve have a 100-bed capacity, and six have a 64-bed capacity. There are also three special management units, which have a 36-, 64-, and 66-bed capacity. The 100-bed dorms range in square footage from 120 to 200 square feet.

STDC was built to accommodate individuals subject to expedited removal but it still houses a number of individuals in regular removal proceedings as well as individuals going through credible fear interviews. Most detainees are apprehended in the jurisdiction of the San Antonio field office which includes Harlingen, Laredo, and Del Rio, Texas. STDC detainees also include those apprehended at the Laredo port-of-entry (POE) as well as individuals apprehended as a result of interior operations in Austin and San Antonio, Texas. Individuals who are subject to "reasonable fear" interviews are sent to the Port Isabel Processing Center. Flights leave twice a week to remove persons to Honduras, Guatemala, and El Salvador.

Planning for STDC began in 1996 at a time when INS had jurisdiction over the custody of juveniles. The facility includes a 21-bed juvenile wing separated entirely from the adult wing, and with its own entrance. The wing has also been used to "stage" cases before transfer to the Office of Refugee Resettlement (ORR).

In early August, ICE launched “Operation Reservation Guaranteed” to transfer detainees from overcrowded detention centers around the United States to facilities with available bed space. As STDC is large and fairly new, it receives a large number of detainees from other ICE districts. At the time of UNHCR’s visit, the facility had approximately 300 detainees who were transferred from the East Coast. The average length of stay in STDC is 12-14 days for expedited removal cases. The length of stay for some asylum-seekers is longer.

Asylum-Seekers: ICE officers indicated that the majority of asylum-seekers at the facility had been in expedited removal proceedings but expressed a fear of return. STDC has an asylum officer assigned to full-time detail. In addition, two ICE officers are specifically dedicated to help manage the asylum caseload. At the time of UNHCR’s visit, there were 209 individuals from countries outside the Americas region detained in the facility. The asylum officer conducts credible fear interviews on site as well as via V-tel from Houston, Texas. STDC has two interview rooms used for credible fear interviews, and both have V-tel equipment. UNHCR used the rooms to conduct detainee interviews and found the acoustics to be unsatisfactory. It was very difficult both to hear the telephonic interpreter, and for the interpreter to hear as well. There were loud doors clanging constantly and much background noise. OIC (b)(6), (b)(7)(c) agreed with our assessment and indicated that he had already asked for modifications to be made to the interview rooms.

UNHCR Comments and Recommendations: UNHCR is concerned that the design of the credible fear interview rooms does not allow for adequate communication. As a large number of asylum-seekers at STDC undergo credible fear interviews, it is essential that credible fear interviews be, at minimum, audible. UNHCR looks forward to completion of the modifications proposed by OIC (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) explained the phenomenon of “runway” cases to UNHCR. He indicated that if someone has an expedited removal order but expresses a fear of returning to his or her home country, even while on the tarmac on the way to the plane for removal, ICE will bring the person back to the facility for a credible fear interview. In this situation, ICE informs the consulate that the detainee indicated a fear and, therefore, will not be on the plane.

UNHCR Comments and Recommendations: UNHCR appreciates the DHS policy of allowing individuals the opportunity to have their claim assessed by an asylum officer even in those situations in which removal is about to take place. UNHCR, however, is concerned that consulates are notified that these individuals have sought asylum, which could result in the applicant or his or her family being placed at risk. This violates DHS’s own regulation 8 CFR § 208.6 mandating that the fact someone has sought asylum be kept confidential from the government officials of the applicant’s home country.

Intake/Booking/Use of Interpreters: There is a large intake area with two rows of desks. One row is for ICE and the other is for GEO. There are several holding rooms

with various seating capacities, ranging from five to 40 individuals per room. Per DHS standards, officers must keep logs of how long detainees are held in holding rooms. While detainees are in the holding cells awaiting processing, medical staff does a walk through of the cells to look for any obvious medical issues. As part of the intake process, a detainee's photo is taken, and travel document requests are prepared for those who are not asylum-seekers and do not have NTAs. ICE will not start the travel document request process until there is a final order of removal. UNHCR was told that GEO and ICE use the telephonic interpreter line during the intake process.

STDC has a fairly large number of Chinese detainees. To facilitate communication, staff members use the telephonic interpreter line for intake, have translated the detainee handbook into Chinese, and have found Chinese-speaking ICE and GEO officers to be detailed to the facility. At the time of our visit, the Chinese consulate was scheduled to be on-site within a week to address any specific concerns and travel document questions raised by Chinese detainees. With regard to other populations not speaking English or Spanish, the dominant languages spoken by ICE officers and GEO staff, it is not clear that the telephonic interpreter line is regularly used during the intake process.

After intake procedures are completed, detainees shower and are given uniforms before undergoing a medical screening with a nurse. UNHCR was told that the nurse uses the telephonic interpreter line if s/he does not speak the detainee's language and that some of the medical staff speak Spanish. However, some detainees reported that interpreters were not used during intake or during medical screenings.

Detainees are not strip-searched upon entry. When they take a shower, they are observed but there is no full cavity search. Male detainees are observed by male officers and female detainees by female officers.

UNHCR Comments and Recommendations: UNHCR appreciates that detainees are not subject to strip-search upon entry because asylum-seekers, especially former victims of trauma and other vulnerable populations, may suffer undue trauma when undergoing strip-searches. UNHCR appreciates STDC's efforts to improve communication by translating materials into Chinese and recruiting Chinese-speaking staff members to the facility. However, with regard to detainees who speak languages other than Chinese, English or Spanish, UNHCR is concerned that they may not understand essential information such as jail rules. UNHCR recommends that the detention center take any necessary measures to ensure that when conveying such information, STDC staff who do not speak the language of the detainee use interpreters.

Commingling: The facility houses only ICE detainees and no criminal inmates. Asylum-seekers are not separated from the general population. Chinese detainees were placed in two dorms to maximize communication resources. However, non-Chinese speaking detainees reported they were not permitted to visit with other detainees from their countries who speak their language.

UNHCR Comments and Recommendations: UNHCR appreciates the fact that STDC does not house ICE detainees with inmates who have criminal charges or convictions. UNHCR objects to the commingling of asylum-seekers with persons serving their criminal sentences. UNHCR is concerned, however, that detainees are not permitted to visit with other detainees who speak the same language. Lack of communication in one's mother tongue can contribute to feelings of isolation and depression which in turn can affect an asylum-seeker's ability to present his or her case.

Medical: Prison Health Services (PHS) is in charge of medical services at STDC. UNHCR spoke with one of PHS's lead staff who provided the following information:

Staffing: STDC employs one doctor, five registered nurses, five licensed nurse practitioners, four mid-level providers, one dentist, one pharmacist, one social worker, and three technicians specializing in magnetic resonance imaging.

Transfers: Most detainees who are transferred from other federal facilities arrive with a medical transfer form. In turn, PHS completes medical transfer forms for all detainees transferred from STDC to another facility. The facility can deny acceptance of a transfer if the form is not provided. PHS provides detainees transferred from STDC with three days of any ongoing medication needed by the detainee. PHS provides 14 days of medication to those individuals being deported. For some time, PHS also gave 30 day supplies of TB medication to individuals being deported to countries that had run out of the medication.

Interpretation: PHS indicated that it regularly uses the telephonic interpreter line when needed and would only use another detainee as a last resort. However, detainees reported that interpreters were not always available at medical appointments, and they sometimes needed to use hand gestures to communicate. Detainees also noted that they have had to ask fellow detainees who are literate in Spanish or English to submit written requests for medical appointments on their behalf.

UNHCR Comments and Recommendations: UNHCR appreciates STDC policies with regard to medical transfer forms and supplies of medication upon transfer or removal. Gaps in medical care affecting an asylum-seekers' health, particularly in acute cases, could impact an asylum-seeker's ability to pursue his or her claim. However, UNHCR is concerned that asylum-seekers with language barriers may not be able to effectively communicate with medical staff during examinations or appointments and, as a result, may not receive proper medical treatment. To ensure effective communication, UNHCR recommends that necessary measures be taken to ensure that CCA medical staff uses interpreters during medical examinations and appointments whenever the staff does not speak the language of the detainee. To preserve doctor-patient confidentiality, UNHCR further recommends that medical staff require a patient's consent before another detainee is used to translate.

Juvenile Housing Unit: STDC staff said that they err on the side of caution and separate from the general population detainees suspected to be juveniles. At the time of

UNHCR's visit, the juvenile housing unit housed one child who had been sent to STDC because he initially lied about his age. The living unit included several bunk beds, a day room with several tables, a television, and a shower area. It was very similar to the adult housing unit, although smaller in size. One officer was assigned to monitor the unit. The recreation area was also similar to the area for adults but smaller in size.

According to the Acting Assistant OIC, the detained child would be returned to Laredo, where he was initially apprehended, as soon as his file arrived from the field office in San Antonio, Texas. The boy would then be placed in the custody of Border Patrol, reprocessed, and transferred to ORR. The child indicated that he had been alone in the wing for a period of four days or more without being given information on his case status or when he would be transferred to a youth facility.

UNHCR Comments and Recommendations: UNHCR appreciates that STDC houses juvenile detainees separately from the adult population, but is concerned that the accommodations are isolating, especially for juveniles who have experienced personal trauma and have particular difficulty with extended periods of confinement. The juvenile wing appeared very stark, and offered only a television as means of entertainment or distraction. UNHCR recommends that recreational activities be provided to detainees housed in the juvenile wing and they be informed of the status of their processing.

Telephones: The facility uses the Public Communications Services, Inc. pre-programmed telephone system, the same system used by DHS in its own facilities. Lists of the phone numbers programmed into the system were posted in the living units next to the telephones. Calls to EOIR and UNHCR were not successful. A call to a non-profit legal service provider listed on the free call list was successful.

UNHCR Comments and Recommendations: UNHCR appreciates that STDC preprograms many essential telephone numbers and posts telephone lists for detainees UNHCR is concerned, however, about the inadequate performance of the telephone system. UNHCR recommends that measures be taken to ensure that all of the telephones are maintained in working order.

Library: The facility's library is a separate medium-sized room which contains several computer terminals. The LexisNexis legal research CD-ROM was current and operating on the computers. There are also computers which are wheeled out on carts for use in the multi-purpose rooms attached to the living units. The computers are available in the dormitories three hours per day, four days per week. There was a schedule for computer use posted in the dormitory visited by UNHCR. Detainees can request to physically go to the law library through an officer, and five people can be in the library at a time. The library has one officer responsible for the library's maintenance who appeared knowledgeable on the use of the LexisNexis software and indicated that he assisted detainees with navigating the software. Detainees could also use computers to prepare their legal cases and were able to print legal documents as well as get necessary copies of legal documents. In addition to the computer software, the library contained a number of print resources, including primers on asylum law and procedure.

The librarian keeps a log of computer usage. He also updates the print resources as necessary. He indicated that detainees use the print resources more than the computers. He also said he could get a telephonic interpreter if he needed to in order to assist someone. UNHCR was told that an officer out of the San Antonio Field Office monitors the law library and checks once a week to make sure the correct resources are available.

The Florence Project Know Your Rights video is played every day in both English and Spanish inside the living units. One detainee interviewed was well-educated and spoke fluent English, but did not know about the law library and did not understand what was happening in her case.

UNHCR Comments and Recommendations: UNHCR appreciates that detained asylum-seekers have access to up to date legal materials in print and on the computer, and that capable library staff is available to assist those who are not computer literate. UNHCR also appreciates the availability of computers for detainees to use to prepare their cases. Many detained asylum-seekers are unrepresented and must prepare their cases by themselves. Access to immigration law materials and tools to prepare their cases is critical. At the time of UNHCR's visit, STDC's immigration law resources did not include specific country of origin materials, including human rights reports from governmental and non-governmental sources; however, UNHCR is pleased that in late 2006 a copy of UNHCR's RefWorld CD-ROM database was distributed to STDC for detainee use.

Outdoor Recreation: Each housing unit has an "outdoor" recreation area attached to it. Detainees are allowed recreation twice a day, two hours per session.

UNHCR Comments and Recommendations: UNCHR views the availability of outdoor recreation as a positive aspect of the detention center's operations, and appreciates the facility's willingness to offer outdoor time in excess of what the Detention Standards require.

Access to DHS: Two ICE officers liaise with the detainee population. According to facility staff, written requests are picked up daily, logged in, and then sorted by issue and provided to either GEO or ICE accordingly. Officers are required to respond in writing within 72 hours. In addition, ICE visits the dormitories once a week to answer questions. However, several detainees stated that their requests to ICE went unanswered even after several attempts. One detainee stated that although ICE officers sometimes visit the housing unit, they do not provide requested information.

UNHCR Comments and Recommendations: UNCHR appreciates STDC's policies regarding responding to detainee requests; however, we note that several detainees complained that they received little response to their questions and requests even after several attempts. To effectively represent their interests, access to case and custody status information is critical. Lack of information also fuels anxiety and a sense of isolation which in turn can impact an asylum-seeker's ability to pursue his or her claim.

UNHCR recommends that STDC review its quality assurance procedures to ensure that detainees receive responses to their questions and requests in line with the facility's policies.

Food: Food is prepared on-site. Pork is not served, although neither the STDC detainee handbook nor the menu specifies this. UNHCR met with two individuals who said they do not eat some items on the menu which they believed contained pork. These detainees did not know that those items actually did not contain pork.

UNHCR Comments and Recommendations: UNHCR is concerned about the limited dissemination of dietary information at STDC. Providing notice of the food content would alleviate anxiety and confusion on the part of detainees who do not eat pork for religious reasons. UNHCR recommends that detainees be informed that STDC is a no-pork facility at the time of admission and that this information be included in the detention center's detainee handbook.



UNHCR

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9 January 2003

BY FACSIMILE (202-514-0051)

Mr. Scott Blackman
Deputy Executive Associate Commissioner
Enforcement, Field Operations
Immigration and Naturalization Service
425 Eye Street, NW
Washington, DC 20536

Re: UNHCR Mission to Berks County Youth Center and Berks
Juvenile and Family Shelter Care Center

Dear Mr. Blackman,

Please find annexed the report prepared by this Office regarding UNHCR's visit to Berks County Youth Center and Berks Juvenile and Family Shelter Care Center, which took place in August 2001. While fully aware that the report is some months late, we believe that its observations remain quite relevant. As always, we greatly appreciate the support of INS in facilitating our visits and the full access UNHCR is given to detention facilities.

We look forward to your feedback on this report.

Sincerely,

Guenet Guebre-Christos
Regional Representative

cc: Ms. Renee Harris, Division of International Affairs
Mr. Bo Cooper, Office of General Counsel
Mr. Joe Langlois, Asylum Office
Mr. Anthony S. Tangeman, Office of Detention and Removal,

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HQ Detention&Removal OPS

09/12/2003 16:57 FAX 202 353 9435

Chicago Area: Tri-County Detention Center

Issue	UNHCR Report (2/15/01)	UNHCR Recommendation	INS Inspection/ INS Information from Field
Facility Background	<ol style="list-style-type: none"> 1) Capacity is 208 adult men and women; is common for jail to be over capacity. 2) Contains six pods, classified by three levels of dangerousness 3) Facility is 353 miles from Chicago, where detainees attend Immigration Court, equivalent to 7 hours driving time. 4) Full-time INS officer on-site. 	<ol style="list-style-type: none"> 1) Ensure that overcrowding does not occur. 2) Use facilities closer to the Immigration Court in Chicago, or at minimum, ensure that asylum-seekers can sleep comfortably the night before hearings. 3) Positive that INS officer on-site full-time. 	Facility houses 150-180 ICE detainees due to the number of detained aliens in the district. Facility transports detainees to/from Chicago on a daily basis. There is an ICE officer on-site full time.
General	Considered one of the better facilities in the Chicago district due to its access to programs and respectful treatment of detainees.	UNHCR appreciates the generally positive treatment of INS detainees.	Facility was reviewed in November 2002.
Co-mingling	Asylum seekers co-mingled with criminal inmates.	Asylum seekers should be separated from criminal inmates.	Facility complies with Detention Standards Classification System.
Length of Detention	Due to distance from Chicago, INS attempts to restrict placement to individuals who have pending appeals or are indefinitely detained, but facility also houses some active asylum cases.	Use detention facilities closer to the Immigration Court for active asylum cases.	Active asylum case are housed closer to Chicago whenever possible.
Interpretation	<ol style="list-style-type: none"> 1) Mandarin-speaking official on staff. 2) Medical staff sometimes uses telephonic interpreter services. 	<ol style="list-style-type: none"> 1) INS use of Mandarin-speaking official is positive. 2) Ensure access to interpreters, including by more frequent use of telephonic services. 	Facility uses the AT&T Language Service Line whenever needed.
Educational and Rehabilitative Classes	A variety of educational and rehabilitative programs are available to INS detainees.	Continue to maintain and expand educational and rehabilitative programs.	Facility continues to offer educational and rehabilitative programs.

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HQ Detention&Removal OPS

09/12/2003 16:57 FAX 202 353 9435

Chicago Area: Tri-County Detention Center

Issue	UNHCR Report (2/15/01)	UNHCR Recommendation	INS Inspection/ INS Information from Field
Recreation	<ol style="list-style-type: none"> 1) Has both outdoor and indoor recreation areas. 2) Jail policy is to allow one hour of outdoor recreation weather permitting, but detainees claim there's been no outside recreation for a month, partially due to staff shortages. 3) There is no established recreation schedule for "security reason." 	<ol style="list-style-type: none"> 1) Adopt an established recreation schedule. 2) Set objective standards as to when weather will prevent outdoor recreation. 	<ol style="list-style-type: none"> 1) Facility has a recreation schedule. 2) Outdoor recreation is allowed whenever the weather permits.
Telephone Access	<ol style="list-style-type: none"> 1) Facility phone cards required for non-collect calls, phone cards cost \$10 for 20 minutes. 2) Unable to make a collect call to UNHCR 	<ol style="list-style-type: none"> 1) Ensure lowest phone rates possible. 2) Ensure telephone access to UNHCR as well as local legal service providers. 	PCS <i>pro bono</i> phone system has been installed in the facility.
Law Library	<ol style="list-style-type: none"> 1) Library available from 8am-4pm; detainees can stay as long as desired. 2) Many immigration law materials are missing or out of date. 3) Use of 3-ringed binders prohibited. Difficult to maintain with loose-leaf updates. 	<ol style="list-style-type: none"> 1) Establish a regulated check-out system and keep materials up-to-date 2) Expand immigration law resources to include country of origin, self-help, and Detention Standards materials. 3) Establish system of keeping current and accessible materials intended for ringed binders. 	The computer Immigration Law Library has been installed at this facility.
Training	To UNHCR's knowledge, no training of jail officials in dealing with refugees.	Staff should receive training on working with immigrants and refugees.	All staff receive jail training in compliance with state standards.

Chicago Area: Tri-County Detention Center

Issue	UNHCR Report (2/15/01)	UNHCR Recommendation	INS Inspection/ INS Information from Field
Medical	<ol style="list-style-type: none"> 1) Detainees must wait from 1-3 days to see medical staff; treatment and medication are sometimes delayed. 2) Asylum seekers not charged a co-payment in practice but jail rulebook indicates no specific exception for them. 3) Met with an elderly frail asylum seeker detained in medical isolation. 	<ol style="list-style-type: none"> 1) INS should further review medical policies and resources to avoid delays in treatment. 2) Clarify policy on co-payments for asylum seekers. 3) Find alternatives to the detention of vulnerable asylum seekers, including the elderly. 	<p>ICE detainees are not charged a co-payment for medical services. Sick call is conducted daily. All requests for sick calls are handled on a daily basis. Emergency situations are handled immediately. Detention of asylum seekers complies with ICB policy.</p>

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HQ Detention&Removal OPS

09/12/2003 16:57 FAX 202 353 9435

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HQ Detention&Removal OPS

09/12/2003 16:57 FAX 202 353 9435

Chicago Area: McHenry County Jail

Issue	UNHCR Report (2/15/01)	UNHCR Recommendation	INS Inspection/ INS Information from Field
Facility Background	<ol style="list-style-type: none"> 1) Capacity is 316 adult men and women. During visit, there were 59 INS detainees. 2) 2- and 4-bed cells with day rooms located within housing units. 3) Facility is in Woodstock, IL, approximately a 1 1/2 hour drive from Chicago. 	Use detention facilities closer to the Immigration Court in Chicago.	McHenry County Jail is the closest major detention facility to the Chicago Field Office. The number of ICE detainees housed here will increase to 250 in June/July 2004 upon completion of the current expansion.
General	At one time, jail housed a large number of Chinese immigrants and made accommodations for them regarding food and language interpretation with the help of community organizations.	UNHCR is impressed with these accommodations and would encourage similar steps for other cultural groups.	The facility continues to utilize community groups in this program.
Co-mingling	<ol style="list-style-type: none"> 1) Jail attempts to house asylum seekers with other non-sentenced, non-violent detainees but is not always able to do so. 2) Jail is considering construction of a 3rd floor to house INS detainees separately. 	Asylum seekers should be held separate from criminal inmates.	Facility uses the Detention Standard's classification system in determining housing assignments.
Length of Detention	<ol style="list-style-type: none"> 1) INS policy is not to detain individuals at facility longer than 45 days, due mainly to lack of outdoor recreation facilities. 2) Detainees report being kept longer than 45 days, some up to 4 months. 	INS should make all efforts to ensure that detainees are held at McHenry for shortest period of time possible.	This facility was reviewed on Oct. 23-24, 2003. That review found the facility does provide outdoor recreation in compliance with the Detention Standards.
Educational and Rehabilitative Classes	Detainees have access to Alcoholics Anonymous groups, but cannot participate in the other educational programs due to limited funding.	Provide access to other educational and rehabilitative programs, funded by INS if necessary.	ICE detainees are able to attend any programs offered at the facility where they are housed, as long as they meet the facilities requirements.

Chicago Area: McHenry County Jail

Issue	UNHCR Report (2/15/01)	UNHCR Recommendation	INS Inspection/ INS Information from Field
Interpretation	<ol style="list-style-type: none"> 1) Some staff members are fluent in Spanish; jail's rulebook has been translated. 2) INS telephonic interpreters rarely used; often must use sign language to communicate w/ jail officials. 3) Detainees might not receive initial psychological screening if language barriers exist. 	<p>Increase use of interpreters for asylum seekers to facilitate essential communication.</p>	<p>Facility has been instructed to use the AT&T Language Line Service whenever there is a communication problem with an ICE detainee.</p>
Religious Services	<ol style="list-style-type: none"> 1) Full-time chaplain with various religious services. 2) Complaints by one Muslim of lack of space and silence for prayer and no organized Islamic services. 	<ol style="list-style-type: none"> 1) Extend access to religious services to all faiths. 2) Provide access to religious leaders and services as appropriate given detainee profile and demand. 	<p>This facility makes every effort to accommodate detainee's religious beliefs but has had difficulty finding Muslim clergy willing to conduct services in the jail.</p>
Medical	<ol style="list-style-type: none"> 1) Medical staff includes nurse, psychologist, and a doctor on call; reports on levels of responsiveness are mixed. 2) Asylum seekers not charged a co-payment in practice but jail rulebook indicates no specific exception for them; must sign a form agreeing to make co-payment. 3) Medical isolation room is empty with no windows and only a speaker for communication; detainees on suicide watch may be placed in room naked. 	<ol style="list-style-type: none"> 1) Presence of full-time psychologist on staff is positive. 2) Clarify policy on co-payments to asylum seekers. 3) Explore other ways of meeting security concerns while maintaining dignity of those on suicide watch. 	<p>ICE detainees are not charged a co-payment for medical services. All inmates on suicide watch wear a quilted gown. The isolation room has a window on the door and is monitored by video camera, which is recorded on VCR at all times when an inmate is in the cell.</p>
Recreation	<ol style="list-style-type: none"> 1) No established recreation schedule. 2) Only indoor recreation is available in a room with fresh air panels and no outdoor equipment. 	<p>Provide access to outdoor recreation.</p>	<p>Facility is in compliance with Detention Standards for outdoor recreation.</p>

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Chicago Area: McHenry County Jail

Issue	UNHCR Report (2/15/01)	UNHCR Recommendation	INS Inspection/ INS Information from Field
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Telephone Access	<ol style="list-style-type: none"> 1) Telephones located inside each of the dayrooms; facility phone cards required for non-collect calls. 2) Unable to make a collect call to UNHCR 	<ol style="list-style-type: none"> 1) Ensure lowest phone rates possible. 2) Ensure access to UNHCR as well as local legal service providers. 	The DRO <i>pro bono</i> phone system has been installed by PCS.
Law Library	<ol style="list-style-type: none"> 1) Rights and remedies materials from MIHRC available, but few resources on immigration law. 2) Typewriter available. 3) Detainees allowed access to library only one hour a week. 4) Jail officials believed INS detention standards on library access of 5 hrs/wk would be hard to meet. 	<ol style="list-style-type: none"> 1) Expand immigration law resources to include country of origin, self-help, and Detention Standards materials. 2) Allow asylum seekers greater access to library. 	The Immigration law Library has been installed at this facility. ICB detainees are granted extended law library access on a case by case basis based on the specifics of the individual's case.
Medical	<ol style="list-style-type: none"> 1) Detainees must wait from 1-3 days to see medical staff; treatment and medication are sometimes delayed. 2) Asylum seekers not charged a co-payment in practice but jail rulebook indicates no specific exception for them. 3) Elderly frail asylum seekers detained. 	<ol style="list-style-type: none"> 1) INS should further review medical policies and resources. 2) Clarify policy on co-payments for asylum seekers. 3) Find alternatives to the detention of elderly asylum seekers. 	Detainees receive a medical screening at intake. Sick call is conducted three times daily. All requests for sick call are handled the same day. Emergencies are handled immediately.
Training	All officers receive training on cultural diversity but no training on working with a refugee population.	Staff should receive further training on working with immigrants and refugees.	Facility does provide all staff with cultural diversity training.

HQ Detention&Removal OPS

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Chicago Area: Broadview Service Staging Area

Issue	UNHCR Report (2/15/01)	UNHCR Recommendation	INS Inspection/ INS Information from Field
Facility Background	<ol style="list-style-type: none"> 1) Used for jail transfers, credible fear interviews, and first processing of all INS detainees to Chicago. 2) Building consists of three day rooms and an overflow room; 10-30 individuals held in each room. 3) Facility is approximately 30 miles from Chicago. 4) Designed to hold INS detainees for less than 24 hours. 		
Co-mingling	INS staff attempts to separate criminal detainees from non-criminal detainees.		
Orientation	<ol style="list-style-type: none"> 1) Arriving detainees given brief rights presentation by local non-profit. 2) INS staff gives no orientation regarding the detention process. 	Should adopt a practice of advising asylum-seekers of the detention process in a language the detainee understands.	The asylum process is explained by CBP Inspections at the airport and by the Asylum Officer during the Asylum Interview. AT&T Language Line is used as necessary.
Telephone Access	<ol style="list-style-type: none"> 1) Telephones are located inside each day room, provide only for collect call. 2) Unable to make a collect call to UNHCR or connect to toll-free Immigration Court number. 	<ol style="list-style-type: none"> 1) Ensure lowest phone rates possible. 2) Ensure access to UNHCR as well as local service providers. 	The PCS <i>pro bono</i> phone system has been installed at Broadview.
Training	To UNHCR's knowledge, no training of INS officers in dealing with refugees.	Staff should receive training on working with immigrants and refugees.	All Immigration Officers receive position specific training at the Federal Law Enforcement Training Center when hired, as well as on going training from the Field Office.

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U.S. Department of Justice
Immigration and Naturalization Service

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Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

NOV 19 2002

Mr. Guenet Guebre Christos
Regional Representative
United Nations High Commissioner for Refugees
1775 K St. NW
Washington, D.C. 20006

Dear Mr. Christos:

Thank you for the very complete report of your staff's visit to the Chicago district and the Racine County Jail, the Tri-county Detention Center, Broadview Service Staging Area, and the McHenry County Jail.

Your report was furnished to the Chicago District Director and members of the Chicago Detention and Removal staff. The Chicago District is moving forward in addressing the problems of adequate detention space that is within a reasonable distance from the district office. Negotiations are taking place with a local county to build a detention facility that meets all INS and American Correctional Association standards. This would allow for the consolidation of bed space into one facility, greatly reducing the need for transportation and improving oversight of cases.

In January 2002, the INS implemented the Detention Management Control Plan (DMCP). The purpose of the DMCP is to prescribe policies, standards, and procedures for INS detention operations and to ensure that detention facilities are operated in a safe, secure and humane condition for both detainees and staff. The DCMP states that in calendar year 2002, each Service Processing Center and Contract Detention Facility shall be comprehensively reviewed using all procedures and guidelines as outlined in DCMP. Intergovernmental Service Agreements (IGSA) such as the Chicago district facilities will be fully included in fiscal year 2003. Due to the number of IGSA's involved and the need to modify contractual agreements with these types of facilities, the INS estimates that up to 36 months may be required to bring about complete contract modifications. In order to verify facility compliance with the National Detention Standards (NDS) and the DMCP, approximately 265 INS reviewers have been trained to conduct

detention reviews during FY2002. These standards may be found on the Internet under INS.USDOJ.GOV.

The Racine facility was inspected in September 2002. The INS has requested that Racine submit a plan of action to address the deficiencies found during the DCMP review. The Tri-county Facility is scheduled for review during November 2002.

In response to the request for female gynecologists at the juvenile shelter, the standards of care in the United States dictate that when a male doctor performs a pelvic examination upon a female, a female chaperone must be present. Your report has been provided to the Office of Juvenile Affairs.

I hope that our response to your report is helpful. If you need further clarification on any of our responses do not hesitate to contact me.

Sincerely,



Anthony S. Targeman
Deputy Executive Associate Commissioner
Detention and Removal Operations

Racine County Jail

On 6 August 2001, (b)(6) and (b)(6) visited the Racine County Jail in Racine, Wisconsin. They were met at the jail by Captain (b)(6), (b)(7)c INS Deportation Officer (b)(6), (b)(7)c accompanied the tour. This report is based on information received from INS and jail officials, the observations of the UNHCR representatives, and information received from detainees, both during the tour and from written correspondence received at the UNHCR Office in Washington, DC.

General Comments: Many of the detainees with whom UNHCR has communicated, by mail or in person, have stated that the Racine County Jail is one of the worst jails in the area. The lack of any indoor or outdoor recreation, and the almost non-existent legal resources available to detainees, are two major complaints. UNHCR is also aware of a number of complaints about the treatment of detainees by jail officials. Detainees have stated that officers "abuse their authority" and "treat them like dogs." UNHCR is aware of racist comments allegedly made by jail officers at the time of the alleged beating of INS detainee (b)(6) an asylum-seeker from Nigeria, in June 2000.

Comments & Recommendations: UNHCR is concerned about the treatment of detained asylum-seekers at the Racine County Jail. Given the lack of certain basic rights (e.g., right to outdoor recreation), the numerous complaints of poor treatment by prison guards, and at least one allegation of physical abuse, UNHCR recommends that INS cease holding detainees at the Racine County Jail until these problems are resolved. The following recommendations are made to improve standards in the interim.

Facility Background and Location: The Racine County Jail was opened in 1981 and holds INS detainees and inmates serving criminal sentences. It is located approximately 75 miles from Chicago. The facility has a capacity of 650 individuals with individual cells holding two detainees each. There are 11 command centers that oversee detainee day-pods. At the time of UNHCR's visit, there were 604 detainees, of whom 33 were INS detainees. The facility is only for adult males.

Comments & Recommendations: UNHCR is concerned that Racine County Jail is located so far from Chicago, where their immigration cases are heard. The distance from Chicago makes it difficult for asylum-seekers to access legal assistance, receive visits from family members, friends or others providing support. The distance also makes it difficult for INS staff to visit the facility regularly. (See "Access to INS/Jail Staff" below.) UNHCR recommends that INS use detention facilities closer to the Immigration Court.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to the asylum-seekers' possibilities to pursue their asylum application).

Co-Mingling: INS detainees are generally housed separately from inmates serving their criminal sentences. If there is an overflow of INS detainees, the jail will co-mingle INS

detainees with criminal inmates. According to Captain (b)(6), (b)(7)c the jail used to co-mingle, but changed its policy after the alleged beating of INS detainee (b)(6) (A # (b)(6)) by jail guards in June 2000.

Comments & Recommendations: UNHCR appreciates the fact that, as a general matter, the Racine County Jail separates INS detainees from criminal inmates. As INS is aware, UNHCR objects to the co-mingling of INS detainees with persons serving their criminal sentences. It is unclear how often there is an overflow of INS detainees such that the jail would resort to co-mingling. UNHCR recommends that the jail make all efforts to ensure that appropriate space is available for the two populations to remain separated.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, Section (f) ("refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as common criminals"); UNHCR EXCOM Conclusion No. 85, para. (e) (noting concern that asylum-seekers are often held with common criminals); UNHCR Detention Guidelines, Guideline 10(iii) (asylum-seekers should not be co-mingled with convicted criminals); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from those imprisoned for criminal offenses); Body of Principles, Principle 8 (same).

Length of Detention: UNHCR was informed by various INS officials, as well as Captain Carlson, that it was INS policy not to detain individuals at the Racine County Jail for longer than 45 days. It appeared that this was due to the jail's failure to meet certain INS standards, most notably the lack of any outdoor or indoor recreation facilities. A review of the detainee list at the time of UNHCR's visit, however, indicated that 5 of the 33 INS detainees had been held at Racine for longer than 45 days. A number of detainees who had previously been detained at Racine (including those detained elsewhere at the time of UNHCR's visit) also stated that they had been detained at Racine for longer than 45 days. UNHCR is aware of asylum-seekers who have been detained at Racine for four or five months. One individual stated he had been detained at Racine for seven and a half months.

Comments & Recommendations: UNHCR disagrees with INS in its conclusion that 45 days of detention at the Racine County Jail is appropriate. As noted above, UNHCR recommends that the INS cease holding its detainees at this facility until the problems noted in this report are resolved. In the interim, UNHCR recommends that INS make all efforts to ensure that detainees are held at the Racine County Jail for the shortest period of time possible.

International Standards Implicated: Standard Minimum Rules, Rule 21 (right to at least one hour suitable exercise in open air daily weather permitting); UNHCR Detention Guidelines, Guideline 10(vi) (right to physical exercise through daily indoor and outdoor recreational activities); UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities [e.g., legal resources] for submitting case); Body of Principles, Principle 1 (persons under detention should be treated in humane manner with respect for inherent dignity of the person).

Interpretation: Racine County Jail does not have immediate access to interpretation if it is needed to handle a situation. UNHCR was informed that if the jail needs an interpreter, staff rely on local volunteers who are not always available. It appears that this resource has only been used occasionally. It also does not appear that the jail has access, or believes it has access, to interpretation through INS' telephonic interpreter services. Various detainees complained of their inability to communicate with jail officials. One noted that while he had a number of questions to ask about his case and the possibility of release, he could not do so because he does not speak English. Another noted that while he received a copy of the jail's rulebook when he arrived, he could not read it because it was in English. Another complained that he had had medical problems since arriving in the US, but had not raised them with jail officials because he did not speak English and did not know how to contact the nurse.

Comments & Recommendations: UNHCR is concerned that asylum-seekers with language barriers may lack orientation as to jail rules and privileges and may not receive proper medical treatment. UNHCR recommends that interpreters be used when needed to facilitate essential communication between jail staff and INS detainees. UNHCR recommends that the INS take any necessary measures to ensure that the Racine County Jail has easy access to interpreters (including, if necessary, INS' telephonic interpreter services) and that the use of interpreters be encouraged whenever necessary. UNHCR further recommends that the jail's rulebook be translated into the languages of its detainee population. Efforts should begin with translations into the most common languages spoken among the INS detainee population.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8 (asylum-seekers to be given necessary facilities, including interpreter services, to submit claim to authorities); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints to be made available to detainees in different languages); ECRE Position Paper on Detention, paras. 20, 29 (right of asylum-seeker to information on detention in language s/he understands); Standard Minimum Rules, Rule 35 (right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations) and Rule 51(2) (whenever necessary, the services of an interpreter shall be used); Body of Principles, Principle 14 (right of detainee to receive information about his rights in detention in language he understands).

Access to INS / Jail Staff: Detainees primarily communicate with jail officials by either speaking through an intercom, gesturing to the guards through the windows, or submitting written requests. They communicate with the INS by having written messages faxed to the INS Office in Chicago. It appears that INS officials rarely visit Racine County Jail to speak with detainees. Detainees complain that it is almost useless to make requests or complaints to jail staff or INS staff as they generally do not receive timely responses or any response at all. Detainees state that they cannot obtain information about their cases from INS officials, or discuss jail conditions with them.

Comments & Recommendations: UNHCR is concerned about the difficulty that asylum-seekers expressed in submitting requests and/or complaints to jail and INS officials about their cases or conditions of confinement. To effectively represent their interests, access to case and custody status information is critical. Lack of information also fuels anxiety and a sense of isolation. These difficulties are exacerbated if the asylum-seeker does not speak English. UNHCR recommends that INS officers meet with INS detainees at the Racine County Jail on a regular basis to facilitate communication. UNHCR further recommends that jail officials fully respond to detainee requests for assistance and concerns regarding detention conditions.

International Standards Implicated: Body of Principles, Principle 33 (right to make request or complaint about treatment to appropriate authorities); Standard Minimum Rules, Rule 36 (right to make request or complaint to director of institution or designated officer and to central prison administration or other proper authorities, and right to receive prompt reply); UNHCR Detention Guidelines, Guideline 10(x) (right of access to a complaints mechanism).

Living Quarters: INS detainees are generally held in two pods. While we did not have sufficient time to observe the living quarters in any detail, the one pod we briefly entered appeared generally clean. One detained asylum-seeker has complained, however, that the pods are often dirty. The cell arrangement seemed preferable to the dorm style arrangements found in other jails given the greater amount of privacy provided.

Detainee complaints about living quarters included: (1) Temperature: Temperature is often either too hot or too cold and, when it is too cold, the jail refuses to issue extra blankets. Captain (b)(6), (b)(7)c acknowledged that there were problems with temperature control in various parts of the jail, but stated that the jail does not provide extra blankets to detainees who request them so as to ensure "consistency in treatment"; (2) Water Temperature in Showers: A number of detainees complained that the water in showers was much too hot ("scorching"). Some noted that one detainee's face had been red for three weeks after having been scalded by the water.

Comments & Recommendations: UNHCR recommends that extra blankets be provided to detainees as needed and that detainee complaints of water temperature be addressed.

International Standards Implicated: Standard Minimum Rules, Rule 10 (sleeping conditions shall meet all health requirements, including necessary heating), 13 (adequate bathing and shower installations should be provided at a temperature suitable to the climate), 19 (every prisoner should be issued sufficient bedding); UNHCR Detention Guidelines, Guideline 10(ix) (detained asylum-seekers should have access to basic necessities such as shower facilities).

Recreation: There is no recreation area, outdoor or indoor, for detainees. All exercise must take place in the dayroom. The jail has an indoor recreation room used for educational programs (for inmates serving sentences) and staff recreation, but INS

detainees do not have access to it for recreational purposes. Captain (b)(6), (b)(7)c stated that there is insufficient staffing to accommodate recreation periods for detainees.

Comments & Recommendations: UNHCR objects to the use of a jail that does not offer any recreational facilities. UNHCR recommends that at least one hour of outdoor recreation a day be offered. If weather does not permit outdoor recreation, indoor recreation should be made available as an alternative..

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(vi) (right to physical exercise through daily indoor and outdoor recreational activities); Standard Minimum Rules, Rule 21 (right to at least one hour suitable exercise in open air daily weather permitting).

Telephone Access: There are two or three telephones in each pod, with notices taped to one of the wall windows. All calls must be made collect and there is a 15-minute cut-off. There was a notice posted with contact information for the Legal Assistance Foundation of Chicago, but no notices regarding how to contact UNHCR. A collect phone call placed to the UNHCR office in Washington, DC was successful. The rate for long-distance, domestic, collect calls is \$3.95 / 1st minute, and 65 cents/every other minute.

Comments & Recommendations: UNHCR appreciates that it is possible to place collect calls to UNHCR. UNHCR recommends that contact information for UNHCR and other active legal service providers (such as the Midwest Immigrant and Human Rights Center (MIHRC)) be provided to all INS detainees in the Chicago district. Given that the high costs of calls from detention centers often impede access to legal assistance, UNHCR recommends that the INS ensure the lowest telephone rates possible to INS detainees.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, para. (g) (detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv)(asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (detained asylum-seekers should be able to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate; ECRE Position Paper on Detention, para. 29 (asylum-seekers should have access to telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counsellors); Body of Principles, Principle 16(2) (detained foreigners have right to communicate by appropriate means with representative of competent organization); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons).

Library: Racine County Jail has no physical library space. The few legal resources available are kept in the jail control area and many detainees complained that they were unaware of what was available. Many of the resources that the jail did have were out of date (e.g., Immigration Law & Crimes and published BIA decisions), although Interpreter Releases appeared to be current. The jail does not allow the use of binders; any resources

that required page updates (such as INS regulations) were completely out of order and essentially useless.

Comments & Recommendations: Given that the majority of those detained typically do not have legal assistance and must prepare their own cases, UNHCR is concerned that the jail lacks a law library and that the few legal resources that are relevant to asylum-seekers are difficult to access. We encourage INS to expand the immigration law resources available to detainees to include country of origin materials compiled by such groups as the Human Rights Documentation Exchange and the asylum and detention release self-help materials produced by the Florence Project on Immigrant and Refugee Rights, available in both English and Spanish. UNHCR encourages the facility to include other general immigration law resources that might be useful to asylum-seekers preparing their own cases, such as the materials listed in the INS Detention Standards on Access to Legal Material. UNHCR is willing to provide any international legal resources that might be available through our Office. Until an adequate library is established, the jail may wish to establish a "travelling library" with resources placed on a cart that is wheeled into the different living areas.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case) UNHCR Detention Guidelines, Guideline 5(ii) (where possible detained asylum-seekers should receive free legal counsel) and Guideline 5 (detention should in no way constitute an obstacle to the asylum-seekers' possibilities to pursue their asylum application).

Medical: The following three issues were note-worthy regarding medical services at the Racine County Jail: (1) INS Efforts to Avoid Detention of Individuals with Major Medical Problems at Racine: Jail officials noted that INS tries not to send to Racine, or continue to detain at Racine, individuals with major medical conditions given its limited medical resources; (2) Distribution of Medication: A doctor comes to the jail once a week and prescribes medication. Medication is then distributed by jail officers on post, not by trained medical staff; (3) Co-Payments: According to the jail's handbook, those held at the jail must make co-payments for medical services. If the person is indigent, the account will be debited. The jail handbook notes that if money is placed into the account, the negative balance will be cleared before any new order is processed. It is not clear if these policies apply to INS detainees. Captain (b)(6), (b)(7)c did not think so.

Comments & Recommendations: (1) Given the limited capacity of the Racine County Jail to respond to serious medical cases, UNHCR appreciates the efforts of the INS to place those detainees with special medical needs elsewhere. UNHCR is aware, however, of an asylum-seekers who had attempted suicide and was then transferred to Racine County Jail, placed on suicide watch, and then medicated for depression. He remained at Racine for at least four months. (2) UNHCR is concerned about the jail's policy of allowing guards to distribute medication. Guards lack the necessary medical training to respond to detainee questions regarding their medication or to recognize when medication has been administered improperly. UNHCR recommends that only trained medical staff be permitted to deliver medication to INS detainees. (3) UNHCR would

appreciate further information about the medical co-payment policy as it applies to INS detainees. UNHCR objects to any policy requiring detainees to pay for medical services. Asylum-seekers are often indigent and may require medical services to treat ailments arising from traumatic experiences in their home countries. While UNHCR understands that this policy does not result in the per se denial of medical services, it may discourage asylum-seekers from seeking medical treatment and improperly deprive them of needed financial resources in the event that they are later released or granted asylum. If asylum-seekers are not required to make co-payments, UNHCR recommends that this be clearly communicated to them.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(v) (asylum-seekers shall receive appropriate medical treatment and psychological counselling); Standard Minimum Rules, Rule 22(2) (sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals; if institution has hospital facilities, its resources shall be proper for necessary medical care), Rule 25(1) (medical officer should care for physical and mental health of prisoners); Body of Principles, Principle 24 (medical care and treatment shall be offered free of charge).

Food: Detainees are provided two hot meals/day and one cold meal. Many detainees complained that dinner is often little more than a sandwich (often peanut butter and jelly or cheese) and that there is not enough food given the long delay between dinner and breakfast (4 p.m. to 7 am, or about 15 hours). It is unclear how this corresponds to the weekly menu (attached).

Comments & Recommendations: UNHCR would appreciate receiving further clarification of the jail's menu and the meals that are provided to INS detainees. UNHCR is concerned, if detainees complaints are accurate, that dinners at the Racine County Jail may be inadequate and that the length of time between meals may be too long.

International Standards Implicated: Standard Minimum Rules, Rule 20(1) (right to food at usual hours of nutritional value adequate for health and strength).

Religious Services: Detainees provided conflicting information about the availability of religious services at Racine. One detainee complained that there are no religious services at the jail, while other sources stated that only Christian bible study is available. A Muslim detainee stated that he is able to pray at the jail, but did not comment on the availability of Muslim services. One asylum-seeker who contacted UNHCR complained that he was unable to obtain a Koran for at least a month while at Racine County Jail. (He obtained a copy following UNHCR's intervention in the matter.) UNHCR did not have the opportunity to ask Captain (b)(6), (b)(7)c about the availability of religious services.

Comments & Recommendations: UNHCR would appreciate further clarification about the availability of religious services to INS detainees at the Racine County Jail. UNHCR recommends that detainees be provided access to religious leaders and services as appropriate based on the religious profile and demand of the INS detainee population.

International Standards Implicated: UNHCR Guidelines, Guideline 10(viii) (asylum-seekers should have the opportunity to exercise their religion); Standard Minimum Rules, Rule 41 (if institution contains sufficient number of prisoners of same religion, a qualified representative of that religion shall be appointed or approved and made available to hold regular services and pay private pastoral visits) and Rule 42 (as far as practicable, every prisoner shall be allowed to satisfy his religious needs by attending religious services).

Training: To UNHCR's knowledge, jail officers do not receive training on working with a refugee population.

Comments & Recommendations: UNHCR recommends that training be provided for jail staff on working with immigrant and refugee populations. UNHCR is willing to assist with such training to the extent resources allow.

International Standards Implicated: Standard Minimum Rules, Rule 47 (personnel shall receive on-going training to maintain and improve their knowledge and professional capacity); ECRE Position Paper on Detention, para. 51 (staff should receive proper training on asylum matters, causes of refugee movements, relevant cultural factors, and methods of recognizing and responding to stress-related illnesses).

Tri-County Detention Center

On 7 August 2001, (b)(6) and (b)(6) visited the GRW/Tri-County Detention Center in Ullin, Illinois. The visit included a tour of the facility conducted by Jack Parks, the INS Liaison Officer stationed at Tri-County, individual interviews with detained asylum-seekers, and a meeting with the Center's Administrator, (b)(6), (b)(7)c (b)(6), (b)(7)c and his assistant, (b)(6), (b)(7)c. This report is based on information received from INS and jail officials, the observations of the UNHCR representatives, and information received from detainees, both during the tour and from written correspondence received at the UNHCR Office.

Facility Location: The facility is situated in a rural area of Southern Illinois, approximately 353 miles or seven hours driving time from Chicago, where INS detainees attend Immigration Court. One asylum-seeker complained that when he has an immigration court date in Chicago, he is transported from Ullin during the night to Chicago. He stated that he is unable to sleep during the transport because he is put in full restraints – hand cuffs, ankle cuffs and belly chains – for the entire journey.

Comments & Recommendations: UNHCR is concerned that Tri-County is located so far from the Chicago immigration court. UNHCR recognizes that INS makes an effort to place individuals at Tri-County who have appeals pending or final orders of removal rather than those who have ongoing court hearings. However, during its visit, UNHCR did encounter asylum-seekers whose cases were still before the Immigration Judge. The facility's distance from the court makes it difficult for asylum-seekers to access legal assistance, receive visits from family members, friends or others providing support. In addition, the distance may impair their ability to testify adequately at their asylum hearings given the lengthy trips to court, often the night before a hearing and during which it is difficult to sleep. UNHCR recommends that INS use detention facilities closer to the Immigration Court and at a minimum ensure that asylum-seekers are transported to court hearings in a manner that does not impair their ability to sleep the night before their court hearings.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to the asylum-seekers' possibilities to pursue their asylum application).

Facility Background: Tri-County has a capacity to hold 208 adult men and women. It is fairly common for the jail to be filled over capacity. During UNHCR's visit, we entered one of the pods and observed a bed placed near the door in the common space rather than the sleeping area. Detainees also stated that sometimes beds are placed under stairwells to accommodate the overflow.

As of the day before our visit, there were 161 INS detainees, three of whom were Chinese women. Tri-County receives \$48.60 per day to house the INS detainees. Of the jails used by the Chicago district, Tri-County holds the majority of the indefinite detainee

population and those INS detainees facing longer term detention because of lengthy appeals. (b)(6), (b)(7)c is stationed full-time at the facility and his position is funded by regional INS.

The facility has six pods, three of which have a capacity to hold 46 inmates. The other three are smaller pods. Inmates are classified as level 1, 2 or 3 with respect to their dangerousness but INS does not provide the facility with the detainees' criminal histories. The facility co-mingles INS detainees with criminal inmates, although the staff tries to put US Marshal's inmates with INS detainees and to house people by race. Several of the pods were over capacity, with A Pod at 47, B at 50 and C at 49.

Comments & Recommendations: UNHCR welcomes the placement of a full-time INS officer at Tri-County and recommends that when INS contracts with a facility, that this model be used. UNHCR is concerned, however, that the facility is at times overcrowded and that asylum-seekers are co-mingled with the general inmate population. UNHCR recommends that Tri-County ensure that overcrowding does not occur and that asylum-seekers are kept separate from the facility's general population.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(iii) (asylum-seekers should not be co-mingled with convicted criminals); UNHCR EXCOM Conclusion No. 44, para. (f) ("refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as common criminals"); UNHCR EXCOM Conclusion No. 85, para. (ee) (noting concern that asylum-seekers are often held with common criminals); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from those imprisoned for criminal offenses); Body of Principles, Principle 8 (same); Standard Minimum Rules, Rule 63(3) (the number of prisoners in closed institution should not be so large that individualization of treatment is hindered), ECRE Position Paper on Detention, para. 43 (places of detention should have sufficient space).

Treatment of INS Detainees: The atmosphere at Tri-County appeared less constraining than at other jails our staff visited. For instance, detainees are allowed to have gym shoes, some variety in their clothing, and more personal items. The facility, however, planned to restrict some of these freedoms in October 2001. The detainees our staff interviewed as a whole thought Tri-County was one of the better facilities in the Chicago district because of its access to programs and respectful treatment of detainees.

Comments & Recommendations: UNHCR appreciates the generally positive treatment of INS detainees at Tri-County.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10 ("conditions of detention for asylum-seekers should be humane with respect shown for the inherent dignity of the person"); Body of Principles, Principle 1 (detainees and prisoners "shall be treated in a humane manner and with respect for the inherent dignity of the human person").

Recreation: The jail's policy is to allow one hour a day of recreation which occurs outdoors if weather permits. For security reasons, there is no set schedule for when recreation will occur, which is determined by the officers on duty. There are two grassy outdoor recreation areas about 35 x 50 feet in dimension surrounded by fences topped with barbed wire. There was no method for providing cover from the sun or rain. The facility also had an indoor recreation room that contained a basketball hoop and some tables. INS detainees complained that they had not been given outdoor recreation for about a month. One detainee stated that they were told for weeks that they could not go outside at times because of bad weather and because there was not enough staff to supervise them. In response to these complaints, Administrator (b)(6), (b)(7)c and his assistant said that weather conditions such as rain, heat or mud had recently prevented outdoor recreation but disagreed that it had been a month.

Comments & Recommendations: UNHCR recommends that the facility adopt an established recreation schedule rather than leaving recreation decisions with the officers on duty on a given day. UNHCR also recommends that objective standards as to when weather will prevent outdoor recreation be established. Access to the outdoors can be especially critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement. It is also critical to those of concern to UNHCR who remain in detention for extended periods of time.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(vi) (asylum-seekers should have opportunity for daily indoor and outdoor recreational activities); Standard Minimum Rules, Rule 21(right to at least one hour suitable exercise in open air daily weather permitting).

Educational and Rehabilitative Classes: INS detainees have access to a variety of programs including computer classes, anger management classes, English classes, GED classes and business classes.

Comments & Recommendations: UNHCR views the availability of educational and rehabilitative programs as a very positive aspect of detention practices at Tri-County. This is particularly true given Tri-County's use as a facility for placement of those in longer term detention. In addition to the valuable instruction and treatment provided, these courses allow INS detainees to demonstrate rehabilitation for purposes of release from custody. Such courses are especially important for those in "indefinite detention" due to the refusal of their country to re-admit them, or due to their statelessness. We encourage the continuation and expansion of these programs.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(vii) (detained asylum-seekers should have opportunity to continue further education or vocational training); ECRE Position Paper on Detention, para. 46 (during prolonged detention, adult education and training should be provided and it should attend to cultural and linguistic needs; it is crucial for detainees' mental health to not be deprived of access to constructive activities during prolonged detention); Basic Principles,

Principle 6 (prisoners shall have right to take part in education aimed at full development of human personality).

Telephone Access: Telephones are located inside each of the dayrooms and are available for general use. Facility phone cards are required to make non-collect calls and cost \$10 for 20 minutes. Detainees are only allowed to purchase sixty minutes worth of phone cards per week. Our staff was unable to make a collect telephone call to UNHCR's Office in Washington, DC.

Comments & Recommendations: UNHCR recommends that telephone access to UNHCR, as well as local service providers, be ensured. Given that the high costs of calls from detention centers often impedes access to legal assistance, UNHCR recommends that the INS ensure the lowest telephone rates possible to INS detainees. UNHCR further recommends that UNHCR contact information be provided to all INS detainees if the facility is not already doing so.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, para. (g)(detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv)(asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (the means shall be made available for detained asylum-seekers to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate); Body of Principles, Principle 16(2) (detained foreigners have right to communicate by appropriate means with representative of competent organization); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons); ECRE Position Paper on Detention, para. 29 (asylum-seekers should have access to telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counsellors).

Library: The library is open from 8:00 a.m. to 4:00 p.m. and while there is no established schedule for library access, INS detainees are allowed to visit the library when and for as long as they desire, provided there are not more than four people in the library at a time. There is no system for checking out materials, and many of the immigration law materials are gone, leaving the library with few current immigration law resources. Given security concerns, the use of ringed binders is prohibited. Some of the legal materials sent to the jail by INS were in ringed binders and require loose-leaf updates to remain current.

Comments & Recommendations: UNHCR appreciates Tri-County's liberal library visitation policy. However, given that the majority of those detained typically do not have legal assistance and must prepare their own case, UNHCR is concerned that the law library contains few resources relevant to asylum-seekers. We would encourage INS to expand the immigration law resources available to detainees to include country of origin information issued by such groups as the Human Rights Documentation Exchange

and the asylum and detention release self-help materials produced by the Florence Project on Immigrant and Refugee Rights, available in both English and Spanish. UNHCR is willing to provide any international legal resources that might be available through our Office. UNHCR encourages the facility to include other general immigration law resources that might be useful to asylum-seekers preparing their own cases such as the materials listed in the INS Detention Standards on Access to Legal Material. UNHCR also encourages the facility to establish a regulated check-out system to ensure that materials are accessible to all asylum-seekers and not lost or stolen. UNHCR encourages the facility to also establish a means of keeping current those immigration law materials that are kept in ringed binders.

International Standards Implicated: *UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to the asylum-seekers' possibilities to pursue their asylum application).*

Interpretation: Tri-County has a Mandarin interpreter on staff who assists the Chinese INS detainee population. She also works with the Chinese men detained at the facility. With regard to verbal communication between staff and other detainees, medical staff indicated that they use the INS telephonic interpreter services often. However, one detainee indicated that there was little use of telephonic interpreters and that he had difficulty communicating with staff at the facility.

Comments and Recommendations: *UNHCR appreciates the positive steps Tri-County has taken with respect to its Chinese population and encourages it to extend these efforts to other nationalities. UNHCR is concerned that asylum-seekers with language barriers may lack orientation as to facility rules and may be unable to communicate with jail staff. We encourage use of interpreters when needed to facilitate essential communication between facility staff and INS detainees.*

International Standards Implicated: *UNHCR EXCOM Conclusion No. 8 (asylum-seekers to be given necessary facilities, including interpreter services, to submit claim to authorities); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints to be made available to detainees in different languages); ECRE Position Paper on Detention, paras. 20, 29 (right of asylum-seeker to information on detention in language s/he understands); Standard Minimum Rules, Rule 35 (right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations) and Rule 51(2) (whenever necessary, the services of an interpreter shall be used); Body of Principles, Principle 14 (right of detainee to receive information about his rights in detention in language he understands).*

Medical: The facility's medical staff includes four nurses with at least one nurse on site from 6:00 am to 10:00 p.m. A Physician's Assistant comes to the facility once a week, and there is a psychologist 18 miles away at Delta Center who examines detainees at the facility when needed. To see a nurse, detainees give requests completed in English to

corrections officers who forward them to the medical staff. The inmate is seen within 1 to 3 days according to the medical staff. Medicine is distributed by nurses at 6:30 a.m., 10:30 a.m., 3:30 p.m. and 7:30 p.m. One detainee complained that he must take several different medications on a very specific schedule that does not coincide with the facility's times for medicine distribution. He believed that not having his medicines at the right time was causing him to suffer unnecessary side effects.

Detainees are not charged a co-payment for medical care. However, because jail inmates are required to make a co-payment, the jail's rulebook mentions the co-payment and indicates that inmates with no money in their accounts will receive health care but their accounts debited. The rulebook does not mention an exception for INS detainees.

The medical infirmary contains two medical isolation rooms. In one room, UNHCR observed an elderly asylum-seeker from Sri Lanka who appeared extremely frail and was in isolation because he was not eating. The individual had apparently been detained by the INS for approximately 28 days and had been in medical isolation for two days. He spoke no English but through another detainee as interpreter, jail staff believed that the man was not eating because he was depressed. The staff had not called a psychologist to meet with the detainee. UNHCR representatives later interviewed the asylum-seeker and discovered that he wanted to eat but was having trouble physically keeping the food down.

UNCHR representatives heard several complaints about medical treatment, such as a cavity that had not been treated for a month, the nurse not being attentive, the need for surgery because of an extra bone attached to an individual's hip being treated only with ibuprofen and doctor appointments for an eye problem being repeatedly cancelled. On the other hand, one detainee said the medical treatment he received for bleeding in his ear was fine, and another said her request for surgery to remove a birth control device was granted and she was satisfied with the surgery and medical treatment.

Comments & Recommendations: UNHCR is concerned about the reported delays in meeting detainee medical requests. We recommend that INS further review Tri-County's medical policies and resources. UNHCR is also concerned that indigent asylum-seekers might refrain from seeking medical care due to a mistaken belief that they must pay for the care. We encourage a change in Tri-County's practices to make it clear that INS detainees are not subject to the co-payment. UNHCR is quite concerned about the detention for 28 days of an elderly, frail asylum-seeker, who speaks almost no English. As an especially vulnerable group, elderly asylum-seekers should not be detained. All efforts should be made to find alternatives to detention. It is our understanding that this asylum-seeker has since been released from detention.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(v) (asylum-seekers shall have opportunity to receive appropriate medical treatment and psychological counselling); Body of Principles, Principle 24 (medical care shall be offered free of charge); Standard Minimum Rules, Rule 22(1) (services of medical officer with some knowledge of psychiatry should be available), Rule 22(2)(sick prisoners who

require specialist treatment shall be transferred to specialized institutions or to civil hospitals; if institution has hospital facilities, its resources shall be proper for necessary medical care) and Rule 25(1) (medical officer should care for physical and mental health of prisoners); UNHCR Detention Guidelines, Guideline 7 (there should be active consideration of alternatives for unaccompanied elderly persons) (advisable that elderly should only be detained on certification of qualified medical practitioner that detention will not adversely affect their health).

Training: To UNHCR's knowledge, jail officers do not receive training on working with a refugee population.

Comments & Recommendations: UNHCR recommends that Tri-County staff receive training on working with immigrant and refugee populations. UNHCR is willing to assist with such training to the extent resources allow.

International Standards Implicated: Standard Minimum Rules, Rule 47 (personnel shall receive on-going training to maintain and improve their knowledge and professional capacity); ECRE Position Paper on Detention, para. 51 (staff should receive proper training on asylum matters, causes of refugee movements, relevant cultural factors, and methods of recognizing and responding to stress-related illnesses).

Broadview Service Staging Area

On 8 August 2001, (b)(6) and (b)(6) visited the Broadview Service Staging Area in Broadview, Illinois, approximately 30 miles from Chicago, Illinois, where INS detainees attend Immigration Court. The visit included a tour of the facility led by (b)(6), (b)(7)c Supervisor, Detention Section, Deportation Branch, and an individual interview with one asylum-seeker transiting through the Broadview facility that day. This report is based on information received from INS officials, the observations of the UNHCR representatives, and information received from detainees during the tour and at other area jails.

Facility Background: The facility is owned and operated by INS. Supervisory Deportation Officer (b)(6), (b)(7)c is the facility manager. It is a staging facility designed to hold INS detainees for less than 24 hours. No detainees spend the night at the facility. The building is closed at 8:00 p.m. and is not staffed overnight.

Broadview is the location where all INS detainees in the Chicago district are first processed before being placed in the various county jails used by INS. On average there are 350 to 400 people detained on any given day in the Chicago District, excluding those detained under regional funds such as Mariel Cubans. This number reflects a dramatic increase since the enactment of the 1996 immigration laws. In 1990, Chicago District had 60 to 100 detainees on any given day, and INS mainly used DuPage and McHenry county jails to house them. Now the INS uses a greater number of jails and struggles to find jail space.

Detainees transit through Broadview in between jail transfers, and when attending Immigration Court in Chicago. Detainees are held at Broadview for credible fear interviews and before being paroled or released. The officers at Broadview are responsible for finding the jail space for detainees and handle a variety of issues related to health care, medical needs and Deportation Officer requests.

The facility is a one and a half floor building that has three day rooms with a capacity to hold 50 people and an overflow room. INS staff attempts to separate individuals convicted of crimes from others and to keep Spanish-speakers together when possible. Typically, there are between 10 and 30 individuals held in a room at one time.

Telephone access: Telephones are located inside each of the day rooms and provide only for collect calls. UNHCR's number was posted, but our staff was unable to make a collect telephone call to UNHCR's Office in Washington, DC or to connect to the toll-free Immigration Court information system. According to (b)(6), (b)(7)c the facility had been having problems with the phones for about two months

Comments & Recommendations: UNHCR recommends that telephone access to UNHCR, as well as local service providers, be ensured. Given that the high costs of calls from detention centers often impedes access to legal assistance, UNHCR recommends that the INS ensure the lowest telephone rates possible to INS detainees.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, para. (g)(detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv)(asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (the means shall be made available for detained asylum-seekers to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate); Body of Principles, Principle 16(2) (detained foreigners have right to communicate by appropriate means with representative of competent organization); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons); ECRE Position Paper on Detention, para. 29 (asylum-seekers should have access to telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counsellors).

Orientation: When detainees arrive at Broadview, they are given a brief summary of rights and remedies in removal proceedings written by a local non-profit legal services provider; however, there is no orientation by INS staff regarding the detention process. The asylum-seeker our staff interviewed did not speak fluent English and had no idea why he was at Broadview. UNHCR representatives were later informed that the asylum-seeker was at Broadview for fingerprinting in relation to his asylum application.

Comments & Recommendations: UNHCR recommends that the INS adopt a practice of advising asylum-seekers of the detention process in a language the detainee understands.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 5(i)(asylum-seekers should receive prompt, full communication of detention order, reasons for order, rights in connection with order, in language they understand); Body of Principles, Principle 11(2) (detained person shall receive prompt and full communication of detention order and the reasons therefor); Principle 13 (upon detention, information on and explanation of rights and how to avail oneself of rights will be provided); Body of Principles, Principle 14 (entitled to receive information in Principle 11 and 13 through interpreter free of charge).

Training: To UNHCR's knowledge, INS officers at the Broadview facility do not receive training on working with a refugee population.

Comments & Recommendations: UNHCR recommends that Broadview staff receive training on working with refugee populations. UNHCR is willing to assist with such training to the extent resources allow.

International Standards Implicated: Standard Minimum Rules, Rule 47 (personnel shall receive on-going training to maintain and improve their knowledge and professional capacity); ECRE Position Paper on Detention, para. 51 (staff should receive proper training on asylum matters, causes of refugee movements, relevant cultural factors, and methods of recognizing and responding to stress-related illnesses).

McHenry County Jail

On 9 August 2001, (b)(6) and (b)(6) visited the McHenry County Jail. The visit included a tour of the facility conducted by Lieutenant (b)(6), (b)(7)c McHenry County Sheriff's Police Department; individual interviews with detained asylum-seekers; and a meeting with Chief (b)(6), (b)(7)c McHenry County Sheriff's Police Department. (b)(6), (b)(7)c INS Deportation Officer, accompanied UNHCR staff on the tour. This report is based on information received from INS and jail officials, the observations of the UNHCR representatives, and information received from detainees, both during the tour and from written correspondence received at the UNHCR Office.

Location of facility: The jail is situated in Woodstock, Illinois, a small town approximately one and a half hour drive from Chicago, Illinois, where INS detainees attend Immigration Court.

UNHCR is concerned that Tri-County is located so far from the Chicago immigration court. The facility's distance from the court makes it difficult for asylum-seekers to access legal assistance, receive visits from family members, friends or others providing support. The distance also makes it difficult for INS staff to visit the facility regularly. UNHCR recommends that INS use detention facilities closer to the Immigration Court.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to the asylum-seekers' possibilities to pursue their asylum application).

Facility Background: The jail holds up to 316 adult men and women. At the time of our visit, the jail had 135 contractual holds including: 59 INS detainees, 3 BOP inmates, 1 US Marshall Service inmate, and 73 Cain County inmates. The jail on average holds 140 people from McHenry County. According to (b)(6), (b)(7)c McHenry detains the majority of women held by INS in the Chicago district..

Most housing units have two-bed cells though some have four-bed cells. There are between six and sixteen cells per housing unit. The cells all contain a toilet and a sink. The housing units have day rooms, and there are two showers and two phones in each day room.

Due to space restrictions, McHenry houses INS detainees with the general jail population. According to jail officials, they know when INS detainees arrive whether they fall within one or two categories: asylum-seekers, who are minimum risks, or convicted felons. The jail has a full-time classification officer who interviews all inmates/detainees and decides how to classify people based on the interview and the person's criminal history. There are three types of classification: (1) non-sentenced, non-violent; (2) sentenced, non-

violent; and (3) sentenced, violent. Asylum-seekers are generally classified as category (1) and the jail attempts to house them with county inmates in the same category but is not always able to do so. The jail also attempts to house INS detainees from the same country together.

Jail officials were aware of the new INS detention standards and thought it would be difficult to meet the requirement in the Standards that detainees have access to the law library five hours a week. Jail officials were also looking into construction of a new third floor where INS detainees could be held entirely separately from the rest of the jail population, making it easier to treat INS detainees differently than criminal inmates.

Jail officials indicated that if they could house INS detainees separately that it would be easier to treat them distinctly from the jail population. At one point, there were a large number of Chinese immigrants detained at McHenry, and the jail made a number of accommodations for that population. Many of the accommodations stemmed from suggestions by a Secular Franciscan Society that requested and gained access to assist the Chinese population. Jail officials allowed the group to translate the jail's commissary form, a summary of the rulebook and some handouts that provide basic information such as that the detainee should pack and is transferring to another jail, or that the detainee is going to be transported to a court hearing. The jail also established a special diet for the Chinese detainees because they were not adjusting well to American jail food. At the jail's request, the INS increased the day rate for housing its detainees from \$50 to \$70 because of the special diet for the Chinese detainees and the extra work involved in medical screenings of all INS detainees.

Comments & Recommendations: UNHCR is impressed that, with respect to the Chinese detainees, jail officials have welcomed community involvement and made a number of accommodations to respect their cultural needs and to enhance their understanding of jail rules and movement in and out of the jail. UNHCR would encourage the jail to make similar accommodations for other cultural groups. UNHCR appreciates McHenry's efforts to separate asylum-seekers from sentenced and violent inmates. However, UNHCR recommends that asylum-seekers not be co-mingled with any inmates subject to criminal proceedings.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 5(i)(asylum-seekers should receive prompt, full communication of detention order, reasons for order, rights in connection with order, in language they understand); Body of Principles, Principle 11(2) (detained person shall receive prompt and full communication of detention order and the reasons therefor); Principle 13 (upon detention, information on and explanation of rights and how to avail oneself of rights will be provided); Body of Principles, Principle 14 (entitled to receive information in Principle 11 and 13 through interpreter free of charge); Standard Minimum Rules, Rule 51(2) (whenever necessary, interpreter services shall be used); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints should be displayed and made available to detainees in different languages); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from persons imprisoned by reason of a criminal offense); UNHCR Detention

Guidelines, Guideline 10(iii) (asylum-seekers should not be co-mingled with convicted criminals); UNHCR EXCOM Conclusion No. 44, para. (f) ("refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as common criminals"); UNHCR EXCOM Conclusion No. 85, para. (ee) (noting concern that asylum-seekers are often held with common criminals); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from those imprisoned for criminal offenses); Body of Principles, Principle 8 (same); ICCPR, Article 10(2)(a) ("accused persons shall, save in exceptional circumstances, be segregated from convicted persons").

Length of Detention: UNHCR was informed by INS officials that it was INS policy not to detain individuals at the McHenry County Jail for longer than 45 days. It appeared that this was due to the jail's failure to meet certain INS standards, most notably the lack of any outdoor recreation facilities. Detainees reported that they had been detained at McHenry for longer than 45 days, some as long as four months.

Comments & Recommendations: UNHCR appreciates the efforts of INS to limit the amount of time a detainee must spend at the McHenry County Jail given its lack of outdoor recreation, its distance from Chicago and its lack of legal materials available for asylum-seekers representing themselves. UNHCR recommends that INS make all efforts to ensure that detainees are held at the McHenry County Jail for the shortest period of time possible.

International Standards Implicated: Standard Minimum Rules, Rule 21 (right to at least one hour suitable exercise in open air daily weather permitting); UNHCR Detention Guidelines, Guideline 10(vi) (right to physical exercise through daily indoor and outdoor recreational activities); UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities [e.g., legal resources] for submitting case).

Recreation: There is no established schedule for recreation. This is determined by the officers on duty. Recreation takes place in a medium-sized room with a bathroom and panels for fresh air. The panels do not actually open and use technology that conditions the air before it enters the room. There was no exercise equipment in the room because the floors could not support it. Because of the lack of outdoor recreation, the INS has an internal policy that detainees will stay no longer than 45 days at McHenry; however, according to several detainees UNHCR interviewed, the INS does not always adhere to this policy.

Comments & Recommendations: UNHCR is concerned about the facility's lack of outdoor recreation. The fresh air panels in the recreation room do not constitute outdoor recreation. Access to the outdoors can be especially critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(vi) (asylum-seekers should have opportunity for daily indoor and outdoor recreational

activities); *Standard Minimum Rules, Rule 21* (right to at least one hour suitable exercise in open air daily weather permitting).

Telephone Access: Telephones are located inside each of the dayrooms and are available for general use. Facility phone cards are required to make non-collect calls. Our staff, however, was unable to make a collect telephone call to UNHCR's Office in Washington, DC, which may be due to the telephone service provider's restrictions.

Comments & Recommendations: UNHCR recommends that telephone access to UNHCR, as well as local service providers, be ensured. Given that the high costs of calls from detention centers often impedes access to legal assistance, UNHCR recommends that the INS ensure the lowest telephone rates possible to INS detainees. UNHCR further recommends that UNHCR contact information be provided to all INS detainees if the facility is not already doing so.

International Standards Implicated: UNHCR EXCOM Conclusion No. 44, para. (g) (detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv) (asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (the means shall be made available for detained asylum-seekers to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate); Body of Principles, Principle 16(2) (detained foreigners have right to communicate by appropriate means with representative of competent organization); *Standard Minimum Rules, Rule 38(2)* (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons); *ECRE Position Paper on Detention, para. 29* (asylum-seekers should have access to telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counsellors).

Library: McHenry's law library contained very few resources on immigration law. The library did include materials on rights and remedies written by a local non-profit legal service provider, Midwest Immigrant and Human Rights Center (MIHRC), and had a typewriter available for INS detainee use. INS detainees are allowed access to the library only one hour a week. One detainee complained that access is insufficient to represent oneself.

Comments & Recommendations: Given that the majority of those detained typically do not have legal assistance and must prepare their own case, UNHCR is concerned that the law library contains few resources relevant to asylum-seekers and that INS detainees have such little access to the library. We would encourage INS to expand the immigration law resources available to detainees to include country of origin information issued by such groups as the Human Rights Documentation Exchange and the asylum and detention release self-help materials produced by the Florence Project on Immigrant and Refugee Rights, available in both English and Spanish. UNHCR encourages the facility to include other general immigration law resources that might be

useful to asylum-seekers preparing their own cases such as the materials listed in the INS Detention Standards on Access to Legal Material. UNHCR is willing to provide any international legal resources that might be available through our Office. UNHCR also recommends that asylum-seekers be allowed greater access to the library.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to the asylum-seekers' possibilities to pursue their asylum application).

Interpretation: As mentioned above, McHenry has taken positive steps with regard to the Chinese population detained there. In addition, the jail's rulebook has been translated into Spanish and there are some staff who are fluent in Spanish. With regard to verbal communication between staff and detainees, jail officials indicated they have access to telephonic interpreters provided by INS but use them rarely. For instance, medical staff indicated that they use the service only about once a month and that a person might not receive the initial psychological screening if there is a language barrier. Two individuals reported that they often had to use sign language to communicate with jail officials.

Comments & Recommendations: UNHCR appreciates the positive steps McHenry has taken with respect to its Chinese population but is concerned that other asylum-seekers with language barriers may feel isolated, lack orientation as to jail rules and may not receive proper medical treatment. We encourage use of interpreters when needed to facilitate essential communication between jail staff and INS detainees.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 5(i)(asylum-seekers should receive prompt, full communication of detention order, reasons for order, rights in connection with order, in language they understand); Body of Principles, Principle 11(2) (detained person shall receive prompt and full communication of detention order and the reasons therefor); Principle 13 (upon detention, information on and explanation of rights and how to avail oneself of rights will be provided); Body of Principles, Principle 14 (entitled to receive information in Principle 11 and 13 through interpreter free of charge); Standard Minimum Rules, Rule 51(2) (whenever necessary, interpreter services shall be used); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints should be displayed and made available to detainees in different languages).

Medical: Medical staff includes at least one nurse on staff from 8:00 a.m. to 10:00 p.m., a full-time psychologist and a doctor who visits the facility once a week and is on call 24 hours a day. Everyone who enters the facility is screened by a psychologist and medical staff. To see a nurse, detainees must put their name on a list for daily sick call rounds, which occur twice a day. According to medical staff, detainees are typically seen the same day that they put their name on the list. One detainee, however, complained that medical staff do not respond quickly enough to medical issues and gave an example of a detainee who was vomiting but received no medical attention for four hours. Two detainees reported that the medical care was fine.

Detainees are not charged a co-payment for medical care. However, because county inmates are required to make a co-payment, the jail's rulebook mentions the co-payment and indicates that inmates with no money in their accounts will receive health care but have their accounts debited. The rulebook does not mention an exception for INS detainees. When a detainee receives medical care, he or she must sign a form agreeing to make the co-payment despite the fact that the detainee in actuality will not be charged. The jail uses the form because it does not want to draw attention to the distinctions between the two populations, which might upset the county inmates. One detainee indicated that she thought detainees were charged for medical care.

The medical unit is split between two pods with one pod containing two cells and the other three. There are two single beds in each cell. There is a separate room for people in medical isolation or on suicide watch. This room was completely empty and had no windows. The only form of communication was a speaker in the ceiling. A person placed inside would receive a mattress to sleep on and a T-shirt and underwear. If there was a risk that the person would use their clothes to hang themselves, they would be placed in the room naked.

Comments & Recommendations: McHenry's inclusion of a full-time psychologist on staff is encouraging. UNHCR is concerned that indigent asylum-seekers might refrain from seeking medical care due to a mistaken belief that they must pay for the care. We encourage a change in McHenry's practices to make it clear that INS detainees are not subject to the co-payment. UNHCR is concerned about the harsh conditions of the medical isolation room and the policy of removing the clothes of those who may be suicidal. UNHCR recommends that the jail explore other ways of meeting its security concerns while maintaining the dignity of those who may be suicidal.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers shall have opportunity to receive appropriate medical treatment and psychological counselling); Body of Principles, Principle 24 (medical care shall be offered free of charge); Standard Minimum Rules, Rule 22(1) (services of medical officer with some knowledge of psychiatry should be available) and Rule 22(2)(sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals; if institution has hospital facilities, its resources shall be proper for necessary medical care); UNHCR Guidelines, Guideline 10 (detention conditions should be humane with respect shown for inherent dignity of person); Basic Principles, Principle 1 (same).

Religious Services: McHenry has a full-time chaplain and INS detainees have access to various religious services. However, one detainee who is Muslim complained that he was unable to pray because the cells were too small, the dayrooms were too noisy and there were no organized services for Muslims.

Comments & Recommendations: UNHCR is encouraged that some INS detainees have access to religious services and would encourage that such services be extended to all faiths. UNHCR recommends that detainees be provided access to religious leaders and

services as appropriate given the religious profile and demand of the INS detainee population.

International Standards Implicated: UNHCR Guidelines, Guideline 10 (asylum-seekers should have the opportunity to exercise their religion); Standard Minimum Rules, Rule 41 (if institution contains sufficient number of prisoners of same religion, a qualified representative of that religion shall be appointed or approved and made available to hold regular services and pay private pastoral visits) and Rule 42 (as far as practicable, every prisoner shall be allowed to satisfy his religious needs by attending religious services);

Educational and Rehabilitative Programs: INS detainees also are able to attend Alcoholics Anonymous groups but are not able to participate in the jail's educational programs because these are funded by Cain county for its inmates.

Comments & Recommendations: UNHCR appreciates the fact that McHenry has recognized that INS detainees can benefit from educational and rehabilitative programs and has granted them access to the one rehabilitative program not funded by Cain county. UNHCR recommends that asylum-seekers have access to other educational and rehabilitative programs, funded by INS if necessary, given that some may remain there for months.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(vii) (detained asylum-seekers should have opportunity to continue further education or vocational training); ECRE Position Paper on Detention, para. 46 (during prolonged detention, adult education and training should be provided and it should attend to cultural and linguistic needs; it is crucial for detainees' mental health to not be deprived of access to constructive activities during prolonged detention); Basic Principles, Principle 6 (prisoners shall have right to take part in education aimed at full development of human personality).

Training: All officers receive training in cultural diversity but there is no training on working with a refugee population. Lieutenant (b)(6), (b)(7)c however, was receptive to UNHCR's proposal that such training be provided.

Comments & Recommendations: UNHCR recommends further training for McHenry staff on working with immigrant and refugee populations. UNHCR is willing to assist with such training to the extent resources allow.

International Standards Implicated: Standard Minimum Rules, Rule 47 (personnel shall receive on-going training to maintain and improve their knowledge and professional capacity); ECRE Position Paper on Detention, para. 51 (staff should receive proper training on asylum matters, causes of refugee movements, relevant cultural factors, and methods of recognizing and responding to stress-related illnesses).

Travelers & Immigrants Aid International Children's Center

On 10 August 2001, (b)(6) and (b)(6) visited the Travelers & Immigrants Aid International Children's Center (TIA/ICC) in Chicago, Illinois. They were accompanied by (b)(6), (b)(7)c INS Assistant District Director, Detention and Deportation; (b)(6), (b)(7)c INS Community Relations Officer; and (b)(6), (b)(7)c (b)(6), (b)(7)c INS Deportation Officer / Juvenile Officer. While at the facility, they met with staff at the TIA/ICC, including (b)(6), (b)(7)c Administrator; (b)(6), (b)(7)c Clinical Administrator; and (b)(6), (b)(7)c Associate Director. The tour was provided by (b)(6), (b)(7)c

Facility Background: The TIA/ICC is located in a residential neighborhood within the Chicago city limits. The house is non-descript from the outside. For security reasons, there are no notices or signs identifying the house as an INS juvenile facility. The facility was originally used as a nursing home. It began operation as an INS children's facility in September 1995. The facility is operated by Travelers & Immigrants Aid (TIA) / Chicago Connections, a section of the Heartland Alliance.

The interior of the building was quite clean and the atmosphere was relaxed. The facility did not seem as institutional as other INS juvenile facilities that UNHCR has visited. It was originally a 20 bed facility, which increased over time to its current capacity to house 70 children. The facility has the credentials to work with children from birth until age 21. The facility is almost always at or near capacity. The average age is about 15. At the time of UNHCR's visit, there were only 37 children (8 girls, 29 boys) at the facility due to a recent chicken pox quarantine which prevented the admission of any new children. The facility operates on all four floors of the building.

There are 42 staff members who work at the TIA/ICC. During the day, there is a children/staff ratio of 6/1. During the evening the ratio is 12/1. All employees have either a BS or BA degree, and/or at least five years of experience in working with children. Eight or nine of the staff members have residential experience working with children. Staff include teachers, social workers, a psychiatrist and recreational specialists.

(b)(6), (b)(7)c explained that TIA/Chicago Connections is trying to establish a model INS juvenile facility, based largely on a boarding school setting. TIA tries to establish an environment where the children feel nourished. Children can wear street clothes and physical contact is allowed. A goal is to reduce the child's desire to flee. There have only been seven run-aways during the facility's six years of operation. Family reunification is a primary goal of the program.

Comments & Recommendations: UNHCR was impressed with the caring staff and open atmosphere of the TIA/ICC facility. Of all of the children's facilities visited by UNHCR this past year, the TIA / ICC facility best achieved a home-like setting for the children detained there. The experience and training required of its staff better ensures that the

special needs of separated children seeking asylum will be met. If the INS must resort to the detention of children, UNHCR encourages it to use TIA/ICC as a model facility.

International Standards Implicated: CRC, Articles 3(1) ("in all actions concerning children,... the best interests of the child shall be the primary consideration") and 37(b) (detention of refugee children should be used only as a last resort and for shortest appropriate time); Declaration on the Rights of the Child, Principle 6 (children should grow up in an atmosphere of affection and of moral and material security); UNHCR Detention Guidelines, Guideline 6 (unaccompanied minors should not be detained as a general rule; if detained, it should not be in prison-like conditions); UNHCR Children's Guidelines, Guidelines 7.6 and 7.7 (same); UN Rules for Protection of Juveniles, Rule 36 (right to wear own clothing), Rule 81 (detention personnel should be qualified and include sufficient number of specialists, such as educators, vocational instructors, social workers, psychologists and psychiatrists), and Rule 85 (detention personnel should receive necessary training to carry out responsibilities, in particular training on child psychology and international standards and norms of human rights and the rights of the child).

Interpretation: Among the 42 staff members, the facility has 21 different languages available to it. These include Spanish, Chinese, Tamil and Urdu. Staff members often provide interpretation to the children detained there. TIA/ICC also has access to telephonic interpretation through the Heartland Alliance. (b)(6), (b)(7)c stated that she uses TIA/ICC staff to translate when necessary and generally has not used telephonic interpretation. The same appears to be true for the medical staff at the facility. To UNHCR's knowledge, the facility's orientation manual is available only in English.

Comments & Recommendations: UNHCR appreciates the presence of staff members who are conversant in a variety of languages and their assistance in meeting translation needs. The ability to communicate with staff and INS officials in a child's own language can be critical for a separated child seeking asylum. UNHCR recommends that TIA/ICC use telephonic interpreter services, rather than its own staff, to interpret during medical examinations given that the information conveyed may be of a private nature. UNHCR would appreciate clarification about whether the facility's orientation manual is available in languages other than English. If unavailable, UNHCR recommends that it be translated into the relevant languages at the facility.

International Standards Implicated: UN Rules for Protection of Juveniles, para 6 (juveniles not fluent in language of detention personnel shall have right to interpreter services, in particular during medical examinations and disciplinary proceedings) and Rule 24 (detained juveniles should be provided copy of rules of facility and written description of rights and obligations in language they can understand; if illiterate, information should be conveyed in a manner ensuring full comprehension).

Religious Services: We did not have the opportunity to inquire in any detail about access for children to religious services. It is UNHCR's understanding that children can pray if they wish, but it is unclear if they have regular access to religious leaders or

organized religious services if there are a sufficient number of children sharing the same faith.

Comments & Recommendations: UNHCR would appreciate further information about access to religious leaders and/or services for children at the TIA/ICC facility. If not done so already, UNHCR would recommend that TIA staff offer access to such services to children residing at the facility if there are a sufficient number of children sharing the same faith.

International Standards Implicated: CRC, Art. 14 (right of children to freedom of religion; freedom to manifest religion or beliefs); UN Rules for Protection of Juveniles, Rule 48 (right to satisfy needs of religious and spiritual life; if sufficient number of juveniles of a given religion, qualified representatives of religion should be appointed or approved to hold regular services and make private pastoral visits).

Transportation: TIA, not INS, transports children for visits, field trips, and court appearances. Children are not shackled when transported, unless there has been a behavioural problem and INS considers it necessary.

Comments & Recommendations: UNHCR supports the policy of not shackling children during transport unless absolutely necessary. UNHCR is concerned about the traumatic effect that the use of restraints will have on children, especially on those who may already have suffered past trauma. The ability of TIA and INS to successfully transport children without shackles demonstrates the feasibility of such a policy. UNHCR recommends that this policy be replicated at other children's facilities in the US.

International Standards Implicated: UN Rules for the Protection of Juveniles, Articles 26 (conditions of transport of children should not cause hardship or indignity), 63 and 64 (instruments of restraint should be prohibited except in exceptional cases where all other control methods have been exhausted and failed).

Legal Assistance: Of the 38 children at TIA/ICC during our visit, G-28s (INS attorney representation forms) were filed for 12 of them. TIA/ICC staff noted that if reunification with the family appears probable, *pro bono* attorneys are less likely to represent the child. The Midwest Immigrant and Human Rights Center (MIHRC) provides Know-Your-Rights presentations at the facility and children have access to MIHRC attorneys. MIHRC will either bring translators with them or TIA/ICC staff will translate. The TIA/ICC Orientation Manual explains the children's right of access to legal services and the role of MIHRC in providing legal rights presentations. Three area NGOs that provide legal assistance are also listed. Attorney meetings are conducted off-site at a shelter used to house county children.

Comments & Recommendations: Legal representation for separated children seeking asylum in the US is critical. UNHCR supports and appreciates the co-operation that exists between the INS, TIA and MIHRC in providing Know-Your-Rights presentations to children at the TIA/ICC facility. UNHCR also recommends the appointment of an

independent guardian or adviser for all unaccompanied minors seeking asylum, so as to ensure that the interests of the child are safeguarded, and that their legal, social, medical and psychological needs are appropriately met during the asylum process.

International Standards Implicated: UNHCR EXCOM Conclusion No. 8 (asylum-seekers to be given necessary facilities for submitting case to authorities); CRC, Art. 37(d) (right of children deprived of their liberty to prompt access to legal and other appropriate assistance); UNHCR Guidelines on Children Seeking Asylum, Guideline 5.7 (guardian or adviser should be appointed by independent organization to ensure that interests of the child are safeguarded) and 8.3 (access should be given to a qualified legal representative); UNHCR Handbook, para. 214 (children asylum-seekers should have, if appropriate, a guardian appointed to promote decisions in their best interests); UNHCR Guidelines on Refugee Children, p. 101 (legal guardian should be appointed).

Food: TIA/ICC has three full-time cooks. A one-week menu was provided, which included a wide variety of breakfast, lunch and dinner meals. Vegetarian alternatives are available at every meal. Cultural diets are accommodated as appropriate - for example, no milk is given to Chinese children due to difficulties with digestion. Allergies and religious restrictions are also honored.

Comments & Recommendations: UNHCR was impressed with the variety and quality of food offered at the TIA/ICC facility. UNHCR appreciates the cultural, religious and medical accommodations that are made for the children as necessary.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(viii) (detained asylum-seekers should receive diet in keeping with religion); UN Rules for the Protection of Juveniles, Rule 37 (detained juveniles shall receive food that is suitably prepared, served at normal meal times, and of an appropriate quality and quantity to satisfy dietetics, hygiene and health, and, as far as possible, religious and cultural requirements).

Medical: There were no nurses or doctors on site during UNHCR's visit. We were informed that a doctor is on call who visits as necessary and who conducts examinations for new arrivals. The TIA/ICC Orientation Manual states that all children will receive a complete medical examination, including vaccinations, within 48 hours of arrival. Telephonic interpretation is generally not used by the medical staff. TIA/ICC staff are often asked to translate when necessary. One female child interviewed by UNHCR stated that that medical service at the facility was generally fine. She also stated, however, that she would have preferred to have had a female doctor conduct a recent gynecological examination that she needed.

Comments & Recommendations: Although there is no medical staff employed on-site at the TIA/ICC facility, it appears that medical assistance is available when needed. The presence of a trained psychiatrist on staff at TIA/ICC is noteworthy given the special mental-health needs of separated children. UNHCR recommends that girls be given the option of seeing a female doctor during medical examinations as appropriate. As stated

earlier, UNHCR also recommends the systematic use of interpretation during medical examinations (to the extent not already done so) unless the child is clearly conversant in, and comfortable speaking, English.

International Standards Implicated: UN Rules for Protection of Juveniles, Rule 6 (juveniles not fluent in language of detention personnel shall have right to interpreter services, in particular during medical examinations), Rule 49 (right to adequate medical care, including dental, ophthalmological and mental health care), and, Rule 81 (detention personnel should be qualified and include sufficient number of specialists, including psychologists and psychiatrists); ECRE Position Paper on Detention, para. 42 (where possible, there should be a choice between male and female doctors).

Chicago O'Hare Airport

On 10 August 2001, (b)(6) and (b)(6) toured the Chicago O'Hare Airport. They were accompanied by (b)(6), (b)(7)c Assistant District Director, Inspections.

Port of Entry Background and Statistics: The Chicago O'Hare Airport inspects about 4.5 million individuals each year (about 16,000/day), making it the fourth busiest port of entry in the US. The main non-US nationalities seeking entry are generally Chinese, Sri Lankan and Albanian. About 40-50 individuals each day are referred to secondary inspection.

Secondary Inspection Area: The inspections section of the airport is divided into two areas (A side and B side), with the secondary inspection area between the two. The secondary inspection area includes a large supervisors' room, a waiting room with benches, individual interview rooms, two holding cells (male and female), a kitchen area, bathrooms, and a photograph area with filing cabinets and other paperwork. The waiting area was well-lit and air-conditioned. At the time of UNHCR's visit, there were handcuffs attached to one of the benches. (b)(6), (b)(7)c stated that handcuffing/shackling was not common practice and that restraints would only be used if the situation were quite serious. He noted that the handcuffs had been used that day to restrain two men who had tried to escape. Individuals can use the bathrooms in the secondary inspection area as needed. They usually are not fed while in the waiting area, but will be fed in the holding area during processing if necessary.

Comments & Recommendations: UNHCR appreciates the fact that the secondary inspection waiting room was relatively comfortable (i.e, well-lit and air-conditioned) and that asylum applicants were able to use the bathroom and get water as needed. We also appreciate the statements of (b)(6), (b)(7)c that the use of restraints is rare, especially given reports that their use is not uncommon at other ports of entry. UNHCR objects to the use of handcuffs or shackles on asylum-seekers unless absolutely necessary.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 10(ix) (right of access to basic necessities, including basic toiletries); UN Standard Minimum Rules, Rules 33 (instruments of restraint never to be applied as punishment, only to be used as precaution during transfers, on medical grounds, or, by order of director, if other methods of control fail, to prevent prisoner from injuring himself, others or damaging property) and 34 (restraints not to be used for any longer than is strictly necessary); Report of the Special Rapporteur on Violence against Women, p. 14 (practice of shackling asylum-seekers at ports of entry or during interviews at INS detention centres violates international standards and constitutes cruel and unusual practices).

Staffing: The male-female ratio of INS secondary inspections officers varies on any given day. The INS will bring a female officer into an interview if necessary, or will sometimes have two male officers present during the interview of a female applicant.

Comments & Recommendations: Given that female asylum applicants may have experienced particular sexual trauma and may be unwilling to speak freely to male INS officers, UNHCR recommends that female asylum applicants be interviewed by INS officers of the same gender whenever possible. If this is not possible, UNHCR recommends that the interviewing officer ask female asylum applicants if they feel comfortable speaking with him or if they would prefer to speak to a woman. While the presence of two male officers may allay concerns of possible coercion by INS officers or of misunderstandings between an inspections officer and an asylum applicant, it may also intimidate female asylum-seekers who have been subject to trauma and prevent them from expressing a fear of return to their home countries.

International Standards Implicated: UNHCR Guidelines on the Protection of Refugee Women, Guideline 75 (recommending that women be employed as interviewers and interpreters given particular trauma that female applicants may have experienced).

Secondary Inspection Interviews: The secondary inspection interview rooms are private rooms with a desk, computer and chairs. Doors to the interview room are kept open during the interview, both to make the applicant feel at ease and for security reasons. (b)(6), (b)(7)c stated that INS officers try not to prolong the interviews. Inadmissibility is determined first, which may take some time. If the applicant expresses a fear of persecution, (b)(6), (b)(7)c stated that the INS officers try and "stick to the four questions" on the INS form regarding asylum.

We observed part of a secondary inspection interview being conducted with a young Chinese female asylum applicant. During the interview, the officer used telephonic interpretation. The interpreter had apparently been used previously and supplemented much of the inspector's initial instructions to the asylum-seeker about the process and her rights and responsibilities. The interpreter also did not appear to interpret verbatim the asylum-seeker's responses. We also noted that after the asylum applicant indicated a fear of persecution in China, the inspections officer continued to ask questions about the nature of her fear, inquiring about whether she had been arrested and how many times.

Comments & Recommendations: UNHCR appreciates INS efforts to ensure that asylum applicants are interviewed in the least intimidating environment possible and with an adequate degree of privacy. The use of individual interview rooms and the practice of keeping interview room doors slightly ajar are positive aspects of INS operations at the Chicago O'Hare Airport.

UNHCR is concerned, however, that during the secondary inspection interview that we observed the interpreter embellished greatly on the inspection officer's instructions to the asylum applicant about her rights and responsibilities. Interpreters are not trained in US immigration procedures and should not be the source of information for those placed in removal proceedings. UNHCR recommends that the INS ensure that interpreters translate only the information conveyed by the INS officer or the asylum applicant so as to avoid any misunderstanding or the provision of inaccurate information.

UNHCR is also concerned that during this interview the inspections officer asked additional questions about the applicant's asylum claim even after she had expressed a fear of returning to China. Asylum-seekers may be confused, anxious and tired at the time of their arrival at a port of entry and may be unable to provide full or accurate information about their asylum claim. UNHCR recommends that INS inspections officer not ask additional questions about an underlying asylum claim once a fear of persecution is expressed so as to avoid any misunderstandings about the asylum claim that may be improperly used against the applicant later in his/her proceedings.

International Standards Implicated: UNHCR Training Module, Interviewing Refugee Applicants, p. 7 (interpreter should translate everything that is said and should not summarize or embellish information conveyed), pp. 7-8 (need to provide interview setting that encourages communication, including comfortable and private physical environment), and pp. 29-34 (explaining barriers to communication during a refugee interview); UNHCR Training Module, Interpreting in a Refugee Context, pp. 33 and 37 (interpreter should faithfully translate all information conveyed).

Holding areas: There are two holding areas in the secondary inspection area, one for men and one for women. Each holding area has a plastic couch, four beds (two bunk-beds) and a bathroom/shower area. While INS tries not to keep individuals in the holding areas for more than 12 hours, people have remained there for longer periods. According to (b)(6), (b)(7)c area jails often will not have enough bed-space to accommodate INS detainees, requiring an overnight stay at the airport. Detainees are rarely held at the airport, however, for more than one night. Children are not held in a holding area unless there is no-one else there, or unless they are with their mother. In such cases, the holding area's doors are not locked. There are no "lock-ups" in the secondary inspection area. If INS has a individual in custody who has been convicted of a crime, and feels it needs to use an individual holding cell, it would use a US Customs Agency lock-up.

Comments & Recommendations: UNHCR encourages INS to find alternatives to the detention of asylum-seekers, and especially children, at its port-of-entry. To the extent that detention is used, however, UNHCR appreciates the efforts of INS to ensure that the airport holding area is as comfortable as possible, that bathroom facilities are easily accessible and that beds are available when needed. UNHCR also appreciates the special efforts that are made to ensure that children are not detained with adults and, if they are detained, that they are held with a parent, if accompanied, and that the door is not locked.

International Standards Implicated: UNHCR Detention Guidelines, Guideline 2 (as a general principle, asylum-seekers should not be detained); UNHCR Detention Guidelines, Guideline 6 (detained unaccompanied minors, including those detained at airports, should not be held under prison-like conditions); UN Rules for the Protection of Children, Rule 29 (juveniles should be separated from adults, unless they are members of the same family); UNHCR Detention Guidelines, Guideline 10(ix) (right of access to basic necessities, including basic toiletries).

Interpretation: (b)(6), (b)(7)c stated that airline interpreters have been used to interpret for INS primary inspections officers given that the questions are very basic, but that INS tries not to use airline interpreters during secondary inspection. For secondary inspection interviews, INS will use either Language Services, AT&T or INS' own New York service. Telephonic interpretation is mostly used in credible fear cases. As noted below, UNHCR observed an incident during its tour of the airport where an airline interpreter did provide interpretation during secondary inspection in the case of a Colombian national who feared return to her country.

Comments & Recommendations: UNHCR recommends that the INS not use airline interpreters in secondary inspection. Some countries continue to operate national airlines, such that asylum applicants may be either afraid to present their claim at the airport if an airline staff person is asked to interpret or may place themselves, or others, in danger if the claim is presented. Aside from these immediate security concerns, airline staff may also not be sufficiently trained to act as interpreters, and are also not subject to any confidentiality agreements with the INS.

International Standards Implicated: UNHCR Training Module, Interviewing Refugee Applicants, pp. 6-7 (interpreter must be neutral and objective and must maintain confidentiality of information conveyed); UNHCR Training Module, Interpreting in a Refugee Context, p. 37 (same).

Incident Observed at Chicago O'Hare Airport: At the end of the tour, as the UNHCR representatives were preparing to leave, they noticed a group of officials surrounding a young woman in the secondary inspection waiting area who was crying. They observed an INS inspections officer, flanked by two US Customs officials and an airline stewardess (who was interpreting), telling the woman that she would not be granted asylum, that she would be detained in the US if she sought asylum, and that she should return to Colombia. The UNHCR representatives asked (b)(6), (b)(7)c about the matter and expressed their concerns about how the case was being handled. (b)(6), (b)(7)c (b)(6), (b)(7)c then instructed his officer to give the woman a secondary inspection interview. The UNHCR representatives spoke with the woman privately after the incident, who informed them that she had fled Colombia after receiving a number of anonymous threats over the phone, the last of which gave her a deadline for leaving the country. UNHCR has provided a letter to INS detailing the incident and has asked for a review of the matter and further training of INS personnel.

Comments & Recommendations: We do not restate here our concerns about the above incident. A copy of the letter we sent to INS about this incident on 28 August 2001 is attached and details what occurred and UNHCR's concerns. It is our understanding that this matter is currently under review by the INS Office of Internal Audit. UNHCR would appreciate receiving a copy of the OIA's findings in this matter. UNHCR recommends that all secondary inspections officers at the Chicago O'Hare Airport receive supplemental training on the expedited removal process and that INS Headquarters make efforts to ensure that the proper expedited removal procedures be followed. UNHCR

considers additional training necessary given that the INS officer involved in the incident was reportedly a supervisory inspections officer.

International Standards Implicated: 1967 Protocol to the 1951 Refugee Convention, Art. 33(1) (protection from non-refoulement); UDHR, Art. 14(1) (right to seek asylum); UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum-seekers to be given the necessary facilities to submit his/her claim to the authorities); UNHCR Training Module, Interviewing Refugee Applicants, pp. 6-7 (interpreter must be neutral and objective and must maintain confidentiality of information conveyed); UNHCR Training Module, Interviewing Refugee Applicants, pp. 7-8 (need to provide interview setting that encourages communication; interviewer should never use a threatening or harsh tone with an applicant).

Follow-Up Meetings/Visits
Chicago O'Hare International Airport,
Broadview Service Staging Area & McHenry County Jail

A. Chicago O'Hare International Airport

On 19 September 2003, (b)(6) Senior Protection Officer, and (b)(6) Protection Officer, met with several officials from the US Customs and Border Protection (CBP) to discuss changes in CBP operations at the Chicago O'Hare International Airport since UNHCR's visit in 2001. Participants from CBP included (b)(6), (b)(7)c Director, Field Operations, Mid-America (former US Customs); (b)(6), (b)(7)c Assistant Port Director (former US Customs); (b)(6), (b)(7)c (b)(6), (b)(7)c Interim Port Director; and (b)(6), (b)(7)c Assistant District Director - Inspections.

1. *Referrals for Credible Fear Interviews:* During UNHCR's 2001 visit to Chicago O'Hare, it observed an incident of the Immigration and Naturalization Service (INS), Customs and airline officials seeking to dissuade a young, female Colombian asylum-seeker from seeking asylum in the US. UNHCR staff members overheard the INS Supervisory Inspections Officer telling the woman that she would not "win asylum," that she would be detained in the US, and that it would be better for her to go back to her country. The INS Inspector later told UNHCR that his comments were based on his (incorrect) belief that the woman was not eligible for asylum because it was not the Colombian government that was threatening her.¹ As a result of this incident, UNHCR recommended that secondary inspections officers at Chicago O'Hare receive supplemental training on the expedited removal process and that INS Headquarters ensure that the proper expedited removal procedures be followed.

During its recent visit, CBP officials informed UNHCR that additional training has been provided regarding the proper referral of individuals in secondary inspection for credible fear interviews. Officers have been instructed to refer to an Asylum Officer any individual who indicates an expression of fear and that it is not their decision whether the individual should be allowed to apply for asylum. They are instructed that if there is an affirmative answer to any of the four fear-related questions, the person must be referred and that those individuals who, in fact, are not seeking asylum may be able to withdraw their request for admission at the credible fear interview stage.

UNHCR Comments and Recommendations: UNHCR appreciates that further training on the expedited removal process has been provided. UNHCR recently completed a six-month study of the expedited removal process, in coordination with DHS. A copy of UNHCR's report is attached. UNHCR encourages local CBP officials to review the report and recommendations, especially with regard to the attitude and actions of many inspections officials.

2. *Interpreters:* During UNHCR's last visit to Chicago O'Hare, it was informed that INS did use airline interpreters to assist primary inspections officers, but tried not to use them during secondary inspection. For secondary inspection interviews, INS was using either Language Services, AT&T or its own New York service. During UNHCR's recent visit, CBP officials informed UNHCR that CBP Headquarters had recently issued new guidelines on the use of interpreters and

¹ See Letter from Guenet Guebre-Christos, Regional Representative, UNHCR Regional Office for the United States and the Caribbean to Joseph Greene, Acting Deputy Executive Associate Commissioner, Enforcement, Field Operations, Immigration and Naturalization Service (Aug. 28, 2001).

that these guidelines had been distributed to inspectors at Chicago O'Hare. It did not appear that any training had been done in conjunction with the guidelines.

UNHCR Comments and Recommendations: In its recent report on the US expedited removal process, UNHCR noted the consistently poor quality of interpreters used during secondary inspection interviews at the ports-of-entry it studied. The recent guidelines on interpreters issued by CBP Headquarters could help to address a number of the concerns raised by UNHCR. To ensure that the interpreter guidelines are effective, UNHCR recommends that training on the use of interpreters be provided in conjunction with the guidelines and that systems be established at the Headquarters level to ensure that the guidelines are being followed.

B. Broadview Service Staging Area

On 15 September 2003, (b)(6) Senior Protection Officer, and (b)(6) Protection Officer, visited the Broadview Service Staging Area in Broadview, Illinois, approximately 30 miles outside of Chicago, Illinois. The visit included a meeting with (b)(6), (b)(7)c Interim Field Office Director for the Chicago district, a tour of the facility led by Chief Detention Officer, (b)(6), (b)(7)c and (b)(6), (b)(7)c Detention Operation Supervisor, and individual interviews with three asylum-seekers being processed through the Broadview facility that day. (b)(6), (b)(7)c accompanied UNHCR during the tour of the facility.

1. **Facility Background:** The facility continues to be a staging facility designed to hold ICE detainees for less than 24 hours. There were some changes to the layout of the building since UNHCR's last visit, but none that significantly affect the detainees.

2. **Telephones:** UNHCR expressed concern in its last report that detainees were unable to call UNHCR either collect or through UNHCR's toll-free number from Broadview. Since our last visit, Broadview has installed a prepaid phone system, through which detainees can call consulates, the Immigration Court, non-profit legal service providers and UNCHR free of charge. UNHCR tried the phone system and was able to make a call to the UNHCR office in Washington, DC.

Comments & Recommendations: UNHCR appreciates the installation of the prepaid phone system at Broadview which should facilitate communication between detained asylum-seekers and legal services providers, the immigration court and UNHCR.

3. **Orientation:** At the time of UNHCR's 2001 visit, INS was providing all new detainees with a copy of legal orientation materials prepared by a local NGO, the Midwest Immigrant and Human Rights Center (MIHRC), when they were initially processed at Broadview. INS was not providing individuals, however, with any type of orientation about the detention process at Broadview, nor was it showing the Florence Project's Know Your Rights video.

During its recent visit, CBP officials informed UNHCR that it no longer provides MIHRC's legal orientation materials and still does not provide a general orientation to detainees regarding the detention process or inform detainees about why they were being transported to Broadview. One of the detainees UNHCR interviewed had no idea why he had been brought to Broadview that day. ICE also stated that under its remodeling plans for Broadview, television sets would be placed in the holding rooms with built-in VCRs that would allow ICE to show the Florence videos.

Comments & Recommendations: UNHCR is disappointed that MIHRC's legal orientation materials are no longer provided to detainees at Broadview and recommends that this practice be resumed. UNHCR would appreciate more information about why this practice was discontinued. UNHCR continues to recommend that ICE explain the detention process to asylum-seekers when they are processed through Broadview, including the reasons for any transports to and from the facilities where they are being held. UNHCR also continues to recommend that the Florence Know Your Rights videos be shown to detained asylum-seekers at the Broadview facility.

4. **Visitation:** The family and lawyer visitation area consists of three booths with plexi-glass windows dividing the detainee and the outside visitor. Visitors talk to detainees by telephone; there are no slots for passing documents back and forth. During its last visit, UNHCR was informed that lawyers could request face-to-face interviews and that the female pod would be available for that purpose (female detainees would be moved if necessary). According to INS officials, however, such requests were few. During its recent visit, UNHCR was informed that only about two lawyers per week meet with their clients at Broadview. ICE officials stated that lawyers rarely request private contact meetings but that such requests could be accommodated. Local *pro bono* attorneys, however, told UNHCR that there was no mechanism for having face-to-face interviews with clients at Broadview.

Comments and Recommendations: UNHCR considers private contact visits between asylum-seekers and their lawyers to be extremely important. The underlying refugee claims of many asylum-seekers may involve sensitive or traumatic events that are difficult to discuss. Private contact facilitates communication between attorneys and their clients so that the asylum-seeker's refugee claim can be clearly established and presented to the immigration court. UNHCR recommends that ICE inform immigration attorneys, perhaps at one of its regular meetings with local legal services providers, that private contact visits between attorneys and their clients can be accommodated at Broadview.

C. McHenry County Jail

On 15 September 2003, (b)(6) Senior Protection Officer, and (b)(6) Protection Officer, visited the McHenry County Jail in Woodstock, Illinois. The Chief of Corrections at the jail is still (b)(6), (b)(7)c. This visit included a meeting with Lieutenant (b)(6), (b)(7)c McHenry County Sheriff's Police Department; individual interviews with detained asylum-seekers; and a tour of the construction of a new floor that will be dedicated to ICE detainees. (b)(6), (b)(7)c Interim Field Office Director for the Chicago district, accompanied UNHCR during the tour of the facility.

1. **Background:** McHenry continues to house males and females, but is mainly used by ICE to hold its female detainees. The jail is still planning a major build-out of its third floor to house ICE detainees and hopes to complete construction by the middle of next year.

2. **Co-mingling:** McHenry is no longer co-mingling ICE detainees with county inmates, even if the number of ICE detainees is small. Females ICE detainees are held in an old section of the jail (formerly a work release area) that has a capacity for 34 beds.

Comments & Recommendations: UNHCR appreciates McHenry's efforts to separate asylum-seekers from its county inmates.

3. Recreation: McHenry continues to lack outdoor recreation. As during UNHCR's last visit in 2001, McHenry continues to use an indoor room with "fresh air panels" that condition the air before it enters the room. UNHCR was informed that ICE Headquarters considers this type of arrangement to satisfy ICE's outdoor recreation standard. Detained asylum-seekers continue to complain about their lack of access to outdoor recreation.

During UNHCR's last visit to McHenry, there was no established recreation schedule. Recreation times were determined by the officers on duty. It appears that there is still no set recreation schedule, that recreation is made available only upon request and that it is limited to 30 minutes per day. Detained asylum-seekers complained that they are not provided access to the indoor recreation room with the fresh air panels.

Comments & Recommendations: UNHCR continues to object to the use of a detention facility that lacks outdoor recreation. Access to the outdoors can be critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement. In UNHCR's view, an indoor recreation room with fresh-air panels does not constitute outdoor recreation, and UNHCR is concerned that ICE might have concluded otherwise. UNHCR also continues to be concerned about the lack of a regular schedule for recreation and to recommend that one be established.

4. Medical: During its last visit, jail officials informed UNHCR that ICE detainees were not subject to the jail's requirement that inmates make a co-payment for any appointments with medical staff. Although medical staff stated that ICE detainees "knew" that they were not subject to this requirement, it was not stated in the jail handbook and ICE detainees were required to sign a form at the time of their medical appointments indicating that they would make the co-payment. The nurse stated that the jail was trying not to make the difference in treatment between county inmates and INS detainees obvious for fear that it would upset the county inmates. When asked about the co-payment policy, asylum-seekers expressed confusion to UNHCR. It is UNHCR's understanding that ICE detainees are still not subject to medical co-payments, but that they are still not formally informed of this fact.

UNHCR also learned during its last visit that detainees on suicide watch whom the jail feared would hang themselves with their clothes were placed naked in a suicide watch room with nothing but a mattress to sleep on. Jail officials informed UNHCR during its recent visit that the jail now has a "suicide gown," which is provided to detainees when such a risk exists.

Comments & Recommendations: UNHCR continues to be concerned that indigent asylum-seekers might refrain from seeking medical care due to a mistaken belief that they must pay for this care. UNHCR continues to recommend that McHenry inform ICE detainees that they are not subject to any medical co-payment requirement. Concerns of jail officials about distinguishing between ICE detainees and county inmates should be minimized by the fact that the two populations are no longer co-mingled. UNHCR appreciates the use of a suicide smock for those who are at risk of self-harm, which should help to maintain the dignity of those on suicide watch.

5. Telephone Access: During UNHCR's last visit, UNHCR representatives were unable to make a collect telephone call to UNHCR's Office in Washington, DC. McHenry has since installed

the DHS pre-programmed phone system, which allows detainees to call consulates, NGO legal service providers and UNHCR at no charge.

Comments & Recommendations: Given that the high costs of calls from detention facilities often impedes access to legal assistance, UNHCR appreciates the installation of the prepaid phone system at McHenry.

6. Law Library: In its previous report, UNHCR noted that McHenry's law library had very few immigration law resources. Detainees were also only allowed one hour per week in the library upon request. The jail now has a computer with immigration research materials loaded on it, and detainees can access the computer upon request for up to 5 hours a week. At the time of UNHCR's last visit, McHenry had just received VCRs and TVs to show the Florence Project Know Your Rights videos, but had not yet developed a plan for when and where to show it. The jail is still not showing the videos and lacks the Spanish version of the video.

Comments & Recommendations: UNHCR appreciates that ICE has expanded the immigration law resources available to detainees at McHenry and has increased the number of hours that detainees can access them. UNHCR is concerned, however, that it may be difficult for detainees to utilize the computer resources and recommends, if not already done, that McHenry allow more than one detainee use the computer at a time so that detainees with more computer and research experience can assist those who are less capable. UNHCR continues to recommend that the written asylum and detention self-help materials produced by the Florence Project, available in both English and Spanish, be made available at the library and that the Florence videos be shown. Legal orientation materials, both written and video, provide critical information to detained asylum-seekers about immigration removal proceedings, their rights in these proceedings, and the forms of relief that may be available to them. These materials can also reduce anxiety among detained asylum-seekers, some of whom may have been victims of torture or trauma.

Kenosha County Detention Center

On 16 September 2003, Senior Protection Officer (b)(6) and Protection Officer (b)(6) (b)(6) visited the Kenosha County Detention Center (KCDC) in Kenosha, Wisconsin. The jail is situated about an hour from Chicago, Illinois. The visit included a tour of the facility conducted by Captain (b)(6), (b)(7)c and Lieutenant (b)(6), (b)(7)c. UNHCR was accompanied by (b)(6), (b)(7)c ICE Supervisory Deportation Officer. This report is based on information received from ICE and jail officials, the observations of the UNHCR representatives during their tour of the facility, and information received from detainees, both during individual interviews at the facility and from written correspondence received at the UNHCR Office in Washington, DC.

Facility Background: Kenosha County has two facilities: the older downtown facility (“Kenosha Downtown”) and Kenosha County Detention Center (“KCDC”), which was built in 1998. KCDC has 447 beds, and Kenosha Downtown has 264 beds. ICE detainees used to be held at Kenosha Downtown, but now are held there only for purposes of intake (which apparently can take a few days) or for medical emergencies due to the availability of 24 hour medical care. About 100 beds are available at KCDC for ICE detainees, both male and female. There are 10,000 square feet of current storage space that KCDC would like to use for 100 more beds with indoor and outdoor recreation. The building’s infrastructure could handle up to 1400 beds total. At the time of UNHCR’s visit, there were 97 ICE detainees at KCDC. Kenosha County has been housing ICE detainees for about a year and a half, but has increased the number of ICE detainees over the previous 4 months. UNHCR did not have the opportunity to visit the downtown facility, but received consistent complaints from asylum-seekers about conditions there.

Comments & Recommendations: UNHCR is concerned about the complaints from asylum-seekers about conditions at the downtown facility. UNHCR recommends that ICE review the conditions there to ensure that they are adequate.

Classification and Housing: Most of the living areas at KCDC are dorm-like settings with direct supervision. The facility also has 65 lockdown beds. Kenosha County classifies its inmates from 1 to 8, with 1 and 2 being the most serious offenders. Those inmates classified from 3 to 8 are less serious offenders and can be housed in a dorm setting. ICE classifies its individuals from 1 to 3, with those classified as 3's having the most serious criminal history. Under ICE policy, 1's and 2's can be housed together and 2's and 3's may be housed together. KCDC has two dorms set aside for ICE male detainees in order to accommodate this policy.

Co-mingling: Due to insufficient numbers of ICE detainees that can be housed together at any given time, ICE detainees are co-mingled with county inmates. However, the majority of dorm residents are usually ICE detainees. If the number of ICE detainees were increased, KCDC would be willing to consider dedicating entire dorms to ICE detainees. Since there is only one dorm for female detainees, this would require transferring some of its county female inmates to the downtown facility.

Comments & Recommendations: UNHCR objects to the commingling of asylum-seekers with persons serving their criminal sentences. UNHCR recommends that the jail make all efforts to ensure that the two populations are separated in all aspects of its operations.

Housing Units: The male housing units are open areas with a guard in the middle of the dorm. The female housing unit contains two separate living areas of between 24 to 30 beds each. One side is used for county females on work-release and the other for other females, including county and ICE females. There is a guard room separating the two living areas, staffed by a female officer. Both male and female housing areas have bunkbeds with lockers at the end of the bed, adequate shower and toilet facilities, and appeared clean. They had tables and chairs in a common living area and an adequate number of pay phones. At the time of UNHCR's visit the female housing section with ICE detainees was overcrowded with four "stack-a-bunks," which Captain (b)(6), (b)(7) said was temporary due to the recent arrival of female ICE detainees the previous month. Several female detainees complained that their housing area was too cold and that they did not have enough bedding for the temperature.

Comments & Recommendations: UNHCR recommends that detainee complaints of temperature be addressed if they have not already and that ICE ensure that detainees are not subject to overcrowding.

Legal Resources/Law Library: There are small multi-purpose rooms adjoining each housing unit, each with a computer loaded with immigration law resources. Only one inmate can be in the room at a time. When asked about detainees who may not know how to use computers, jail staff indicated that jail officers could assist them. There are two sets of law books that circulate, but they do not cover immigration law topics. Jail staff was not aware of the Florence Project's Know Your Rights videos and the accompanying booklets, but indicated that they would be willing to show the videos and provide access to the booklets if provided with copies. The jail currently has the ability to show the Florence videos to detainees during intake, and hopes to rewire the television sets in the dorms next year. If the rewiring is completed, it could show the videos in the dorms.

Comments & Recommendations: UNHCR appreciates the availability of immigration law resources to detainees at KCDC. Many detained asylum-seekers are unrepresented and must prepare their cases by themselves, making access to legal materials critical. UNHCR is concerned, however, that some detained asylum-seekers may not know how to use the computer resources. As is done at other facilities, UNHCR recommends that KCDC allow more than one detainee to use the computer at a time so that detainees with more computer and research experience can assist those who are less capable. UNHCR further recommends that the asylum and detention release self-help materials produced by the Florence Project on immigrant and refugee rights, available in both English and Spanish, be made available to detainees housed at KCDC. UNHCR recommends that the Florence videos also be shown. Legal orientation materials, both written and video, provide critical information to detained asylum-seekers about immigration removal proceedings, their rights in these proceedings, and the forms of relief that may be available to them. These materials can also reduce anxiety among detained asylum-seekers, some of whom may have been victims of torture or trauma.

Intake/Interpretation: Jail officials indicated that they use the interpreter line at the downtown facility during intake if needed but generally do not use telephonic interpretation at KCDC. They also explained that they have a Chinese receptionist at the downtown facility and have used her to read the rules to Chinese detainees. There is one rulebook for both the downtown and KCDC facilities, which is in English and Spanish. The jail also has videos in English and Spanish that discuss the rules of the facility. Captain (b)(6), (b)(7) stated that ICE detainees who did not speak English

generally would not be disciplined for rule violations if they were simply misunderstandings due to language.

UNHCR Comments and Recommendations: UNHCR appreciates KCDC's efforts to overcome language barriers, but is concerned, that telephonic interpretation is not consistently used to communicate essential matters. UNHCR recommends that additional efforts be made in this regard. UNHCR also recommends that any rules or orientation materials be translated into the most common languages (other than Spanish) spoken among the population residing there.

Strip-Searches/Restraints: Detainees and inmates are strip-searched at KCDC after initial processing downtown. If a detainee has left the building, he is strip-searched upon return. Detainees are strip-searched after attorney contact visits. Lawyers are given the option of contact or non-contact visits. Several detainees complained about being shackled while transported. One detainee said she was placed in belly chains, which was humiliating. Another detainee complained that he was strip-searched after getting out of segregation.

Comments and Recommendations: UNHCR appreciates the fact that KCDC allows for non-contact visits so as to avoid strip searches after attorney visits. UNHCR, however, is concerned that asylum seekers (especially former victims of trauma and other vulnerable populations) may suffer undue trauma when going to Broadview to attend Immigration Court hearings knowing that they will have to undergo strip-searches upon their return. We recommend that this policy be modified, especially for those detainees with no criminal background, and that strip-searches of asylum-seekers be avoided whenever possible. UNHCR objects to the use of handcuffs or shackles on asylum-seekers unless absolutely necessary.

Medical:

KCDC has at least one nurse on duty sixteen hours a day. There is 24-hour medical coverage at the downtown jail. A physician is available by phone 24 hours a day, seven days a week and is on-site once a week for three hours. UNHCR notes the following issues regarding medical care:

- (1) **Interpretation:** Medical staff stated that they have never used a telephonic interpreter, although they know the option is available.
- (2) **Mental Health Care:** There is a group called "Crisis Intervention" in the community that is available 24 hours a day, 7 days a week. There is a social worker, psychologist and psychiatrist available through this service who are contracted through the county. The jail also intends to have a psychology intern on-site 40 hours a week for a one year period.
- (3) **Medical Intake:** Under Wisconsin state law, medical staff at detention facilities must prepare a medical transfer form before a detainee is released to another facility. KCDC follows this practice. This requirement does not extend, however, to detainees arriving from county jails in Illinois (such as Tri-County and McHenry), which has made it difficult for medical staff to quickly assess detainee medical needs upon arrival at the facility.
- (4) **Co-Payments:** The jail charges \$5 to see the nurse or doctor and \$3 for medications. These charges apply both to inmates and ICE detainees, although ICE detainees are not subject to the co-pays until they have been at the facility for more than 30 days. Jail officials explained that because DHS piggybacks on a Marshall's contract, it is subject to the same contractual obligations as the Marshals, which has agreed to this co-pay.

Comments & Recommendations: Many asylum-seekers are victims of trauma or violence. Their detention may result in or aggravate pre-existing mental health conditions. The availability of mental health care through Crisis Intervention and a full-time psychology intern is a positive aspect of KCDC's operations. UNHCR is concerned, however, that asylum-seekers may not receive adequate medical care due to language barriers. UNHCR recommends that interpretation be made available, either in-person or telephonic, during any medical screenings or consultations. UNHCR is also concerned that indigent asylum-seekers might refrain from seeking medical care due to the co-pay expenses charged for their care. UNHCR encourages ICE to change its contract with KCDC to cease such charges. UNHCR appreciates the fact that KCDC provides a medical summary upon release of detainees consistent with Wisconsin law. Given that Illinois law does not have the same requirement, consistent with ICE's detention standards, UNHCR recommends that ICE require all facilities to provide copies of medical records to discharged detainees or medical staff at subsequent facilities.

Attorney Visitation/ Access: Some *pro bono* attorneys complained to UNHCR that they were not able to communicate with their clients detained at KCDC by fax. According to Captain (b)(6), (b)(7)c this issue had not arisen, but he expressed a willingness to facilitate such communications when necessary. Jail officials also indicated a willingness to accommodate reasonable attorney requests for extra visitation time with their clients.

Comments & Recommendations: Given the distance of KCDC from Chicago where most *pro bono* immigration attorneys practice, UNHCR appreciates KCDC's willingness to accommodate reasonable attorney requests for extra visitation time or for communication with clients by fax. UNHCR recommends that KCDC communicate to local *pro bono* attorneys its willingness to be flexible on these matters.

Programs: UNHCR staff met with KCDC's Programs Manager, (b)(6), (b)(7)c, who stated that ICE detainees may participate in any of the programs offered at KCDC. There is no requirement that detainees be at the jail for a certain length of time. The most comprehensive program offered at KCDC is the Living Free program, which accepts up to 32 males for 12 weeks and 8 females for 8 weeks. The program involves six hours of classes a day in such subjects such as drug and alcohol abuse, domestic violence, sexual abuse, anger management and wellness. No ICE detainees have enrolled in the program yet, but (b)(6), (b)(7)c expects that more will do so now that they are likely to be at the facility for a longer period of time given ICE's recent reduction in transfers. KCDC has been offering GED classes for men, and just started GED classes for women. Some ICE detainees have enrolled in the GED classes. KCDC is considering ESL classes, for which there is a high demand. The jail does not offer AA or other substance abuse programs aside from the Living Free Program.

Comments & Recommendations: UNHCR appreciates the breadth of educational and rehabilitative programs available to detained asylum-seekers at KCDC. Such programs enable detained asylum-seekers to receive necessary counseling and provides them access to constructive activities during potentially prolonged detention. ESL classes are especially helpful for detained asylum-seekers who do not speak English. Given that many ICE detainees may be at KCDC for an extended period, these classes also increase detainee equities for possible release from custody. UNHCR encourages the continuation and expansion of these programs.

Religious Practices: There are a number of bible study groups available throughout the week, one of which caters to Spanish-speakers, but is for men only. There are religious services on Saturdays. (b)(6), (b)(7)c indicated that it is easy to provide Korans for Muslim detainees but he has had difficulty getting an Imam to come to the jail. An Imam at a major Islamic Center in Milwaukee has advised the jail on religious practices. A volunteer named (b)(6) of the Kenosha County Jail Chaplaincy has recently begun spending time at the jail. UNHCR had the opportunity to meet with her. She has begun collecting bibles in various different languages as they are needed and is creating a library so that she can meet detainees' needs. (b)(6) also helps detainees complete request forms for information on their immigration cases and does spiritual counseling if requested. She also brings in newspapers in Chinese.

Comments & Recommendations: UNHCR is encouraged that some ICE detainees have access to religious services and would encourage that such services be extended to Spanish-speaking women as needed and to all faiths. UNHCR recommends that detainees be provided access to religious leaders and services as appropriate given the religious profile and demand of the INS detainee population. Numerous detainees praised the work of (b)(6) in meeting detainee needs, which is commendable.

Recreation: The outdoor recreation area is adjacent to the male housing areas. It is a fairly large, concrete courtyard with an open roof and wires covering it. Detainees can jog, walk or sit in the courtyard. There is also an indoor recreation area like a gymnasium with basketball hoops, volleyball net and games. Male detainees have access to the recreation area twice a day for about an hour each time out. Female detainees currently do not have access to outdoor recreation because of its location and concerns that male inmates can view the women through the windows. Several female detainees who had been detained at KCDC for several months complained about the lack of outdoor recreation.

Comments & Recommendations: UNHCR objects to the use of a jail that does not offer outdoor recreation to all detained asylum-seekers, be they male or female. Under international standards, detainees are entitled to at least one hour of suitable exercise in open air daily weather permitting. Access to the outdoors can be especially critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement. UNHCR recommends that accommodations be made to ensure that female detainees have access to at least one hour of outdoor recreation a day.

Telephones: Pre-paid calls are now available at KCDC to consulates, the Immigration Courts, NGO legal service providers, and UNHCR. UNHCR successfully made a pre-paid call to the UNHCR Office in Washington, DC. All other calls must be made collect. According to jail staff, phone cards are not available because the jail needs the revenue stream from collect calls.

Comments & Recommendations: UNHCR appreciates that the ICE pre-paid telephone service to consulates, Immigration Courts, NGOs and UNHCR is available at KCDC. This should better enable detained asylum-seekers to find legal representation. With regard to other calls, UNHCR does not believe that detained asylum-seekers should be required to pay unusually high rates to maintain KCDC's operating budget. High rates may prevent asylum-seekers from communicating with private attorneys who cannot afford to accept collect calls, as well as to contact family

members. *UNHCR recommends that ICE ensure the lowest telephone rates possible. As is done at the Tri-County Detention Center, UNHCR also recommends that calling cards be made available to detainees.*

Food: Religious diets are allowed at KCDC. Medical diets are restricted to diabetic diets. The facility is generally a no-pork facility, and there is notice given when an item contains pork. Detainees are provided 3,200 calories per day. Two detainees complained about the lack of a low-cholesterol diet and expressed concerns about their health.

Comments & Recommendations: *UNHCR appreciates the number of calories provided to detainees at KCDC. UNHCR encourages KCDC to provide medical diets other than diabetic diets, as is done at other detention facilities.*

Segregation/Discipline: Isolation cells are used for purposes of administrative and disciplinary segregation. If a person is in segregation, s/he has access to a day area twice a day for one hour, which has a table with benches. Those who are disciplined are usually in segregation for three to six days. For minor sanctions, KCDC has a “time out room,” which is an isolation room for use under 24 hours. An inmate can also be “bunked” or lose privileges for minor violations.

Detainees complained that minor rule violations unnecessarily lead to segregation and that segregation was particularly difficult or traumatic. One detainee stated that she had been imprisoned in her home country and had been placed in isolation as a form of torture. As a result, being placed in segregation at KCDC was very traumatic for her.

Comments and recommendations: *UNHCR is concerned that KCDC may unnecessarily place asylum-seekers in segregation for minor rule infractions. UNHCR supports the use of disciplinary measures other than the use of segregation cells for detained asylum-seekers in ICE custody. Segregation cells can be especially traumatic for victims of trauma or other vulnerable groups.*

Ozaukee County Justice Center

On 17 September 2003, Senior Protection Officer (b)(6) and Protection Officer (b)(6) (b)(6) visited the Ozaukee County Justice Center ("Ozaukee") in Port Washington, Wisconsin. Sergeant (b)(6), (b)(7)c provided a tour of the facility. UNHCR was accompanied by (b)(6), (b)(7)c Detention and Removal Officer with ICE. This report is based on information received from ICE and jail officials; the observations of the UNHCR representatives during their tour of the facility; and information received from detainees, both during individual interviews at the facility and from written correspondence received at the UNHCR Office in Washington, DC.

Facility Background: Ozaukee is approximately 90 minutes from Chicago, IL. The facility has a capacity of 260 inmates and generally holds about 65-80 ICE detainees. At the time of UNHCR's visit, there were 67 ICE detainees. The jail has been holding ICE detainees for two to three years. ICE pays the jail \$60/day for each detainee.

General: UNHCR has received generally negative comments about Ozaukee. When compared to other jails in the area, detainees have usually placed Ozaukee near the bottom of the list in terms of conditions. Treatment by Ozaukee guards is a common complaint. Detainees have commented that guards do not respect detainees, are rude and unprofessional, often shout at detainees, and are unresponsive to detainee requests, especially to those who do not speak English.

Comments & Recommendations: *UNHCR is concerned about allegations of rude and disrespectful treatment of detainee by Ozaukee staff. Such behavior should not be tolerated by either the jail or by ICE. At a minimum, UNHCR recommends that training be provided to jail staff on working with immigrant and refugee populations. UNHCR is willing to assist with such training to the extent resources allow. UNHCR also recommends that any allegations of unprofessional behavior be fully investigated and, if borne out, that staff be disciplined accordingly.*

Law Library: The "law library" was a small room with a video-teleconferencing machine and a desk with about five books on Wisconsin criminal law. There were no materials on immigration law. Jail officials stated that they are waiting for ICE to provide a computer system, which will be made available to all inmates at the facility. Given the large number of inmates at Ozaukee, jail officials do not expect that they will be able to guarantee a minimum amount of computer time for people to conduct legal research. Access will depend on demand. One detainee has complained to UNHCR about the lack of legal materials at Ozaukee. He noted that he had regularly used available legal materials at a previous jail where he had been held, but has been unable to do so at Ozaukee.

Comments & Recommendations: *UNHCR is extremely concerned that the jail lacks a law library with any immigration materials. Many detained asylum-seekers are unrepresented and must prepare their cases by themselves. Access to immigration law materials for these detainees is critical. UNHCR urges ICE to promptly ensure that basic immigration legal materials are made available to its detainees. Given that ICE is now putting these materials on a computerized system, UNHCR urges that, like other facilities, Ozaukee allow more than one detainee to use the computer at a time so that detainees with more computer and research experience can assist those who are less capable.*

Legal Orientations and Materials: One of the dayrooms visited by UNHCR had legal orientation materials produced by the Midwest Immigrant and Human Rights Center (MIHRC) posted on the

dayroom bulletin board. Jail officials stated that these materials are generally held in the control room rather than in the dayroom to prevent them from being destroyed or stolen. According to jail officials, detainees know that the materials are there, but have to ask an officer for them. One detainee stated that he had asked a guard for MIHRC materials, but the guard said that he would “have to look for it.” The detainee never received them. MIHRC also does legal orientations at the jail two to four times a year. The jail has the ability to show detainees the videos on immigrants’ rights produced by the Florence Project if they were to receive them from ICE.

Comments & Recommendations: UNHCR is concerned about the availability of legal orientation materials at Ozaukee. UNHCR did not see any notices informing ICE detainees that these materials were available. The experience of the asylum-seeker noted above in trying to obtain a copy of the materials further suggests that they are not easily available. UNHCR recommends that detainees be informed of the availability of these materials and that they actually be made available when requested. UNHCR appreciates the willingness of Ozaukee staff to show the Florence videos to detainees in the housing areas and urges ICE to provide a copy of the videos as soon as possible. Legal orientation materials, both written and video, provide critical information to detained asylum-seekers about immigration removal proceedings, their rights in these proceedings, and the forms of relief that may be available to them. These materials can also reduce anxiety among detained asylum-seekers, some of whom may have been victims of torture or trauma.

Medical: Ozaukee has one nurse on duty from 8 a.m.-10 p.m., and a physician on-call 24 hours/day and on-site once a week as necessary. Booking officers do initial medical screening during intake. Nurses will review the intakes every day. Nurses will not see new detainees unless they arrive with medication, something is indicated during initial screening, or the detainee requests to see a nurse. UNHCR noted the following problems/issues in medical treatment:

- (1) **Distribution of Medication:** Due to limited medical staff, nurses do not dispense medication to detainees. This is done by guards.
- (2) **Pre-Existing Medical Conditions:** According to the jail rulebook, Ozaukee will not treat pre-existing medical conditions unless the detainee is in need of urgent treatment.
- (3) **Dental Treatment:** Due to disagreements between the Ozaukee's dental provider and ICE regarding ICE's payment of bills, there is currently no dental care available at Ozaukee.
- (4) **Co-Payments:** The jail rulebook states that detainees will be charged a co-pay for nurse and doctor consultations. According to medical staff, ICE detainees do not have to make a co-payment, but this information is not posted anywhere.
- (5) **Delays in PHS Approval:** Medical staff complained that PHS is often slow in authorizing treatments/medication, delaying the delivery of treatment to ICE detainees.
- (6) **Medical Records:** Detainees often arrive at Ozaukee without medical records or health transfer forms. Many state that they were on medications at the prior facility, but do not know which ones. Medical staff must then try and obtain records from the prior facility.

Comments & Recommendations: UNHCR has significant concerns about the adequacy of medical care at Ozaukee. UNHCR recommends that: (1) medical staff distribute medications to detainees to ensure proper distribution and to answer any questions that might arise; (2) pre-existing conditions be treated if medically necessary and not only if urgent treatment is required; (3) detainees be assured access to adequate dental care; (4) detained asylum-seekers not be required to make a co-payment to receive medical treatment and that they be informed of such; (5) PHS promptly approve

medical treatments and allow local medical staff to provide any treatment deemed necessary in the absence of prompt approval; (6) consistent with ICE's detention standards, UNHCR recommends that ICE require all facilities to provide copies of medical records to discharged detainees or medical staff at subsequent facilities.

Outdoor Recreation: The outdoor recreation area at Ozaukee is a relatively small, enclosed concrete courtyard. Detainees can jog, walk or sit in the courtyard. The number of hours per week of outdoor recreation was unclear and appeared to be based on where the detainee was housed. One housing unit had notices indicating that detainees were entitled to three hours of recreation a week, while another unit had notices indicating that they were entitled to five hours a week. Detainees who were interviewed gave similarly inconsistent reports regarding the amount of recreation they received, with reports ranging anywhere from two to five hours a week. UNHCR was also informed that only a limited number of detainees can go outside at a time (about 10 people), such that access to outdoor recreation was on a "first come, first-serve" basis.

Comments & Recommendations: UNHCR is concerned about the availability of outdoor recreation at Ozaukee. Under international standards, detainees are entitled to at least one hour of suitable exercise in open air daily weather permitting. This does not appear to be the case at Ozaukee. UNHCR recommends that the facility adopt an established and consistent recreation schedule. Access to the outdoors can be especially critical for asylum-seekers and refugees who may have experienced personal trauma and have particular difficulty with extended periods of confinement.

Telephones: Only collect calls can be made from Ozaukee, at a cost of \$5.31 for the first minute and 89 cents every minute thereafter (*i.e.*, almost \$20 for a 15 minute call). UNHCR was able to place a collect call to the UNHCR office in Washington, DC. Ozaukee does not offer calling cards, and toll-free numbers cannot be used. The ICE pre-paid telephone system to consulates, legal service providers, and the Immigration Courts, had not yet been installed. While most of the detainees with whom UNHCR spoke did not have difficulties placing collect calls, all complained about the high cost of calls, which prevented some from calling family members and others on a regular basis.

Comments & Recommendations: UNHCR urges ICE to install its pre-paid telephone service at Ozaukee. This service will better enable detained asylum-seekers to find legal representation and maintain contact with the immigration courts and their NGO attorneys. With regard to collect calls, UNHCR recommends that ICE ensure the lowest telephone rates possible. High rates may prevent asylum-seekers from communicating with private attorneys who cannot afford to accept collect calls, as well as with family members. As is done at the Tri-County Detention Center, UNHCR recommends that calling cards be made available to detainees.

Programs: While a variety of programs are available to county inmates at Ozaukee, it appears that ICE detainees are ineligible for most of them. Programs available to county inmates include GED classes, drug and alcoholic counseling, computer courses, bible study and "inmate labor" (work opportunities). ICE detainees are not eligible for GED classes, inmate labor, or bible study (unless they know they will be at the jail for at least a month). The officer in charge of programs did not know if ICE detainees were eligible for drug and alcohol counseling classes. Detainees complained to UNHCR about the lack of available programs, especially as compared to other facilities.

Comments & Recommendations: UNHCR is concerned about the limited availability of rehabilitation and educational classes for ICE detainees at Ozaukee. UNHCR recommends that available classes be extended to ICE detainees whenever possible. In addition to the valuable instruction and treatment provided, these courses allow ICE detainees to demonstrate rehabilitation for purposes of release from custody. They also provide asylum-seekers with meaningful activity during their detention.

Interpretation / Language: The jail rule book is available in both English and Spanish. It appeared that officers at Ozaukee rarely use telephonic interpretation to communicate with detainees who do not speak English. Non-English speaking detainees have noted their inability to communicate with staff. One person said that language was the most difficult issue at the jail. He said that he had never been given the opportunity to speak through an interpreter while there, including during his medical intake. At one point, he was given a vaccine, but he is not even sure what it was.

Comments & Recommendations: UNHCR is concerned that asylum-seekers with language barriers may lack orientation as to jail rules and privileges and may not receive proper medical treatment. UNHCR recommends that interpreters be used when needed to facilitate essential communication between jail staff and ICE detainees. UNHCR recommends that ICE take any necessary measures to ensure that Ozaukee has easy access to interpreters (including ICE's telephonic interpreter services) and that the use of interpreters be encouraged whenever necessary. UNHCR further recommends that the jail's rulebook be translated into the languages of its detainee population. Efforts should begin with translations into the most common languages spoken among the ICE detainee population.

Food: Religious and medical diets are honored at Ozaukee. Medical diets include diabetic, low-salt and low cholesterol. Ozaukee is a no-pork facility, which is not advertised to detainees but will be explained if asked.

Comments & Recommendations: UNHCR appreciates that a number of medical and religious diets are provided at Ozaukee. UNHCR recommends that detainees be informed that the jail is a no-pork facility at the time of admission.

Strip-Searches: Detainees are strip-searched at the time of booking at Ozaukee. If a detainee leaves the building, he is strip-searched upon return. Detainees are not strip-searched, however, after attorney contact visits, although they are patted down.

Comments & Recommendations: UNHCR appreciates the fact that Ozaukee does not subject detainees to strip-searches after attorney contact visits. UNHCR, however, is concerned that asylum-seekers (especially former victims of trauma and other vulnerable populations) may suffer undue trauma when going to Broadview to attend Immigration Court hearings knowing that they will have to undergo strip-searches upon their return. We recommend that this policy be modified, especially for those detainees with no criminal background, and that strip-searches of asylum-seekers be avoided whenever possible.

Living Areas: Five of the 14 living areas have ICE detainees, which appeared relatively clean during the tour. The notice boards in each dorm, however, were not enclosed in Plexiglas, so notices were ripped and defaced. Detainees commented that the dayrooms are generally clean and that

temperature and artificial light levels were fine. Detainees did complain, however, about the lack of natural light in the dayrooms.

Comments & Recommendations: UNHCR recommends that notice boards be enclosed in plexiglass, as is regular practice at other facilities, to ensure that important notices regarding detainee rights and jail rules not be defaced or destroyed.

Dodge County Detention Facility

On 18 September 2003, Senior Protection Officer (b)(6) and Protection Officer (b)(6) (b)(6) visited the Dodge County Detention Facility in Juneau, Wisconsin. (b)(6), (b)(7)c Corrections Supervisor, provided a tour of the facility. UNHCR was accompanied by an ICE Detention and Removal Officer. This report is based on information received from ICE and jail officials; the observations of the UNHCR representatives during their tour of the facility; and information received from detainees, both during individual interviews at the facility and from written correspondence received at the UNHCR Office in Washington, DC.

Facility Background: Dodge County Jail is located about 150 miles from Chicago, Illinois, and has been open for about three years. The jail has 358 beds, 269 of which are contract beds. ICE has a contract for about 200 beds at the facility. At the time of UNHCR's visit, there were 195 ICE detainees held at Dodge. Dodge has three types of living areas: Dormitory, Indirect Supervision, and Direct Supervision. At the time of our visit, five pods were holding ICE detainees: two indirect supervision, two direct supervision, and one dormitory.

General Comments: Detainee comments about Dodge were mixed. Positive comments included that the jail is "good", "nice and clean" and "better organized" (with more available services) than others. Negative comments included that the jail is "very harsh", with particular complaints about the classification system and the resulting restrictions on their privileges. Detainees also had mixed comments on their treatment by guards. While one stated that the majority of guards treat detainees with respect, other ICE detainees complained that they were treated poorly and worse than the county inmates.

Classification System: Dodge maintains an extremely complicated classification system. Dodge classification ranges from Phase 1 (highest risk) to Phase 3 (lowest risk). ICE classification ranges from Level 1 (lowest risk) to Level 3 (highest risk). Dodge will do its own assessments of each detainee's risk, but will respect ICE classifications to the extent that it will follow ICE rules on commingling of levels. As a result, each detainee is assigned both a Dodge "Phase" and an ICE "Level."²

Intake and Initial Classification: For the first 72 hours after intake, ICE detainees are categorized as either "Intake High" (high security risk) or "Intake Low" (low security risk). Classification is done through a personal interview with a Program Officer. It is based primarily on criminal history, prior disciplinary history at Dodge, and escape history. ICE detainees are generally placed in "Intake

² At the time of our visit, Dodge had the following number of ICE detainees by classification:

Phase 1 Level 1: 0 ICE detainees
Phase 1 Level 2: 2 ICE detainees
Phase 1 Level 3: 11 ICE detainees (highest risk per Dodge and ICE)

Phase 2 Level 1: 1 ICE detainees
Phase 2 Level 2: 9 ICE detainees
Phase 2 Level 3: 6 ICE detainees

Phase 3 Level 1: 73 ICE detainees (lowest risk per Dodge and ICE)
Phase 3 Level 2: 42 ICE detainees
Phase 3 Level 3: 51 ICE detainees

High" because the jail does not have information about their underlying criminal convictions. Due to time constraints, telephonic interpretation is generally not used during the classification interview. All detainees can earn their way to Phase 3 within 28 days.

Classification Privileges: Detainee privileges correlate to their classification phase. The privileges primarily impacted include: (a) amount of time allowed out of one's cell in the dayroom, (b) access to active recreation, and (c) access to programs. (a) Detainees classified as either "Phase 1" or "Intake High" have access to the dayroom only 6 1/2 hours a day (*i.e.*, confined to their cells 17 1/2 hours/day); "Phase 2" and "Intake Low" detainees have about 10 1/2 hours in the dayroom (*i.e.*, confined to cells 13 1/2 hours/day); "Phase 3" detainees can use the dayroom at all times when the facility is not on scheduled lockdown. (b) No "active" recreation is allowed for "Phase 1"/"Intake High" detainees (except for calisthenics in the dayroom); "Phase 2" / "Intake Low" detainees receive "three active recreation periods" per week; and "Phase 3" detainees "may sign up for active recreation during open dayroom hours when the pod schedule permits." (c) "Phase 1"/"Intake High" detainees cannot participate in any programming activities; "Phase 2" / "Intake Low" and "Phase 3" detainees do have access to programming activities.

Re-Classification: A detainee's classification level can be changed based on (a) successful completion of designated amount of time as Phase 1 or Phase 2; (b) a finding that the detainee violated a jail rule; (c) addition, deletion, or change in assigned programming; (d) administrative segregation or special management needs; (e) addition or deletion to the detainee's current charges; (f) per request of Shift Commander; and (g) review per inmate request at discretion of Program Specialist.

Detainee Comments: Some detainees had strong complaints about the classification system. Complaints included the fact that all ICE detainees must go through Phase 1 when they first enter, which is essentially 17-hour lockdown, and that any rule violation can result in re-classification back to Phase 1 with the accompanying privileges restrictions. Detainees must then wait a number of weeks before they achieve Phase 3 status once again.

Comments & Observations: *UNHCR has significant concerns about Dodge's classification system, primarily the limited rights that Phase 1/Intake High and Phase 2/Intake Low detainees are afforded. These detainees have limited access to indoor recreation and programs (including the law library) and limited time outside of their individual cells. Many asylum-seekers may be classified as Intake High at the time of admission at Dodge and would have to wait almost a month before being afforded full rights at the facility. Minor rule infractions can result (and apparently have resulted) in a person's reclassification as Phase 1, again subjecting them to a 28 day transition period. The restricted rights afforded Phase 1/Intake High and Phase 2/Intake Low detainees fall below international standards. UNHCR recommends that asylum-seekers not be subject to the facility's classification system.*

Medical: Medical services at Dodge are provided by a private company, Health Services Limited. A nurse is on duty for sixteen hours a day, with a supervisor on call twenty-four hours a day. A doctor comes to the jail every two weeks. Booking officers conduct a medical intake, which nurses will later review. If the intake suggests a problem, the nurse will assess it and, if necessary, pull the detainee aside during the next medication delivery. Nurses distribute medication, not guards.

Detainees consistently complained about medical treatment at Dodge. Issues of concern regarding medical care include the following:

- (1) Mental Health Care: There is no psychologist or psychiatrist on staff. While a mental health professional may make visits to the jail, we were informed that he does so very infrequently (maybe two times a year). UNHCR interviewed one asylum-seeker with a clear mental illness (apparently diagnosed as schizophrenic) who was receiving a variety of psychotropic medications, despite the fact that there is no psychiatrist on staff or on call to regulate it. The asylum-seeker complained that he was not able to see a psychiatrist. Another detainee, who is on an anti-depressant, had had access to mental health therapy at a previous facility but had not received any counseling at Dodge despite repeated requests.
- (2) Co-Payments: The jail rulebook states that detainees will be assessed \$5 for a nurse visit and \$10 for a doctor's visit, but that "contract inmates" will be charged \$2.50 and that federal inmates will only be charged after 30 days at the jail. Under these rules, therefore, an ICE detainee must pay \$2.50 for every medical visit after being held at Dodge for more than 30 days. There was much confusion, however, among detained asylum-seekers about the co-payment system, with some saying they were charged \$10 to see the doctor and \$5 to see a nurse.
- (3) Scope of Treatment: Two detainees stated that, prior to their transfer to Dodge, the medical staff at their previous detention facilities told them that they needed operations for their conditions. One detainee had a hernia, the other had angina. Once at Dodge, however, the medical staff decided that these surgeries were not necessary. The patient with the hernia stated that he is still in pain.
- (4) Medical Records: It is not uncommon for detainees transferred from jails outside of Wisconsin to arrive with no medical records. At times it can take days to confirm a detainee's medication, which is extremely frustrating for medical staff and delays medical treatment at Dodge.
- (5) Interpretation: Medical staff stated that they generally use other detainees to interpret during medical exams/visits if the patient does not speak English. They generally do not ask the patient if he would prefer not to have another detainee translate. When another detainee is not available, they will use the AT&T interpreter line. They use the interpreter line about once every two months. One detainee with a medical problem who does not speak English said that he had asked to use an interpreter to speak with medical staff, but had been told that one was not needed.

Comments & Observations: UNHCR has significant concerns about the adequacy of medical care at Dodge, particularly for those suffering from mental illnesses. While the mere detention in a county jail of an asylum-seeker suffering from schizophrenia is of concern, the absence of a psychiatrist on staff or on call to monitor his medication is quite disturbing. With regard to medical care at Dodge in general, UNHCR recommends that: (1) persons with serious mental illnesses not be detained at Dodge or any local county jail; (2) a mental health professional be placed on staff or on call at Dodge to ensure proper treatment of any ICE detainees with mental health problems; (3) detained asylum-seekers not be required to make a co-payment to receive medical treatment and that they be informed of such; (4) consistency of care be ensured for detainees who are transferred from one facility to another; if one facility determines that certain medical treatment is necessary, the recommended treatment should be provided at the new facility or the detainee should be allowed to receive a second, outside opinion on the diagnosis and recommended treatment; (5) consistent with ICE's detention standards, UNHCR recommends that ICE require all facilities to provide copies of medical records to discharged detainees or medical staff at subsequent facilities; (6) detainees have

access to interpretation, either in-person or telephonic, during any medical screenings or consultations; medical staff obtain patient consent before asking another detainee to interpret during a medical appointment.

Outdoor Recreation: There is no outdoor recreation at Dodge. One detainee said that he had not been outside for nearly six months. While there is a small outdoor space at the jail, only inmate labor can use it during their 15 minute work breaks. Each grouping of dorms has a carpeted indoor recreation area, which detainees can access depending on their classification level. ("Phase 1"/"Intake High" detainees have no access; "Phase 2" / "Intake Low" detainees get "three active recreation periods" per week; "Phase 3" detainees may have access, dayroom schedule permitting, during open dayroom hours.) No more than 6 detainees can be in the recreation area at one time.

Comments & Observations: UNHCR objects to the use of a jail that does not offer any outdoor recreation. Access to the outdoors can be especially critical for asylum-seekers and refugees who may have experienced personal trauma and have particular difficulty with extended periods of confinement. Under international standards, detainees are entitled to at least one hour of suitable exercise in open air daily weather permitting. UNHCR is also concerned that access to indoor recreation may be denied based on a person's classification level. If weather does not permit outdoor recreation, indoor recreation should be made available to detainees as an alternative.

Programs: Dodge offers a number of programs to both county inmate and ICE detainees. These include AA, GED, ESL and computer classes. There is no drug counseling available. Dodge also offers an "inmate labor" program to Phase 3 detainees, which provides a small amount of financial compensation for certain services. ICE detainees are eligible for all work, except kitchen work. Available work includes laundry, dayroom services (*i.e.*, cleaning), meals service, library, tutoring (e.g., GED, ESL, law library) and interpretation. Workers also get a 15 minute outdoor "break" on the days that they work. UNHCR interviewed two detainees who had jobs at the jail. One worked in the dayroom, and the other worked as an interpreter and law library tutor for other detainees.

Comments & Observations: UNHCR appreciates the breadth of educational and rehabilitative programs available to detained asylum-seekers at Dodge, as well as their ability to participate in inmate labor programs. Such programs enable detained asylum-seekers to receive necessary counseling and provides them access to constructive activities during potentially prolonged detention. ESL classes are especially helpful for detained asylum-seekers who do not speak English, as are inmate labor programs which allow detainees to assist others through interpreter services and tutoring. Given that many ICE detainees may be at Dodge for an extended period, these classes also increase detainee equities for possible release from custody.

Library: Each housing area has a library and law library located in an adjacent carpeted, multi-purpose room. Books in the general library include bibles, self-help books (AA) and fiction. Immigration legal materials are available on computer; most multi-purpose rooms have one computer. According to the jail rulebook, eligibility to use the law library is based upon one's classification status. If person is not eligible to use the library because of his status, he can request Programs staff to bring him a copy of the materials that he wants to review. There are no set hours to use the library, rather detainees must request use. Dodge limits the number of detainees who can use the library at one time to three to five people. There are detainees who work as tutors for inmate labor and can assist detainees with the computer and research. Most detainees interviewed had

positive comments about the law library, with one detainee commenting that computer access at Dodge was better than at other jails.

Comments & Observations: UNHCR appreciates that detained asylum-seekers have access to legal materials on the computer and that library tutors are available to assist those who are not computer literate or do not speak English easily. Many detained asylum-seekers are unrepresented and must prepare their cases by themselves. Access to immigration law materials for these detainees is critical. UNHCR also recommends that the asylum and detention release self-help materials produced by the Florence Project on immigrant and refugee rights, available in both English and Spanish, be made available to detainees housed at Ozaukee.

Telephones: Collect calls are possible from Dodge, but calling cards cannot be used. Telephone rates are \$4.25 for the initial connection and then 8 cents to 38 cents for an "Intralata call" (up to \$10 for a 15-minute call) and 89 cents to 94 cents for an "Outside Lata" call (up to \$20 for a 15-minute call). Calls are limited to 15 minutes. Jail officials stated that Dodge is getting a new telephone provider that will allow for the use of calling cards. The ICE pre-paid telephone service to consulates, UNHCR, Immigration Courts, and NGOs was operational. The directions for use, however, were confusing and required all four members of the tour, including jail staff (all educated, English-speakers) some time to successfully place a call to the UNHCR office in Washington, DC. While detainees appeared to appreciate the ability to make free calls to service providers and consulates, all complained about the high cost of collect calls and the unavailability of calling cards.

Comments & Recommendations: UNHCR appreciates that the ICE pre-paid telephone service to consulates, Immigration Courts, NGOs and UNHCR is available at Dodge. This is a positive step which will better enable detained asylum-seekers to find legal representation. UNHCR recommends, however, that the operating instructions be provided in a more understandable format and in a variety of languages. With regard to collect calls, UNHCR recommends that ICE ensure the lowest telephone rates possible. High rates may prevent asylum-seekers from communicating with private attorneys who cannot afford to accept collect calls, as well as with family members. As is done at the Tri-County Detention Center, UNHCR recommends that calling cards be made available to detainees.

Segregation: Dodge has both administrative and disciplinary segregation. Detainees can be held in disciplinary segregation for up to 10 days. Those in disciplinary segregation can have books and magazines, but do not have access to the law library. If a detainee needs specific legal materials, the Programs Officers will print it. There is no guaranteed one-hour out of the cell, although they will be allowed to take a shower or make a call if necessary. Some detainees complained that guards placed people in disciplinary segregation for minor infractions, sometimes as a result of misunderstandings.

UNHCR is also aware of two detainees with possible mental health problems who were placed in disciplinary segregation. One person said that he had been put "in the hole" for 18 days due to behavioral problems, which he attributed to lack of attention to his mental condition. He stated that he had had no disciplinary incidents at his previous detention facilities. Another detainee stated that he had been in segregation for over four months, although it is unclear how much of this time was in administrative or disciplinary segregation.

Comments & Observations: UNHCR is concerned that Dodge may unnecessarily place asylum-seekers in segregation for minor rule infractions and subject them to restricted rights once released from segregation due to a re-classification of their risk level. UNHCR is also concerned that persons with mental health issues may be subject to segregation for behavioral problems that arise from their psychological condition. Segregation cells can be especially traumatic for victims of trauma or other vulnerable groups. UNHCR supports the use of disciplinary measures other than the use of segregation cells for detained asylum-seekers in ICE custody.

Legal Orientations: Jail officials stated that they have the ability to show the Florence legal orientation video to detainees in the housing areas and are willing to do so if a copy of the video is provided.

Comments & Observations: UNHCR appreciates the willingness of Dodge staff to show the Florence videos to detainees in the housing areas and urges ICE to provide copies of the videos as soon as possible. Legal orientation materials, both written and video, provide critical information to detained asylum-seekers about immigration removal proceedings, their rights in these proceedings, and the forms of relief that may be available to them. These materials can also reduce anxiety among detained asylum-seekers, some of whom may have been victims of torture or trauma.

Food / Kitchen: Most detainees complained about both the quality and amount of food at Dodge, with one person stating that the food at Dodge was the worst of all of the jails where he had been detained. Dodge contracts with Aramark for food services. Detainees are provided 2,400-2,800 calories/day. Fresh fruit is only allowed for Huber inmates because of concerns of detainees hoarding fruit and making fermented drinks. Fresh juice is available. Diabetic, vegetarian, and religious diets are available. An altercation between a detainee and jail guards occurred during UNHCR's visit, apparently due to detainee frustration over the food.

Comments & Observations: UNHCR is concerned about the number of complaints received about the quality and quantity of food at Dodge. UNHCR recommends that ICE investigate these complaints further and, if borne out, either improve the food being provided by Aramark or require Dodge to change its food service provider. UNHCR also encourages Dodge to provide medical diets other than diabetic diets, as is done at the Ozaukee facility.

Religion: Dodge offers non-denominational services on Sunday, as well as Spanish, Catholic, and non-denominational Bible studies. Jail officials stated that they had tried to identify a Muslim religious leader to provide services to Dodge's Muslim detainees, but had been unsuccessful. Muslim detainees are entitled to a prayer towel and have been provided Korans. There has been some conflict at the jail between ICE detainees and jail staff, however, because Dodge does not allow the inmates to pray together in the multi-purpose room due to staffing resources.

Comments & Observations: UNHCR is encouraged that ICE detainees have access to some religious services and appreciates the efforts that have been made to identify a religious leader for its Muslim detainee population. As a general matter, UNHCR recommends that detainees be provided access to religious leaders and services as appropriate based on the religious profile and demand of the INS detainee population. Given the jail's inability to identify a religious leader to meet the needs of the Muslim detainees, UNHCR recommends that it allow Muslim group prayer when requested and that it devote the necessary staff resources to this end.

Training: Jail officials stated that the facility has a "new philosophy" in its management, whereby it tries to "manage" cases rather than "lock them up and forget about them." Before the jail opened, the staff received training on issues such as direct supervision and interpersonal communication. There have only been two staff assaults in three years. To UNHCR's knowledge, jail officers do not receive training on working with refugee and immigrant populations.

Comments & Recommendations: UNHCR appreciates that jail staff have received training on interpersonal communication, which is often critical in settings where jails officials and detainees speak different languages. UNHCR recommends that training also be provided for jail staff on working with immigrant and refugee populations. UNHCR is willing to assist with such training to the extent resources allow.



UNHCR

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24 May 2002

BY HAND DELIVERY

Mr. Ronald Smith
Deputy Executive Associate Commissioner
Enforcement, Field Operations
Immigration & Naturalization Service
425 Eye Street, N.W.
Washington, DC 20536

Re: Report on UNHCR Site Visit to Miami

Dear Mr. Smith:

Please find annexed UNHCR's report informing about the recent visit to Miami's detention facilities, carried out on 18-19 April, 2002.

Thank you in advance for your consideration.

Best regards,

Guenet Guebre-Christos
Regional Representative

Cc: Ms. Renee Harris, Director Office of International Affairs (by first class mail)
Mr. Joe Langois, Director, Asylum Division (by first class mail)

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04 November 1998

Mr. Jeffrey Weiss
Acting Director, International Affairs
Mr. Joseph Langlois
Acting Director, Asylum
US Immigration and Naturalization Service
425 Eye Street, N.W.
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Washington, DC 20526

Re: El Centro Mission (21-25 September 1998) and Issues of Concern

Dear Mr. Weiss and Mr. Langlois:

We wish to thank you and your staff for inviting our Office to observe the initial phases of the expedited removal processing for Chinese nationals apprehended in Operation Red Tied. As you know, in response to your invitation, our staff member, (b)(6), was dispatched to El Centro from the 21st to the 25th of September. As in the past, we are writing to provide you with our observations and comments based on (b)(6) mission. During her stay in El Centro, (b)(6) was able to observe the initial orientation interviews of several of the Chinese nationals, tour the El Centro detention facility, meet with representatives of two NGOs from San Diego and speak to several detainees who had previously written to our Office. As discussed earlier with you by telephone, we were greatly disappointed that during her stay (b)(6) (b)(6) was unable to observe the secondary inspection interviews of the 92 Chinese nationals conducted at the El Centro Service Processing Center. The efforts made by your Office in arranging for (b)(6) mission are very much appreciated.

General Observations

The Asylum Officers conducting the interviews in El Centro, (b)(6), (b)(7)c and (b)(6), (b)(7)c were extremely cooperative, open and accommodating. Unfortunately, however, the Office of Field Operations, with jurisdiction over the inspectors conducting the interviews, and the Officer-in-Charge of the detention facility, were not as accommodating. Despite numerous efforts throughout her mission, beginning with calls to the Asylum Division on the morning of the 22nd of September, (b)(6) was unable to obtain authorization to observe the interviews

conducted by the inspectors at the El Centro detention facility. In her numerous contacts with your office, (b)(6) specifically noted that the secondary interviews would probably be completed by the afternoon of Thursday, the 24th of September, based on the information provided to her by Asylum Officer (b)(6), (b)(7)c and Officer-in-Charge (b)(6), (b)(7)c. The interviews were, in fact, completed on the 24th.

Observations of the Credible Fear Orientation Process

The orientation interviews were conducted in a friendly, non-adversarial and non-threatening manner by the Asylum Officers. They were conducted in a building which housed the Immigration Court, located several miles away from the El Centro detention facility. The following issues were noted by (b)(6)

Consultations - The majority of individuals interviewed by the Asylum Officers complained that they had not had an opportunity to call family members or friends since their arrival in the United States. After approximately four months at sea, they desperately wished to contact family and friends. Although they had U.S. dollars to place calls to China, New York or other locations, the telephones in their dormitory or pod could only be used to make collect calls. The facility has only five telephones from which its 500 detainees can pay for calls and after several days in the facility, the Chinese nationals, despite being in expedited procedures, had not been permitted to use the pay or non-collect call telephones. We note that the Immigration and Nationality Act allows for individuals to "consult with a person or persons of the [individual's] choosing prior to the [credible fear] interview." INA Section 235(b)(1)(B)(iv). The Chinese nationals in El Centro were, unfortunately, precluded from having such consultations due to the lack of pay or non-collect call telephones in the El Centro detention center. The Asylum Officers, as they became aware of this problem, permitted some of the Chinese nationals to place calls to family and friends in the U.S.

Use of Shackles - At times, the Chinese nationals were brought in shackles to the non-detained facility where the orientation interviews were conducted. At other times they were not shackled. The use of shackles appeared to be decided by the individual Detention and Deportation Officers who transported the Chinese nationals to the non-detained facility. On one occasion, two of the Chinese nationals attempted to escape when they were left unshackled along with six others in the public waiting area near an open door, instead of being taken to the holding cell which is located in the non-detained facility. They were quickly recaptured. When asked by an Asylum Officer why he had run away, one of the recaptured individuals replied that he wanted to make a telephone call and had been unable to do so in the facility.

Language of M-444 Form and Video - Several of the Chinese nationals expressed confusion about the Information About Credible Fear Interview Form (Form M-444) and the video explaining the M-444 Form because both were in Mandarin, not Fuzhou, the primary language of most of the Chinese who were interviewed.

Use of Segregation - Almost all of the 92 Chinese nationals in the El Centro detention facility were given the lowest security classification, were issued blue uniforms and were placed in the

same dormitory or pod. One Chinese national interviewed was dressed in a red uniform, indicating the highest security classification. Since his arrival in the El Centro facility he had been kept in segregation, assigned to a small room by himself where he was confined 23 hours per day. He was allowed to be outside 30 minutes in the morning and 30 minutes in the afternoon. He was unable to communicate with the detention officers in the segregation unit. When an Asylum Officer asked the detention personnel why the individual was wearing red, she was told it was because he was "gay." Indeed, on the Form I-867, the individual had admitted that he fled China because he feared harm because of his sexual orientation. The Officer-in-Charge of the facility, after speaking to the Asylum Officer, agreed to release the individual from segregation and allowed him to be housed with the other Chinese nationals. The decision to place the individual in segregation appears to have been decided arbitrarily.

Observations of the Detention Facility

The El Centro Service Processing Center is a 500-bed facility located in a rural, desert setting approximately midway between San Diego, California and Phoenix, Arizona. It was the site of a riot by detainees on two separate occasions earlier this year and one detainee, housed in the medical section of the facility, was on a hunger strike during (b)(6) visit

Classifications - The detainees are classified according to degree of dangerousness. Most of the Chinese nationals were given the lowest, or least dangerous, classification and were held together in the same pod. As noted above, UNHCR is concerned that a Chinese national who indicated he was a homosexual was given the highest classification and subjected to segregation solely on account of his sexual orientation. When the asylum officers and (b)(6) inquired about the reasons for this classification, the Officer in Charge agreed to reclassify this individual and place him in the pod with the other Chinese nationals.

Overcrowding - It was noted that during (b)(6) visit, 92 Chinese nationals were held in a pod designed to hold 72 persons. As a result, the detainees were required to sleep on mattresses on the floor and had more limited access to the 10 showers, 8 toilets and 5 telephones provided in the pod.

Access to UNHCR - In the pod containing the Chinese detainees, the bulletin board contained an 8 1/2" x 11" notice with information regarding UNHCR. The notice was on white paper with blue and red markings and listed UNHCR's toll-free telephone number in Washington, DC, i.e. (888) 272-1913. This notice was not made by UNHCR, although the Officer-in-Charge was under the impression that it had been. As it is not possible to make toll-free calls from the pods, we ask that this notice be removed from the El Centro detention center. We would appreciate the opportunity to consult with you in designing a notice to be displayed in INS detention centers which would list our number, (202) 296-5191, and which would indicate that our Office accepts collect calls.

Access to NGOs - The El Centro facility is located several hours from the nearest non-profit legal service providers. The Catholic Charities attorney, whom (b)(6) was able to meet with during her mission, travels from San Diego to El Centro on a limited basis. We appreciate your

efforts in contacting Casa Cornelia in San Diego to provide assistance and note that Casa Cornelia had agreed to set up a toll-free number for the Chinese detainees. Unfortunately, the detainees were unable to make calls to toll-free numbers from their pod. In addition, during the time of the initial orientation interviews, the toll-free number was not working.

Law Library - The law library is housed in a trailer on the detention center grounds. Detainees complained that they are given limited access to the library and that the legal publications were out of date. At least one of the treatises was last updated in August 1996, before the sweeping immigration changes that resulted with the passage of the Immigration Reform and Immigrant Responsibility Act (IIRAIRA) in September 1996. UNHCR recommends that El Centro, as well as other detention centers, obtain and provide to detainees, self-help materials for non-lawyers, in addition to the other legal materials provided for in the law library. There did not appear to be any such self-help materials in the El Centro law library.

Clothing - One detainee complained that the individuals detained at El Centro are only provided with a change of clothes, including undergarments, twice per week. We note that the INS detention standards require undergarments to be provided daily and that outer garments should be changed more frequently than twice per week in hotter climates, such as El Centro which is located in a desert.

Visiting Hours - One detainee who spoke with (b)(6) complained that visiting hours are too short. Often family members travel long distances, from Los Angeles for example, and are only permitted to visit for 15 minute intervals. We note that the INS detention standards state that visits should be permitted for at least 30 minutes.

Health Care - (b)(6) noted that she had the opportunity to tour, briefly, the medical section of the detention center. She noted that the facility appeared to be well-equipped with the services of a doctor, nurses, psychiatrist and other health care professionals. One of the detainees interviewed, however, complained that he was not receiving adequate medical attention for his kidney problem. He noted in particular that he was not receiving a special diet required for his condition.

We thank you for your consideration of our observations on these matters. We look forward to similar missions in the future. In addition, as previously communicated to you, we hope to meet with you and officials from the Field Operations branch of INS to discuss and formulate a protocol regarding UNHCR's access to secondary inspection.

Sincerely,

(b)(6)

Deputy Regional Representative

cc. Mr. Michael Pearson
INS Executive Associate Commissioner for Field Operations

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International Instruments and Policy Guidance Materials

1. **1967 Protocol to the 1951 Refugee Convention** Protocol relating to the Status of Refugees, *adopted* 31 January 1967, *entered into force* 4 October 1967, 606 U.N.T.S. 267 (1967); Convention relating to the Status of Refugees, *adopted* 28 July 1951, *entered into force* 22 April 1954, 189 U.N.T.S. 137 (1951).
2. **Basic Principles** Basic Principles for the Treatment of Prisoners, *adopted* 14 December 1990, G.A. res. 45/111, annex, U.N. Doc. A/45/49 (1990).
3. **Body of Principles** Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, *adopted* 9 December 1988, G.A. res. 43/173, U.N. Doc. A/RES/43/173 (1988).
4. **ECRE, Position Paper on Detention of Asylum-Seekers** European Committee on Refugees and Exiles, *Position on Detention of Asylum Seekers* (April 1996).
5. **ICCPR** International Covenant on Civil and Political Rights, *adopted* 19 December 1966, *entered into force* 23 March 1976, G.A. res. 2200A (XXI), UN Doc. A/6316 (1966).
6. **Standard Minimum Rules** Standard Minimum Rules for the Treatment of Prisoners, *adopted* 1955, First U.N. Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva (1955), *approved* 31 July 1957, ECOSOC res. 663 C (XXIV) and 13 May 1977, ECOSOC res. 2076 (LXII).
7. **UNHCR Detention Guidelines** UNHCR Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers, Geneva (February 1999).
8. **UNHCR EXCOM Conclusions** Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme.

Relevant International Standards

Access to ICE Officials: Body of Principles, Principle 33 (right to make request or complaint about treatment to appropriate authorities); Standard Minimum Rules, Rule 36 (right to make request or complaint to director of institution or designated officer and to central prison administration or other proper authorities, and right to receive prompt reply); UNHCR Detention Guidelines, Guideline 10(x) (right of access to a complaints mechanism)

Co-mingling: Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from persons imprisoned by reason of a criminal offense); UNHCR Detention Guidelines, Guideline 10(iii) (asylum-seekers should not be co-mingled with convicted criminals); UNHCR EXCOM Conclusion No. 44, para. (f) ("refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as common criminals"); UNHCR EXCOM Conclusion No. 85, para. (ee) (noting concern that asylum-seekers are often held with common criminals); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from those imprisoned for criminal offenses); Body of Principles, Principle 8 (same); ICCPR, Article 10(2)(a) ("accused persons shall, save in exceptional circumstances, be segregated from convicted persons").

Diet: Standard Minimum Rules, Rule 20(1) (right to food at usual hours of nutritional value adequate for health and strength).

Interpretation: UNHCR EXCOM Conclusion No. 8 (asylum-seekers to be given necessary facilities, including interpreter services, to submit claim to authorities); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints to be made available to detainees in different languages); ECRE Position Paper on Detention, paras. 20, 29 (right of asylum-seeker to information on detention in language s/he understands); Standard Minimum Rules, Rule 35 (right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations) and Rule 51(2) (whenever necessary, the services of an interpreter shall be used); Body of Principles, Principle 14 (right of detainee to receive information about his rights in detention in language he understands).

Legal Resources: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to the asylum-seekers' possibilities to pursue their asylum application).

Medical: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers shall have opportunity to receive appropriate medical treatment and psychological counselling); Body of Principles, Principle 24 (medical care shall be offered free of charge); Standard Minimum Rules, Rule 22(1) (services of medical officer with some knowledge of psychiatry should be available) and Rule 22(2) (sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals; if institution has hospital facilities, its resources shall be proper for necessary medical care); UNHCR Detention Guidelines, Guideline 10 (detention conditions should be humane with respect shown for inherent dignity of person); Basic Principles, Principle 1 (same).

Orientation: UNHCR Detention Guidelines, Guideline 5(i)(asylum-seekers should receive prompt, full communication of detention order, reasons for order, rights in connection with order, in language they understand); Body of Principles, Principle 11(2) (detained person shall receive prompt and full communication of detention order and the reasons therefor); Principle 13 (upon detention, information on and explanation of rights and how to avail oneself of rights will be provided); Body of Principles, Principle 14 (entitled to receive information in Principle 11 and 13 through interpreter free of charge).

Programs: UNHCR Detention Guidelines, Guideline 10(vii) (detained asylum-seekers should have opportunity to continue further education or vocational training); ECRE Position Paper on Detention, para. 46 (during prolonged detention, adult education and training should be provided and it should attend to cultural and linguistic needs; it is crucial for detainees' mental health to not be deprived of access to constructive activities during prolonged detention); Basic Principles, Principle 6 (prisoners shall have right to take part in education aimed at full development of human personality).

Recreation: UNHCR Detention Guidelines, Guideline 10(vi) (asylum-seekers should have opportunity for daily indoor and outdoor recreational activities); Standard Minimum Rules, Rule 21(right to at least one hour suitable exercise in open air daily weather permitting).

Religion: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers should have the opportunity to exercise their religion); Standard Minimum Rules, Rule 41 (if institution contains sufficient number of prisoners of same religion, a qualified representative of that religion shall be appointed or approved and made available to hold regular services and pay private pastoral visits) and Rule 42 (as far as practicable, every prisoner shall be allowed to satisfy his religious needs by attending religious services).

Restraints: Standard Minimum Rules, Rules 33 (instruments of restraint never to be applied as punishment, only to be used as precaution during transfers, on medical grounds, or, by order of director, if other methods of control fail, to prevent prisoner from injuring himself, others or damaging property) and 34 (restraints not to be used for any longer than is strictly necessary).

Segregation: Basic Principles, Art. 7 ("efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction on its use, should be undertaken and encouraged."); ECRE Position Paper on Detention, para. 44 (Detained asylum-seekers "should...never be placed in isolation"); UN Human Rights Committee, Gen. Comment 20 (prolonged solitary confinement may amount to cruel, inhuman or degrading treatment or punishment).

Strip-searches: UNHCR Guidelines, Guideline 10 (detention conditions should be humane with respect shown for inherent dignity of person); Basic Principles, Principle 1 (same); Human Rights Committee, Gen. Comment 16, para. 8 (personal and body searches should be conducted "in a manner consistent with the dignity of the person who is being searched"); European Commission on Human Rights, *McFeeley v. United Kingdom*, App. No. 8317/78 (strip searches should be used only in limited circumstances).

Telephone Access: UNHCR EXCOM Conclusion No. 44, para. (g)(detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv)(asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (the means shall be made available for detained asylum-seekers to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate); Body of Principles, Principle 16(2) (detained foreigners have right to communicate by appropriate means with representative of competent organization); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons); ECRE Position Paper on Detention, para. 29 (asylum-seekers should have access to telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counsellors).

Temperature: Standard Minimum Rules, Rule 10 (sleeping conditions shall meet all health requirements, including necessary heating) & Rule 19 (every prisoner should be issued sufficient bedding).

Training: Standard Minimum Rules, Rule 47 (personnel shall receive on-going training to maintain and improve their knowledge and professional capacity); ECRE Position Paper on Detention, para. 51 (staff should receive proper training on asylum matters, causes of refugee movements, relevant cultural factors, and methods of recognizing and responding to stress-related illnesses).

Women Asylum-Seekers: UNHCR Detention Guidelines, Guideline 8 ("Women asylum-seekers should receive the same access to legal and other services, without discrimination as to their gender...").



UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

*Mission
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21 July 2004

Mr. Victor Cerda
Acting Director, Office of Detention and Removal Operations
US Bureau of Immigration and Customs Enforcement
801 Eye Street, NW, Suite 900
Department of Homeland Security
Washington, DC 20536

Re: UNHCR Visits to Louisiana Parish Detention Facilities, 4-7 May 2004

Dear Mr. Cerda;

Please find enclosed the report of the Office of the United Nations High Commissioner for Refugees (UNHCR) on its visit to Louisiana Parish detention facilities during the week of 3 May 2004, during which time representatives from UNHCR's Regional Office in Washington visited the Avoyelles Women's Correctional Center in Cottonport (Cottonport facility), the Orleans Parish Prison Women's Facility in New Orleans (OPP Women's Facility) the Tensas Detention Center in Waterproof and Tangipahoa Parish Prison in Amite (Amite Facility). We wish to especially thank (b)(6), (b)(7)c Chief, Detention Compliance Branch, US Immigration and Customs Enforcement, for facilitating the visit of (b)(6) and (b)(6) UNHCR Senior Protection Officers.

This visit was, in part, a follow-up to UNHCR's visit to Louisiana in April 2001 to assess what changes, if any, had occurred since then. A full report containing our current observations, comments and recommendations is attached for your review. For those facilities that UNHCR visited in August 2001, our comments are limited to issues of previous concern and new issues that have arisen in the interim. We have provided a more comprehensive report for the OPP Women's Facility and the Tensas Detention Center, given that this was UNHCR's first visit to these facilities.

As you are aware, UNHCR had exceptional concerns over conditions observed by UNHCR while conducting follow up visits to the Cottonport and Amite facilities. In a letter of 20 May 2004, UNHCR provided a summary list of its concerns and recommendations that DHS cease using those facilities. In support of those recommendations, the following report provides more detailed observations which will hopefully serve to inform future decisions by DHS. UNHCR understands that DHS has ceased using both the Cottonport and Amite facilities, and we appreciate these decisions.

Please note that we have included as an attachment to this report references to the international standards implicated by the conditions and procedures we observed. We hope that these international standards will be useful for you and your staff in assessing the adequacy of ICE detention conditions. Copies of the underlying international instruments and policy guidance materials were forwarded to your Office in September 2003.



In closing, we reiterate our continued concerns about the detention of asylum-seekers in the United States. As you are aware, UNHCR's Executive Committee (*see, e.g.*, Conclusion No. 44), has stated that asylum-seekers should normally not be detained. This principle is also found in UNHCR's Detention Guidelines. We encourage ICE to release individuals who should not be detained and to aggressively pursue alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kolude Doherty".

Kolude Doherty
Regional Representative

cc:

Joseph Cuddihy, Director, Office of International Affairs, CIS

Dan Sutherland, Director, Office of Civil Rights and Civil Liberties, DHS

(b)(6), (b)(7)c Field Officer Director, New Orleans Field Office, ICE

(b)(6), (b)(7)c Chief, Detention Compliance Branch, ICE

Avoyelles Women's Correctional Center (Cottonport)

On 5 May 2004, Senior Protection Officers (b)(6) and (b)(6) visited the Avoyelles Women's Correctional Center in Cottonport, Louisiana (hereinafter "Cottonport"). This was a follow-up to UNHCR's visit to Cottonport in April 2001. The recently appointed Chief of Security, (b)(6), (b)(7)c who had been a guard at Cottonport, provided a tour of the facility, and we were accompanied by (b)(6), (b)(7)c ICE Deportation Officer/Jail Inspector. UNHCR met briefly with the warden of the facility, (b)(6), (b)(7)c This report is based on information received from ICE and jail officials, the observations of the UNHCR representatives during their tour of the facility, and information received from detainees during individual interviews at the facility and correspondence from detainees.

General Comments: For the reasons detailed below, UNHCR considers Cottonport to be inappropriate for the detention of asylum-seekers and other persons of concern to UNHCR. In a letter of 20 May 2004 to Mr. Victor Cerda, Acting Director of the ICE Office of Detention and Removal Operations, UNHCR provided initial observations and noted that conditions appear to have deteriorated at Cottonport since our previous visit. Based on our observations, UNHCR strongly recommended that DHS cease holding detainees at the Cottonport facility. UNHCR was recently informed that DHS has ceased using Cottonport, and we appreciate this decision.

Background: Cottonport is run by the Avoyelles Parish Sheriff's Office. It was previously an elementary school which was converted to a correctional center. Its capacity remains at 204. At the time of our visit, there were 189 detainees of which 23 were ICE detainees. ICE detainees include those with final orders of removal and those in proceedings, both in immigration court and on appeal.

Staff: UNHCR is extremely concerned about the visible lack of professionalism and the reports of abusive treatment by staff at Cottonport. As in 2001, detainees complained about poor treatment by jail guards and other officials, but the level of abuse reported during the current visit was much higher, with numerous allegations of verbal and physical abuse. During our tour it was difficult to distinguish between guards and detainees, as the guards' "uniforms" appeared to be red t-shirts, and the detainees' uniforms were either red or orange jumpsuits, and some detainees appeared to be wearing jeans or khakis, similar to officers. Though it was apparent that not all guards were subject to criticism, detainees reported that there appeared to be no rules or that rules were ignored or always changing, so that much depended on the mood and fancies of individual guards; there was no apparent structure, no line between inmates and staff and no respect for the detainees. Detainees reported that some of the guards would scream and curse at them, and sometimes grab detainees, hit them, push them, and pull their hair. Detainees described the guards as uneducated and not professional, sometimes "rough-housing" with detainees or telling detainees to "go back to your country." Detainees described incidents in which guards failed to intervene to break up fights. There were several accounts of abusive touching and "grabbing" and "serious sexual activity" that guards did nothing to address. They said they would be disciplined if they complained about the guards.

There was one particularly disturbing report of a beating of a detainee ("(b)(6)", an asylum-seeker in (b)(6)) by a guard ("(b)(6), (b)(7)c") about 6-8 weeks prior to our visit. Another detainee had reported the incident to DHS, both verbally and in writing.

Several of the detainees who were interviewed by UNHCR were hesitant to discuss conditions, fearing that guards or officers at the jail would retaliate against them. We assured them that their identities would not be disclosed in our report.

Classification / Commingling: Commingling still occurs. ICE Field Office Director for New Orleans, (b)(6), (b)(7)c, stated that there were no non-criminals at Cottonport. We interviewed one woman from Haiti, however, who had no criminal record and was seeking asylum. She had been recently interdicted in a boat en route to the US and had been detained since that time. After learning of her presence at Cottonport, (b)(6), (b)(7)c said she would be transferred immediately.

Law Library: There were no immigration materials on the computer, and the hard-copy immigration materials were all out of date. The most recent set of immigration regulations was for 2000. There was no current country of origin information.

Living Quarters: As reported in 2001, detainees live in smoke-filled dorms and common areas where there is little ventilation and limited opportunities for fresh air. All dorms are smoking dorms, and smoking is allowed in the rest of the facility, except for the library, medical area and day-room. The warden said that administrative offices (off-limits for detainees) are non-smoking because she cannot tolerate smoke. We were told by a nurse that there is no smoking in the corridors, although staff could be observed smoking in the corridor during our conversation. The nurse reported that the most common medical complaints at Cottonport were colds, sinus problems, coughs and seasonal allergies, and she also stated that individuals with asthma are detained at Cottonport. These conditions are all respiratory-related and can only be exacerbated by a smoke-filled environment. As in 2001, detainees reported that mice were a problem in the dorms. UNHCR is concerned that, despite UNHCR's 2001 report and despite awareness at Cottonport of the dangers and discomfort of living in a smoke-filled environment, the smoking policy continues and staff are able to flaunt the few non-smoking rules that exist.

Bathrooms: As in 2001, bathrooms were visibly dirty, and restricted use of toilets was a problem. UNHCR appreciates that Cottonport was in the process of installing new showers to replace stalls that were old and moldy. The work in progress, however, meant that the number of available showers and toilets was even more limited than previously. Given the limited number of toilets, one potential way to accommodate the needs of detainees during this time would be to relax the time restrictions on the use of toilets. Without access to the bathroom where construction was in progress, there continue to be three toilets generally accessible to those in the main area, approximately 140 individuals. Accessibility was a problem in 2001 and continues to be a major complaint. Use of bathrooms – showers and toilets – was regulated by permission from the guards, and reports of arbitrary and lengthy restrictions by staff on the use of toilets were disturbing. One detainee reported that she was denied use of the bathroom for so long that she urinated in her pants. She was later placed on medication so that she would not have to urinate as much.

Medical: As in 2001, individuals complained of getting sick from smoke, having little or no access to nurses or a doctor, and receiving either no treatment or inappropriate treatment. The nurses explained that no medical staff is on site in the evening, though nurses are on call. The

doctor visits once a month and as needed. The nurses said they have never had a situation where they needed an outside interpreter, and that they were not aware of the availability of the DHS interpreter line. Detainees complained that unless they insist, and that those who do not speak English cannot insist, they cannot get medicine or see the doctor.

Telephones: As in 2001, there was no information near the phones on available legal services or UNHCR. The list of embassy numbers was ripped so that some numbers were missing. Evercom remains the service provider, and calls remain prohibitively expensive: \$6 for the first minute, \$1 every minute thereafter. There were complaints that, due to the expense, most detainees tried to use the one payphone available, which is often broken and also costly.

Segregation and Disciplinary Procedures: There is no segregation area. It is unfortunate that conditions at Cottonport are below standard and inappropriate for the detention of individuals of concern to UNHCR, as the freedom of movement and the lack of lock-down cells or solitary confinement/segregation is otherwise a positive element of Cottonport. UNHCR supports the use of disciplinary measures other than the use of segregation cells for detained asylum-seekers and others of concern in DHS custody. Segregation cells can be especially traumatic for victims of trauma or other vulnerable groups. The experience of the Cottonport facility suggests that the jail's security needs are not seriously compromised by the use of such alternative measures. UNHCR recommends that DHS replicate such measures in other facilities where possible.

Staff Training: As in 2001, UNHCR is not aware of any special training given to jail officials on working with immigrant and refugee populations, and, as noted above, complaints of inappropriate, even abusive, treatment by staff have increased. UNHCR continues to recommend that such training be provided to all officials working with immigrant and refugee populations. UNHCR is willing to assist in this endeavor to the extent that resources allow.

Tangipahoa Parish Jail (Amite)

On 6 May 2004, Senior Protection Officers (b)(6) and (b)(6) visited the Tangipahoa Parish Jail in Amite, Louisiana (hereinafter “Amite Facility”). This was a follow-up to UNHCR’s visit to the Amite Facility in April 2001. Deputy Sheriff (b)(6), (b)(7)c who serves as the jail’s liaison with ICE, provided a tour of the facility. UNHCR was accompanied by (b)(6), (b)(7)c Detention and Removal Officer, ICE. This report is based on information received from ICE and jail officials, the observations of the UNHCR representatives during their tour of the facility, and information received from detainees during individual interviews at the facility.

General Comments: For the reasons detailed below, UNHCR continues to consider the Amite Facility to be inappropriate for the detention of asylum-seekers and other persons of concern to UNHCR. UNHCR is unaware of any improvement in conditions at the jail, particularly those conditions highlighted in our 2001 report. UNHCR, therefore, continues to strongly recommend that DHS cease holding detainees at the Amite Facility.

Facility Background: The Amite Facility continues to have a capacity of 526 detainees and is used by the ICE New Orleans Field Office to hold immigration detainees. At the time of our visit, the jail was renegotiating its contract with ICE so that the jail would assume responsibility for providing transportation for ICE detainees. Until the new contract is finalized, ICE has decided to reduce the number of detainees at the Amite Facility. At the time of our visit, there were 27 individuals in ICE custody detained at the facility.

Classification/Commingling: Asylum-seekers continue to be commingled with inmates serving their criminal convictions. Deputy Sheriff (b)(6), (b)(7)c was unaware of ICE’s classification system, suggesting that persons with minor or no criminal convictions are possibly being commingled with detainees convicted of serious crimes.

Jail Rulebooks: As in 2001, detained asylum-seekers continue not to receive a copy of the jail’s rulebook. When asked about the jail’s policy on distribution of the rulebook, Deputy Sheriff (b)(6), (b)(7)c stated that officers “try” and provide a copy, but that he cannot confirm whether this happens when he is not on duty. A number of detainees interviewed by UNHCR during our visit stated that they had never received a rulebook.

Law Library: In 2001, UNHCR found that most of the legal materials available to immigration detainees were either outdated or useless. This has not changed. Hard copies of immigration materials, such as INS/DHS regulations and the Immigration Case Reporter, continue to be outdated (2000 editions). Computer-based materials included only federal immigration court decisions, available through Lexis-Nexis. While UNHCR was told that detainees could work in the classroom adjoining the library (which is extremely small), the jail rule-book states that the library only has books for check-out, which must be requested in writing. One detained asylum-seeker interviewed by UNHCR did not even know that there was a law library at the jail.

Access to DHS: Deputy Sheriff (b)(6), (b)(7)c stated that DHS staff was regularly at the jail. Detained asylum-seekers, however, consistently complained about lack of access to DHS. Numerous detainees stated that they had never seen a DHS officer, or had seen an officer only once, despite

being held at the Amite Facility for as long as 30 days and despite submitting written requests. Deportation Officer (b)(6), (b)(7)(c) did not know which ICE officers were responsible for visiting the jail.

Living Quarters: As in 2001, the dorms that we visited were extremely dirty, especially the common bathroom areas. The jail continues to be a smoking facility; dorms were smoke-filled with little ventilation. The jail nurse stated that respiratory problems were among the most common complaints from detainees. Detainees complained that trustees clean the common areas in a superficial manner and never clean the bathrooms.

Holding Cells: The Amite Facility continues to use cell E-17 for suicide watch. Cell E-17, as described in our 2001 report, is completely bare, with only a small grate on the floor that detainees must use as a toilet. In 2001, UNHCR was informed that the cell would be cleaned out with bleach three times a week. During our most recent visit, we were informed that individuals on suicide watch who are placed in cell E-17 are often placed there completely naked or only in their underwear.

Recreation: While Deputy Sheriff (b)(6), (b)(7)(c) stated that detainees are allowed one hour/day in the small, concrete outdoor recreation area, a number of detainees stated that they are only allowed 30-60 minutes/week of outdoor recreation. In 2001, jail officials told UNHCR that detainees received three hours/week of outdoor recreation, while detainees again stated that it was not that often. One detainee said he was not sure if he was permitted to go outdoors.

Programs: UNHCR was informed that immigration detainees cannot serve as trustees at the jail. Trustee benefits include contact visits, greater mobility within the jail, and a double tray of food. Rehabilitation classes continue to be unavailable at the jail, although computer classes are now being offered along with Bible study and GED classes.

Telephone Access: The DHS pre-programmed telephone system, which allows for free calls to local legal service providers, immigration courts, and embassies, was not installed at the jail. Detainees complained that they were unable to call their consulates or attorneys, despite repeated requests to guards, both verbally and in writing. As in 2001, UNHCR was unable to place a collect call from phones at the jail to the UNHCR office in Washington, DC. Contact information for local legal services was not posted in the dorms. Detainees continued to complain about the high cost of telephone calls, with phone cards costing \$15 for 15 minutes.

Medical: As in 2001, the jail has on-site medical coverage at the jail only from 6 am-2 pm, Monday-Friday. Guards continue to distribute medication, with the exception of narcotics. With regard to detainee waiting times to see medical staff, the LPN told UNHCR that she had been "working through a back-log of cases" left behind from the previous nurse, so that there had been "some delays." She believed that now, however, detainees generally see a nurse within one or two days of making a request. While the LPN said that ICE detainees do not need to make the required co-payment to see medical staff (\$3) or receive prescription drugs (\$2), this is nowhere indicated on the medical request form or in the jail rulebook. Finally, the LPN was unaware of available interpreter services through DHS and said that when necessary, medical staff uses other detainees to interpret.

Tensas Detention Center

On 4 May 2004, Senior Protection Officers (b)(6) and (b)(6) visited the Tensas Detention Center in Waterproof, Louisiana. (b)(6), (b)(7)c Programs Classification Supervisor, provided a tour of the facility. UNHCR was accompanied by (b)(6), (b)(7)c Deportation Officer/Jail Inspector, ICE. An ICE Deportation Officer from the Atlanta Field Office, (b)(6), (b)(7)c was on-site at the time of our visit. The facility is operated and managed for the Sheriff of Tensas Parish by a private company, Emerald Correctional Management. The warden of the facility is (b)(6), (b)(7)c This report is based on information received from ICE and jail officials, the observations of the UNHCR representatives during their tour of the facility, and information received from detainees during individual interviews at the facility and from written correspondence from detainees.

Background: The facility was opened in 2001. It has 512 beds, and serves DHS, USMS, and State DOC. At the time of our visit, Tensas was primarily being used by the Atlanta ICE Field Office, which had recently lost a number of beds in its district. Atlanta DHS expected to have access to a new facility in southern Georgia by the end of the summer and expected to stop using Tensas at that time. 380 beds are available for ICE detainees. At the time of our visit, there were 354 ICE detainees at Tensas, two of whom were Iraqi stowaways whose beds were paid for by the shipping company. The cost to ICE was \$46/night. There were 6 dorms in use for general population (A, C-G) and 9 cells off the hall, mostly used for staging purposes in preparation for ground transport. New Orleans Field Office Director (b)(6), (b)(7)c said ICE detainees held at Tensas were generally not active cases, usually post-removal order or on appeal to BIA. Detained asylum-seekers interviewed by UNHCR generally considered Tensas to be a better facility than others where they had been detained.

Commingling: Jail officials stated that, like DHS, Tensas also uses a three-level classification system. The jail rule book defines four classification levels (minimum custody, medium custody, medium two custody, and maximum custody), but states that maximum custody inmates cannot be held at the facility. Immigration detainees are commingled with inmates who have corresponding classification levels, except for female detainees who all reside in one dorm.

Comments & Recommendations: *While UNHCR appreciates that some effort is made to separate those detainees with serious criminal convictions and those with minor or no convictions, UNHCR continues to object to the general practice of commingling asylum-seekers with persons serving their criminal sentences. UNHCR recommends that the jail make all efforts to ensure that the two populations are separated in all aspects of its operations.*

Access to DHS: UNHCR met briefly with (b)(6), (b)(7)c, a DHS Deportation Officer with the ICE Atlanta Field Office. (b)(6), (b)(7)c stated that until March 2004, he had been at the jail about three times a month. Due to travel in May and June, however, he had only been able to visit once a month. He informed UNHCR that when he visits the jail, he walks through the pods to meet with detainees. Detainees complained that it is difficult to contact DHS. One noted that, except for the day of UNHCR's tour, no DHS official had visited the jail for about two months, while another said that it could take six weeks for a DHS official to respond to a written request.

The jail rule book states that immigration detainees can call DHS on the pre-programmed telephones free of charge. To UNHCR's knowledge, this is not true.

Comments & Recommendations: UNHCR is concerned about the difficulty that asylum-seekers expressed regarding access to DHS officials. While DHS detention standards require ICE officers to visit jails holding immigration detainees at least once a week, it appears that this is not always occurring. UNHCR urges ICE to ensure that its officers implement this standard fully. To effectively represent their interests, access to case and custody status information is critical. Lack of information also fuels anxiety and a sense of isolation. These difficulties are exacerbated if the asylum-seeker does not speak English.

Interpretation / Language: The jail rule book is available in both English and Spanish. It appeared that officers at Tensas rarely use telephonic interpretation to communicate with detainees who do not speak English. When necessary, jail officials will try and use other detainees to translate

Comments & Recommendations: UNHCR is concerned that asylum-seekers with language barriers may lack orientation as to jail rules and privileges and may not receive proper medical treatment. UNHCR recommends that interpreters be used when needed to facilitate essential communication between jail staff and ICE detainees. UNHCR recommends that ICE take any necessary measures to ensure that Tensas has easy access to interpreters (including ICE's telephonic interpreter services) and that the use of interpreters be encouraged whenever necessary. UNHCR further recommends that the jail's rulebook be translated into the languages of its detainee population. Efforts should begin with translations into the most common languages spoken among the ICE detainee population.

Living Areas: Six dorms were used for general population, five were dormitory-style and one had cells. UNHCR was informed that the facility will soon be fully non-smoking. One of the dorms visited by UNHCR (Dorm A) had a large common area with cells holding six beds to a cell. A ping-pong table was in one corner of the common area and detainee prayer rugs in another. In general, the common area appeared relatively clean, but was hot and stuffy. Detainees complained that the air-conditioning unit had been broken for two months, was only recently fixed, and had then broken again. Detainees showed UNHCR representatives the toilet in one of the cells, which was leaking water. Because the jail had failed to fix the toilets, detainees had put soap around the toilet base to stop the leaking and to prevent the water from seeping across the cell floor. Detainees also complained of mildew in the bathroom (the shower appeared quite dirty, which detainees said had not been washed for months) and lack of access to necessary cleaning supplies.

Comments & Recommendations: UNHCR appreciates that detainees are permitted to pray together in the common area of Dorm A. UNHCR is concerned, however, about the consistent complaints regarding ventilation / air conditioning in the dorms, and unsanitary shower areas and bathrooms with broken fixtures. UNHCR recommends that detainee complaints regarding these conditions be promptly addressed by jail staff and that appropriate cleaning materials be provided, with their use supervised by jail officials as necessary.

Telephones: DHS' pre-programmed telephones that allow for free calls to local legal service providers, the immigration courts and embassies, were installed in the dorms. The jail's rule book has a section entitled "Special Notices to Immigration Detainees" that states that the dormitory phones permit free calls to DHS and consulates. In the two dorms that UNHCR visited, however, the majority of the telephones did not work. In Dorm A, UNHCR tested two of the five telephones, both of which cut-off or went dead half-way through the speed-dial instructions. Detainees in Dorm A said that three of the five phones did not work. In Dorm B, none of the five phones worked, either because certain number buttons were broken or because the phone would cut-off mid-way through the speed-dial instructions. Instructions on how to use the pre-programmed phones were posted in Dorm A, but no information was posted in either Dorm B or Dorm C.

Jail officials informed UNHCR that detainees who needed to make free calls to either their attorneys or consulates were permitted "special access calls" if they submitted a request to a jail officer. Detainees, however, said that they could not make such calls, with one detainee stating that he had submitted five requests to make a call to his attorney, but had yet to receive a response from jail or DHS officials. Many detainees also complained about the high cost of collect calls that are made from the jail.

Comments & Recommendations: UNHCR appreciates that the ICE pre-paid telephone service to consulates, Immigration Courts, NGOs and UNHCR is installed at Tensas. UNHCR is extremely concerned, however, that most of the phones at Tensas do not seem to work and that instructions on how to use the phones are not always posted. UNHCR recommends that ICE ensure that all of the phones at Tensas function and that instructions are posted appropriately. Until such time, and afterwards with regard to calls to private attorneys, UNHCR recommends that detainees be advised of their right to make "special calls" and that ICE ensure that requests for such calls are accommodated. We also note that, to our understanding, the pre-programmed telephones do not allow for free calls to DHS. If true, the Tensas jail rulebook should be modified to reflect this fact. Finally, with regard to collect calls, UNHCR recommends that ICE and/or jail officials ensure the lowest telephone rates possible. High rates may prevent asylum-seekers from communicating with private attorneys who cannot afford to accept collect calls, as well as with family members.

Library: The jail rule book states that detainees are guaranteed a minimum of one hour/day, five days/week. A jail officer reviews the names of detainees who have requested to use the law library and posts the names of approved individuals in the dorms. Detainees generally get access to the library the day after they sign up. Library hours are from 9-11 am and 1-4 pm. Eight or nine people can use the library at one time, with about 16 people generally using the library each day. The library has a law clerk, and detainees can assist each other with research.

Female detainees interviewed by UNHCR said that women were not allowed to use the library because the men used it and because the jail did not want to commingle male and female detainees. When UNHCR raised this issue with the warden, he informed us that women were not allowed to use the library during the day for commingling reasons, but that they could use it "at night."

With regard to research materials, the library had a DHS research cd-rom, but current only to 2001. There is usually Lexis-Nexis service for immigration decisions from US federal courts, although this service had been down for about a week. Hard copy materials included 8 CFR (current to May 2003), the US Code, BIA Interim Decisions, 6 copies of Immigration Law and Crimes, Department of State Country Reports (2001), and ILRC "A Guide to Immigration Advocates" (2001 ed). There were no international law materials.

Comments & Recommendations: UNHCR appreciates that detained asylum-seekers have access to legal materials (both computer-based and hard copies) and that a library tutor or fellow detainee can assist those who are not computer literate or do not speak English easily. Many detained asylum-seekers are unrepresented and must prepare their cases by themselves. Access to immigration law materials for these detainees is critical. UNHCR is concerned that female detainees believe that they do not have access to the law library and recommends that the available law library hours for women be posted prominently in the female dorm. UNHCR also recommends that the asylum and detention release self-help materials produced by the Florence Project on immigrant and refugee rights, available in both English and Spanish, be made available in the library.

Medical: The medical program at Tensas is operated by CCP Medical Management, a subdivision of Emerald Companies. CCP began operations at Tensas in November 2003. Medical staff includes three LPNs, one RN, six CMAs (certified medical assistant), and one clerk. An LPN is on-site 24 hours/day, and the RN is on-site from 9 am -5 pm. A doctor visits the facility once a week.

Medical staff informed UNHCR that immigration detainees are often transferred to Tensas Parish Jail with no medical history. They noted that, unlike DHS, the US Marshals Service (USMS) does not even allow the transfer of a detainee without medical data. Detainees are generally able to see a nurse within a couple of days of submitting a request, a point confirmed by many detainees. Detainees complained, however, that it can take weeks or months to see a doctor.

UNHCR and medical staff discussed mental health treatment at Tensas. They acknowledged that this issue is near the top of their list of needs. Many detainees have adjustment disorders and suffer from anxiety. CCP is trying to hire a part-time mental health worker, probably a social worker, to work at the facility twice a week. The company is only just now able to refer detainees for psychiatric medications. UNHCR raised its concerns about the prolonged (six-month) administrative segregation of an immigration detainee with mental health problems and queried whether alternative placement in a mental health facility might be possible.

While aware of the DHS interpretation line, medical staff stated that they rarely used it for medical examinations or consultations. A nurse said that she had probably used the interpreter line four or five times, usually for detainees from China.

Detainees, including one detainee who was a nurse by profession, had numerous complaints about the adequacy of medical treatment at Tensas Parish Jail. Complaints included failure of medical staff to identify and treat a detainee's high blood pressure, despite repeated requests to see a doctor, resulting in the detainee losing consciousness; failure to treat a diagnosed hernia;

failure to provide replacement contact lenses to a detainee after they were lost by ICE; failure by medical staff to respond to a detainee's cardiac arrest for 30 minutes; failure to properly identify and treat a diabetic detainee and to provide her with an appropriate diet; failure to treat a female detainee who had not had her period for two months and was suffering from terrible headaches.

Comments & Recommendations: UNHCR has certain concerns about medical care at Tensas, although it does appear to be better than at other jails used by ICE in Louisiana. UNHCR recommends that: (1) mental health treatment be improved at Tensas and that detainees who are unable to be placed with the general detainee population be transferred to an appropriate mental health facility; (2) consistent with its detention standards, ICE require all facilities to provide copies of medical records to discharged detainees being transferred to another facility, and that transport not be permitted if these documents are not in order; and, (3) interpretation be offered, either in-person or telephonic, to non-English speaking detainees during any medical screenings or consultations.

Legal Orientation Programs and Videos: According to the warden, no organizations have requested to conduct group legal orientations at Tensas, but he would consider any requests received. The jail rule book states that legal rights presentations will be allowed if approved by the "District Director." The warden also stated that the Florence Project's "Know-Your-Rights" video has not been shown at the jail, but that he would have no objection to doing so.

Comments & Recommendation: UNHCR appreciates the willingness of the warden at Tensas to show the Florence Project videos to detainees and urges ICE to provide copies of the videos as soon as possible. UNHCR also appreciates the willingness of the warden to consider NGO requests to conduct group rights presentation. Legal orientations, whether live, on video, or in easy-to-understand written materials, provide critical information to detained asylum-seekers about immigration removal proceedings, their rights in these proceedings, and the forms of relief that may be available to them. This information can also reduce anxiety among detained asylum-seekers, some of whom may have been victims of torture or trauma.

Religion: Christian services are available at the facility, and Muslim detainees can have access to prayer rugs. During UNHCR's tour, there were several prayer rugs in one corner of the common area of Dorm A. According to one Muslim detainee, the ability of Muslim detainees to pray together was much appreciated. At least one Muslim detainee was not aware that the facility was pork-free.

Comments & Recommendations: UNHCR appreciates the efforts that have been made to accommodate the religious needs of its detainee population. The provision of pork-free meals (although this needs to be more effectively conveyed to the detainee population) and the allowance of group religious prayers are positive aspects of the jail's operations for Muslim detainees. As a general matter, UNHCR recommends that detainees be provided access to religious leaders and services as appropriate based on the religious profile and demand of the ICE detainee population. Recognizing the difficulties in finding religious leaders to meet these needs, UNHCR encourages ICE and Tensas Parish jail officials to make efforts to this end.

Recreation: Jail officials stated that detainees receive 60-90 minutes of outdoor recreation every day. When asked, detainees provided different responses as to the amount of outdoor recreation

they receive. Based on their comments, however, it appears that, at least for the previous few weeks, detainees had received one hour of outdoor recreation per day, Monday-Friday, with possible time on the weekends at the discretion of jail officers. There are two recreation yards. The one which UNHCR visited had four basketball hoops, weights, and a volleyball net and was shaded. UNHCR was informed that the other recreation yard also had a volleyball net but was not shaded.

Comments & Recommendations: UNHCR recommends that the facility ensure that detainees are allowed a minimum of one hour of outdoor recreation, seven days a week. Access to the outdoors can be critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement. It is also important to those of concern to UNHCR who remain in detention for extended periods of time.

Use of Force: Jail officials informed UNHCR that guards have access to mace, tasers and electric shock shields to respond to security situations. The warden stated that the taser has not been used for four months and that he could “count on one hand” the number of times the electric shield had been used. UNHCR was also informed that DHS inquires about use of force during its jail reviews and will require additional information if the number of instances where force was needed seems high. Two detainees interviewed by UNHCR noted that the jail had used a “stun gun” to control detainees and that guards often use pepper spray.

Comments & Recommendations: UNHCR is concerned about the use of tasers and electric shock shields at Tensas, despite assurances that their use has been minimal, and recommends that their use be discontinued. UNHCR notes that the UN Committee Against Torture has expressed its concerns about the use of electro-shock devices as methods of restraint in US jails and has recommended that their use be abolished. The Committee concluded that the use of such devices almost invariably leads to breaches of article 16 of the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, which requires States to prohibit acts of cruel, inhuman or degrading treatment or punishment within their territory. UNHCR also recommends that ICE investigate further detainee allegations of excessive use of pepper spray or mace by jail guards.

Segregation: Jail officials informed UNHCR of general segregation policies at Tensas, including for “administrative protective custody.” At the time of UNHCR’s visit, there were two ICE detainees in administrative segregation cells in Dorm B, both of whom appeared to have mental health issues. One of the detainees, (b)(6) (Ivory Coast) had been in administrative segregation for about six months. At the time of our visit, the window on his cell door was broken, apparently because he broke it with his head. The jail rule book provides that a mental health professional must interview anyone in segregation for more than 30 consecutive days. A mental health assessment also must be completed at least every three months thereafter if confinement is continuous.

Comments & Recommendations: UNHCR is extremely concerned about the prolonged use of administrative segregation for persons who cannot be placed with the general detainee population for mental health reasons. UNHCR recommends that in such cases the detainee be transferred to an appropriate mental health facility.

Food: Although the facility does not serve pork, this information is not systematically conveyed to detainees (for example, it is not included in the rule book). Menu items include “sausage patty,” “smoked sausage” and “red beans w/ ham,” which suggest that the facility serves pork, even though we were told that meat substitutes are used. One Muslim detainee interviewed by UNHCR believed that the facility served pork, referencing the menu items noted above.

Comments & Recommendations: UNHCR recommends that detainees be informed that the jail is a no-pork facility at the time of admission and that this information be included in the jail rule book.

Orleans Parish Prison Women's Facility, New Orleans

On 7 May 2004, Senior Protection Officers (b)(6) and (b)(6) visited the Orleans Parish Prison Women's Facility in New Orleans (hereinafter "OPP Women's Facility"). Warden (b)(6), (b)(7)c provided a tour of the facility, along with Chief (b)(6), (b)(7)c who is the facility's Watch Commander. UNHCR was accompanied by (b)(6), (b)(7)c ICE Detention and Removal Officer. This report is based on information received from ICE and jail officials, the observations of the UNHCR representatives during their tour of the facility, and information received from detainees during individual interviews at the facility and from correspondence from detainees.

Background: The OPP Women's Facility is sometimes known as "Concetta," as it was converted from a former motel by that name in approximately 1993. It is part of a large complex of several buildings that make up the OPP. It has a capacity of 366, with 8 dorms. DHS can use as many beds as needed, at \$46 per bed per day (which includes \$1 per day to the detainee). One dorm (Dorm 1-2) is used exclusively for federal detainees; though ICE detainees may be placed in other dorms. Due to time constraints, UNHCR's tour was confined mainly to the first floor, where Dorm 1-2 is located, though we briefly viewed other dorms upstairs used mainly for state, parish and municipal prisoners, as well as some ICE detainees serving criminal sentences.

General Comments: The women UNHCR interviewed reported both positive and negative aspects of the OPP Women's Facility. Detainees generally appreciated the fact that packages could be received from outside and that attorney visits were not limited. They also felt that they had good access to DHS. Most were aware of the status of their immigration proceedings. As a result of this knowledge, detainees appeared to be less anxious about their detention than in other facilities where the lack of information is a constant concern. Some of the women stated that the OPP Women's Facility was the worst of any jail where they had been detained. The poor quality of the food, the unhealthy environment due to smoke, and the irregular access to medical treatment were the most common complaints.

Classification / Commingling: Commingling still occurs, as the number of women detained by ICE is insufficient to merit separate quarters. Several detainees complained about being held with people who had committed violent crimes or were "hardened criminals."

Comments & Recommendations: *UNHCR objects to the commingling of asylum-seekers with persons serving their criminal sentences. UNHCR recommends that the jail make all efforts to ensure that the two populations are separated in all aspects of its operations, or, if this is not feasible, that ICE use alternate facilities for female detainees.*

Law Library: There is no library, but the "legal department" keeps books, which can be requested, or can be chosen from a push cart that the guards circulate. It was not clear how a detainee would know what books are available if not visible on the cart. "Request for Service" forms were distributed by staff, which could be used to get paralegal information.

Comments & Observations: UNHCR is concerned about access to legal information at the OPP Women's Facility. As many detained asylum-seekers are unrepresented and must prepare their cases by themselves, access to immigration law materials for these detainees is critical. UNHCR recommends that ICE promptly ensure that basic immigration legal materials are made available to its detainees. UNHCR also recommends that the asylum and detention release self-help materials produced by the Florence Immigrant and Refugee Rights Project, available in both English and Spanish, be made available to detainees.

Living Quarters: There are 8 dorms. All dorms are smoking dorms. We were told that the jail cannot bar smoking, as people are addicted. The dorm holding ICE detainees was one large open room, with approximately 12 triple-bunk beds lining the walls. It appeared to be near capacity. Five metal toilets were exposed to view at one end of the room, with an open stall containing 4 showers to one side, half hidden by a waist-high concrete barrier on one side. Small sinks with water fountains formed the backs of the toilets. Metal tables with benches were in the center of the room, where there was a wall-mounted TV. The room appeared clean, and beds were made up and personalized. There were some games and books in a box in one corner. Detainees can receive packages, with some limitations. UNHCR was told by several detainees that smoke was a major problem, and that some were sick because of the smoke. They noted that air conditioning was used to help clear the air, but then the dorm would become too cold. One IC was concerned that people were not getting proper treatment in a dorm that was not on our tour, Dorm 1-1, which she said held people with mental or drug problems.

Comments & Recommendations: UNHCR is concerned about the health of individuals forced to reside in smoke-filled dorms where there is little ventilation and limited opportunities for fresh air. International standards require proper ventilation and sanitary conditions for prisoner accommodations. The World Health Organization has warned of the negative health effects of second-hand smoke (including asthma and other breathing problems, heart disease and lung cancer). UNHCR recommends that individuals of concern to UNHCR be detained in non-smoking facilities or, failing that, that separate non-smoking dorms be established. UNHCR also recommends that detainee complaints of temperature problems be addressed.

Food: A central kitchen that serves the entire OPP (whole complex has a capacity for 7,512) sends food in to the OPP Women's Facility. Menus change every 6 weeks. OPP is pork-free. Comments about the food were extremely negative, more so than in other facilities.

Special Diets: Though we were assured that the facility was pork-free, it was clear that detainees thought they were being given ham, as it was listed on the weekly meal chart and they had eaten – or refused – “ham” sandwiches. UNHCR raised this with Chief (b)(6), (b)(7)(c) who said the jail used “turkey ham,” and UNHCR suggested that this be clarified on the meal charts. A detainee also noted that a woman from India was told that she could not be served special meals. For religious reasons, she had asked that beef not be put on her plate as it then made it impossible to eat other food that had been in contact with the beef. Officers insisted that all plates be similar and the kitchen continued to serve beef and gravy on top of rice, which the woman could then not eat.

Comments & Observations: UNHCR is concerned about the number of complaints received about the quality and quantity of food at the OPP Women's Facility. UNHCR recommends that ICE investigate these complaints further and, if borne out, require the facility to improve the

quality of food and ensure that nutritional value is adequate. UNHCR also encourages the OPP Women's Facility to ensure, as is done in other jails, that religious diets are available and that detainees are clearly informed that OPP is pork-free despite the listing of pork products on the meal charts.

Medical: We were introduced to Nurse (b)(6) who had recently come to the jail (March 2004). She said she conducts the intake screening, within a couple of days of arrival, but that the doctor performs the physical. An ICE officer, (b)(6), (b)(7)(c) interprets for the Chinese. Sick calls are every day, and nurses have 3 shifts, covering from 6:00 am to 5:00 pm. Nurses are on call after hours. There are 3-4 nurses and/or medical assistants who comprise staff Monday through Friday. Medication is disbursed Monday, Wednesday and Friday, with enough disbursed to cover off days. A psychiatrist is on call and a doctor on site every day. Most common complaints are menstrual cramping and headaches. They do disburse anti-depressants. Charity Hospital is used for emergencies and psychiatric cases. DHS detainees do not have to make co-payments and are told this during their initial medical exam. According to the detainees UNHCR interviewed, it is difficult to get any kind of medical attention, and requests to see a doctor are either not honored or not timely. One detainee had tonsillitis and was told it would take ten days to see a doctor. She insisted and, after two days, was seen by the doctor, who gave her a shot and prescription for antibiotics. Another detainee complained that pain-killers are dispensed no matter what the complaint.

Comments & Recommendations: *UNHCR appreciates the availability of a psychiatrist and that a Chinese interpreter is available to assist when needed. UNHCR also appreciates that DHS detainees are advised that they do not have to make co-payments. UNHCR is concerned, however, about complaints about the difficulty of accessing appropriate medical treatment. UNHCR recommends that ICE review the staffing and policies at the facility to ensure the availability of appropriate and timely medical treatment.*

Attorney/Family Visitation: There are no contact rooms. There is a document pass-through for attorney visits. Family and attorney visits are held in metal booths with glass dividers and metal stools. The jail is open to attorneys 7 days a week. If a contact visit is needed, they will transport the detainee to another facility.

Comments & Recommendations: *UNHCR appreciates the access allowed for attorney visits and notes that the individuals who were interviewed who received regular visits from their attorneys were generally less anxious about their status or length of detention, as they had information about their pending cases and potential bonds.*

Outdoor Recreation: The warden and Officer (b)(6), (b)(7)(c) said that DHS detainees go outside five days/week; 1 hour/day. The outdoor recreation area is an oblong concrete yard, with no shady areas, and with a net for volley ball and one basketball hoop. The detainees UNHCR interviewed confirmed that they were allowed to go outside every week day and that they appreciated the fact that it was voluntary.

Comments & Recommendations: *UNHCR appreciates the access to outdoor recreation, especially as this is not the norm in other facilities in Louisiana visited by UNHCR, and the importance of such activity for individuals of concern to UNHCR. UNHCR recommends that the*

facility ensure that detainees are allowed a minimum of one hour of outdoor recreation seven days a week. Access to the outdoors can be critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement. It is also important to those of concern to UNHCR who remain in detention for extended periods of time.

Telephones: The ICE automated system with pre-programmed phone numbers, which allows free phone calls to consulates, Immigration Courts and NGOs, was installed. There were one or two phones in the dorm, but instructions were difficult to follow. UNHCR was unable to call out despite repeated efforts. There is no limit to how many numbers may be programmed. (b)(6) (b)(6) agreed to have ICE include UNHCR's number. Detainees get a free call when they are booked, with an interpreter if needed. Jail officials stated that if detainees need to call their attorneys, they can fill out a request form and they will be given access to a free phone. Phone cards are not allowed.

Several detainees UNHCR interviewed said that the phones were a major problem. They said that the one free phone call must be a local call. Some detainees had been told that they do not get free calls, other than the first one at the time of booking, to their attorney. Other complaints were that long distance calls must be collect and are prohibitively expensive, and since no phone cards are allowed, it is virtually impossible to call overseas (although one woman stated that she had been allowed to make a free call to China).

Comments & Recommendations: UNHCR appreciates that the ICE pre-paid telephone service to consulates, Immigration Courts and NGOs is available at the OPP Women's Facility. This should better enable detained asylum-seekers to find legal representation. With regard to other calls, UNHCR encourages jail officials to ensure that the policy of free phone calls to attorneys is fully implemented. High rates may prevent asylum-seekers from communicating with private attorneys who cannot afford to accept collect calls, as well as to contact family members. UNHCR recommends that ICE and/or the OPP Women's Facility ensure the lowest telephone rates possible. As is done at other facilities, UNHCR also recommends that calling cards be made available to detainees.

Religion: A Chaplain's department sends in volunteers. Services are available in all faiths. Prayer rugs are allowed. The facility is pork-free.

Comments & Recommendations: UNHCR appreciates that individuals of concern to UNHCR have the opportunity to exercise their religion and that the facility is pork-free. As noted above UNHCR recommends that the OPP Women's Facility ensure that religious diets are available and that detainees are clearly informed that OPP is pork-free despite the listing of pork products on the meal charts.

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES



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12 June 2001

BY HAND DELIVERY

Kenneth Elwood
Deputy Executive Associate Commissioner
Enforcement, Field Operations
Immigration and Naturalization Service
425 Eye Street, NW
Washington, DC 20536

Re: Report on UNHCR Mission to Louisiana

Dear Mr. Elwood:

I wish to thank you and your staff for facilitating the visit of UNHCR Legal Counselors (b)(6) and (b)(6) to various adult detention facilities in the state of Louisiana. As you know, (b)(6) and (b)(6) visited Louisiana during the week of 16 April 2001. During this time, they visited the Pine Prairie Correctional Facility in Pine Prairie (16 April), the Oakdale Federal Detention Center (FDC) in Oakdale (16 April), the Avoyelles Parish Jail in Marksville (17 April), the Avoyelles Parish Women's Correctional Center ("Cottonport facility") in Cottonport (17 April), and the Tangipahoa Parish Jail in Amite (18 April). I have been informed that INS and local staff were courteous and accommodating of our visits. In particular, we would like to thank Detention Officer (b)(6), (b)(7)c with the INS Oakdale Office, who accompanied my staff to four of the five facilities visited, as well as Detention Officer (b)(6), (b)(7)c with the INS New Orleans Office, who accompanied my staff to the Tangipahoa facility. We greatly appreciate the time they devoted to our visits.

A full report containing our observations, comments and recommendations is attached for your review. In this connection, we would like to take the opportunity here to highlight some of the report's findings and suggestions.

The primary concern of UNHCR, as highlighted in our letter to you dated 25 April 2001, is the conditions at the **Avoyelles Parish Jail** and the **Tangipahoa Parish Jail**. **In brief, we found these facilities to be wholly unacceptable for the detention of asylum-seekers and others of concern to UNHCR. We found certain conditions to be inhumane, if not in violation of basic human rights norms.** Given the allegations of physical abuse at the Avoyelles Parish Jail, we are forwarding a copy of this report to the Civil Rights

Division of the Department of Justice for any investigations that they may deem appropriate. **We urge the INS to cease holding detainees in these two facilities.** As a general matter, if detention is necessary, we recommend that INS use its own Service Processing Centers, which are presently required to meet all INS standards and can be easily monitored, rather than to use these facilities.

With regard to the other facilities we visited during this mission, we would like to highlight the following points. You will note throughout our report our reference to the need for training of jail officials on working with immigrant and refugee populations. We remain willing to assist INS in any training activities, as resources allow.

We found the Pine Prairie Correctional Facility to have higher standards and more resources available to detainees than the other four facilities visited during this mission. The presence of rehabilitation classes and the apparent respectful relationship between jail officials and detainees are particularly noteworthy. We raise in our report, however, concerns regarding telephone access and medical treatment that merit further review by INS.

Our visit to the Oakdale Federal Detention Center was relatively short, so our comments are more limited. The general cleanliness of the facility and its grounds, as well as a relatively liberal outdoor recreation policy, are positive aspects of its operations. Areas of concerns include the exclusion of INS detainees from available rehabilitation classes, the apparent lack of regulated access to the library, and reported delays in medical treatment.

Finally, we appreciated the use of a relatively non-secure facility at the Avoyelles Parish Women's Correctional Center. The use of alternative disciplinary measures, rather than segregation cells, was especially noted. There were a number of aspects of the facility's operations, however, that are of concern. These include the ventilation and sanitary conditions of the dorms, the limited number of toilets for the detainee population, reported delays and poor treatment by medical staff and Public Health Services (PHS), and allegations of punitive actions taken against detainees who recently undertook a hunger-strike.

We would also like to note or highlight here various issues that arose during our mission that are more within the domain of INS than that of the facilities themselves. These include:

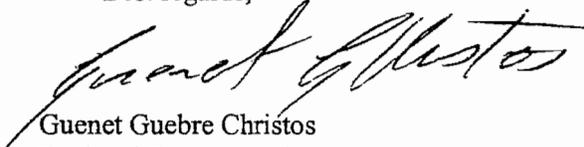
- 1) Custody Reviews: A number of detainees informed us that they had had custody reviews in November and December 2000, but had not yet received a decision from INS. We realize that these delays may be due to the transition to INS Headquarter review of release decisions, but encourage INS to expedite its custody decisions to the extent possible.
- 2) Public Health Services (PHS): We received repeated complaints regarding delays in treatment decisions by the PHS. Specific complaints are noted in the report. We would appreciate discussing this matter with you further so as to better understand PHS operations and how such delays may be avoided.
- 3) Rehabilitation Classes: We very much appreciate the availability of rehabilitation classes at the Pine Prairie facility and would encourage INS to expand this program significantly to include other facilities. Such classes may prove critical

for detainees (many of whom UNHCR may consider *bona fide* refugees or stateless persons) to obtain release. While we understand that INS currently attempts to move eligible detainees to Pine Prairie to participate in such classes, expansion of the program seems justified given the large case-load of long-term detainees in Louisiana.

- 4) Access to INS: At various facilities, a number of INS detainees complained of lack of access to INS officials. We encourage INS to ensure that all detainees have the necessary access to INS officials to discuss the status of their cases and conditions of detention.

In closing, we reiterate our continued concerns about the detention of asylum-seekers in the United States. As you are aware, UNHCR's Executive Committee (*see, e.g.*, Conclusion No. 44), has stated that asylum-seekers should normally not be detained. This principle is also found in UNHCR's Detention Guidelines. We encourage the INS to release individuals who should not be detained and to aggressively pursue alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Best regards,



Guenet Guebre Christos
Regional Representative

Cc: Mr. Joseph Langlois (by first class mail)
Acting Director of Asylum
Immigration and Naturalization Service
US Department of Justice

Al Moskowitz (by first class mail)
Section Chief, Criminal Section
Civil Rights Division
US Department of Justice

Pine Prairie Correctional Facility

On the morning of 16 April 2001, (b)(6) and (b)(6) visited the Pine Prairie Correctional Facility in Pine Prairie, Louisiana. They were met at Pine Prairie by (b)(6), (b)(7)c, President/Managing Partner/Owner of LCS Corrections Services, Inc.; (b)(6), (b)(7)c, Regional Warden (based in Basile); (b)(6), (b)(7)c, Site Warden; and (b)(6), (b)(7)c, Administrative Warden. (b)(6), (b)(7)c the staff psychologist, joined them briefly to discuss therapy programs and medical issues. (b)(6), (b)(7)c, INS Deportation Officer, accompanied the tour. This report is based on information received from INS and jail officials, the observations of the UNHCR representatives, and information received from detainees, both during the tour and from written correspondence received at the UNHCR Office.

Facility Background: Pine Prairie is a private facility, operated by LCS Corrections Services, Inc., a private corporation that began operations in 1990. Pine Prairie opened as a prison in August 1999 and has been used by INS since January 2000. It is a secure facility surrounded by a double fence with razor wire on top and bottom. Its layout is based on a "campus plan", with several one-story concrete block buildings with flat tin roofs around a concrete and grass-covered space. The facility has 680 beds, of which 200 are available to INS. At the time of our visit there were 118 INS detainees, 8 "stagers" (short-term detainees being readied for removal) and 419 Department of Corrections detainees. INS detainees are co-mingled with inmates serving criminal sentences.

General Comments: As INS is aware, UNHCR objects to the co-mingling of INS detainees with persons serving their criminal sentences. The Pine Prairie facility, however, appeared to have higher standards and more resources available to detainees than the other four facilities visited during this mission. Its operations and facilities stood in stark contrast to the parish jails that we visited, where conditions were abysmal. Several detainees compared Pine Prairie to other Louisiana jails and commented that Pine Prairie was a much better facility. Areas that they noted included more outdoor recreation time, greater access to the library, and respectful treatment by guards and staff. Various areas of concern to UNHCR are noted below.

Rehabilitation Classes: Pine Prairie offers therapy classes for sex offenders and classes in anger management. Other pre-release programs are planned for the future. The therapy classes are separate for INS detainees and inmates serving criminal sentences. The classes have twelve students and meet two hours per week over a three to four month period. (b)(6), (b)(7)c noted that the classes have had a 100% graduation rate, with the majority of students having been released to "step-down" care.

Comments & Recommendations: UNHCR strongly supports efforts by Pine Prairie and INS to provide rehabilitation classes to INS detainees. In addition to the valuable instruction and treatment provided, these courses allow INS detainees to demonstrate rehabilitation for purposes of release from custody. Such courses are especially important for those in "indefinite detention" due to the refusal of their country to re-admit them, or due to their statelessness. We encourage the continuation and expansion of these programs. UNHCR understands that the INS attempts to identify eligible detainees for these courses and to transfer them to Pine Prairie from other jails when possible. While this is helpful, UNHCR encourages INS to establish similar programs at other facilities as well given the overwhelming need and limited opportunities now available at Pine Prairie.

Telephone Access: Telephones are available to detainees inside of the dorm areas. Only collect and calling card calls (with cards provided by the facility) can be made by detainees. No phone numbers for attorneys or consulates were posted, although one detainee noted that some jail officials are helpful in making calls if necessary. A trial collect call to the UNHCR Office in Washington, DC, was not successful; a recording stated that "the number is not billable" and the number was blocked. Detainees have complained of the high costs of collect calls from the facility.

Comments & Recommendations: UNHCR recommends that telephone access to UNHCR, and other legal service providers, be ensured. Given that the high costs of calls from detention centers often impedes access to legal assistance, UNHCR recommends that the INS ensure the lowest telephone rates possible to INS detainees. UNHCR further recommends that contact information be provided to all INS detainees.

Library: The library consisted of two parts of a large open room -- one side used as a law library and the other as an educational library, where tutors (other detainees) provided GED classes. The law library had four computers. The library had updated *Interpreter Releases, Immigration Law and Crimes*, and updated immigration regulations; INS Inserts was available on CD. No material on country of origin conditions was available.

Comments & Recommendations: It appears that the Pine Prairie facility has a number of necessary legal resources for detained asylum-seekers. We encourage INS to expand the cd-roms available to detainees to include country of origin cd-roms issued by such groups as the Human Rights Documentation Exchange. We also encourage the use of asylum and detention release self-help materials produced by the Florence Project on Immigrant and Refugee Rights, available in both English and Spanish. UNHCR is willing to provide any international legal resources that might be available through our Office.

Medical: Jail officials informed us that there are two nurses on 24-hour call at the facility, and that a doctor is contracted to visit once a week. Special needs, such as dental, eye care, or cardiology for INS detainees must be pre-certified by Captain Joe Fink, a nurse with the US Public Health Service. Jail officials informed us that the longest wait for treatment by the local doctor (not PHS) is a week. Some INS detainees, however, have stated that it can take longer than a week to receive treatment, even if "emergency" is written on the request. One detainee noted he had had an infection for three weeks before receiving treatment; another stated that despite numerous requests, he had been waiting for six months for his glasses to be repaired.

Outside physicians can see detainees and detainees can obtain copies of their medical files. Mental health problems are referred to (b)(6), (b)(7)c the staff psychologist, who can give them an appointment within three days. During our tour, we met a Vietnamese detainee in the "Bayou" dorm who appeared to have mental health problems (extremely quiet and non-responsive). Jail officials have made an effort to house him with another Vietnamese detainee who can speak with him.

Comments & Recommendations: UNHCR is concerned about reports by some detainees of delays in receiving medical treatment. This is especially true for those seeking treatment that must be approved by PHS. We recommend that INS further review medical policies and resources, both at Pine Prairie and through PHS. UNHCR is extremely concerned about the detention of refugees and asylum-seekers with possible mental illnesses. We would appreciate receiving additional information on INS policy in this regard. Finally, UNHCR appreciates Pine Prairie's policy of

permitting detainees to obtain copies of their medical files and of allowing outside physicians to conduct medical examinations of detainees at their facility.

Training: UNHCR is not aware of any special training given to jail officials on working with immigrant and refugee populations. We note, however, that various detainees informed us that jail officials treat them with greater respect than at other facilities where they have been detained.

Comments & Recommendations: UNHCR recommends that training on working with immigrant and refugee populations be provided. UNHCR is willing to assist with training to the extent resources allow.

Oakdale Federal Detention Center (FDC)

On the afternoon of 16 April 2001, (b)(6) and (b)(6) visited the Oakdale Federal Detention Center (FDC) in Oakdale, Louisiana. (b)(6), (b)(7)c Oakdale Executive Assistant, conducted the tour, and (b)(6), (b)(7)c INS Deportation Officer, accompanied them. Due to a late arrival and an unexpectedly abbreviated tour time, the tour was limited to a little over an hour, although an additional hour was provided to speak to detainees. This report is based on information received from INS and jail officials, the observations of the UNHCR representatives, and information received from detainees, both during the tour and from written correspondence received at the UNHCR Office.

Facility Background: Oakdale consists of two large federal facilities, the Federal Correctional Institute (FCI) for individuals who are serving their criminal sentences, and the FDC for INS detainees who have completed their sentences. The warden is (b)(6), (b)(7)c Many INS detainees are transferred to the FDC from the FCI after finishing their sentences; others, who have gone through the Institutional Hearing Program and received a final order of removal while still serving their criminal sentence, are transferred to parish prisons. The new FDC, a secure facility, was completed in 1990 and operates under Bureau of Prisons (BOP) guidelines. Surrounded by barbed wire and fences, the grounds are landscaped and open around separate buildings, including the housing units. The FDC holds INS detainees, including "rollovers" from FCI who have a few months left on their federal sentences, as well as other federal detainees. At the time of our visit, there were approximately 830 INS detainees, including "rollovers" from the FCI, of a total capacity of 1000-1100. There is no co-mingling of INS detainees and inmates serving criminal sentences. INS detainees who are completing their criminal sentences as well as other federal detainees serving their sentences are housed in separate housing units.

Rehabilitation Classes: There are a few rehabilitation classes available at the FDC, but available only to those individuals serving their criminal sentences. INS detainees are treated as if they are "pre-trial" or short stayers, and are therefore not eligible for the classes. They can take ESL classes and a short psychology course.

Comments & Recommendations: UNHCR recommends that available rehabilitation classes be extended to INS detainees. Given that many INS detainees may be at Oakdale for an extended period (while their cases are pending before an Immigration Judge or the Board of Immigration Appeals, and possibly beyond), such cases provide treatment/education and increase their equities for possible release from custody.

Telephone Access: There are six telephones per wing (for 168 individuals). The phones operate with pin numbers, and all numbers must be approved and processed three days in advance. Collect calls to UNHCR will not go through unless a detainee has asked to have the number processed. Phone numbers for local legal services and UNHCR were not posted.

Comments & Recommendations: UNHCR recommends that INS confirm that telephone access to UNHCR, and other legal service providers, is available once phone numbers are processed. UNHCR further recommends that contact information be provided to all INS detainees.

Library: The library is open from 7:40 a.m. to 3:30 p.m. (weekdays) and for three evenings per week from 5:00 p.m. to 8:15 p.m. While we did not have time for a full tour, INS detainees have informed us that many of the books in the library are out of date. One asylum-seeker stated that

detainees are not permitted to photocopy newspaper articles, including those with human rights information about their country of origin. There were also complaints that library time was not well-regulated and that it was essentially a "first-come, first-served" arrangement. As a result, one detainee noted, when the library opens, there is a "mad dash" to get there first so as to get in. Once in, a detainee can essentially remain there until it closes. As a result, access to the library is not ensured to all.

Comments & Recommendations: UNHCR recommends that INS inquire further as to the library policies at Oakdale FDC. If necessary, UNHCR recommends that a predictable and equitable library policy be implemented to ensure that all detainees have sufficient library access. UNHCR further recommends that INS review the resources available in the library and to update and expand these resources as necessary. We suggest that asylum-seekers be permitted to photocopy newspaper articles given the importance of country of origin information to their asylum claims. We also encourage the facility to make available the asylum and detention release self-help materials produced by the Florence Project on Immigrant and Refugee Rights, available in both English and Spanish. UNHCR is willing to provide any international legal resources that might be available through our Office. Finally, we note that during our tour, we were informed that Bureau of Prisons standards will continue to apply at the facility, and not INS Detention Standards. We would appreciate INS clarification of this matter.

Medical: A doctor is available for FCI and FDC detainees from 7:30 a.m. to 4:00 p.m. daily. No outside doctors are permitted to examine detainees. Requests for medical records take a week to a month to answer. Sick call is Monday through Friday from 6:30 a.m. to 7:00 a.m., when medical appointments are given. Jail officials stated that appointments are usually provided within a few days, depending on the urgency of the complaint. Each facility also has its own dentist, although one detainee has commented that it is extremely difficult to obtain dental treatment

Comments & Recommendations: UNHCR is concerned about reported delays in receiving medical treatment. We recommend that INS further review the relevant policies and resources, both at Oakdale and through PHS, to ensure that necessary treatment is promptly provided.

Outdoor Recreation: During our visit, there were many detainees using the outdoor recreation areas. Some were playing basketball; others were sitting at tables in a covered area. The area was large, with some shady areas and some sunny and grass covered. Jail officials informed us that outdoor recreation is available after 4:00 p.m. to 9:00 p.m. for those without work details, and earlier for those who work. Some detainees have commented positively on the degree of access to outdoor recreation policy, while others have complained about the difference in access based on work details.

Comments & Recommendations: UNHCR appreciates the relatively liberal outdoor recreation policy at the Oakdale FDC. Such access can be especially critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement.

Training: UNHCR is not aware of any special training given to jail officials on working with immigrant and refugee populations.

Comments & Recommendations: UNHCR recommends that training on working with immigrant and refugee populations be provided. UNHCR is willing to assist with training to the extent resources allow.

Avoyelles Parish Jail (Marksville)

On the morning of 17 April 2001, (b)(6) and (b)(6) visited the Avoyelles Parish Jail in Marksville, Louisiana. They were accompanied by (b)(6), (b)(7)c Acting Warden; (b)(6), (b)(7)c Director of Corrections; and (b)(6), (b)(7)c INS Deportation Officer. This report is based on information received from INS and jail officials, the observations of the UNHCR representatives, and information received from detainees, both during the tour and from written correspondence received at the UNHCR Office.

General Recommendation: Unlike with previous UNHCR reports, we do not include here specific comments and recommendations on the issues discussed below. This is because, as a general matter, UNHCR considers the Avoyelles Parish Jail in Marksville, Louisiana, to be completely inappropriate for the detention of asylum-seekers and others of concern to UNHCR in the United States. As noted in our letter to you dated 25 April 2001, we found conditions at the Avoyelles Parish Jail to be abysmal, and, in some instances, to be in violation of commonly accepted human rights norms. Some conditions of concern include:

1. *Dirty, crowded and smoke-filled living quarters, with apparent dirt or sewage rising from shower drainage systems;*
2. *Co-mingling of INS detainees and inmates serving criminal sentences;*
3. *Use of an extremely small, dark holding cell (the size of a small closet, but under 6 feet in height), known by some as "the cage," with bars on the wall to restrain the detainee's hands and feet. UNHCR has never before seen such an isolation cell used by prison officials in the United States for INS detainees and finds it use, especially for persons who may be mentally ill, shocking;*
4. *Allegations of physical and other abuse by jail officials;*
5. *Use of small temporary holding cells for multiple persons with only mattresses on the floor for sleeping;*
6. *Lock-down areas with poor ventilation and minimum periods of detention of 90-days, including for relatively minor offenses;*
7. *Reported delays in medical treatment, lack of interpreter services for non-English speaking detainees, and lack of detainee access to medical files;*
8. *Absence of any rehabilitation classes.*

Given these conditions, UNHCR strongly recommends that INS cease holding detainees at the Avoyelles Parish Jail. If detention is necessary, we recommend that INS use its own Service Processing Centers, which are required to meet INS standards and can be easily monitored, rather than use local jails such as these.

Facility Background: The Avoyelles Parish Jail holds INS detainees and inmates serving criminal sentences. INS detainees and other inmates are co-mingled. The facility has a capacity of 366 individuals, of which the INS has a contract for up to 200 beds. At the time of our visit, there were 91 INS detainees out of a total population of 362. Although the jail is an adult male facility, we interviewed one INS detainee who was apparently transferred to Avoyelles from a juvenile facility while he was still a minor (17 years of age).

Holding Cells: Near the booking area, there are five temporary holding cells and another cell marked "Interview Room." The "Interview Room," apparently also known as "the cage", is an extremely small, dark cell, about 3 ft. x 3 ft. x 5 ft. 10 in. in size (approximately the width and depth

of two filing cabinets placed together). It has a solid metal door with a barred grill on it. On one wall is a small bar at arm level and another bar at foot level, to which detainees' hands and feet are shackled. Presumably once shackled, the person would be unable to sit down. If tall, the person would have to crouch to fit in the cell. Jail officials informed us that the cell was used for "drunks" and mentally ill detainees who are combative or aggressive. We were told that the cell was not used for "punishment". It is unclear how long an individual can remain in the cell, although one detainee has informed us that he knew of someone who had been held there for three days.

The five temporary holding cells appeared to be used for a variety of purposes, including general processing, administrative and investigatory segregation and possibly disciplinary segregation. The rooms were quite small (perhaps 10 ft.x.10 ft) with no benches, toilets, or other fixtures. Some had mattresses (3-4) directly on the floor, presumably to accommodate those who must sleep on the floor. Detainees could be seen lying on the mattresses on the floor at the time of our visit. At the time of our visit some inmates were in one of the holding rooms for investigation of a possible prison rape.

Living Quarters: There are five dorms at the jail, three large ones (capacity 72) and two smaller ones (capacity 36). The smaller dorms are "working dorms", available to jail "trustees" (those with work assignments at the jail). INS detainees are not permitted to live in the trustee dorms. The larger dorms hold the rest of the detainee population. All dorms are smoking dorms.

The larger, general population dorm that we visited had a terrible smell, as well as pervasive cigarette smoke. It was difficult to speak with jail officials due to the loud, echoing din of the television in the background and the conversations among detainees. All of the bunk-beds are in the common area with no individual or double-person cells. There are eight toilets and eight showers. The shower area had broken tiles and what appeared to be dirt or sewage on the floor. Detainees informed us that "black water" has come up from the drainage pipe on to the shower floor. They also noted that the water for the showers was extremely hot (which we confirmed), and complained of having red, burn marks on their bodies after taking showers. A number of detainees complained of the constant smoke and the health dangers to them and noted that there had been no air-conditioning in the dorm for five days.

Lock-Down: There are five "lock-down" pods at the jail, three of which hold nine people and two of which hold fifteen people. Small cells with two beds per cell are in each pod. A small common area includes a small table and a television. Air circulation in the lock-down cell was poor. It appears that those in lock-down have basically the same privileges as those in the general population. The minimum period of time in lock-down is 90-days.

Jail officials informed us that those placed in lock-down are those charged with escape attempts or major infractions such as aggravated fighting. We are aware, however, of one detainee who was placed in lock-down one week after his arrival at Avoyelles for trying to hot-wire a television so that it would remain on all night. He was sentenced to 90 days, which he himself extended for another six months so as to avoid residing with the general population. Another detainee has informed us that he was placed in "segregation" (presumably lock-down) for a week upon arrival because the jail did not have adequate bed-space in the dorms. He commented that there was no ventilation and that the walls would often "sweat."

Medical: Jail officials informed us that there are four nurses on staff during the day and one at night. A doctor comes to the jail at least once a week for two to three hours. Jail officials stated that detainees are seen within a day of their request, although detainees complained that it can actually

take much longer. Nurses address minor ailments (the most common being colds and respiratory problems) and can disburse standing orders for antibiotics. INS detainees must receive US Public Health Service (PHS) approval before specialist procedures are provided (including eye and dental care). No phone interpreter is available to the medical staff. While jail officials stated that communication has never been a problem, a detainee has complained that Spanish-speaking detainees receive inferior medical care because none of the medical staff (and only one jail official) speak Spanish. Detainees, and their legal representatives, do not have access to medical records while at the jail absent a court order. Jail officials cited "confidentiality and privacy" as the rationale for this policy, although it is unclear how such rights would be breached if the detainee makes the request himself.

Telephone Access: A regular payphone and a blue automated phone are in each dorm. There are no instructions on how to use the phone, nor is there contact information for area attorneys/NGOs or UNHCR. Direct and collect calls can be made on the regular payphone, apparently operated by "MCI State", although a collect call we attempted to the UNHCR office in Washington, DC was unsuccessful (phone number was "blocked"). The blue automated phones, operated by "Evercom," provide instructions on use in English and Spanish once the headset is picked up. A collect call to the UNHCR Washington, DC, Office was successful on this phone. A number of detainees complained of the high cost of making calls on facility telephones, noting that a fifteen minute long-distance collect call could cost as much as \$45. These prices are apparently much higher than those at Bureau of Prisons facilities (where many served their criminal sentences).

Rehabilitation and Other Classes: There are no rehabilitation classes available at Avoyelles Parish Jail. GED and ESL classes are available.

Allegations of Physical and Other Abuse: UNHCR has received complaints of beatings and other abusive acts at the Avoyelles Parish Jail, including the indiscriminate use of mace. During our visit, two INS detainees alleged that they were physically abused by jail officials at the jail. The first, (b)(6) stated that guards had attacked him and beaten him (noting in particular injuries to his head and nose). He accused the following officers of being involved in the incident: (b)(6), (b)(7)c (b)(6), (b)(7) (exact spelling of name not clear), (b)(6), (b)(7)c (b)(6), (b)(7)c

The second INS detainee who alleged physical abuse, (b)(6) was interviewed in the jail's sick-bay. (b)(6) was emaciated and his hands trembled from apparent weakness when he spoke. He stated that he could not walk without assistance. Based on his behaviour, it appeared that (b)(6) (b)(6) may have mental health problems, such that it was difficult to assess the credibility of his charges. (b)(6) stated that he had been on a hunger-strike for some time and alleged that guards had beaten him while at Avoyelles Parish Jail. He also alleged that he was beaten by guards at Concordia Parish Jail, where he had previously been detained. He stated that the jail was not providing him with a wheelchair or braces to use the sick-bay's bathroom and that he was forced to urinate in small bottles (apparently old hand lotion or other bottles) which he kept near his bed. Jail officials informed us that (b)(6) was very thin at the time he arrived at the jail and that he often would "sneak" food under the bed covers.

Training: UNHCR is not aware of any special training given to jail officials on working with immigrant and refugee populations.

Avoyelles Parish Women's Correctional Center (Cottonport)

On the afternoon of 17 April 2001, (b)(6) and (b)(6) visited the Avoyelles Parish Women's Correctional Center in Cottonport, Louisiana (hereafter "Cottonport"). They were accompanied by (b)(6), (b)(7)c Chief of Security, and (b)(6), (b)(7)c INS Deportation Officer. This report is based on information received from INS and jail officials, the observations of the UNHCR representatives, and information received from detainees, both during the tour and from written correspondence received at the UNHCR Office.

We note that at the time of our visit to the Cottonport facility, three INS detainees were on a hunger-strike to protest conditions at the facility. The hunger-strike began on 5 April 2001, with eight detainees participating at that time. We spoke to the three remaining hunger-strikers during our visit and have incorporated some of their complaints in this report.

Facility Background: The Cottonport facility holds INS detainees and inmates serving criminal sentences. INS detainees and inmates are co-mingled. The facility has a capacity of 204 individuals. The facility appears to have been built for a non-correctional purpose and, as a result, had less of a prison atmosphere. There were no iron doors between different areas of the facility and the dorms/common areas were sunnier than other jails visited. Jail officials informed us that the detainee handbook was being revised, but provided us with the one currently in use. One INS detainee has stated that she has never received a detainee handbook at the facility.

Comments & Recommendations: As INS is aware, UNHCR objects to the co-mingling of INS detainees with persons serving their criminal sentences. UNHCR appreciates, however, that Cottonport has a less "prison-like" atmosphere than other detention facilities. It does not appear that security at the facility has been seriously compromised as a result. UNHCR is concerned that all detainees may not be receiving a copy of the facility's detainee handbook. UNHCR recommends that all detainees be provided with such a handbook, in their own language to the extent possible, so that they may be adequately informed of their rights and responsibilities while detained.

Living Quarters: There are five dorms with capacities ranging from 24 to 50 detainees. Four of the dorms (for general population) are off of a common hallway, while the trustee dorm (for those with work assignments) is in a separate building. Detainees sleep on bunk-beds arranged in the dorm common area. There are no separate cell-blocks. For those in the general population dorms, bathrooms are located in the common hallway and permission is required for their use. For trustees, bathrooms are located within the dorm such that special permission for use is not required. INS detainees are eligible to be trustees. All dorms are smoking dorms. Jail officials stated that it was not possible to designate certain dorms as non-smoking because of possible sexual relations between certain detainees (this was not fully explained). Detainees have also complained about the presence of mice in the dorm areas.

Comments & Recommendations: UNHCR is concerned about the health of asylum-seekers forced to reside in smoke-filled dorms and common areas where there is little ventilation and limited opportunities for fresh air. International standards require proper ventilation and sanitary conditions for prisoner accommodations. The World Health Organization has warned of the negative health effects of second-hand smoke (including asthma and other breathing problems, heart disease and lung cancer). UNHCR recommends that non-smoking living quarters be established for those INS detainees who so request it. Detainee allegations regarding the presence of mice and other vermin should also be fully investigated and addressed as necessary.

Bathrooms: A major complaint raised by numerous INS detainees at the Cottonport facility was the number of toilets available to them and their accessibility. In brief, there are two bathrooms available to all of the detainees in the general population dorms (approximately 150 detainees) - one with six toilets and one with three toilets. The smaller bathroom is generally available to detainees, while access to the larger one appears much more restricted due to operating difficulties (loss of hot water in showers when toilets are flushed and inability to monitor). Detainees complained that the bathrooms are often dirty and the jail officials unreasonably deny requests to use them.

Comments & Recommendations: It appears that for much of the day, only three toilets are available for approximately 150 detainees. Such a ratio is clearly insufficient. UNHCR recommends that all necessary steps be taken to ensure that adequate bathroom facilities are available to all INS detainees throughout the day.

Telephone Access: For the general population, there are five telephones in the main hallway, both regular payphones and blue automated telephones operated by "Evercom." There are no instructions on how to use the telephones, nor is there contact information for area attorneys/NGOs or UNHCR. Detainees have complained of the high cost of collect calls from the facility. A collect call to the UNHCR office in Washington, DC on the regular payphone was unsuccessful (call would not go through). The telephones operated by Evercom provide automated instructions in English and Spanish when the headset is picked up, although the cost of using the phone is apparently higher than the regular payphone. A collect call to the UNHCR office was successful on this phone. The jail will take messages for detainees from outside callers.

Comments & Recommendations: UNHCR recommends that contact information for UNHCR and other legal service providers be provided to all INS detainees. Given that the high costs of calls from detention centers often impedes access to legal assistance, UNHCR recommends that the INS ensure the lowest telephone rates possible to INS detainees. UNHCR appreciates the facility's policy of providing messages to detainees from outside callers, as this often facilitates communication between asylum-seekers and their attorneys.

Lock-Down: The facility does not have any lock-down cells or solitary confinement/segregation. Those who violate jail rules must sit alone in one of the common areas. A jail official noted that this arrangement has been working.

Comments & Recommendations: UNHCR supports the use of disciplinary measures other than the use of segregation cells for detained asylum-seekers in INS custody. Segregation cells can be especially traumatic for victims of trauma or other vulnerable groups. The experience of the Cottonport facility suggests that the jail's security needs are not seriously compromised by the use of such alternative measures. UNHCR recommends that INS replicate such measures in other facilities where possible.

Medical: Jail officials informed us that two nurses are on site at Cottonport per shift from 7:00 am - 5:00 pm. Nurses are on call in the evening. A doctor is also on call, but not 24 hours/day. When asked the last time the doctor had been to the facility, we were informed that he had "not been coming in lately" and that it had "been a while" since his last visit. Numerous detainees have complained about poor medical treatment by facility staff and/or PHS. One detainee has stated that she suffers from extremely painful migraines, a long-standing condition that can induce vomiting. She states that the Cottonport medical staff has given her a medication much less effective than the

medication provided to her in other facilities. A request to PHS for approval of the appropriate migraine medication had been made five months earlier, with no response received. Another detainee complained of receiving no treatment for an ear-ache, while another stated that she received a suppository to treat vomiting.

Comments & Recommendations: UNHCR is concerned about the reports of poor treatment by medical staff at Cottonport and reported delays in treatment decisions by PHS. UNHCR recommends that the INS review medical policies and resources at the Cottonport facility to ensure prompt and adequate medical care.

Treatment of Hunger-Strikers: The three INS detainees still on the hunger-strike at the time of our visit alleged that jail officials punished them for participating in the hunger-strike. Alleged punishment included the rescinding of certain privileges (such as access to religious services), as well as certain food items (such as juice).

Comments & Recommendations: UNHCR is concerned about allegations of punitive measures taken against those participating on a hunger-strike. The deprivation of food items, such as juice, does not appear justified unless medically necessary. (INS Detention Standards on Hunger-Strikes provide that staff "shall provide the detainee an adequate supply of drinking water and shall offer to provide other beverages".) UNHCR is also unaware of any security or medical basis for restricting access to religious services. UNHCR recommends that INS investigate these allegations and provide additional guidance, as necessary, as to the treatment of individuals who engage in hunger-strikes while in detention.

Training: UNHCR is not aware of any special training given to jail officials on working with immigrant and refugee populations. Detainees have complained of poor treatment by jail guards and other officials.

Comments & Recommendations: UNHCR recommends that training on working with immigrant and refugee populations be provided. UNHCR is willing to assist with training to the extent resources allow.

Tangipahoa Parish Jail

On the morning of 18 April 2001, (b)(6) and (b)(6) visited the Tangipahoa Parish Jail in Amite, Louisiana. They were accompanied by INS Deportation Officer (b)(6), (b)(7)c and Deputy Sheriff/Immigration Liaison (b)(6), (b)(7)c. They briefly met the warden of the facility, Major (b)(6), (b)(7)c who answered some questions at the end of the tour. Unlike the four other facilities UNHCR visited in Louisiana, they were not permitted access to the living areas and were not allowed to speak informally to detainees. They were only permitted to speak to individuals that they requested by name. They were informed that this decision was based on security concerns.

General Recommendation: Unlike with previous UNHCR reports, we do not include here specific comments and recommendations on the issues discussed below. This is because, as a general matter, UNHCR considers the Tangipahoa Parish Jail to be completely inappropriate for the detention of asylum-seekers and others of concern to UNHCR in the United States. As noted in our letter to you dated 25 April 2001, we found conditions at Tangipahoa Parish Jail to be abysmal, and, in some instances, to be in violation of commonly accepted human rights norms. Some conditions of concern include:

- 1. What appeared to be dirty, crowded and smoke-filled living quarters;*
- 2. Co-mingling of INS detainees and inmates serving criminal sentences;*
- 3. Use of a lock-down cell, cleaned only three times a week, with no fixtures and only a small grate on the floor to be used as a toilet, for suicidal detainees and those with disciplinary problems. (INS statements that such a cell would not be used for INS detainees appear contradicted by other statements that no distinction is made between INS and other detainees, as well as by statements regarding standard operating procedure for all detainees who might be suicidal or a danger to others.);*
- 4. Lack of a uniform policy for the distribution of detainee handbooks;*
- 5. Allegations of denial of access to outdoor recreation and religious services;*
- 6. Lack of access to UNHCR by telephone and the absence of any contact information;*
- 7. Inadequate library resources;*
- 8. Distribution of medication by jail guards;*
- 9. Absence of any rehabilitation classes.*

Given these conditions, UNHCR strongly recommends that INS cease holding detainees at the Tangipahoa Parish Jail. If detention is necessary, we recommend that INS use its own Service Processing Centers, which are required to meet INS standards and can be easily monitored, rather than use local jails such as this.

Facility Background: The jail is a secure facility and holds inmates serving criminal sentences and INS detainees. The jail is used by the INS New Orleans District. It has a capacity of 526 detainees and inmates. At the time of our visit, there were 101 INS detainees at the facility and the jail was near capacity. We were informed that only those with a final order or removal or whose cases are on appeal to the BIA are at Tangipahoa. INS detainees are co-mingled with inmates serving criminal sentences.

Booking: Detainees are processed in a main reception area that has holding cells around a central booking area. We were initially informed that all detainees receive a procedures handbook when processed. After speaking with an INS detainee, however, who had not received a handbook, we

were informed that while some jail officials may try and distribute the handbook while on duty, there is no standard policy to issue handbooks to all detainees.

Holding Cells: Near the booking area, there are seven holding cells (E-11 through E-17) used for disciplinary detention, for violent or suicidal detainees, or for detainees "who can't get along with others," i.e., high profile detainees or "flamboyant homosexuals." The cells were of various sizes and could hold from three to five detainees. Two of the cells were used for lockdown purposes – for suicide attempts or for people causing problems in maximum security. One of these cells (E-17) had only a small grate on the floor that detainees would use as a toilet. Jail officials informed us that the cell would be cleaned out with bleach three times per week. There is no time limit for detention in the seven holding cells. Detainees could be assigned there "permanently," although we were informed that the standard period was one month segregation in E-17. (b)(6), (b)(7)c informed us that an INS detainee would be moved rather than held in these cells.

Living Quarters: There are three wings, North, East, and West, with dorms where detainees live. One of the dorms in the West wing is a trustee dorm for kitchen workers. The West wing also holds maximum security detainees (for those with disciplinary problems) who are in lockdown cells. The North wing has eight "open" dorms (with bunk beds and a common area with tables and benches) that accommodate twenty prisoners each; the other wings have eight cell blocks each that accommodate sixteen per block, two per cell. The jail is a smoking facility; there is no area of the jail designated as non-smoking. It appeared that each dorm had one phone. We viewed the dorms through the glass walls that opened to the central area, as we were not permitted to enter the dorms or talk to the detainees. The dorms appeared to be dirty, smoky, and crowded.

Recreation: The outdoor recreation area is a concrete area in the prison with concrete walls and barbed wire on top. Officer (b)(6), (b)(7)d stated that detainees are permitted one hour of outdoor recreation, three times per week, although one detainee has informed us that he was permitted outside only once during the previous month.

Classes: No rehabilitation classes are available at the jail. Bible classes, GED and ESL classes are available.

Religious Services: The jail has a room used as a chapel for various religious services. Officer (b)(6), (b)(7)a informed us that detainees may ask to be placed on a list to attend services. One detainee informed us that although he had requested to attend Christian services for a month, he had yet to be given access.

Telephone Access: We were not able to test the telephones in the dorms, as we were not allowed access to the living areas. We did, however, attempt a collect call to the UNHCR Office in Washington, DC, on one of the payphones in the booking area. The operator informed us that the phone number was "restricted" so that the call could not be placed. Presumably detainees also cannot make collect calls to UNHCR from the living areas. No contact information for UNHCR is posted near the phones. One detainee has informed our Office that he cannot make collect calls to a number of family members because their numbers are "blocked" (despite the fact that his family members are current with their phone bills). Other detainees have complained of the high cost of collect calls from the facility.

Library: Library materials are kept in a closet-like room off of a large room called the classroom. We were informed that the library was open three times per week, one to three hours per day. A

library assistant informed us that the capacity of the library was five to six people at a time, and that there was a waiting list. There was one computer in the library. INS's INSERTS CD was available, but was kept by Officer (b)(6), (b)(7) in his office. As a result, while documents could be requested from the cd-rom, it had little usefulness as a detainee research tool. Immigration-related material filled about two feet of shelf space. No copies of the Immigration and Nationality Act or of the complete INS regulations were on the shelves. While the facility does receive regular updates to the INS regulations (Benders 8 CFR binder inserts), only copies are made available to detainees to avoid detainee mishandling. These copies, however, are not inserted into a complete set of regulations, with each new page replacing the corresponding outdated page. Rather, the copies are merely collected in a folder in the library as they come in. As a result, the regulations are completely useless. There were no newspapers or human rights reports. *Interpreter Releases* was current, and there was a copy of *Immigration Law and Defense* and *Immigration Law and Crimes*, both with 2000 updates.

Medical: Officer (b)(6), (b)(7) explained that there is a local doctor who screens detainees with medical complaints. A Registered Nurse is on duty from 8:00 a.m. to 4:00 p.m. daily, although there were no medical personnel present at the time of our visit (we were informed that the nurse was on leave). The doctor is usually at the prison Monday through Friday, from 6:00 a.m. to 12:00 p.m. Captain (b)(6), (b)(7) the U.S. Public Health Service (PHS) nurse at Oakdale must approve any dental, eye care, and "specialized care" for INS detainees. Jail officials first informed us that detainees can generally see a doctor or nurse within a day of their request. They later stated that it could take longer after we relayed complaints from some detainees that it generally takes at least a week to see a doctor. Jail officials (non-medical personnel) distribute medication to detainees. One detainee has complained that the guards are not properly trained and have been known to distribute the wrong medications.

Commissary: Stamps and paper are not free and are sold at the commissary

Training: UNHCR is not aware of any special training given to jail officials on working with immigrant and refugee populations.

**UNHCR's FOLLOW UP VISIT TO MIAMI DETENTION
FACILITIES (Krome and TGK),
18 - 19 April 2002**

INTRODUCTION AND INITIAL OBSERVATIONS

1. As a follow up to UNHCR's visit to Miami's detention facilities April 9-12, 2001, a follow up visit was carried out on April 18-19, 2002. The undersigned visited both the Krome Detention Center for men and the Turner Guilford Knight Correctional Center (TGK) for women. Further to UNHCR's report to INS of May 4th, 2001 and the response of INS to this report received by UNHCR in October 2001, the following observations and recommendations are noteworthy.
2. **INS's full cooperation with UNHCR:** At the outset, it is noted that INS has fully cooperated with and greatly facilitated UNHCR's visits to the detention facilities where asylum seekers are present. In this connection, the exceptional cooperation and assistance from the Deputy OIC and her staff at Krome, who provided full access to the Krome facility, allowed UNHCR to speak to any asylum seeker, and provided much useful information and tirelessly answered the numerous questions posed, is much appreciated. The same applies to the INS staff at TGK, who facilitated the visit and, as in Krome, allowed UNHCR to speak confidentially to a number of asylum-seekers (providing telephonic interpreters) and showed UNHCR the different parts of the facility. This type of cooperation not only facilitates UNHCR's mandated tasks, but allows for full transparency in relations with INS.
3. **UNHCR's position on detention/Extra-ordinary situation re detention of Haitian "boat people":** Particularly in light of the long term detention of the Haitian asylum seekers (those that arrived by boat in December 2001) presently in Miami, the fundamental discrepancy between INS policies on detention of asylum seekers and international refugee law principles become more acute. As far back as 1993, even before the 1996 legislation was passed making detention mandatory for many asylum seekers, UNHCR made its position clear to INS regarding its concern about the detention of refugees and asylum seekers. A number of subsequent letters on this same issue have been addressed to INS since that time. UNHCR remains concerned with the continued detention of asylum-seekers.
4. UNHCR's most recent advisory opinion on detention of asylum seekers dated April 15, 2002 (INS received a copy promptly) elaborates on this position. This advisory opinion is based on UNHCR's Guidelines on applicable Criteria and Standards Relating to the Detention of Asylum-Seekers. While the advisory opinion sets out UNHCR's concerns as a matter of principle and does not specifically refer to any nationality, the principles outlined clearly apply to the detained Haitian boat people. In a nutshell, the advisory points out that i) using detention as a deterrent is inconsistent with international standards and ii) detaining asylum-seekers based on their nationality is discriminatory and, therefore, also inconsistent with the international standards of treatment of asylum-seekers.

KROME AND TGK DETENTION FACILITIES

5. **Overall Detention Situation in Miami worse than last year:** While a genuine desire to a) ameliorate detention conditions and b) expedite asylum-seekers' time in detention was expressed by INS at both Krome and TGK, the degree of overcrowding at both facilities has made the overall detention situation for asylum-seekers worse than last year. The overcrowding is largely due to the long term detention of the "boat" Haitian asylum-seekers, a policy decision beyond the control of the local INS office. Local officials confide that they favor expeditious processing of asylum-seekers, as occurred in the past; however, they must follow the new guidelines from INS HQs which significantly slows down the processing of all Haitian asylum-seekers.
6. **Overcrowded Facilities negatively affects services and general conditions:** As a result of the overcrowding at the detention facilities, general conditions suffer. For example, Krome is currently housing over 800 persons, some 300 over the recommended number. This degree of overcrowding is of significant concern since Krome functions at full efficiency with up to 500 persons. At TGK, there was no room for additional asylum-seekers. As the Krome officials admit, the excess number of people negatively affects the overall rendering of services and general conditions at the detention centers. For instance, to deal with so many people at Krome, the timeframe for recreation has returned to what it used to be – an hour a day. In the past, without overcrowding at Krome, the authorities allowed the detainees to stay out longer, understanding that this was a healthy past time. All those interviewed expressed a desire to lengthen the recreation hours. The fact that this time is back to the regulated one hour could create more problems, as tensions that would otherwise be assuaged through exercise will vent through other outlets. This particularly affects those asylum-seekers who have been detained for longer periods.
7. **A number of both men and women asylum seekers are being housed in hotels due to lack of space.** While a hotel initially sounds better than a detention facility, housing asylum-seekers for more than a few days in a hotel, particularly when children are involved, is more limiting and can be more difficult on asylum-seekers. Those housed in hotels have no access to recreation, must sit in their rooms all day and have no educational opportunities or access to a law library.
8. **Average Time of Detention for all asylum-seekers has increased:** The average time of detention for asylum seekers at both Krome and TGK has increased, thus asylum-seekers are now incarcerated for longer periods of time than last year (the average time does not include the "boat" Haitians who have now been detained over 5 months). At Krome, where the average time of detention last year was 4 days; it was approximately 11.5 days at the time of the visit. At TGK the average detention time was 6 days; at the time of the visit it was approximately 10 days. While UNHCR does not agree with the policy of detaining asylum-seekers, UNHCR continues to work in good faith with INS in its efforts to provide adequate treatment under the law for asylum-seekers. In last year's report, UNHCR gave credit where appropriate, highlighting some of the positive elements at the detention facilities. Particularly in light of the genuine efforts to

expeditiously process asylum cases, UNHCR urged that the average short detention time be maintained. Independent of the long term “boat” Haitian asylum-seekers, all others are being held for longer periods, which is a step backward. **NOTE:** UNHCR has been informed that, as of the date of this report, more asylum officers had been deployed at Krome and TGK. Average time of detention has now decreased. We hope that this trend will continue and that the average time of detention always stays, at most, at the same length of time as last year.

9. **Difference of Treatment between female and male asylum-seekers in Miami more Pronounced than last year:** In light of the points already mentioned -- overcrowding and longer detention periods than last year—the difference between the treatment of male and female asylum-seekers becomes more obvious. The use of a maximum security facility was more tolerable when periods of detention were very short, as was the case last year. Given the lengthening of detention periods for women, UNHCR’s recommendation last year to homogenize the treatment of detained asylum-seekers nationwide needs to be re-emphasized. As was pointed out in last year’s report, UNHCR agreed that the women should have been moved out of Krome because the facilities at Krome are not conducive to keeping both males and females together. However, women asylum-seekers should not feel punished by being housed in inferior facilities to men, where critical services have been diminished. By lengthening the time of detention in general, the differences between Krome and TGK (inferior food, exercise facilities, computer rooms, law library, less visitation rights, less privacy, etc) become more pronounced and ,therefore, should be addressed promptly. All women asylum-seekers at TGK should either be released more quickly, as was the case last year, or alternatives to detention should be explored in the immediate future for these asylum-seekers.
10. **Women at TGK now Interviewed for credible fear on premises –a step forward:** One of the main concerns raised last year was UNHCR’s opposition to women systematically being handcuffed and strip searched upon leaving the facility. At the time, the possibility of holding credible fear interviews on premises so that detainees would not need to leave the facility was briefly discussed and was under consideration. To UNHCR’s pleasant surprise, credible fear interviews and most immigration hearings are now carried out on the premises. As a result, there were no complaints by any of the asylum-seekers interviewed about being handcuffed or strip searched, as was the case last year.
11. **Prolonged Detention of Haitian Asylum Seekers violates international standards/Prolonged detention in a maximum security facility is not suitable for Asylum-Seekers:** In last year’s response from INS to UNHCR’s report, it was pointed out that all asylum-seekers are considered for parole once there has been a finding of credible fear. Any asylum-seeker in prolonged detention, UNHCR was informed, was an exceptional case. This is no longer the case. The Haitian asylum seekers who arrived by boat last December and continue to be detained at Krome and TGK present no exceptional circumstances aside from the fortuitous fact that they managed to get to US shores. During the visit, a number of “boat” Haitians as well as a number of other Haitians detained by the INS were

interviewed. Their profiles did not differ significantly, casting doubt on the need to apply different parole standards.

12. It is UNHCR's understanding that the current detention policy for Haitians was implemented to prevent a mass outflow of persons from Haiti to the U.S. Putting aside UNHCR's position on the legitimacy of this policy -- as explained in our advisory opinion-- UNHCR questions the underlying assumption that there will be a mass outflow in the immediate future. Other Haitians in similar situations continue to leave Haiti in small groups and have arrived in various places throughout the Caribbean. The trends for departures from Haiti have not changed for the last few years. According to UNHCR's monitoring of the situation in Haiti, there have been no significant changes in Haiti and there is no evidence of an imminent mass influx of boat people. This view is consistent with that of one of our sources of information, the American Embassy in Port au Prince.
13. In light of these unchanged circumstances, the action to continue to detain indefinitely some 117 men at Krome and 24 women at TGK who arrived by boat in December 2001 is a step backward regarding the overall treatment of asylum-seekers in the U.S. This action also undermines the humanitarian principles that should be adhered to regarding the treatment of asylum-seekers. Moreover, detaining asylum-seekers for (now) over 5 months in a maximum security facility, where access to their respective families has been very difficult and their mental state is gradually deteriorating, is not only harsh treatment for individuals who have committed no crime, but highlights an unflattering precedent for the US, which has usually been at the forefront of providing humanitarian aid to refugees and promoting progressive refugee protection principles.

OTHER CONCERNS

- 13 Main Complaint at Krome –Lack of information about case processing:** 14 persons were interviewed at Krome during UNHCR's mission. The main and consistent complaint by all of them was that the INS was not providing sufficient information (or any information at all) about the status of their cases. The majority were genuinely ignorant about why they were still detained, when they would be released and what specific issues are delaying or preventing their release. This general lack of information was, by far, the biggest frustration expressed.
14. When asked why they simply do not request the information about their cases from the Krome authorities, there was unanimous cynicism about their respective "deportation officers" or "Counsellors" who are responsible to provide them such explanations. Most detainees informed UNHCR that there is an on-going joke amongst them about which "deportation officer" or "Counsellor" is most invisible. The detainees confessed, only half jokingly, that they call their "Counsellors" the "invisible men" because they are hardly ever seen on the premises and, when they do mix with some detainees, they are in a hurry and generally do not answer many questions. As desperate as they are about wanting information, the detainees insist that they have little or no access to their Counsellors and all complained that this vacuum of information is perhaps the hardest element to deal with while detained. Needless to say, despite the caseload of each Counsellor, there is an urgent need to

ameliorate this situation. Those designated to provide the specific information to asylum-seekers should be more pro-active and conscientious in doing so.

15. **TGK --Adequate/Private Interview Room a Basic Necessity:** The differences between Krome and TGK have been broached in this report and were also highlighted in last year's report. In fact, last year's report suggested that, as a first step, a few changes at TGK be addressed immediately. One of those suggested changes was that "...an adequate interview room ...be made available as soon as possible". This minor suggestion by UNHCR that would allow for confidentiality between attorney and asylum-seeker clients was not followed up, despite the little effort it would take to implement --in essence, there is a need to put a sign on the 2 doors of the small interview room to stop the on-going traffic of people during interviews (even with the doors closed, the room is still a little noisy). After UNHCR's recent visit, INS informed that indeed this suggestion was going to be implemented. UNHCR has been informed that the "Do Not Disturb" sign was placed on the doors a week after the visit. It is hoped that, given the limitations at TGK, the sign is not only maintained, but enforced.

(b)(6)

UNHCR Washington
Regional Deputy Representative
May 23, 2002

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



**NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES**

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14 March 2001

Kenneth Elwood
Deputy Executive Associate Commissioner
Enforcement, Field Operations
Immigration and Naturalization Service
425 Eye Street, NW
Washington, DC 20536

Re: UNHCR Site Visit to Miami, Florida airport and Area Detention Facilities and County Jails

Dear Mr. Elwood:

I hereby refer to the above-captioned matter. As you are aware, this visit is the second, in a series of visits that UNHCR has planned, and discussed with you, to conduct this calendar year 2001. As already mentioned in our previous correspondence on the site visit to San Ysidro, CA, this visit would be undertaken within the context of UNHCR's advisory relationship with the United States government with respect to its obligations under the 1967 Protocol relating to the Status of Refugees.

Miami International Airport

During our trip, we would greatly appreciate observing the various aspects of INS operations at the Miami International Airport. This would include, for example, observing primary and secondary inspections, any detention or holding areas, and any other observation areas. We are particularly interested in observing the expedited removal process and other procedures that asylum-seekers might experience. If possible, we would like to review a random sampling of expedited removal files.

We have scheduled our visit for monitoring the expedited removal procedures at the airport on Tuesday, April 10, 2001. Please let us know if that date is convenient for the INS local officials, and what time, determined by the arrival of international flights, would be most convenient. Our draft agenda is attached for your reference.

Krome Detention Center, Turner Guilford Knight Correctional Center and Broward (Ft. Lauderdale) County Jail

We would also like to visit the above-mentioned detention centers and county jail. We would be interested in observing the living and processing areas, including cells, pods, dormitories, holding rooms, special housing units, libraries, recreation areas, interview rooms, medical treatment areas, clinics, cafeterias and segregation areas. We would also appreciate the opportunity to meet with individual asylum-seekers or refugees who are detained, and will provide you with the names and "A" numbers of these individuals in advance of our visit. As our agenda notes, our visit to Krome Detention Center is scheduled for the morning of Wednesday, 11 April and we envisage to visit Turner Guilford Knight in the afternoon of that day. If there is an asylum hearing at the Krome North Service Processing Center on Wednesday, 11 April, we would very much like to attend, if time allows. We propose to visit the Broward County Jail in the early afternoon of Thursday, 12 April.

We would also highly appreciate it if our delegation could attend a credible fear interview at the Miami Asylum Office in the morning of Thursday, 12 April. We would be most grateful to have the opportunity to meet and have discussions with the INS District Director.

The UNHCR delegation will comprise two representatives from UNHCR's Regional Office for the United States and the Caribbean, located in Washington, DC. Members of the delegation are: Messrs (b)(6) and (b)(6) respectively Deputy Regional Representative and Legal Officer. (b)(6) will be our Office's point of contact in arranging the visit. He can be reached at 202 (b)(6)

Thank you, as always, for your assistance in accommodating our site visit requests. We will discuss our findings with you and provide a written report after our mission. We look forward to working with you and local INS officials in arranging this visit.

Sincerely,

Guenet Guebre Christos
Regional Representative



UNHCR

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Haut Commissariat des Nations Unies pour les réfugiés

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17 May 2003

VIA FACSIMILE: 202 307 9911

Mr. Michael Garcia, Commissioner
Bureau of Immigration and Customs Enforcement
US Department of Homeland Security
Washington, DC 20528

VIA FACSIMILE: 202 401 0981

Dr. Nguyen Van Hanh, Director
Office of Refugee Resettlement
US Department of Health and Human Services
370 L'Enfant Promenade, SW
ORR/6th Floor East
Washington, DC 20447

Re: Report on UNHCR Mission to Miami Region Detention Sites

Dear Commissioner Garcia and Dr. Van Hanh:

Following please find the report of the Office of the United Nations High Commissioner for Refugees (UNHCR) on its visits to three Miami area detention sites on 5 December 2002, Boystown Juvenile Facility, Broward County Detention Center (Wackenhut Corrections Corporation), and the Comfort Suites Hotel. UNHCR requested the visits in light of the increased number of Haitian detainees in the region and prior criticism of the Immigration and Naturalization Service (INS) regarding detention conditions at Turner Guilford Knight Correctional Center and the Krome Service Processing Center in Miami. As noted below, with the exception of the Comfort Suites Hotel, we commend the INS and DHS for making positive changes in this regard.

We would particularly like to thank (b)(6), (b)(7)c Program Analyst with Detention & Removals (INS) for helping to coordinate the visit and meeting our representatives at the Broward County facility; Officer (b)(6), (b)(7)c the District Juvenile Coordinator; and Officers (b)(6), (b)(7)c (Acting OIC at Krome) and (b)(6), (b)(7)c (Supervising Detention/Deportations Officer at Krome) for their assistance. We appreciate that your staff were able to accommodate three representatives from UNHCR's Regional Office for the US and Caribbean, (b)(6) Senior Regional Protection Officer; (b)(6) Senior Protection Officer; and (b)(6) Senior Public Information Officer, who were provided tours of the facilities and given access to interview the asylum-seekers whom we had designated. Our representatives reported that INS and local facility staff were extremely helpful, both in working out the complicated logistics of the day and in giving their time generously.

At each site, UNHCR interviewed asylum-seekers regarding conditions of detention and the process of seeking asylum, spoke to INS and facility officials, and toured the facility. Due to the limited focus of the visits, the following report is brief. We wish to highlight, however, UNHCR's observations and recommendations against the use of the Comfort Suites Hotel or similar accommodation as a detention site, especially for any length of time beyond the few days that may be needed in an emergency or in the temporary absence of any alternative.

We reiterate our continued concerns about the detention of asylum seekers in the United States. As you are aware, UNHCR's Executive Committee (*see, e.g.*, Conclusion No. 44), has stated that asylum seekers should normally not be detained. This principle is also found in UNHCR's Detention Guidelines. We encourage BICE and ORR to release individuals who should not be detained and to aggressively pursue alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Sincerely,

Guenet Guebre Christos
Regional Representative

cc: Mr. Joseph Langlois (by first class mail)
Director, Asylum Division
Bureau of Citizenship and Immigration Services
US Department of Homeland Security

Boystown Juvenile Facility

UNHCR was briefed by (b)(6), (b)(7)c Clinical Supervisor of the Unaccompanied Minors Program of Boystown, and (b)(6), (b)(7)c INS Deportation Officer and District Juvenile Coordinator. They provided the following background and statistical information:

Since 1998, the facility has been used exclusively by INS for unaccompanied minors or minors held as material witnesses. It is run by Catholic Charities of the Archdiocese of Miami under contract to the US Department of Justice. It is a shelter care facility; doors are not locked; it exceeds the *Flores Settlement* standards. The facility capacity is 32, although it can expand to 40. At the time of UNHCR's visit, there were 18 boys and 13 girls detained, of which total, 14 were Haitians. Other countries of origin included Colombia, Nicaragua, Ecuador, Peru and Serbia (Kosovo). Ages ranged from 3-17, with an average age of 15. Most children were apprehended locally; some were stowaways, others could have been transferred from New York, or other region, if the Berks facility (in Pennsylvania) were full.

They stated that their main purpose was to provide for the care of children in the INS process and to facilitate reunification with family in the US. Efforts to reunite with family included the identification of a sponsor in the US and the attempt to contact a caregiver in the home country. The entire process could be completed in 48 hours. Foster home care is also an option. The INS Office of International Affairs was responsible for Cuban and Haitian cases. Some apprehension was indicated over how the system would work and where the Office of Juvenile Affairs would fit in once the Office of Refugee Resettlement, took over. It was noted that the children are coached before apprehension to not reveal the whereabouts of their families, but instead to identify a lawful permanent resident. The program allows for release to someone unlawfully present, however, and parents who are unlawfully present are not always put in proceedings if identified.

Staff counselors (case managers) handle six cases, unless the child is under eight years old, in which case the counselor is assigned only that case. There were 40 staff. Children are read their rights immediately upon apprehension; if they are 14 or older, they can make their own decisions about whether to seek asylum; otherwise they are referred to the Florida Immigrant Advocacy Center (FIAC) or the American Immigration Lawyers Association (AILA). AILA has received an ABA grant to assist children. FIAC gives rights presentations regularly. Immigration Court hearings are held at Krome. Restraints are not used. Most children are released before the disposition of their asylum case, and AILA or FIAC help with changes of venue. Their average length of detention is 50 days, the longest being one year.

Observations: The facility has a pleasant atmosphere, both in the common areas and bedrooms. It appears clean and comfortable. The boys live in one wing; girls in another. There are two children in each room, which has ample space for storage. It has a well-stocked library and play area for younger children as well as recreation area for the older children. Staff appeared uniformly pleasant and helpful and interested in the well-being of the children. Unlike other children's facilities UNHCR has visited, schooling is a priority (school-age children attend from 8:30-2:30 Monday-Friday, and wear school uniforms; teachers give classes at the facility in social sciences, math, sciences and ESL).

UNHCR spoke to two children (16 and 17 years old) through an interpreter. They had both been detained since 29 October 2002, when INS apprehended them after their boat reached Biscayne Bay. They had both been detained elsewhere before being moved to Boystown – either at Krome, Broward County, or the Comfort Suites Hotel. During our interviews, they could not communicate well through the interpreter, who was kind and well-meaning, but untrained in interpreter skills and obviously not faithfully translating what the children were saying. Although we were aware that both children had legal representation, the children themselves did not know if they had attorneys or what papers they had signed when they were first interviewed or even whether their interviewer was with INS or was an advocate. They did not voice any concern with conditions at the facility, and said they were treated well. They did, however, express eagerness to be released to family in the US and confusion about the process, noting that they had been questioned by many different people at different times.

UNHCR recommends that, while children remain in BCBP, BICE or ORR custody, officials increase efforts to inform children of the process and provide well-trained interpreters at all times, from the time of apprehension through all phases of the asylum and release process. This practice would help the children understand the process they are going through, ease some of their anxieties, and allow them to better communicate with the appropriate officials or advocates. The duty of confidentiality owed asylum-seekers would also be better maintained. In all other regards, UNHCR commends immigration authorities for providing a caring and home-like atmosphere for children at Boystown.

Broward County Detention Center (Wackenhut Corrections Corporation - WCC)

UNHCR was briefed and given a tour by (b)(6), (b)(7)c WCC Facility Administrator; (b)(6), (b)(7)c (b)(6), (b)(7)c WCC Deputy Administrator; (b)(6), (b)(7)c INS Program Analyst, Detention & Removals; and (b)(6), (b)(7)c INS Supervising Detention/Deportations Officer at Krome. They explained that the facility is also a Work Release Center for both male and female inmates of Broward County. Under contract to INS, WCC added accommodations for women in immigration custody and began to house them on 28 August 2002.

INS originally contracted for 72 beds (at \$85 per day per woman) which later expanded to 104. It is a minimum security facility, with the grounds secured and guards at all exits. It was first used by INS in response to criticism over the use of TGK (the Miami-Dade County Jail) and Krome for the detention of women. INS transferred the Haitian women who were at TGK to this facility. The group of Haitian women who were transferred to this facility were among the group that has been detained since 3 December 2001 when their boat floundered off the Miami shore. INS policy changed at that time so that asylum-seekers in that group were not eligible for parole.

From the briefing and material provided by WCC and INS, the facility appears to be very well run, and a model in many ways: There is no contact between INS detainees and inmates of the county; INS detainees can attend ESL classes and life skills classes, and work programs; discipline rules are explained, and there is no use of isolation; WCC provides extensive orientation to detainees, and written materials are provided in Spanish, French, and English; detainees are allowed to wear their own clothes and are given clothes and sanitation items as needed; there is a liberal telephone policy and access to free calls when needed. Staff noted that rates are “high – as in all correctional institutions.” FIAC gave

weekly rights presentations. Rooms accommodate four (two bunk beds) with a shower and sink attached. WCC management is proud of the facility and its efforts to communicate with detainees and its own staff to get feedback and try to improve the facility.

Observations: During our visit, the women had access to the entire facility, including a beauty salon and general recreation room with exercise equipment and arts and crafts material. There was a lot of interaction among the detainees, and guards and staff appeared to be helpful and friendly. We spoke to three women. They were unanimous in their favorable comparisons of Broward to TGK, which one described as the difference "between hell and paradise." They said most of the staff was very kind. Staff who served as translators during our interviews did an excellent job. One problem, which was voiced by all three, was that it was extremely depressing for the women who were not eligible for release to see others come and go; they felt hopeless. One woman said that she did not know how to ask for a favor (to talk to her son at Krome) because the staff appeared so busy. She also said she did not understand why they had recently had their photos taken and was afraid that it was to send them back to Haiti. (We were later informed that it was purely an administrative requirement.) She said no one had explained and that it was not easy to talk to officials, as interpreters were not always available.

UNHCR recommends that BICE and WCC increase efforts to help detainees communicate their needs and have their questions answered, including by having trained interpreters available as necessary to ensure that detainees understand the process and are able to communicate better with and have easier access to staff. UNHCR commends BICE and WCC on the caring and open atmosphere at Broward and recommends that, when BICE detains asylum-seekers, the model of minimum security and access to attorneys/NGOs that is employed there be copied.

Comfort Suites Hotel

INS uses this hotel to house accompanied minors with the accompanying adult. We were met at the hotel by an INS Deportation Officer from Krome, who showed us to the room where the family we had requested to interview was detained.

Observations: There was a female guard posted outside the hotel room. The family consisted of a mother and three children (11, 14, and 17 years old), who had been detained at the hotel since 29 October 2002. Two other members of the family, an adult daughter who was seven months pregnant and her three-year-old daughter, had also shared the room with them, but had been released two weeks earlier. There were two double beds and a sofa bed which they had all (six) shared before. There was constant noise of construction during the interview, which the family said was normal. They said they never left the room, never went outside, that their meals were brought to them. The room had a TV, but the children had no toys or books or games (though the INS officer later said they were available). They said they were not allowed to communicate with other detainees at the hotel, which was later confirmed by INS as a policy to prevent detainees from conspiring. The family said that none of the guards spoke any French or Creole, making it virtually impossible for them to ask questions or communicate their needs.

The mother's primary concerns were that she could not use the phone to call her pregnant daughter, causing her to be extremely worried about the pregnancy and about who would

care for her daughter. She also said she could not use the phone to contact her attorney. It was not clear whether there was a problem with the phone or whether the attorney simply was not available. She said that a friend had been denied permission to visit them. The guard was not helpful, knowledgeable or sympathetic when we asked about these concerns.

Under these conditions, UNHCR recommends that hotels not be used for detention, above all not for children or pregnant women and not for prolonged periods. The lack of access to other individuals, recreation or exercise of any kind, and fresh air over an extended period constitute denials of basic human rights. In this regard, when detention is deemed necessary, we recommend a model that incorporates the positive aspects of the Berks Family Shelter Care facility.

Miami Visit 9 – 12 April *Mission Report*

Prefatory Remarks

1. (b)(6) Legal Officer, and the undersigned undertook the second of a series of visits to ports of entry/detention facilities planned by ROW in 2001. We met with several NGOs on the afternoon of our arrival (Monday 9 people), spent a day at the Miami International Airport (Tuesday 10 April), visited the Krome and TGK Detention facilities (Wednesday 11 April), attended credible fear interviews and had meetings with Senior INS Officials (Thursday 12 April).
2. The visit was educational. We were (i) able to see most of the process that asylum seekers experience from the time they enter the US via an airport through the credible fear interviews; (ii) had full access to and cooperation from all INS Officials involved in the process; (iii) heard the NGO's views regarding the respective detention facilities; (iv) had the opportunity to meet and discuss detention related issues with the Acting Director and the Director of the Miami INS Asylum Office; (v) interviewed over a dozen female and male asylum seekers, focusing primarily on how they viewed the asylum process and the conditions of detention.; and (vi) witnessed first-hand the conditions of detention of asylum seekers at both Krome and TGK.

Meeting with NGOs

3. We met with the Florida Immigrant Advocacy Center (FIAC), the Church World Service (CWS) and Catholic Legal Immigration Services Network (Clinic) to discuss primarily detention of asylum seekers. In brief, the NGOs believe that INS is not living up to its detention standards. The focus of the criticism was TGK, the women's detention center in Miami.
4. Some of the main complaints about TGK were: i) the facilities for confidential meetings between lawyer and client are inadequate; ii) the law library available to the asylum seekers is very limited; iii) there is a lack of access by NGOs to asylum seekers when there is a medical emergency or a close down; iv) the medical treatment needs improvement; and v) there is a lack of access by indigent clients to mail services. (**Note:** Our subsequent observations proved that these observations had merit.)
5. There was a general criticism that women asylum seekers are getting punished twice. First, women were moved out of Krome because they were abused and those who allegedly perpetrated the abuses are said to still be working at Krome; second, they are now housed in inferior facilities which do not meet INS standards. (**Note:** According to INS officials, all the INS employees suspected of having committed abuses against female

detainees at Krome have been transferred from the detention center, pending the investigation.)

6. The NGOs also pointed out that medical and dental treatment at TGK is far inferior to Krome and that there is a shortage of multi-lingual staff there.
7. When asked about specific alternatives that NGOs can recommend, they pointed out that a more “humane” environment should be made available for the women asylum seekers. Also, they pointed out that the Catholic Church would be interested in working together with INS to set up pilot projects to house asylum-seekers in “half-way house” type arrangements. There was much frustration by the NGOs about a lack of uniformity which they see in the treatment toward asylum seekers. We were also informed that a meeting with the Director of Krome to discuss alternatives did not yield results. There is a sense that the decision to implement alternatives to detention lies with HQs.

Miami International Airport

8. At the Miami International Airport, we were able to meet and have available throughout the day the Assistant District Director of Inspections, the Port Director in charge of the Airport, the Assistant Port Director, Special Operations Inspector and other immigration inspectors. We were walked through every detail of the primary inspection and were able to walk into any interview going on at the secondary inspection phase. The direct access from the highest levels to the operational levels allowed us to ask and get answers to many queries about the process asylum seekers go through.
9. There was much emphasis by the inspectors that all individuals, migrants and asylum seekers, are now treated with “respect and dignity”. While it was not explicitly stated, there were implications that all potential asylum seekers may not have been treated in an ideal manner in the past. It was acknowledged at all levels that the INS airport staff is scrutinized by the media, NGOs and others. As a result, the INS staff is taking extraordinary precautions to make all individuals “comfortable” and treat them with “respect”.
10. In order to expedite the process for asylum seekers, the Miami International Airport recently began to provide the entire credible fear orientation at the airport. This allows asylum seekers to be scheduled for their credible fear interview faster. This is a precedent set by the Miami airport since they receive probably the largest number of asylum-seekers. The idea is to decrease the time of detention which, thus far, has been successful.
11. Among other things, it was explained to us that:
 - a) Asylum seekers will get an orientation video at the airport, currently available in 18 languages. If a video is not available in an individual’s language, the explanation in writing is available in every language needed. So far, the airport authorities have not come across a language not available.

- b) A list of free legal services available in the Miami area is also provided to all asylum seekers. However, it was pointed out by INS that they are fully aware that most free legal services are already over booked.
 - c) All asylum seekers have access to phone services nation-wide. If an asylum seeker cannot find a telephone number, INS will help them trace it.
 - d) All asylum seekers are also given the opportunity to call their respective diplomatic mission. The consequences of potential refugees doing this is also explained to each individual; however, a number of individuals insist on making this call.
 - e) Legal counsel is also on the premises to assist INS with the expedited removal process. INS inspectors pointed out that legal counsel has been very helpful to their work when questions of admissibility or other legal issues arise during the process.
 - f) Food is provided to those in secondary inspection.
12. We were able to sit and observe a number of expedited removal interviews in order to ascertain that individuals were clearly allowed to express concerns about their respective countries of origin. In fact, we had the opportunity of observing the beginning and (almost) the end of the process. As we were introduced to the secondary inspection area, we found a Liberian asylum-seeker being interviewed. We requested and were given a chance to interview him to check, as we explained to the INS officials, if the process, as outlined to us, was indeed followed. The asylum-seeker confirmed that : a) he was given documents in English; b) it was ascertained that he spoke and understood English well; c) was presented with a list of NGOs that provide pro bono services in the Miami area and that he could contact them (which he did); d) that the officers were courteous and very respectful; e) that the atmosphere was not “intimidating”; and f) he was given food. The asylum-seeker arrived at the airport in the morning of the day we interviewed him and was still at the airport when we left in the afternoon. He looked, and told us he was, exhausted as he had not had a chance to rest. To our dismay, he also told us that, initially, he was told by one of the officers that, since he had a return ticket, he was going to be sent back to Ghana. It was not clear whether this was before or after he had expressed a fear of being returned to his country.
13. The Liberian asylum-seeker was not deported as he feared since we met him again at Krome at the credible fear interview that lasted some 45 minutes. According to the interviewing officer, the asylum-seeker was found credible and the finding was positive. The officer also informed us that if the asylum-seeker was able to provide the INS with an address of a relative of friend (which in fact was the case) in the US, he would be released immediately.

Krome Detention Center --For Men

14. At the Krome Detention Facility we met with the Acting OIC, who was very helpful. Among other things, she informed us that i) there is no co-mingling of detainees. The asylum seekers are dressed in orange jump-suits, while those with criminal records are dressed in red jump-suits and kept in separate areas; ii) the detention facility is working better because it is not full (since imposing a visa restriction on Colombians transiting through Miami, INS has been able to better cope with the case load).
15. When asked about the rationale for and length of time of detention of asylum seekers, the Acting OIC emphasised that INS does not have a choice. She pointed out that the law makes detention mandatory, with only the exceptions of a medical situation and/or a special interests/significant public interest case. At the same time, however, she informed us that detention at Krome, on average, is now down to four days for asylum seekers. Krome expects to maintain this expedited processing of asylum seekers, since this makes everybody's job easier and avoids potential criticisms.
16. Regarding what many consider are inferior conditions at the TGK facility, where women are detained, the Acting OIC pointed out that the present facilities at Krome are not conducive to keeping both sexes together, thus it would not be a good idea to return the women to Krome. While Krome has undergone major reparations in the last few years, it would need further major reconstruction and large amount of funds to change the facilities and allow for an adequate stay for women asylum seekers.
17. We were able to carry out a comprehensive tour of the facilities. We noted that the medical facilities are well equipped, there is a doctor on stand-by on 24 hours basis, there is a local hospital available close by and translators are available if necessary. We also saw an X-ray unit, Radiology Unit and dental facilities.
18. At the eating facilities, we saw a 5 week menu which is varied and has balanced meals. We spoke with some of the staff at the eating facility, noting that everything is impeccably clean, and where the staff appeared to take much pride in their work.
19. We also saw a large collection of books, games which are readily available, sofas in the seating areas and in the TV room, a multi-purpose room and large exercise facilities outside. Krome also has a good Law Library, a recreation room and movies on Saturdays. The area where bunks are located for the detainees appear rather crowded, but we heard no complaints from the detainees.
20. We interviewed 5 individuals of concern to UNHCR.

TGK Detention Facility –For Women

21. At TGK we spoke with INS officials, the Facility Executive Officer and were able to mingle with the asylum seekers. In total, we spoke with about 8 detainees.
22. We saw the interview room where confidential interviews take place, had access to the library, the common area, recreational patio and rooms where the asylum seekers sleep. We also checked that the phone indeed works for long distance collect calls.
23. We noted that the room for attorney client confidential meetings is a rather public room due to the constant traffic through the room. We also noted that the Law Library is very limited in its collection. In speaking to a number of asylum seekers, while the majority did not complain about generally harsh treatment and the food (several felt the food was actually good, contrary to allegations by NGOs), some complained about an insensitive doctor who did not take their medical problems seriously.
24. All the women we spoke with complained about the humiliating treatment of being handcuffed when they are taken out of the facility and strip searched upon return to the facility. We asked the facility executive officer about this treatment. He explained that it is common practice at detention facilities and that this procedure could not be changed. Precisely to avoid this procedure, INS is considering carrying out credible fear interviews by telephone so that the women do not need to leave the facility. We were informed by the INS officials that an in-person interview will be conducted if a telephone interview is negative, so that all asylum-seekers have an equal chance to present their claims.
25. When asked about allegations of a workman exposing himself to the women, we were informed that there are 24 hour video cameras everywhere and every allegation can be explored. To-date they did not know of such allegations being made.
26. When asked about the jail conditions, INS informed us that they were looking at an ex-nursing home which was vacant in Bradenton, Florida. While they believe that this is a more humane facility, they also acknowledged that they would likely be criticised by NGOs because it is 200 miles away from Miami.
27. We also asked about women being moved without providing notice to their lawyers. INS informed that if a lawyer has filled out a G-28 notice of appearance and it has been put into IC's file, by law, INS must inform the lawyer. INS insisted that this obligation has always been fulfilled; however, when this form is not in the file, they cannot inform the lawyer about a transfer.
28. We were informed that 6.2 days is the average time of detention at TGK.

OBSERVATIONS

29. **MIAMI AIRPORT:** There is an obvious effort under way by inspectors to carry out the procedure for asylum seekers fairly and humanely. It was reiterated to us that everyone is treated with "respect and dignity". It goes without saying that this treatment should be the norm at all times; we hope that it continues.
30. Access to INS legal counsel on the premises to assist inspectors with any potential legal query in the expedited removal process is a positive development. We strongly suggest that this practice continues.
31. **KROME DETENTION CENTER:** In light of previous criticism against Krome, we were pleasantly surprised with the present conditions there. The asylum-seekers interviewed appeared puzzled at the question of conditions/treatment at Krome, none complained; in fact, most stated that the conditions were "good" or "satisfactory". We hope that these conditions will become the norm in the short and long term future.
32. We hope that the four day average detention stay is maintained. This will keep the credible fear phase running expeditiously and minimize many potential problems regarding conditions for asylum-seekers.
33. Under the present conditions at Krome, we concur that the facilities are not conducive to keeping both males and females together. We therefore suggest that, notwithstanding the criticisms against TGK, women not be returned to the Krome Detention Center. However, if a significant investment is made at Krome, structural changes are undertaken to allow for an independent facility for women, this will allow for adequate facilities for women where they would be treated equally to men. The TGK type facility should be avoided if at all possible.
34. **TGK Detention Facility:** Unlike the INS run Krome Detention Center, the TGK Facility is indeed a prison. It looks and feels like a place where criminals are kept and virtually all detainees complained about conditions there. Indeed, we would suggest, as a first step, a number of changes in the immediate future.
 - a) As pointed out in our observations, an adequate interview room should be made available as soon as possible.
 - b) An adequately stocked law library should be made available to the detainees.
 - c) Medical personnel who treat the asylum seekers and refugees at TGK should be sensitive to their problems. Over half of those interviewed made a point about the "insensitivity" of the doctor on the premises because he did not take their medical problem seriously.

- d) While understanding the nature of a detention facility, UNHCR reiterates its opposition to women systematically being handcuffed and strip-searched upon leaving and returning to the premises. This is inconsistent with humane treatment of asylum-seekers anywhere as required by international norms and standards.
- e) The 6.2 day average time of detention should be maintained or lowered, if at all possible.

35. **Uniformity:** One of UNHCR's goals is to establish uniformity of treatment of detained asylum-seekers nation-wide, consistent with our detention guidelines. Given the differences between Krome and TGK, there is still a lack of uniformity within Miami. UNHCR suggests that all detained asylum-seekers, if it is necessary to detain them, should be put into specific INS run facilities that are accountable and must adhere to the detention guidelines of INS. We note that UNHCR was contacted by TGK personnel because the orientation material was not available in Tigreian, but only in English, unlike the situation at the airport.

36. **Prolonged Detention:** While it is positive that detained asylum-seekers in Miami are now detained for less than a week on average, there are still a number of asylum-seekers who have been in detention for months without hope of being released soon. This issue should also be addressed and ameliorated, with parole considered when there is no security risk.

(b)(6)

UNHCR Washington
Regional Deputy Representative
May 4, 2001

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES



NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES

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25 November 1998

Mr. Michael Pearson
Executive Associate Commissioner for Field Operations
US Immigration and Naturalization Service
425 Eye Street, N.W.
Washington, DC 20536

Re: **Expedited Removal Mission to Detroit, Michigan - 21 to 22 of October 1998**

Dear Mr. Pearson:

At the suggestion of Mr. Jeffrey Weiss, Acting Director of International Affairs, we are addressing our letter to you regarding a recent mission by our Senior Legal Counselor, (b)(6) (b)(6) to the Detroit, Michigan area to observe the expedited removal process. We wish to thank members of your staff for arranging (b)(6) visit, in particular (b)(6), (b)(7)c (b)(6), (b)(7) was extremely helpful and generous with her time.

As we have not directed any previous letters to you directly, we would like to briefly explain to you our role in general and in the expedited removal process in particular. UNHCR has been formally mandated by the United Nations General Assembly to provide international protection to refugees and to assist governments in providing permanent solutions to their problems. In addition, under Article 35 of the 1951 Convention relating to the Status of Refugees, UNHCR has the duty of supervising the application of the Convention. With regard to the expedited removal process, our role so far has been limited to site visits for the purpose of observing and providing feedback to the INS Office of International Affairs in its efforts to comport with international principles and standards of refugee protection.

During her mission to the Detroit area, (b)(6) visited the Wayne County Jail, the Detroit-Windsor Tunnel, the Ambassador Bridge and the Detroit Metropolitan Airport. Below are (b)(6) observations

Wayne County Jail

The Wayne County Jail is a facility built in 1920 which houses 1,000 inmates. Two cells containing ten beds each are reserved for use by the INS. Each cell contains one telephone, one shower, one toilet and one sink. At the time of (b)(6) visit only nine INS detainees were housed at the Wayne County Jail.

Visitation - The Wayne County Jail allows attorneys to visit inmates (including INS detainees) from 7:30 am to 10:00am, 1:00pm to 3:00pm, and 7:00pm to 10:00pm. Family and friends may only visit inmates (including INS detainees) one day per week, and the day depends on the first letter of the inmate's last name. Visits by family and friends is limited to 30 minutes, but there are no minute or hour limitations on visits by attorneys. Such limitations on visits by family and friends are of concern to UNHCR because individuals in the expedited removal process, who have only a limited period of time to prepare for their credible fear interviews, may, in effect, be denied the opportunity to consult with family and friends because of the limitations (one day per week for 30 minutes) placed on their in-person consultations with such individuals.

Access to Telephones - Each cell contained one telephone from which detainees may only make collect calls. Because legal assistance organizations often do not accept collect calls, such restrictions could prevent detainees from obtaining legal assistance. As UNHCR's *Guidelines on Detention of Asylum Seekers* (Geneva 1996) provide, asylum-seeker have the right to contact a lawyer, national refugee agency or other agency, as well as UNHCR, and the means to such persons or agencies should be made available to asylum-seekers. See Guideline 4. We recommend that the Jail allow asylum-seekers the opportunity to place calls from coin-operated or phone-card telephones or, if the asylum-seeker is indigent, that the Jail allow him or her to call such persons or agencies free of charge.

Law Library - The law library is housed near the recreation facility in the jail and during the time of Ms. Germain's visit was noisy and crowded. Approximately 10 inmates were lined up to speak to the law librarian. When asked what immigration materials were available for INS detainees, the librarian pointed to a CD ROM containing an annotated US Code. The law library did not appear to have any books or treatises focusing on immigration law or any self-help materials. The Wayne County Jail officials were receptive to making available to INS detainees self help materials provided by INS or outside groups. Asylum-seekers should be provided with "necessary guidance" regarding the procedures to be followed when applying for asylum and the "necessary facilities" for submitting their claim. See UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status* (Geneva 1992) at para. 192. Asylum-seekers housed in INS detention facilities have access to law libraries containing immigration law treatises and/or self-help materials and, in some cases, have the opportunity to observe group rights presentations.

Conditions - When (b)(6) arrived at the Wayne County Jail, inmates were mopping and scrubbing the INS detainees' cells while the INS detainees were taken to recreation. Other parts of the Jail visited by (b)(6) particularly the booking or registration area, were dirty and contained strong, foul odors. Detainees complained that they were unable to have their hair cut because the prison charged \$9 for a hair cut and they had no money. As a result, one detainee had not had his hair cut in 12 months. A detainee from Afghanistan, who appeared to be in need of psychiatric or psychological assistance, was classified as a manipulator by a mental health

professional asked by INS to evaluate him and had not been afforded adequate mental health care. After (b)(6) visit, the Director of Psychiatry of the Wayne County Jail contacted UNHCR and expressed concern about the individual, indicating that he had been exhibiting psychotic behavior in the Jail. We would ask INS to look into these matters and provide detainees with clean environments, minimum personal hygiene benefits, such as hair cuts, and access to adequate mental health care. We are concerned that poor conditions could deter bono fide refugees from pursuing their asylum claims.

Ports of Entry

(b)(6) wishes to extend her gratitude to Area Port Director (b)(6), (b)(7)c who kindly answered her numerous questions openly and candidly and transported her to the three ports of entry she visited during her mission. We note that at the time of (b)(6) visit, very few individuals (less than 50) who were subject to expedited removal at the tunnel, bridge or airport in the Detroit area had been referred for a credible fear interview since the expedited removal process was implemented in April 1997. Nevertheless, the Area Port Director had been instructed that if an expedited removal case was referred to secondary inspection, (b)(6) should be the opportunity to observe it, if the individual being interviewed did not object. We thank the INS for making such arrangements in advance.

Unfortunately, under such circumstances, the changes are very slim that an expedited removal secondary inspection interview would take place during such brief visits by (b)(6) or others from our Office. We raise this point because we are still displeased about our previous attempts to observe the 92 secondary inspection interviews of Chinese nationals which took place at the El Centro Detention Center in September. Our Office had dispatched (b)(6) to El Centro at the invitation of the Office of International Affairs, yet during the three days she attempted to gain access to these interviews, she was precluded from observing them and only received authorization from the INS, according to the Office of International Affairs, on the day *after* the interviews concluded.

Policy Regarding Asylum-Seekers Seeking Entry into Canada - Area Port Director (b)(6), (b)(7)c explained that the INS policy in the Detroit area is to give 30 days voluntary departure to individuals "directed back" from Canada while their fingerprints and initial application are being processed. If US authorities indicate to the Canadians that the person being "directed-back" is likely to be detained upon return, the Canadian policy is to parole the individual into Canada and not to "direct back" such persons. We believe that such a policy is a good one from UNHCR's perspective because it would avoid situations in which an individual who may not have access to a full and fair proceeding in the US (either because he or she was ordered deported *in absentia* or would be barred from asylum based on the one-year filing requirement or other bars). It also allows individuals with family ties in Canada, and no ties in the US, to be reunited with family members. We realize, however, that such a policy is moot in light of Canada's recent announcement that it will not "direct back" asylum-seekers to the U.S.

Airline Interpreters - During the secondary inspection process at the Detroit Airport, INS inspectors sometimes use airline employees as interpreters. UNHCR recommends that such

employees, in particular those who are employees of foreign governments, may intimidate potential asylum-seekers who may be unwilling to be open about their fears of return to their home countries in the presence of these interpreters.

Privacy - Individuals subject to expedited removal who may have a fear of persecution, should be permitted to speak with an inspector in a private area where conversations cannot be overheard by others. (b)(6) noted that at the Detroit Airport, the secondary inspection interview areas were in cubicles adjacent to the waiting areas and that conversations between inspectors and non-citizens could be easily heard by individuals in the secondary inspection waiting area. It is recommended that individuals subject expedited removal be afforded a more private area for secondary inspection interviews.

We thank you for your consideration of our observations on these matters. We look forward to similar missions in the future. In addition, as previously communicated to you, we hope to meet with you and officials from the Field Operations branch of INS to discuss and formulate a protocol regarding UNHCR's access to secondary inspection.

Sincerely,

(b)(6)

Deputy Regional Representative

cc. Mr. Jeffrey Weiss
Acting Director of International Affairs

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March 4, 1993⁴

By Telefax

Commissioner Doris M. Meissner
Immigration and Naturalization Service
U.S. Department of Justice
425 I Street, N.W.
Washington, D.C. 20536

Re: INS Detention Policies

Dear Commissioner Meissner:

During the past several months, UNHCR has had the opportunity to meet with a number of district directors and other INS officials, and to visit several INS detention centers in the field. These visits have included Boston (Coast Guard facility), Los Angeles (San Pedro), New York (Varick Street and Wackenhut), and San Diego, as well as several detention locations in Louisiana. I am writing now to offer some observations regarding certain aspects of INS detention policies and practices affecting refugees and asylum seekers.

Although my Office fully appreciates the difficulties posed to States by illegal movements of people, the situation of refugees and asylum seekers differs fundamentally from that of other migrants. Some refugees and asylum seekers are, of course, detained for criminal offenses and other special problems, but the vast majority appear to be in INS custody merely for undocumented entry.

As you know, asylum seekers who are refugees are in an exceptional situation of need. National authorities are responsible for issuing travel documents which are a prerequisite for authorization to enter potential asylum countries, yet often the national authorities themselves constitute the threat of persecution. The drafters of the 1951 Convention anticipated that refugees frequently may be compelled to flee on short notice and without completing the usual immigration procedures for departure and entry. Article 31 (attached for ease of reference) of the 1951 Convention, which is incorporated by

reference into the 1967 Protocol, reflects this special situation of refugees by proscribing the imposition of penalties on refugees merely on account of their "illegal entry or presence," so long as the refugees fulfill certain qualifications such as showing good cause for such entry or presence.

The tendency of some States to detain refugees and asylum seekers, sometimes in extreme conditions and as a deterrent to further arrivals, prompted the UNHCR Executive Committee to adopt several Conclusions to address this problem. The Executive Committee Conclusions, customarily adopted by consensus of the 47 States members (including the U.S.), evidence an important measure of State support for particular protection practices and standards. They contain international guidelines that should serve as a basis for developing national policies on refugee issues.

The UNHCR Executive Committee has expressed deep concern about the detention of refugees and asylum seekers merely on account of their undocumented entry or presence in search of asylum. Executive Conclusion No. 44 (attached) recommended that "in view of the hardship which it involves, detention should normally be avoided." Detention of refugees and asylum seekers should normally be limited to the shortest time necessary to establish the applicant's identity and the elements of the asylum claim.

Please let me now share a few general observations on INS detention practices which my Office obtained during the above-mentioned site visits to Boston, New York, Los Angeles and San Diego. My comments concern two particular aspects of INS practice, specifically the APSO program and conditions of detention.

UNHCR stresses the importance of instituting administrative practices that make the necessary distinction between the situation of refugees and asylum seekers, and that of other aliens. Therefore, UNHCR strongly supported both the INS Pilot Parole Project that began in May 1990, as well as INS's institution of the Asylum Pre-screening Officer (APSO) program in April 1992. My Office worked with various INS colleagues in the early stages of these programs, and was pleased to participate in the orientation of the INS trial attorneys who were to serve as APSO's at the inception of the program. The Service's introduction of a screening and release procedure was also well-received by the NGO community. The New York Times noted in an editorial at the time that "[t]he I.N.S. deserves praise for restoring the presumption of freedom that draw (sic) asylum seekers to the U.S. in the first place." (27 Apr 92, p. A16).

Unfortunately, the APSO program does not yet appear to have lived up to its promise. The program appears to be administered unevenly, with mixed results for refugees. I should acknowledge that it is difficult to comment precisely on this program, as it has been difficult for our Office to obtain comprehensive and reliable statistics describing the number of asylum seekers interviewed, the number recommended for release, and the number actually released. The absence of a statistical or evaluative component may have been a deficiency at the inception of the program.

Nevertheless, the information my Office has been able to obtain appears to suggest the existence of serious problems which, I believe, require the Service's increased attention. In New York, for example, there appeared to be a substantial discrepancy between the number of asylum seekers recommended for release by the APSO, and the number ultimately released from detention. According to statistics received from the District Director, from May 1993 to January 1994, of 96 APSO cases interviewed by an APSO, 13 were recommended for parole. Although the District Director exercised his parole authority favorably in one case that had been recommended for denial at the APSO level, of the 13 asylum seekers recommended for release by APSO's, only 3 were approved for release by the District Director. Discrepancies between cases recommended for release by the APSO but not approved by the District Director have also been observed in other districts (e.g., New Orleans, Seattle). Irrespective of the ultimate disposition of these asylum claims by the immigration courts, the substantial discrepancy between the number recommended for release and those actually paroled is a troubling sign that the system may not be working as planned by the Service.

In Boston, which at the time of our visit did not have a large caseload of asylum seekers at the Coast Guard facility there, my Office interviewed a Ghanaian clergyman seeking asylum who appeared possibly to have a "credible" and "substantial" claim for asylum, but who had been in detention for some months without ever being offered an APSO interview. Also, in New York, my Office is aware of the individual case of a Peruvian asylum seeker who was kept in detention for well over one year prior to receiving last month a favorable decision on his asylum request by the U.S. Court of Appeals. While uniformity between APSO determinations and final asylum determinations cannot be expected, my Office has been informed that this case never even was considered under the APSO program. Presumably, complex cases and those presenting novel but bona fide claims would receive the benefit of the doubt, and at the very least timely and careful review under APSO screening criteria.

I also was surprised to learn through our various site visits that a fair number of asylum seekers in INS detention are from countries designated by the Attorney General for Temporary Protected Status (TPS). My Office understands that the TPS program includes a registration deadline which may preclude TPS protection for newer arrivals. However, since many asylum seekers from TPS countries could be expected to have fled their countries because of a threat of persecution or violence stemming from the instability in their countries, or for reasons other than purely economic interest or personal convenience, I believe you would agree that many of these cases are likely deserving of a humanitarian response more generous than detention during the pendency of their claims. No doubt the Service's detention practice regarding individual cases is informed in part by the likelihood of deportation. UNHCR would urge the Service to exercise utmost caution regarding execution of deportation orders for TPS country nationals.

On a positive note, I am pleased to report that my Office's contacts with INS officials responsible for individual detention decisions in the field often

revealed considerable sensitivity to the special plight of refugees. I was greatly impressed by the perspectives and stated commitment of INS officials at Kennedy Airport to ensure that unnecessary detention of refugees is avoided. My staff reported similar experiences in contacts with INS officials in other parts of the country. To my knowledge, however, these INS staff have not been given any uniform national guidelines or training in asylum criteria and country conditions which is essential to initial determinations regarding whom to detain.

Finally, I would like to bring to your attention my Office's serious concerns regarding conditions in some INS detention facilities. District Directors covering urban areas appear to be confronted with the problem of having inherited facilities intended for temporary or shorter periods of detention - a few days or weeks - that are now being employed for much longer periods of incarceration. Despite the best efforts of all concerned, these urban facilities - the Coast Guard facility in Boston, Wackenhut and Varick Street in New York, San Pedro in Los Angeles - are seriously deficient.

The most glaring problem which my Office identified at these facilities is that refugees and asylum seekers are incarcerated, often for many months and sometimes for more than a year, in large rooms with no privacy, with little or no access to fresh air and sunlight, and with virtually no opportunity to go outdoors for exercise or for a breath of fresh air. I visited one warehouse-type room containing very few windows. Those windows that were in place were high above ground level and were constructed of thick block glass through which very little natural light could pass. Some detained asylum seekers complained that, with little or no natural light and with fluorescent lights kept on around the clock, they lost track of time and could barely distinguish day from night. Some complained of, and appeared to manifest palpably, a sense of anguish, desperation, and deteriorating mental conditions. The United Nations "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment" ("Body of Principles") states that "[n]o person under any form of detention or imprisonment shall be subjected to . . . inhuman or degrading treatment or punishment. (U.N. Doc. A/43/889, 9 Dec 88, Principle 6) (attached). The U.N. Body of Principles go on to state that the term ". . . inhuman or degrading treatment or punishment' should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as . . . the passing of time." (Id.)

One INS facility, Varick Street, is located on a middle floor of an urban high-rise office building with no possible outside access by detainees. Other facilities, such as Wackenhut, the Boston Coast Guard facility, and San Pedro appear to have abutting space such as parking lots which could be converted to outside exercise areas. In some locations this may be less feasible than in others, but at the very least, detention facilities should provide access to the outside.

Other problems which were identified during UNHCR's missions relate to legal representation and interpreters. Principle 18 of the U.N. "Body of Principles" provides that "[a] detained person shall be entitled to communicate and consult with his legal counsel" and "shall be allowed adequate time and facilities for consultations with his legal counsel . . . without delay . . . and in full confidentiality." "If a detained person does not have a legal counsel of his own choice, he shall be entitled to have one assigned . . . where the interests of justice so require and without payment by him if he does not have sufficient means to pay." Principle 14 entitles detainees to the assistance of an interpreter for persons who do not adequately understand or speak the language used by the authorities responsible for the detention. These principles are consistent with internationally recognized minimum standards for determining refugee status which provide that "[t]he applicant should be given the necessary facilities . . . for submitting his case to the authorities concerned." (UNHCR Executive Committee Conclusion No. 8)

Some of the INS detention facilities impose severe restrictions on telephone contacts between asylum seekers and their counsel. These include permitting only collect telephone calls to be made by detainees even though many pro bono legal organizations do not accept collect calls, and a time limitation on individual calls of as little as five minutes. While my Office has been informed that some of these policies stem from telephone company requests and a desire to limit disputes among detainees, anyone who has ever spoken with an asylum seeker knows that it is difficult to cover much substantive ground in a five minute telephone call.

Confidentiality of lawyer-client contacts also appears to be unduly limited in some facilities. Telephones are sometimes located within large dormitory rooms or in other public places. Not all facilities have private interview rooms, and three-sided interview cubicles are sometimes located within earshot of one another.

There also appear to be differing practices with respect to law libraries. While some facilities appear to offer extensive access by asylum seekers to the in-house law libraries, others reported limitations on access. One facility's law library was open only one hour per day.

With respect to both legal counsel and interpreters, the availability of legal representatives and competent interpreters is substantially limited when the INS transfers asylum seekers to detention facilities, such as in central and northern Florida or rural Louisiana, which are located far from urban areas or other places where populations of persons speaking the same language may reside.

Finally, I would like to note that the UNHCR Executive Committee has stressed that refugees and asylum seekers should not be commingled with criminal offenders or located in areas where their personal safety may be endangered. During my Office's mission to Louisiana, and elsewhere, we found

Commissoner Doris M. Meissner
March 4, 1994

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that in both INS facilities and local jails utilized for INS detention, refugees and asylum seekers were sometimes detained with criminal offenders. More than one woman asylum seeker interviewed by my Office complained of repeated sexual harassment by a criminal offenders accommodated in the same facility.

I would like to note that UNHCR did not conduct a comprehensive survey of INS detention facilities throughout the country, and in some cases had the opportunity to spend only two or three hours at a particular location. My comments above are not meant as an exhaustive review of INS detention practice nor, in the interests of time, do they reflect the good efforts and progress being made by INS colleagues with whom we met in the field. Nevertheless, I hope you will find these observations useful as you assess INS detention policy and practice. I believe the system-wide problems associated with INS detention beg your careful consideration. Please do not hesitate to contact me if you have any comments or questions, or if my Office can provide any additional information.

Before closing, please allow me also to thank, through you, the INS district directors and other INS colleagues in Boston, Los Angeles, Louisiana, New York, and San Diego who all graciously received UNHCR's missions to the field. Their time and assistance, candor, and professionalism were much appreciated by this Office. I would also like to thank the Acting INS General Counsel and the Office of the General Counsel for their consistently thoughtful responses to UNHCR concerns regarding detention.

Sincerely,

(b)(6)

Representative

cc: Ms. Phyllis Coven, Dep. Associate Attorney General, DOJ
Mr. Paul W. Virtue, Acting General Counsel, INS

(b)(6), (b)(7)c

Consultant, INS

(b)(6), (b)(7)c

District Director, INS

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District Director, INS

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(b)(6), (b)(7)c

District Director, INS

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17 March 1998

Ms. Phyllis Coven
Director, International Affairs
and
Mr. Jeffrey Weiss
Director, Asylum Office
US Immigration and Naturalization Service
425 Eye Street, N.W.
(ULLICO 3rd Floor)
Washington, DC 20536

Re: Observations and Comments on San Francisco Mission - 19 to 21 of February 1998

Dear Ms. Coven and Mr. Weiss:

I wish to extend to you both, again, my appreciation for your assistance in coordinating and facilitating the visit of our Senior Legal Counselor, (b)(6) on her visit to the INS San Francisco Asylum Office, INS District Office, the San Francisco International Airport and the Oakland City Jail. As we have commented to you many times, we very much appreciate the opportunity to observe the expedited removal process. While in San Francisco, (b)(6) had the opportunity to observe two credible fear interviews, the holding cell area of the INS District Office, the primary and secondary inspection areas of the San Francisco Airport and the Oakland City Jail where some of the asylum-seekers subject to expedited removal are held. We thank you for offering (b)(6) the possibility of observing a secondary inspection interview. Unfortunately, no such interviews were occurring at the time (b)(6) was touring the inspections area of the Airport.

We look forward to continuing our ad hoc visits to various expedited removal sites. We hope, with your kind assistance, to visit the Los Angeles area on our next visit. A member of my legal staff will be in contact with you in the near future to inquire regarding the possibility of observing the expedited removal process in Los Angeles.

As in our last letter, we have included below (b)(6) observations from her visit. We hope such information is useful to you and others at the INS as you continue to implement the expedited removal process.

Observations

INS Personnel

As before, our staff member was impressed with the knowledge and professionalism of the INS staff that arranged for and accompanied her during her visit. In particular, (b)(6), (b)(7)c were especially helpful. In addition, we thank the Oakland City Police for their attention during our staff member's visit to the Oakland City Jail.

Credible Fear Interviews

Our staff member observed two credible fear interviews on 19 February 1998, which was by Asylum Officer (b)(6), (b)(7)c at the San Francisco District Office. The first interview was of a Chinese woman who claimed to have been forcibly sterilized and the second was of a Tamil man from Sri Lanka. (b)(6), (b)(7)c conducted both interviews in an exemplary manner. Each interview was less than one hour and a telephonic interpreter was used for each. Both interpreters appeared to be able to hear and understand the asylum-seekers, as they spoke in a normal tone of voice, unlike the credible fear interview we had observed in Miami.

The interviews were conducted in a small room near the holding cell area. The Chinese woman, who was the first individual interviewed, was brought to the interview room sobbing. When asked by the Asylum Officer through the telephonic interpreter why she was upset, she stated that she had not had breakfast that morning and was very cold. She was wearing pink prison garb which consisted of a cotton short-sleeved shirt and cotton pants. Asylum Officer (b)(6), (b)(7)c was very kind and allowed her to wear his jacket during the interview. She asked for a cup of hot water which the Asylum Officer tried to obtain for her, but hot water was not available. Later, when touring the holding cell area, our staff member asked whether jackets were available for the detainees. The Detention Officer explained that jackets are not made available, but that there may be blankets available inside the holding cells. According to the Detention Officer, the Chinese asylum-seeker had been brought to the interview from the North County Jail in Oakland.

The interpretation, provided by an interpreter from LSA, appeared to be well conducted. If the interpreter believed that he had made a mistake or that the asylum-seeker had misunderstood, he noted his concerns to the Asylum Officer who allowed him to clarify a question or answer. In this way, the interpreter maintained a good rapport with the asylum-seeker.

At the end of the interview, the Chinese woman asked if she would be able to reunite with her husband who lives in New York. She was informed by Officer (b)(6), (b)(7) that she could request parole, but that it was unlikely that the District Director would grant parole. She was told to speak with her attorney about this. The attorney participated in the interview by telephone, although at one point he was accidentally disconnected.

The second credible fear interview, of a Tamil young man from Sri Lanka, was also conducted by Officer (b)(6), (b)(7). Unlike the Chinese woman, this asylum-seeker was wearing a long-sleeved shirt and jacket to the interview. We were later told that he was being detained at the Kern County Jail, over 100 miles from San Francisco. Such individuals, according to a Detention Officer may be picked up from their detention locations as early as 5:00am to be brought to the San Francisco District Office. As with the first interview, Officer (b)(6), (b)(7) was polite and non-adversarial.

Our Office was interested to learn from the San Francisco Asylum Office that it has approved almost 99.6% of the credible fear interviews it has conducted and that the 4 or 5 negative determinations made by the San Francisco Office have been reversed by immigration judges. In other words, it appears that every individual referred to the credible fear process has been determined to have a credible fear. Our staff member was also informed that the majority of the cases receiving a credible fear determinations are Chinese and Sri Lankan nationals. As we have previously requested, we would very much appreciate receiving statistics from the Service regarding the expedited removal process nationwide.

San Francisco International Airport

At the Airport, our staff member met briefly with Port Director (b)(6), (b)(7)c who was helpful in providing general information and statistics. She was then given a tour of the primary and secondary inspections area by Inspector (b)(6), (b)(7)c

Statistics: We very much appreciate receiving statistics from the Airport that indicate that from April to December 1997, 158 individuals were referred for a credible fear interview from the San Francisco Airport. The large number of Chinese, 118, and Sri Lankans, 28, coincides with the information we received from the San Francisco Asylum Office.

Primary Inspection Area: Inspector (b)(6), (b)(7) was very thorough in explaining the primary inspection process. He noted, for example, (b)(2)High

(b)(2)High One profile used by INS, for example, is that of a Chinese woman traveling with children. He said that many Chinese women were attempting to enter the US with children who, in some cases, were not their own. Once individuals arriving from their flights have picked up their luggage, they then proceed to a primary inspection station. According to Inspector (b)(6), (b)(7) if a passport or visa appears false or suspicious, the individual will first be sent to a "soft" secondary booth.

Soft Secondary Booth: At a soft secondary booth, our staff member was able to observe an inspector reviewing the documents of a man who had arrived on a KLM flight. Inspector (b)(6), (b)(7)(c) indicated to the soft secondary inspector that it appeared that the man had been flagged by customs, not INS, due to the code that was used in his case. One observation that we have is that an airline employee stood by to listen to the conversation to determine whether she would be needed to translate or assist in some other manner. The presence of such airline employees may, in some circumstances, intimidate an asylum-seeker who may not wish to speak openly in the presence of an airline employee, who may be a representative of the asylum-seeker's home government.

Stowaways: Inspector (b)(6), (b)(7) also explained that he has responsibility for the San Francisco seaport. When asked whether he has encountered many stowaways who are asylum-seekers, he said no and expressed relief that he had not received a stowaway since 1988. When later asked why he was relieved, he stated that asylum-seekers require extra paper work. We hope, of course, that this additional paperwork would not act as a deterrent for permitting individuals who might wish to seek asylum to do so.

Shackles: When touring the secondary inspection area, our staff member asked to see the holding cells where individuals are kept prior to their detention or removal. Inspector (b)(6), (b)(7) stated that there are no holding cells at the San Francisco Airport. He pointed to the chairs in the waiting area of the secondary inspection and noted that individuals would be shackled to the chairs. When asked how long someone might be shackled, he stated that it could be several hours. Another INS inspector, who was nearby, noted that if the person arrived on a morning flight he or she could be shackled for up to 12 hours, in some cases. Inspector (b)(6), (b)(7) explained that if the person was hungry, he would ask the person for money and buy him or her something to eat. When asked what would be done for someone without money, he stated that the airline would be contacted to pay for the person's meal. We recommend that individuals expressing a fear of return to their home countries not be shackled at the airport.

Secondary Interview Area: Inspector (b)(6), (b)(7) noted that individuals in secondary inspection do not have access to telephones, unlike the primary area where there are 12 public telephones. He noted that sometimes inspectors will make calls for individuals and that it is within the inspector's discretion whether to make such calls. An individual in secondary would first speak to an inspector at a counter and the inspector would determine whether a secondary interview was necessary. Our staff member observed a Korean woman interviewed at the counter in secondary. The Korean woman was accompanied by an airline employee who translated for her. As noted above, the presence of an airline employee from an national airline may intimidate an asylum-seeker. Inspector (b)(6), (b)(7) explained that an inspector will first attempt to find an INS employee to interpret, then he or she will request assistance from an airline, and, if the airline is unable to assist, the inspector will then contact AT&T. The Korean woman was given deferred inspection and was not, therefore, interviewed further.

Our staff member was then able to view the cubicles where the more extensive secondary interviews take place. These cubicles are close together, with low walls and doorless entry-ways, and do not seem to afford much privacy to an individual being interviewed. Inspector (b)(6), (b)(7)(c)

explained that often individuals will bring incriminating documents with them in their luggage which the inspectors may search in secondary inspection. We would recommend that secondary interviews take place in more private areas where individuals may be more willing to speak openly about their fears.

Inspector (b)(6), (b)(7) also noted that in order to obtain a statement from an individual, an inspector may sometimes confront the individual with the incriminating document or other evidence and state that the individual has been lying, and that lying to an INS officer is an offense punishable by a fine and imprisonment in the US. We are concerned that asylum-seekers may be frightened by such statements and withdraw their application for entry or accept a removal order out of fear that they would be prosecuted in the US.

Oakland City Jail

Lieutenant (b)(6), (b)(7)c and a jail official accompanied our staff member on her tour of the Oakland City Jail. Because INS detainees are only held for a maximum of 30 days in the facility, before being transferred to another county or city jail, our staff member was unable to meet with any of the asylum-seekers who had previously contacted UNHCR's office. At the time of her visit, the asylum-seekers were no longer in the Oakland City Jail. According to Lt. (b)(6), (b)(7)c the Oakland City Jail does not mix INS and non-INS detainees together.

Telephones: Our staff member was able to observe the dormitories used by INS detainees. Each dormitory had several telephones, however, the detainees could only make collect calls from the telephones. When asked if the facility would consider allowing asylum-seekers to make a call to an attorney or friend free-of-charge, the officer responded that if they allowed INS detainees to make such calls, they would have to allow everyone to make free calls, and that, therefore, they could not make an exception. Lt. (b)(6), (b)(7)c did seem amenable to allowing UNHCR and NGOs to post notices in the dormitories near the telephone about the services we and they offer.

Visitation: Visiting hours were limited to two days per week, two hours per day, 30 minutes per visit, for family members and friends of the detainees. Attorneys, however, are permitted to visit detainees at any time, 24 hours per day. The Oakland City Jail officials were unaware that asylum-seekers in the credible fear process should have the opportunity to consult with a person or persons of their choosing, even if the person is not an attorney and that they may have a very short period of time in which to have such a consultation. The Jail officials were also unaware that the expedited process may take place in as little as 48 to 72 hours and that a visitation day may not be available before the person has a credible fear interview. Our Office recommends that the INS inform the local jails that house INS detainees of special circumstances involved in the expedited removal process so that these facilities adapt their rules accordingly.

Strip Searches: The Jail officials informed our staff member that each time a detainee is transported to the INS District Office, Immigration Court, or for a medical or other appointment, the person must be strip-searched upon his or her return to the facility. A person subject to a credible fear interview, for example, who is interviewed on one day and taken back to INS the next day to receive the decision will undergo repeated strip searches. Such searches may be

traumatizing to a victim of persecution or torture. A Jail official also noted that detainees are not issued jackets in the facility because they provide hiding places for weapons or contraband. The facility does give the detainees blankets, however.

Law Library: The law library is available to detainees who ask to use it. It is located in a small room and contains a US Code, although Title 8 which contains the Immigration and Nationality Act, appeared to be missing, and the California Code. It did not appear to contain any immigration-related legal resources. When asked, Lt. (b)(6), (b)(7)(c) stated that he would gladly accept donations from UNHCR and NGOs for the law library.

Separation of Women and Children: The Jail officials noted that some of the INS female detainees have children that are detained by the INS in juvenile facilities and that on occasion the INS will allow the women to visit with their children in the Jail. As you know, UNHCR takes the position that as a general rule asylum-seekers should not be detained. In addition, we would recommend in the case of children, that they not be separated from their parents.

We hope these comments and observations are useful. As before, please do not hesitate to contact our Office to discuss these matters further with myself or my staff. We hope to continue to offer our services in this manner. Thank you again.

Sincerely,

(b)(6)

Deputy Regional Representative



UNHCR

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29 September 2005

BY FACSIMILE (202-353-9435) & OVERNIGHT MAIL

Mr. John Torres
Acting Director, Office of Detention and Removal Operations
US Bureau of Immigration and Customs Enforcement
801 Eye Street, NW, Suite 900
Department of Homeland Security
Washington, DC 20536

Re: UNHCR Visits to Pamunkey Regional Jail, 22 August 2005

Dear Mr. Torres,

I wish to thank you and your staff for facilitating my visit to the Pamunkey Regional Jail on August 22, 2005. I found the DHS staff to be extremely courteous and accommodating during the visit. I very much appreciate both the time that they devoted to our visits and their full and forthright answers to our many questions about facility operations. The assistance of the Pamunkey regional jail staff was also very much appreciated.

A full report containing our observations, comments and recommendations is attached for your review. We highlight below, however, some of the report's specific findings and suggestions for each facility visited. Please note that we have included as an attachment to this report references to the international standards implicated by the conditions and procedures we observed. We hope that these international standards will be useful for you and your staff in assessing the adequacy of ICE detention conditions. Copies of the underlying international instruments and policy guidance materials were forwarded to your Office in September 2003.

At the outset, it is important to highlight that the Pamunkey facility was clean and its staff very professional. Immigration detainees interviewed by UNHCR acknowledged that the Pamunkey staff treated them with due respect, despite various complaints. However, as UNHCR has reiterated to DHS on numerous occasions, DHS does not appear to sufficiently emphasize its own standards to contracted county jails, which continues to be a concern for UNHCR. For example:

- **Lack of Adherence to DHS Standards.** UNHCR urges DHS to work with Pamunkey to ensure that DHS detention standards are followed, as DHS detention standards more closely approximate international standards for the treatment of civil detainees and asylum-seekers than do standards developed for a criminal and pre-trial population.

- **Phone Access.** A number of detainees commented that they were not aware that they could make free calls to certain legal service providers and other organizations. Some detainees also commented that their phone access codes did not function properly.
- **Access to Deportation Officers.** As UNHCR has pointed out in the past, there is no proactive effort on the part of DHS to inform the immigration detainees of their right to a deportation officer. As a result, most detainees are not clear the status of their respective cases, thus adding to their general frustration of being detained. DHS stated that an ICE officer visits Pamunkey once a week, but only one of the interviewed detainees knew of this officer.
- **Access to Legal Resource Materials.** The Pamunkey facility does not provide full access to legal resource materials. While all the necessary books were available, many were still in boxes and the computer was not functioning. Detainees interviewed by UNHCR stated that that it was unclear when they had access to the library, and requests for access were not quickly processed. UNHCR encourages Pamunkey to include relevant immigration materials in the library and ensure that detainees have meaningful access to legal resource materials.

In closing, we reiterate our continued concerns about the detention of asylum-seekers in the United States. As you are aware, UNHCR's Executive Committee (see, e.g., Conclusion No. 44), has stated that asylum-seekers should normally not be detained. This principle is also found in UNHCR's Detention Guidelines. We encourage ICE to release individuals who should not be detained and to aggressively pursue alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Sincerely,

(b)(6)

Deputy Regional Representative

cc: Joseph Cuddihy, Director, Office of International Affairs, CIS
Molly Groom, Chief, Refugee and Asylum Law Division, CIS
Dan Sutherland, Director, Office of Civil Rights and Civil Liberties, DHS

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13 August 2001

BY OVERNIGHT MAIL

Joseph R. Greene
Acting Deputy Associate Commissioner for Enforcement
U.S. Department of Justice
Immigration and Naturalization Service
425 Eye Street, NW, Room 7114
Washington, DC 20536

Re: Report on UNHCR Mission to Piedmont Regional Jail

Dear Mr. Greene:

I wish to thank you and your staff for facilitating the visit of (b)(6) and (b)(6) (b)(6) UNHCR Legal Counselors, and (b)(6) Legal Intern, to the Piedmont Regional Jail in Farmville, Virginia. As you know, UNHCR visited Piedmont on July 10, 2001. I have been informed that INS and local staff was very helpful and courteous. We would particularly like to thank (b)(6), (b)(7)c Superintendent; (b)(6), (b)(7)c Supervisory Deportation Officer; and (b)(6), (b)(7)c Deportation Officer, who accompanied UNHCR. We greatly appreciate the time they devoted to our visit.

A full report containing our observations, comments and recommendations is attached for your review. We would like to take the opportunity here to highlight the following findings and suggestions:

1. New Facility: As noted in our report, Piedmont plans to construct a new building to house non-criminal INS detainees. UNHCR appreciates this plan to separate INS detainees from criminal inmates. We recommend that the new facility be a minimum-security facility that properly reflects the INS detainees' civil status. We further recommend that female INS detainees also be held in the new facility.
2. Living Conditions: We were pleased to note that Piedmont is a non-smoking facility, which vastly improves air quality within the facility and reduces the likelihood of smoke-related ailments. We were also pleased to note that male INS detainees are concentrated in two pods, although some criminal inmates were also

in those pods. We are very concerned that female INS detainees are co-mingled with criminal inmates. UNHCR is also concerned that the jail is overcrowded.

3. Medical Care: We are impressed with the quality of Piedmont's medical equipment. We are concerned that INS detainees must pay for medical treatment, that there were reports of failure to provide treatment, and that lack of interpretation interferes with proper medical care.
4. Telephone Access: UNHCR appreciates that Piedmont has improved telephone access for male INS detainees. We also appreciate that guards allow INS detainees to receive incoming calls. However, UNHCR is concerned that female INS detainees do not have telephones in their pods and that their access to telephones is limited.
5. Recreation: UNHCR received complaints that detainees do not have adequate access to recreation, sometimes only once every 1-2 weeks. We recommend that INS detainees be allowed adequate time for outdoor recreation.
6. Restraints: The use of the restraint chair may have negative psychological and medical effects on asylum seekers who may have been tortured in their country of origin.

In closing, we reiterate our continued concerns about the detention of asylum-seekers in the United States. As you are aware, UNHCR's Executive Committee (*see, e.g.*, Conclusion No. 44), has stated that asylum-seekers should normally not be detained. This principle is also found in UNHCR's Detention Guidelines. We encourage the INS to release individuals who should not be detained and to aggressively pursue alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Best regards,

(b)(6)

Deputy Regional Representative

Cc: Mr. Joseph Langlois (by first class mail)
Acting Director of Asylum
Immigration and Naturalization Service
US Department of Justice

Piedmont Regional Jail

On July 10, 2001, (b)(6) and (b)(6) visited the Piedmont Regional Jail in Farmville, Virginia. They were met at Piedmont by (b)(6), (b)(7)c, Jail Superintendent; (b)(6), (b)(7)c, Supervisory Deportation Officer, INS; and (b)(6), (b)(7)c, Deportation Officer, INS. This report is based on information received from INS and jail officials, the observations of the UNHCR representatives, and information received from detainees, both during the tour and from written correspondence received at the UNHCR Office.

Facility Background: Piedmont Regional Jail is a secure facility surrounded by a fence with razor wire. It is located approximately 165 miles from metropolitan Washington, D.C. There were 375 detainees in Piedmont, including 74 INS detainees, at the time of UNHCR's visit. Piedmont plans to construct a new building that could house 80-85 INS detainees who do not have criminal convictions. It is not yet decided whether women will be held in the new facility. INS detainees in the new facility will be directly supervised by a guard at all times.

Comments & Recommendations: UNHCR supports efforts to separate INS detainees from criminal inmates in the new facility. UNHCR recommends that the new facility for non-criminal INS detainees be a minimum-security facility that properly reflects the INS detainee's civil status. UNHCR further recommends that female INS detainees also be held in the new facility.

Living Conditions: Piedmont is a non-smoking facility and has been for the past 7 years. Superintendent Barlow stated that this policy has not caused any problems with the detainees.

UNHCR visited two female pods, two male pods, and the segregation unit. All of the pods had concrete floors and bare walls. In the female pods (Pods F and G), INS detainees were co-mingled with criminal inmates. The female pods had individual cells and each cell housed two women. Some female INS detainees slept on bunk-beds in a common area within the pod, including one bed located under the stairwell with a sheet overhead to prevent dirt from falling on the detainee. UNHCR also visited two large male pods (Pods O-2 and O-3). Pod O-2 held 40 detainees and Pod O-3 held 32 detainees (both were at capacity.) Male INS detainees were concentrated in these two pods. The concentration of the INS detainees into two pods appears to have occurred within 2-3 weeks of our visit. There were no cells in either male pod—both contained dorm-style bunk-beds in a common area. Some beds in Pod O-2 were also under the stairwell. Each male pod had two toilets and one shower. There were two criminal inmates with the highest violence classification who were also housed in one of the male pods with the INS detainees.

UNHCR also visited the segregation unit (M Pod) which contained eight cells and a common area lined with bunk-beds. The unit is used for disciplinary purposes (detainees who are being punished are locked in individual cells) or to house male INS detainees who are waiting for beds in the other pods. The latter group can move between the individual cells and the common area. There were several INS detainees in the segregation unit who had been waiting for available bed space for 3-10 days. The segregation unit appeared noticeably unclean.

Comments & Recommendations: UNHCR appreciates that Piedmont is a non-smoking facility. This policy vastly improves air quality within the facility and reduces the likelihood of smoke-related ailments. UNHCR also appreciates Piedmont's efforts to separate male INS detainees from the criminal population (although perhaps belatedly.) UNHCR objects to the continued comingling of female detainees with criminal inmates and the placement of some criminal inmates with male INS detainees. UNHCR is also concerned about over-crowding in the facility (a concern raised in our previous report on Piedmont.) UNHCR recommends that INS review the appropriate capacity of the cells and ensure that detainees only be sent to Piedmont if there is available space.

Medical Care: The medical facilities at the jail include a trauma room, emergency care, new dental hygiene machines, an EKG and an x-ray machine. Given the quality of medical equipment at the jail, medical staff can provide much treatment at the facility. As a result, Piedmont does not need to receive PHS approval as often as other jails. Medical staff complained, however, that when PHS approval for medical treatment is necessary, it may take a week or more. The medical staff includes a doctor, psychologist and dentist who visit the facility weekly and two nurses per shift. There is no medical ward. When a detainee is too ill to remain in the normal population, he is placed in a holding cell in the booking unit (Cell J-5.)

Piedmont medical staff forwards medical records with a detainee when he is transferred, but according to medical personnel, they do not generally receive medical records for new INS detainees who are transferred from another facility. This may delay the distribution of needed medication to the INS detainees.

To receive medical care, INS detainees must submit medical request forms to the guards. There are no medical request forms in the pods. The forms are located in the pill line or the INS detainee must request the form from a guard. UNHCR received complaints that the request forms must be completed in English and that a form completed in another language would not necessarily be answered. Submission of a medical request form does not guarantee treatment by medical staff. UNHCR has received complaints that the medical department responds belatedly to medical requests or may not respond at all.

Due to a recent change in the Marshal's Service contract with the jail (which also applies to INS detainees), INS detainees must make a co-payment for medical treatment. UNHCR was given a list of the prices for medical treatment: \$10 for an initial doctor's visit, \$50 for an emergency doctor's visit, \$125 for minor surgery, \$75 for an x-ray, among other fees. Any incoming funds to the account are automatically applied to the outstanding balance. Detainees complained that they are sometimes charged for simply requesting a doctor's visit.

Medical staff identified translation as one of the most difficult issues at the jail. The medical unit uses diagnostic books or computer programs that accommodate different languages or asks INS detainees to serve as interpreters. This, however, does not meet the staff's translation needs. It is unclear whether the staff is aware that telephonic translation systems may be available.

Comments & Recommendations: UNHCR is impressed with the quality of the equipment in the medical department. A high quality medical unit within the jail will reduce reliance on PHS and

consequently reduce delays in medical treatment. However, the medical unit should also include a medical ward so that INS detainees who are ill may properly be observed by medical staff and will not be put in holding cells. Medical records should accompany INS detainees to new detention facilities when they are transferred to avoid delays in treatment.

UNHCR is concerned that the unavailability of medical request forms may limit detainee access to medical care. UNHCR encourages the medical staff to make medical request forms readily available and to respond to all requests in a timely and effective manner. The staff must also respond to medical request forms that are not completed in English to ensure that all detainees are adequately treated. PHS should be encouraged to respond to requests for approval in a timely manner to ensure that medical treatment is not delayed. UNHCR is very concerned that INS detainees are required to pay for medical services and urges INS to ensure free medical treatment for INS detainees at Piedmont.

Piedmont's use of several methods of interpretation is a positive step toward assisting non-English speakers. However, access to adequate interpreter services appears to remain a significant obstacle in the delivery of medical care. Medical staff should be encouraged to use telephonic translation whenever necessary.

Telephone Access: In UNHCR's first report on Piedmont, we noted our concern about the jail's phone system (only three calls could be placed to any one number unless a separate account was established.) Piedmont has improved the situation by recently installing payphones in the male pods (O-2 and O-3.) There is no payphone, however, in either of the female pods (Pods F and G.) Female INS detainees must use the payphone in the booking area to make telephone calls. A guard escorts all of the women at one time to use the phone or the women may ask individual guards to take them to the phone. UNHCR has received complaints from female INS detainees and refugee advocates who state that the women must rely on guards to take them to the phone, that guards may not be willing to escort them, and that the calls they are allowed to make are rushed. However, if the detainee (male or female) receives a phone call at the jail, guards will bring the detainee to the phone to answer the call.

Comments & Recommendations: UNHCR appreciates that Piedmont has improved telephone access for male INS detainees. The large poster in the hallway indicating UNHCR and Amnesty International's telephone is also helpful to INS detainees who may need to reach these organizations. UNHCR also appreciates that Piedmont staff will locate an INS detainee if she receives a phone call. UNHCR is concerned about women's access to telephones and encourages Piedmont to install phones in the female pods. The female detainee's access to telephones should be unfettered and should not be at the discretion of the guard.

Access to Attorneys: Immigration attorneys and NGO representatives in the area have noted that they are able to visit clients at Piedmont with little difficulty. Attorneys are permitted to call Piedmont and request to speak with a client.

Comments & Recommendations: Piedmont has been very cooperative in allowing pro bono legal services full access to INS detainees through attorney visits and phone calls.

Legal Information: There is no law library in the facility. Piedmont owns a computer-based CD-ROM that contains legal information. If an INS detainee knows what legal information he needs, he may request it from a guard. INS detainees cannot conduct their own searches on the database. INS detainees must ask guards to make photocopies of legal documents. UNHCR received complaints that it was not possible to get copies made.

Comments & Recommendations: UNHCR is extremely concerned that INS detainees do not have access to a law library. Given that many detained asylum-seekers must represent themselves due to their detention in remote locations, an adequate law library can be critical for preparation of their cases. UNHCR recommends that all INS detainees (both criminal and non-criminal) have access to the law libraries in the new facility. INS detainees should also be permitted to make photocopies necessary to prepare their case.

Recreation: Piedmont's policy is to allow 30-45 minutes of outdoor recreation per day (weather permitting) in a basketball court outside the jail. UNHCR received complaints that INS detainees are allowed outside infrequently and sometimes only once every 1-2 weeks. Several INS detainees stated that the day before UNHCR's visit, there was a hunger strike by INS detainees protesting lack of recreation, among other complaints.

Comments & Recommendations: UNHCR recommends a liberal outdoor recreation policy. Such access can be especially critical for asylum-seekers and refugees who have experienced personal trauma and have particular difficulty with extended periods of confinement.

Restraints: Handcuffs and legcuffs are used to restrain INS detainees when they are transported to the video-conferencing room. Individuals who are disruptive or "crazy" may be restrained in a plastic, molded chair with their hands handcuffed behind their back.

Comments & Recommendations: UNHCR recommends that restraints be used in limited circumstances and only as long as is strictly necessary. In a session of the UN Committee Against Torture (11 May 2000), the US reported to the Committee Against Torture (CAT) that improper use of the restraint chair has resulted in deaths in US healthcare facilities and may have caused deaths in jails and prisons. UNHCR is concerned about the use of the restraint chair on asylum-seekers, many of whom may have been tortured in their country of origin. UNHCR is especially concerned about the medical and psychological effects that use of the restraint chair may have on torture survivors and others who have suffered traumatic abuse.

Training: Detainees have complained of poor treatment by jail guards and other officials. Piedmont staff does not receive any specialized training on working with immigrants, refugees or asylum-seekers. UNHCR offered to train Piedmont guards about refugee issues. Supt. (b)(6), (b)(7)c stated that he is interested in providing this training to the guards.

Comments & Recommendations: UNHCR appreciates that Superintendent Barlow expressed interest in training Piedmont guards about refugee issues and cultural diversity.



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR

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11 August 2005

BY FACSIMILE (202-353-9435) & OVERNIGHT MAIL

Mr. John Torres
Acting Director, Office of Detention and Removal Operations
US Bureau of Immigration and Customs Enforcement
801 Eye Street, NW, Suite 900
Department of Homeland Security
Washington, DC 20536

Re: UNHCR Visits to Puerto Rico Detention Facilities, 16-17 May 2005

Dear Mr. Torres,

I wish to thank you and your staff for facilitating the visit of UNHCR Protection Officers (b)(6) and (b)(6) to the DHS Service Processing Center (SPC) in Aguadilla, Puerto Rico, and the Metropolitan Detention Center (MDC) in Guaynabo, Puerto Rico, on 16 and 17 May 2005. I have been informed that DHS staff at each location were extremely courteous and accommodating of our visits. I very much appreciate both the time that they devoted to our visits and their full and forthright answers to our many questions about facility operations. The assistance of the Department of Justice, Bureau of Prisons, staff at the Guaynabo MDC was also very much appreciated.

A full report containing our observations, comments and recommendations is attached for your review. We highlight below, however, some of the report's specific findings and suggestions for each facility visited. Please note that we have included as an attachment to this report references to the international standards implicated by the conditions and procedures we observed. We hope that these international standards will be useful for you and your staff in assessing the adequacy of ICE detention conditions. Copies of the underlying international instruments and policy guidance materials were forwarded to your Office in September 2003.

Aguadilla Service Processing Center (SPC): The Aguadilla SPC is a facility owned and operated by DHS. It is a small facility with a capacity of 65 beds. *Positive aspects* of the facility's operation include assistance to DHS detainees in making free calls to family members and access to outdoor recreation. *Primary issues of concern* include frequent overcrowding; inadequate legal resources; lack of a private attorney visitation area; absence of educational and rehabilitation programs; possible use of restraints during video-conferenced hearings; and limited use of telephonic interpretation by facility staff to communicate with non-English or Spanish speaking detainees. UNHCR is especially

concerned that DHS' own detention standards, on such issues as access to legal resources, are not being met at one of its own service processing centers.

Guaynabo Metropolitan Detention Center (MDC): The Guaynabo MDC is operated by the Department of Justice, Bureau of Prisons (BOP). About 10% of its detainee population (approximately 100 persons) are DHS detainees. *Positive aspects* of the facility's operations include the general separation of DHS detainees from pre-trial detainees and those serving criminal convictions; extensive religious services programs; and, better medical staffing levels and practices than at most local and county jails. *Primary issues of concern* include inadequate immigration legal resources and restricted phone access for indigent detainees to legal service providers. While the on-site presence of a DHS officer at MDC is a positive aspect of DHS operations, the officer's actual communication with DHS detainees was reportedly inadequate. All of these issues can have a significant impact on the ability of detained asylum-seekers to adequately prepare their cases. While we understand that BOP facilities are not required to meet DHS detention standards, BOP staff offered during our visit to make available whatever immigration law resources DHS were to provide, as well as to show the Florence Project Know-Your-Rights video to DHS detainees on a regular basis. UNHCR is disappointed that DHS had not consulted with BOP earlier on how DHS detention standards could best be met at MDC despite the fact that it is a BOP facility.

In closing, we reiterate our continued concerns about the detention of asylum-seekers in the United States. As you are aware, UNHCR's Executive Committee (see, e.g., Conclusion No. 44), has stated that asylum-seekers should normally not be detained. This principle is also found in UNHCR's Detention Guidelines. We encourage ICE to release individuals who should not be detained and to aggressively pursue alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Sincerely,



(b)(6)

Deputy Regional Representative

cc: Joseph Cuddihy, Director, Office of International Affairs, CIS
Molly Groom, Chief, Refugee and Asylum Law Division, CIS
Dan Sutherland, Director, Office of Civil Rights and Civil Liberties, DHS

Aguadilla Service Processing Center

On 16 May 2005, Senior Protection Officer (b)(6) and Protection Officer (b)(6) visited the ICE Service Processing Center in Aguadilla, Puerto Rico (“Aguadilla SPC”). The city of Aguadilla is located about two hours from San Juan, Puerto Rico. The Aguadilla SPC is owned and operated by ICE; although, some of the facility staff is contract staff. UNHCR met with the Officer-in-Charge of the facility, (b)(6), (b)(7)c and was provided a tour by one of the Investigation and Enforcement Agents, (b)(6), (b)(7)c

This report is based on information received from ICE officials, facility staff, the observations of the UNHCR representatives during their tour of the facility, and information received from detainees, both during individual interviews at the facility and from written correspondence received at the UNHCR Office in Washington, DC.

Facility Background: Aguadilla has a capacity of 65 beds. According to OIC (b)(6), (b)(7) it is often over capacity. (b)(6), (b)(7) provided UNHCR with a report which showed the average daily population on a monthly basis over the last nine years. In FY 2004, there were three months in which the average daily population was over 65, with an average daily population in April of 84. On the day of UNHCR’s visit, the facility was under capacity. There were only 11 detainees.

Staffing at the facility includes 19 Investigations and Enforcement Agents, five Supervisory Investigations and Enforcement Agents, one Deportation Officer, approximately 40 contract guards, and three Public Health Service staff – one nurse, one nurse practitioner and a clerical person.

The facility is small. It has two open dorm-style housing units, one with 50 beds, the other with 15. DHS tries not to place at the Aguadilla SPC individuals with criminal convictions (level 3s under ICE classification system) because under ICE rules, Level 1s cannot be mixed with Level 3s, and Aguadilla has insufficient space to separate levels appropriately. If the Aguadilla SPC receives individuals in the Level 3 category, the staff has three isolation cells they can use to house the person until s/he can be transferred to another facility.

Comments & Recommendations: UNHCR is concerned about the frequent occurrence of overcrowding at the facility. UNHCR recommends that DHS make all efforts to ensure that this does not occur.

Housing Units: The 15-bed dorm is typically used for females and the 50-bed dorm for males. The air conditioning in the male dorm has been broken for two months, so on the day of UNHCR’s visit, the 11 male detainees were being held in the 15-bed dorm. Due to the arrival of 35 new detainees, including females, the males were to be returned to the 50-bed dorm without air conditioning. The dorms include a day room which is open from 6 a.m. until 10 p.m. on weeknights, and until 11 p.m. on the weekends. One male detainee reported that he preferred the male dorm without air conditioning because it was

much larger, he did not feel as caged in, and the air conditioning was often too cold. Detainees are not issued long-sleeved shirts or sweatshirts. The UNHCR delegation observed that the temperature throughout most of the facility was quite cold.

Comments & Recommendations: UNHCR recommends that the air-conditioning issues and detainee complaints of temperature be addressed.

Legal Resources/Law Library: The library was a small room with a computer, a printer some outdated legal resource materials and some leisure reading materials. The legal resources included: DHS regulations current to May 2004; the Immigration and Nationality Act (1999 and 2004 versions); *Immigration Law and Defense* current to September 2000, Administrative Decisions current to 2000; and *Immigration Law and Procedure* (1984 and 1988 versions). The detainees were not allowed to use the computer for preparing legal documents or research. Detainees are permitted to use the library for one hour a day and must come one at a time. Staff reported that they do not get any requests to use the library despite the fact that many detainees remain at Aguadilla for a number of months. ICE officials were aware of the DHS Lexis CD-ROM containing the legal resources prescribed by the ICE Detention Standards, but had not made it available to detainees. An ICE training officer indicated that all staff had received 40 hours of training on the ICE Detention Standards.

Staff reported that if a detainee needed copies of legal documents, the staff would make the copies for them. According to the intake officer, the Florence Immigrant and Refugee Rights Project “Know Your Rights” videos are being played in the holding tanks upon intake.

Comments & Recommendations: UNHCR is concerned about the lack of current legal resources available to asylum-seekers detained at the Aguadilla SPC. This is of particular concern given that this facility is owned and operated by DHS and should clearly be in compliance with its own detention standards. Many detained asylum-seekers are unrepresented and must prepare their cases by themselves, making access to legal materials critical. UNHCR recommends that DHS provide the materials in its standards as well as the asylum and detention release self-help materials produced by the Florence Project on Immigrant and Refugee Rights, available in both English and Spanish. UNHCR also recommends that DHS make UNHCR’s Refworld CD-ROM available to detainees at the Aguadilla SPC.

Interpretation: According to DHS, the telephonic interpreter line is only used at intake, and the rest of the time the staff gets by with basic “sign language.” The facility has no Creole speakers on staff despite the fact that there are often Haitian detainees housed at the facility. Most staff members speak both Spanish and English. The detainee handbook is available in both Spanish and English.

UNHCR Comments and Recommendations: UNHCR is concerned that telephonic interpretation is not consistently used to communicate essential matters to detainees who do not speak Spanish or English. Without interpretation asylum-seekers with language

barriers may lack orientation as to jail rules and privileges. UNHCR recommends that interpreters be used when needed to facilitate essential communication between facility staff and ICE detainees. UNHCR further recommends that the jail's rulebook be translated into the languages of its detainee population. Efforts should begin with translations into the most common languages spoken among the ICE detainee population, such as Haitian Creole.

Restraints: Detainees at the Aguadilla SPC may be handcuffed during their master calendar court appearances, which occur via videoconferencing technology in a small room. Whether the detainee is handcuffed is up to the officer on duty. There was a small room used for master calendar court appearances by video. Detainees are brought to San Juan for their final merits hearings. The facility staff stated that, upon request, lawyers would be allowed to be with the client during the video court appearance, but most lawyers prefer to be in the courtroom in San Juan.

Comments and Recommendations: UNHCR appreciates the fact that the Aguadilla SPC allows lawyers to be with their clients during video-conferenced court hearings. UNHCR, however, is concerned that asylum seekers (especially former victims of trauma and other vulnerable populations) may suffer undue trauma if placed in handcuffs or restraints during their Immigration Court hearings. We recommend that this practice be avoided whenever possible. UNHCR objects to the use of handcuffs or shackles on asylum-seekers unless absolutely necessary.

Attorney Visitation/ Access: Aguadilla is not a major metropolitan center, and there is only one non-profit legal service provider in the area, a local University law clinic. Attorney visitation requests are granted and hours for visitation are quite extensive. However, there is no designated attorney visitation area at the Aguadilla SPC, and it is difficult for visiting attorneys to meet with their clients in private.

Comments & Recommendations: UNHCR is concerned with the lack of a private visitation area for attorneys. UNHCR considers private contact visits between asylum-seekers and their lawyers to be extremely important. The underlying refugee claims of many asylum-seekers may involve sensitive or traumatic events that are difficult to discuss. Private contact facilitates communication between attorneys and their clients so that the asylum-seeker's refugee claim can be clearly established and presented to the immigration court. UNHCR recommends that DHS establish a private lawyer visitation area.

Programs: There are no group educational, vocational, religious or rehabilitative activities at the Aguadilla SPC.

Comments & Recommendations: UNHCR is concerned about the lack of opportunity for meaningful activity at the Aguadilla SPC. Educational, vocational, religious or rehabilitative programs enable detained asylum-seekers to receive necessary counseling and provide them access to constructive activities during potentially prolonged detention. Given that many ICE detainees may be at the Aguadilla SPC for an extended period,

these classes also increase detainees' equities for possible release from custody. UNHCR recommends that the SPC adopt such programs.

Telephone Access: The telephone provider at the Aguadilla SPC is Puerto Rico Telephone (PRT). The pre-programmed telephone system adopted by DHS at other facilities was not in use at the Aguadilla SPC. Near the phone, the following information was posted: the Immigration Court 1-800 number, a list of private attorneys and their phone numbers, a list of consulates and their phone numbers, and a notice to contact a deportation officer if you wanted to call your consulate for free. Free calls for detainees are at the discretion of the supervisor and, according to staff, calls to family members were often facilitated. The delegation was able to place a collect call to the Washington Office of UNHCR. The local University clinic's number was posted; however, other posted material near the phone indicated that there were no free legal service providers in the area. The detainee handbook also included a statement to this effect. Upon UNHCR's indication of this contradictory information, OIC Renz directed her staff to delete the posted reference to no free legal service providers. In an earlier meeting, the local University law clinic indicated to UNHCR its willingness to accept collect calls; however, UNHCR's effort to place a collect call from the facility to the clinic was not successful.

Comments & Recommendations: UNHCR appreciates that the staff at the Aguadilla SPC facilitate free phone calls to family members. This should better enable detained asylum-seekers, who are often indigent, to find legal representation. In this regard, UNHCR encourages DHS to allow free phone calls to the local University law clinic. For clarification purposes, UNHCR recommends that the reference to "no free legal service providers in the area" be removed from the detainee handbook.

Metropolitan Detention Center
Guaynabo, Puerto Rico

On 17 May 2005, Senior Protection Officer (b)(6) and Protection Officer (b)(6) visited the Metropolitan Detention Center in Guaynabo, Puerto Rico (“MDC”). The facility is operated and managed by the Federal Bureau of Prisons (BOP), Department of Justice (DOJ). UNHCR was accompanied by (b)(6), (b)(7)c Deputy Field Office Director, Detention & Removal, ICE, DHS; Gil Torres, Deportation Officer, Detention & Removal, ICE, DHS; (b)(6), (b)(7)c Associate Warden/Operations, BOP, DOJ; (b)(6), (b)(7)c Associate Warden/Programs, BOP, DOJ. The Warden of the facility is (b)(6), (b)(7)c

This report is based on information received from ICE officials, facility staff, the observations of the UNHCR representatives during their tour of the facility, and information received from detainees, both during individual interviews at the facility and from written correspondence received at the UNHCR Office in Washington, DC.

Facility Background: MDC was built in 1991 and began operations in 1993. It houses detainees being processed by two federal districts – Puerto Rico and the US Virgin Islands (USVI). MDC’s capacity is 1,200 detainees, although it usually averages about 1,000 detainees. It has about 250 staff. BOP operates MDC as an “administrative jail;” it is not intended for persons serving lengthy prison sentences. 70% of the population are pre-trial detainees, 20% are sentenced prisoners, and 10% are DHS immigration detainees (*i.e.*, about 100 beds). The average sentence for those serving criminal sentences is 67 months. Those with life sentences, death row inmates, or others with long sentences are generally transferred to prisons on the US mainland. DHS stated that immigration detainees are generally detained two to four weeks, but that it can take up to six months for asylum-seekers to have their claims adjudicated.

Comments & Recommendations: Although UNHCR recognizes that DHS detention standards are not mandatory at BOP facilities, UNHCR urges DHS to work with BOP to the extent possible to ensure that the standard of care required by these standards is met. DHS detention standards meet the needs of detained, non-criminal asylum-seekers in immigration proceedings better than do standards developed for a criminal and pre-trial population. As a result, DHS detention standards more closely approximate international standards for the treatment of civil detainees and asylum-seekers.

Commingling: Immigration detainees are generally held in one housing unit (3-B), although they may be commingled with criminal inmates in other housing units if they themselves are in criminal proceedings, either as defendants or material witnesses.

Comments & Recommendations: UNHCR appreciates that asylum-seekers in immigration proceedings are generally not commingled with inmates serving their criminal sentences.

Housing Units: The facility has nine open housing units spread over four floors. Each unit has a maximum capacity of 140 persons. The units were designed so that detainees could access all services without leaving the unit. Each open housing unit has individual cells (two persons/cell), private showers, an open common area, an attached “outdoor” recreation area, a classroom, and a religious services room. ROW toured Units 1-B and 3-B. The housing units appeared clean. The individual cells had small rectangular windows, a toilet and sink, and cabinets for personal property. Three detainees complained that the temperature in the housing unit was too cold. MDC does not issue sweatshirts; detainees must purchase them through the commissary. One detained asylum-seeker was indigent and could not afford to buy a sweatshirt. He said that he often gets sick because of the cold temperature.

Comments & Recommendations: UNHCR appreciates that shower facilities are private, as most jails do not provide this accommodation. UNHCR recommends that detainee complaints of temperature be addressed and that warmer clothing be made available to indigent detainees without cost as necessary.

Law Library: The only immigration materials in the library were: (1) INA (current as of 1998); (2) 8 CFR (current as of January 2004); and (3) Immigration Law and Procedure (current as of April 2004 and as of 2002). MDC does not offer computer-based research, although it is considering it. BOP said it had never been approached by ICE to include any immigration resources in the facility, but would be happy to do so. DHS noted that it had extra copies of its legal research cd-rom (Lexis/Nexis), which it would share with BOP, and offered to make hard-copy materials available as well. Detainees can come to the library to conduct research, although usually no more than five or six people are allowed at any one time. Detainees can arrange for another detainee to assist them in the library. There is a library specialist who also works in the library. Detainees have access to typewriters, but not to computers for word processing or other computer-based research.

Comments & Recommendations: UNHCR is concerned that, despite BOP’s clear willingness to make immigration legal materials available to DHS detainees at MDC, DHS had not made any efforts to provide these materials prior to UNHCR’s visit. UNHCR recommends that DHS make these materials available, in either CD-rom form (if computer research is available) or in hard-copy, and that they be updated regularly. UNHCR also recommends that DHS make available to MDC a copy of UNHCR’s CD-rom, RefWorld, to assist with refugee related research.

Legal Orientation Programs: BOP stated that it has the ability to play the Florence Know-Your-Rights video on a regular basis in the housing units holding DHS detainees. DHS need only provide a copy of the video. BOP also appeared willing to make available through the library the Florence written self-help materials.

Comments & Recommendations: UNHCR recommends that DHS provide English and Spanish versions of the Florence Know-Your-Rights video and accompanying self-help

materials to MDC and that it coordinate with MDC for the video to be played in DHS detainee housing units on a regular basis.

Telephone Access: All detainees/inmates are assigned a PIN number to access the phone. According to BOP, PIN numbers are usually assigned within 24-48 hours of arrival, although one detainee told UNHCR that it took four days to get his PIN number. Detainees must have telephone numbers pre-approved and can have a list of up to 30 pre-approved phone numbers. These numbers can be added on an on-going basis and, according to BOP, are usually added within two days of being submitted. One detainee stated, however, that it actually takes longer. Calls are limited to 15 minutes, with a 15 minute wait time between calls. No 1-800 numbers can be called. Detainees can transfer funds from their commissary account to their phone account. Contact information for consulates was posted in Unit 3-B. Indigent detainees must demonstrate a “compelling need” to place a free call (at BOP expense) to their consulate or attorney; otherwise, they are expected to write letters. UNHCR interviewed one indigent asylum-seeker who wanted an attorney, but had no money to make a call. He had requested to make free calls to his consulate and his attorney, but his requests had been refused.

***Comments & Recommendations:** UNHCR is concerned that detained asylum-seekers are unable to make free calls to legal service providers, immigration courts, DHS and UNHCR for assistance regarding their immigration cases. Contact with these agencies can be critical for the preparation and presentation of a refugee claim. Many asylum-seekers, however, cannot afford to place paid calls to these agencies due to the expense. Likewise, legal service providers are often unable to accept collect calls, also due to the expense. DHS detention standards require that free phone calls to these entities be made available. The BOP requirement that a “compelling need” be shown is unduly burdensome and may result in the denial of needed legal services and case information. UNHCR recommends that DHS ensure that detained asylum-seekers have access to free phone calls as necessary.*

Medical: PHS is the medical care provider at MDC. UNHCR had the opportunity to speak with a PHS Officer, (b)(6), who provided the following information. The medical staffing at MDC includes one on-site doctor (with one position unfilled), seven mid-level professionals, one nurse, two dentists, one pharmacist, and two psychologists. A psychiatrist is available from Miami using “tele-health,” which UNHCR understands to be counseling and treatment via video-conferencing. Medical intake screenings are conducted by medical staff as part of the booking process. Most detainees coming from other federal facilities come with a medical transfer form. Detainee requests to see medical staff are picked up every day. If it is a routine medical issue, the detainee will be seen within two weeks. (b)(6) stated that PHS regularly uses the telephonic interpreter line during intake when needed. The psychology department does counseling and drug treatment. There is a suicide watch holding cell, which contains a bed and mattress, sink and toilet. Detainees on suicide-watch are given a “suicide smock” to wear. The medical department completes medical transfer forms for all detainees transferred from MDC to another facility.

Comments & Recommendations: UNHCR was generally impressed with the scope of medical services available to detainees at MDC. The availability of mental health treatment is especially welcomed. UNHCR received few complaints from detained asylum-seekers about the quality of medical care at MDC.

Access to DHS: ICE maintains one Detention and Removal Officer on-site at MDC full-time, who was the source of some complaints from both BOP officials and detained asylum-seekers. DHS informed UNHCR that the full-time ICE officer was scheduled to leave MDC at the end of May and would be replaced by two part-time ICE officers. When interviewed, the full-time Officer stated that he visited the housing units at least twice a week to speak with DHS detainees, using other detainees as interpreters if necessary. If a detainee asked a question that he could not answer, he stated that he would get the requested information and respond to the detainee later. One senior BOP official, however, told UNHCR that he was dissatisfied with the ICE officer's performance and believed that he did not visit detainees enough. The BOP officials stated that he wanted to be involved in the training of the new ICE officers to ensure that there was sufficient communication between DHS and its detainees.

Of the detainees interviewed by UNHCR, two expressed no dissatisfaction with their access to the DHS officer. Two other detained asylum-seekers, however, had no idea what was going on in their cases. One had not seen an Immigration Judge and said that while the DHS Officer sometimes came to the housing unit, he provided no information. When UNHCR asked the DHS officer about the status of the asylum-seeker's case, the Officer responded that immigration proceedings had not yet been initiated because the decision on whether to pursue criminal prosecution was still pending. This information had not been provided to the asylum-seeker. The other detained asylum-seeker did not know when his court date was or how long the process was going to take. UNHCR called the Immigration Court Information Line and learned that his merits hearing was in two weeks. The asylum-seeker was quite relieved when UNHCR provided him with this information. Some detained asylum-seekers also complained that the DHS officer did not use interpretation frequently enough, or, in the case of Haitians, that he used a French interpreter rather than a Creole interpreter.

Comments & Recommendations: UNHCR is concerned about the extent to which detained asylum-seekers have meaningful access to DHS while held at MDC. To effectively represent their interests, access to case and custody status information is critical. Lack of information also fuels anxiety and a sense of isolation. These difficulties are exacerbated if the asylum-seeker does not speak English. UNHCR fully supports the placement of a DHS officer on-site as this would seem the most effective way to provide information to detained asylum-seekers about the status of their cases. UNHCR recommends that DHS review the terms of reference for the DHS officer(s) placed at MDC to ensure adequate DHS-detainee communication.

Religion: UNHCR spoke with (b)(6) who runs the Pastoral Care Department at MDC. (b)(6) is assisted by 90 volunteers. Religious services are held in the religious services room in each housing unit. At the time of UNHCR's visit, the

following religious services were available: General Christian, Catholic Mass, Santeria Reflection, Rosary, Jehovah Witness, and Native American. (b)(6) has been trying to locate an Imam for Muslim detainees. Services are held in Spanish and English. Three Haitian detainees complained that services were not available in Creole or French. Detainee-led group prayer sessions are allowed if a guard is available to supervise and the service is conducted in English.

The Pastoral Care Department also offers religious videos that can be played in the housing units. Some of these videos address religious issues for religions that do not benefit from live religious services (e.g., Jewish Holidays, Islam's Place and Practice of Worship in the Correctional Environment, The Healing Practice of Christian Science, Islamic Teaching Lessons (series), Rastafari Voices, Soto Zen Buddhism).

Detainees generally can keep religious property and can pray in their cells. A large carpet is available for Muslims in the religious services rooms. Muslim detainees are allowed to keep smaller, personal rugs in their cells should they wish. UNCHR interviewed a Muslim-seeker asylum-seeker who was not aware that he could have a personal rug and had been using a sheet instead.

Comments & Recommendations: UNHCR was impressed with the scope of religious activities of the Pastoral Care Department at MDC. UNHCR recommends that detainees be provided access to religious leaders and services as appropriate based on the religious profile and demand of the INS detainee population. UNHCR further recommends that Muslim detainees be informed of their right to have small prayer rugs in their cells.

Rehabilitation / Education Programs: GED and ESL classes are available to all detainees, including immigration detainees. Some detainees indicated that they could not attend the programs because they did not speak English or Spanish. Rehabilitation programs, such as drug rehabilitation and anger management are made available only to persons ordered to participate and others in the same housing unit who wish to join. Unit 3-B, where most DHS detainees are held, does not receive these programs.

Comments & Recommendations: UNHCR appreciates the availability of GED and ESL classes to detained asylum-seekers. UNHCR is concerned, however, about the limited availability of rehabilitation programs available to DHS detainees at MDC. In addition to the valuable instruction and treatment provided, these courses allow detained asylum-seekers to demonstrate rehabilitation for purposes of release from custody. They also provide meaningful activity during detention. UNHCR recommends that MDC's rehabilitation programs be made to those DHS detainees who would like to participate, at that they provided in languages other than Spanish and English to the extent possible, based on the language abilities of the detained population.

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1. **1967 Protocol to the 1951 Refugee Convention** Protocol relating to the Status of Refugees, *adopted* 31 January 1967, *entered into force* 4 October 1967, 606 U.N.T.S. 267 (1967); Convention relating to the Status of Refugees, *adopted* 28 July 1951, *entered into force* 22 April 1954, 189 U.N.T.S. 137 (1951).
2. **Basic Principles** Basic Principles for the Treatment of Prisoners, *adopted* 14 December 1990, G.A. res. 45/111, annex, U.N. Doc. A/45/49 (1990).
3. **Body of Principles** Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, *adopted* 9 December 1988, G.A. res. 43/173, U.N. Doc. A/RES/43/173 (1988).
4. **ECRE, Position Paper on Detention of Asylum-Seekers** European Committee on Refugees and Exiles, *Position on Detention of Asylum Seekers* (April 1996).
5. **ICCPR** International Covenant on Civil and Political Rights, *adopted* 19 December 1966, *entered into force* 23 March 1976, G.A. res. 2200A (XXI), UN Doc. A/6316 (1966).
6. **Standard Minimum Rules** Standard Minimum Rules for the Treatment of Prisoners, *adopted* 1955, First U.N. Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva (1955), *approved* 31 July 1957, ECOSOC res. 663 C (XXIV) and 13 May 1977, ECOSOC res. 2076 (LXII).
7. **UNHCR Detention Guidelines** UNHCR Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers, Geneva (February 1999).
8. **UNHCR EXCOM Conclusions** Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme.

Relevant International Standards

Access to DHS Officials: Body of Principles, Principle 33 (right to make request or complaint about treatment to appropriate authorities); Standard Minimum Rules, Rule 36 (right to make request or complaint to director of institution or designated officer and to central prison administration or other proper authorities, and right to receive prompt reply); UNHCR Detention Guidelines, Guideline 10(x) (right of access to a complaints mechanism)

Co-mingling: Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from persons imprisoned by reason of a criminal offense); UNHCR Detention Guidelines, Guideline 10(iii) (asylum-seekers should not be co-mingled with convicted criminals); UNHCR EXCOM Conclusion No. 44, para. (f) ("refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as common criminals"); UNHCR EXCOM Conclusion No. 85, para. (ee) (noting concern that asylum-seekers are often held with common criminals); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from those imprisoned for criminal offenses); Body of Principles, Principle 8 (same); ICCPR, Article 10(2)(a) ("accused persons shall, save in exceptional circumstances, be segregated from convicted persons").

Confidential Attorney Consultations: Body of Principles, Principles 18(3) (right to be visited by and to consult and communicate with attorney in full confidentiality) and 18(4) (interviews between detained persons and legal counsel may be within sight, but not within hearing, of a law enforcement official).

Interpretation: UNHCR EXCOM Conclusion No. 8 (asylum-seekers to be given necessary facilities, including interpreter services, to submit claim to authorities); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints to be made available to detainees in different languages); ECRE Position Paper on Detention, paras. 20, 29 (right of asylum-seeker to information on detention in language s/he understands); Standard Minimum Rules, Rule 35 (right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations) and Rule 51(2) (whenever necessary, the services of an interpreter shall be used); Body of Principles, Principle 14 (right of detainee to receive information about his rights in detention in language he understands).

Legal Resources: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to the asylum-seekers' possibilities to pursue their asylum application).

Medical: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers shall have opportunity to receive appropriate medical treatment and psychological counselling); Body of Principles, Principle 24 (medical care shall be offered free of charge); Standard Minimum Rules, Rule 22(1) (services of medical officer with some knowledge of

psychiatry should be available) and Rule 22(2)(sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals; if institution has hospital facilities, its resources shall be proper for necessary medical care); UNHCR Detention Guidelines, Guideline 10 (detention conditions should be humane with respect shown for inherent dignity of person); Basic Principles, Principle 1 (same).

Orientation: UNHCR Detention Guidelines, Guideline 5(i)(asylum-seekers should receive prompt, full communication of detention order, reasons for order, rights in connection with order, in language they understand); Body of Principles, Principle 11(2) (detained person shall receive prompt and full communication of detention order and the reasons therefor); Principle 13 (upon detention, information on and explanation of rights and how to avail oneself of rights will be provided); Body of Principles, Principle 14 (entitled to receive information in Principle 11 and 13 through interpreter free of charge).

Programs: UNHCR Detention Guidelines, Guideline 10(vii) (detained asylum-seekers should have opportunity to continue further education or vocational training); ECRE Position Paper on Detention, para. 46 (during prolonged detention, adult education and training should be provided and it should attend to cultural and linguistic needs; it is crucial for detainees' mental health to not be deprived of access to constructive activities during prolonged detention); Basic Principles, Principle 6 (prisoners shall have right to take part in education aimed at full development of human personality).

Recreation: UNHCR Detention Guidelines, Guideline 10(vi) (asylum-seekers should have opportunity for daily indoor and outdoor recreational activities); Standard Minimum Rules, Rule 21(right to at least one hour suitable exercise in open air daily weather permitting).

Religion: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers should have the opportunity to exercise their religion); Standard Minimum Rules, Rule 41 (if institution contains sufficient number of prisoners of same religion, a qualified representative of that religion shall be appointed or approved and made available to hold regular services and pay private pastoral visits) and Rule 42 (as far as practicable, every prisoner shall be allowed to satisfy his religious needs by attending religious services).

Restraints: Standard Minimum Rules, Rules 33 (instruments of restraint never to be applied as punishment, only to be used as precaution during transfers, on medical grounds, or, by order of director, if other methods of control fail, to prevent prisoner from injuring himself, others or damaging property) and 34 (restraints not to be used for any longer than is strictly necessary).

Telephone Access: UNHCR EXCOM Conclusion No. 44, para. (g)(detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv)(asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (the means shall be made available for detained asylum-seekers to contact and be contacted by UNHCR, available

national refugee bodies or other agencies and an advocate); Body of Principles, Principle 16(2) (detained foreigners have right to communicate by appropriate means with representative of competent organization); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons); ECRE Position Paper on Detention, para. 29 (asylum-seekers should have access to telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counselors).

Temperature: Standard Minimum Rules, Rule 10 (sleeping conditions shall meet all health requirements, including necessary heating) & Rule 19 (every prisoner should be issued sufficient bedding).

Training: Standard Minimum Rules, Rule 47 (personnel shall receive on-going training to maintain and improve their knowledge and professional capacity); ECRE Position Paper on Detention, para. 51 (staff should receive proper training on asylum matters, causes of refugee movements, relevant cultural factors, and methods of recognizing and responding to stress-related illnesses).

UNHCR ROW MISSION
Pamunkey Regional Jail in Hanover, Virginia
22 August 2005

1. Introduction

On 22 August 2005, (b)(6) Deputy Regional Representative of the UNHCR Regional Office in Washington, DC, along with (b)(6), Legal Protection Unit Intern, visited the Pamunkey Regional Jail (Pamunkey) in Hanover, Virginia. Pamunkey is a county jail that contracts bed space to Immigration and Customs Enforcement (ICE). Deputy Rep. (b)(6) (hereinafter "UNHCR") was given a tour of the facility by Captain (b)(6), (b)(7)c and Lieutenant (b)(6), (b)(7)c of Pamunkey. They were accompanied by (b)(6), (b)(7)c and (b)(6), (b)(7)c of ICE.

This report is based on information received from DHS officials and facility staff, the observations of UNHCR staff during their tour of the facility, information received from detainees, both during individual interviews at the facility and from written correspondence received at the UNHCR Office in Washington, DC.

2. Facility Background and Housing Units

Pamunkey opened in 1998 and has a 400-bed capacity spread over 14 housing units. It is used as an overflow facility for immigration detainees when there is no bed space at the Piedmont Regional Jail in Farmville or the Hampton Roads Regional Jail in Portsmouth. DHS estimated that the average length of detention to be between two and three weeks. On average, the facility houses between 10 and 68 immigration detainees at a time. When UNHCR visited the facility, 21 immigration detainees were held there.

Unit K, where male detainees are held, is a dormitory-style detention area for low risk detainees, with a common area, toilet, shower, and bunks on the first floor, and additional bunks on the second floor. Detainees cannot see outside from the housing unit. The detention area appeared clean, although several of the detainees complained that the temperature was too cold.

Immigration detainees are processed into Pamunkey in the same manner as other detainees, and housed with the general population. Male and female detainees are housed in different units. Persons with behavior problems are housed separately in Units C or D.

The detainees generally commented that the Pamunkey staff is friendly, helpful, and professional. There were some reports that certain members of the Pamunkey staff used verbal threats or intimidation against detainees.

Comments & Recommendations: UNCHR recommends that asylum seekers in immigration proceedings not be commingled with inmates serving their criminal sentences.

3. Phones

In Housing Unit K, four phones are available for detainee use. Detainees can purchase phone cards from the commissary or can make collect calls. Instructions on how to use a phone card, call collect, or make a free call to one's Embassy or Consulate are posted next to the phone.

Pamunkey has a speed dial system in place for making free calls to UNHCR, the immigration court and other organizations, but both DHS and Pamunkey officials were unaware of this until the UNHCR visit. Detainees were generally unaware of their ability to make free calls to these organizations. When a detainee attempted to call UNHCR collect from the phone system, the call could not be completed. According to DHS officials, immigration detainees can request to make a phone call to a legal service provider at DHS' expense; if the request is approved, they are taken to an interview room where a Pamunkey official places the call and hands the phone to the detainee. It is unclear if detainees are aware of this procedure.

Some of the detainees that UNHCR interviewed complained that the inmate code on their wristband IDs, which must be entered before dialing, did not allow them to use the phones, and that they often used another detainee's code. The detainees also complained that the calling card rates were too high.

Comments & Recommendations: UNHCR is concerned that detained asylum-seekers may be unable or unaware of their right to make free calls to legal service providers, immigration courts, DHS and UNHCR. Contact with these agencies can be critical to the preparation of an asylum claim. UNCHR recommends that Pamunkey place instructions to use the speed dial function to make free calls and to contact DHS if they are unable to place a call.

4. Access to Deportation Officers

ICE Officer (b)(6), (b)(7)c who serves as a Deportation Officer for Pamunkey, stated that he visits Pamunkey four times a year. Officer (b)(6), (b)(7)c informed UNHCR that ICE Officer (b)(6), (b)(7)c of the Fairfax field office visits the facility once a week. If a detainee has a question about his or her individual case, they must request to speak to Officer (b)(6), (b)(7)c during his weekly visit. Officer (b)(6), (b)(7)c will then pass along the question to the Deportation Officer in the Fairfax field office. However, only one of the detainees interviewed had heard of Officer (b)(6), (b)(7)c and all detainees expressed frustration about not knowing what was going on with their cases.

Comments & Recommendations: UNCHR is concerned about the extent which detained asylum seekers have meaningful access to DHS. Detainees should be made aware of their right to speak with a deportation officer, and should be informed in advance of any visits by ICE officials.

5. Law Library

In general, Pamunkey's law library is well stocked with immigration materials, although many books were still in boxes and not accessible to detainees. Pamunkey officials explained that all immigration law materials are provided by DHS. When UNHCR arrived at the law library, a

Pamunkey staff member and an inmate were in the process of updating the immigration law materials. The materials contained in the library include: UNHCR Handbook on Procedures and Criteria for Determining Refugee Status; Section 8 of the U.S. Code; Administrative Decisions on immigration law (current through 1997); National Lawyers Guild—Immigration Law and Crimes; Bender’s Immigration Case Reporter; Interpreter Releases (current through 2003); Guide for Immigration Advocates; Lexis Immigration Law and Procedure; Lexis guide on Writs of Habeas Corpus; Freedom House Reports from 2005; Human Rights Watch Report from 2005; Amnesty International Human Rights Reports; Black’s Law Dictionary; and a Spanish language legal dictionary.

Pamunkey staff mentioned that DHS has provided them with a CD-ROM of legal materials, but the computer in the law library did not work and had no keyboard.

Pamunkey officials state that detainees must make a request to visit the law library. Such requests are usually processed within a few days. Detainees are typically allowed to visit the library for one-hour increments. Detainees interviewed by UNHCR stated that requests to visit the law library were not quickly processed. Detainees also stated that it was not always made clear to them when they would be allowed to visit the library.

Comments & Recommendations: UNCHR appreciates the fact that Pamunkey has an adequate collection of immigration law materials, albeit largely in boxes. UNCHR is concerned that detainees do not have meaningful access to the law library because of schedule restrictions, as well as the fact that many of the books were still in boxes and difficult to access. UNHCR recommends that Pamunkey allow more flexibility in granting detainees request for access to the library and provide a functioning computer for legal research.

6. Medical Care

Pamunkey officials stated that their medical unit is staffed twenty-four hours a day with certified nurses. A doctor visits twice a week and is constantly on call for emergencies. A mental health professional comes in once a week. Detainees with suicidal tendencies are placed on suicide watch. The degree of observation varies with the likelihood of self-inflicted harm. Detainees must make a request to see a doctor for non-emergency cases. Pamunkey officials stated that detainees taking medication have a twice daily “pill call.” One detainee commented that at times the medical staff does not give him his pills on weekends. Detainees who are extremely ill are housed separately within the facility, and taken to the hospital in cases of emergency.

UNHCR received a report before this visit of a detainee who fell off a bunk and required stitches, but was only given a band-aid. Pamunkey officials assured UNHCR that if a detainees report a fall to a staff member, they are taken to the medical unit and treated appropriately. UNHCR also received reports from female detainees that were not being provided sanitary materials. Pamunkey officials stated that sanitary materials are kept in the detention area always available for free to female detainees upon request.

Comments & Recommendations: UNHCR was pleased with the diversity of medical services offered at Pamunkey. The availability of a mental health professional is especially welcomed.

UNCHR is concerned that some detainees may not be receiving their pills on the weekends. UNHCR is also concerned about reports that detainees are not receiving adequate medical care for serious wounds or adequate sanitary supplies.

7. Attorney Visitation/Access

If detainees wish to meet with their attorney, the detainee must contact their attorney, and the attorney must make a request to visit. Pamunkey officials reported that such requests are usually accommodated. Pamunkey provides two rooms for attorney/client meetings. None of the detainees interviewed by UNHCR complained of lack of access to attorneys. However, some did complain that they had difficulty calling their attorneys.

Detainees are subject to a strip search after a visit from their attorney, as they are after any outside visit. Pamunkey officials stated that this is pursuant to Department of Corrections regulations.

Comments & Recommendations: UNHCR is pleased that Pamunkey provides a private visitation area for attorney/client meetings. Private contact facilitates communication between attorneys and asylum-seekers so that the asylum-seekers' claim can be clearly presented in court. UNHCR is concerned about the practice of conducting a strip-search of detainees after they meet with their attorneys. This practice may dissuade asylum-seekers from meeting with their attorneys; UNCHR considers contact between asylum seekers and their attorneys to be crucial to the preparation of their case.

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1. **1967 Protocol to the 1951 Refugee Convention** Protocol relating to the Status of Refugees, *adopted* 31 January 1967, *entered into force* 4 October 1967, 606 U.N.T.S. 267 (1967); Convention relating to the Status of Refugees, *adopted* 28 July 1951, *entered into force* 22 April 1954, 189 U.N.T.S. 137 (1951).
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6. **Standard Minimum Rules** Standard Minimum Rules for the Treatment of Prisoners, *adopted* 1955, First U.N. Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva (1955), *approved* 31 July 1957, ECOSOC res. 663 C (XXIV) and 13 May 1977, ECOSOC res. 2076 (LXII).
7. **UNHCR Detention Guidelines** UNHCR Guidelines on applicable Criteria and Standards relating to the Detention of Asylum Seekers, Geneva (February 1999).
8. **UNHCR EXCOM Conclusions** Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme.

Relevant International Standards

Access to DHS Officials: Body of Principles, Principle 33 (right to make request or complaint about treatment to appropriate authorities); Standard Minimum Rules, Rule 36 (right to make request or complaint to director of institution or designated officer and to central prison administration or other proper authorities, and right to receive prompt reply); UNHCR Detention Guidelines, Guideline 10(x) (right of access to a complaints mechanism)

Co-mingling: Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from persons imprisoned by reason of a criminal offense); UNHCR Detention Guidelines, Guideline 10(iii) (asylum-seekers should not be co-mingled with convicted criminals); UNHCR EXCOM Conclusion No. 44, para. (f) ("refugees and asylum-seekers shall, wherever possible, not be accommodated with persons detained as common criminals"); UNHCR EXCOM Conclusion No. 85, para. (ee) (noting concern that asylum-seekers are often held with common criminals); Standard Minimum Rules, Rule 8(c) (civil prisoners shall be separated from those imprisoned for criminal offenses); Body of Principles, Principle 8 (same); ICCPR, Article 10(2)(a) ("accused persons shall, save in exceptional circumstances, be segregated from convicted persons").

Confidential Attorney Consultations: Body of Principles, Principles 18(3) (right to be visited by and to consult and communicate with attorney in full confidentiality) and 18(4) (interviews between detained persons and legal counsel may be within sight, but not within hearing, of a law enforcement official).

Interpretation: UNHCR EXCOM Conclusion No. 8 (asylum-seekers to be given necessary facilities, including interpreter services, to submit claim to authorities); UNHCR Detention Guidelines, Guideline 10(x) (procedures for lodging complaints to be made available to detainees in different languages); ECRE Position Paper on Detention, paras. 20, 29 (right of asylum-seeker to information on detention in language s/he understands); Standard Minimum Rules, Rule 35 (right of prisoner on admission to be provided written information on regulations governing treatment of prisoners as necessary to enable him to understand rights and obligations) and Rule 51(2) (whenever necessary, the services of an interpreter shall be used); Body of Principles, Principle 14 (right of detainee to receive information about his rights in detention in language he understands).

Legal Resources: UNHCR EXCOM Conclusion No. 8, para. (e)(iv) (asylum applicants shall be given necessary facilities for submitting case); UNHCR Detention Guidelines, Guideline 5 (detention should in no way constitute an obstacle to the asylum-seekers' possibilities to pursue their asylum application).

Medical: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers shall have opportunity to receive appropriate medical treatment and psychological counselling); Body of Principles, Principle 24 (medical care shall be offered free of charge); Standard Minimum Rules, Rule 22(1) (services of medical officer with some knowledge of psychiatry should be available) and Rule 22(2) (sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals; if institution has hospital facilities, its resources shall be proper for necessary medical care); UNHCR Detention Guidelines, Guideline 10 (detention conditions

should be humane with respect shown for inherent dignity of person); Basic Principles, Principle 1 (same).

Orientation: UNHCR Detention Guidelines, Guideline 5(i)(asylum-seekers should receive prompt, full communication of detention order, reasons for order, rights in connection with order, in language they understand); Body of Principles, Principle 11(2) (detained person shall receive prompt and full communication of detention order and the reasons therefor); Principle 13 (upon detention, information on and explanation of rights and how to avail oneself of rights will be provided); Body of Principles, Principle 14 (entitled to receive information in Principle 11 and 13 through interpreter free of charge).

Programs: UNHCR Detention Guidelines, Guideline 10(vii) (detained asylum-seekers should have opportunity to continue further education or vocational training); ECRE Position Paper on Detention, para. 46 (during prolonged detention, adult education and training should be provided and it should attend to cultural and linguistic needs; it is crucial for detainees' mental health to not be deprived of access to constructive activities during prolonged detention); Basic Principles, Principle 6 (prisoners shall have right to take part in education aimed at full development of human personality).

Recreation: UNHCR Detention Guidelines, Guideline 10(vi) (asylum-seekers should have opportunity for daily indoor and outdoor recreational activities); Standard Minimum Rules, Rule 21(right to at least one hour suitable exercise in open air daily weather permitting).

Religion: UNHCR Detention Guidelines, Guideline 10 (asylum-seekers should have the opportunity to exercise their religion); Standard Minimum Rules, Rule 41 (if institution contains sufficient number of prisoners of same religion, a qualified representative of that religion shall be appointed or approved and made available to hold regular services and pay private pastoral visits) and Rule 42 (as far as practicable, every prisoner shall be allowed to satisfy his religious needs by attending religious services).

Restraints: Standard Minimum Rules, Rules 33 (instruments of restraint never to be applied as punishment, only to be used as precaution during transfers, on medical grounds, or, by order of director, if other methods of control fail, to prevent prisoner from injuring himself, others or damaging property) and 34 (restraints not to be used for any longer than is strictly necessary).

Telephone Access: UNHCR EXCOM Conclusion No. 44, para. (g)(detained refugees and asylum-seekers should have opportunity to contact UNHCR); UNHCR Handbook, para. 192(iv)(asylum applicants should have opportunity to contact UNHCR representative); UNHCR Detention Guidelines, Guideline 5 (the means shall be made available for detained asylum-seekers to contact and be contacted by UNHCR, available national refugee bodies or other agencies and an advocate); Body of Principles, Principle 16(2) (detained foreigners have right to communicate by appropriate means with representative of competent organization); Standard Minimum Rules, Rule 38(2) (prisoners who are refugees shall be allowed reasonable facilities to communicate with any national or international authority whose task it is to protect such persons); ECRE Position Paper on Detention, para. 29 (asylum-seekers should have access to

telephones at times which allow them to contact and be contacted by legal counsel, UNHCR, other relevant organizations, family, friends, social or religious counselors).

Temperature: Standard Minimum Rules, Rule 10 (sleeping conditions shall meet all health requirements, including necessary heating) & Rule 19 (every prisoner should be issued sufficient bedding).

Training: Standard Minimum Rules, Rule 47 (personnel shall receive on-going training to maintain and improve their knowledge and professional capacity); ECRE Position Paper on Detention, para. 51 (staff should receive proper training on asylum matters, causes of refugee movements, relevant cultural factors, and methods of recognizing and responding to stress-related illnesses).

**UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES**



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14 April 2003

VIA HAND DELIVERY

Mr. Michael Garcia, Commissioner
Bureau of Immigration and Customs Enforcement
US Department of Homeland Security
Washington, DC 20528

Mr. Robert Bonner, Commissioner
Bureau of Customs and Border Protection
US Department of Homeland Security
Washington, DC 20528

Dr. Nguyen Van Hanh, Director
Office of Refugee Resettlement
US Department of Health and Human Services
370 L'Enfant Promenade, SW
ORR/6th Floor East
Washington, DC 20447

Re: Report on UNHCR Follow-up Mission to San Diego

Dear Commissioner Garcia, Commissioner Bonner, and Dr. Van Hanh:

Please find enclosed the report of the Office of the United Nations High Commissioner for Refugees (UNHCR) on its visit to the San Diego area during the week of 7 October 2002, during which time we visited the CCA Otay Mesa (CCA) adult detention facility, the Casa de San Juan (CSJ) children's and family facility, San Diego County Juvenile Hall (SDCJH), and the San Ysidro/Tijuana Port of Entry (POE). I wish to thank (b)(6), (b)(7)c former Deputy Executive Associate Commissioner of Enforcement for the Immigration and Naturalization Service (INS), for facilitating the visit to the area of UNHCR representatives, (b)(6) Senior Legal Counselor (UNHCR Washington), (b)(6) Legal Counselor (UNHCR Washington) and (b)(6) Deputy Regional Representative for UNHCR Mexico. I have been informed that INS and local staff at each location were extremely courteous and accommodating during the visit. I very much

appreciate both the time that they devoted to our visits, and their full and forthright answers to our many questions about facility and port operations.

This visit was a follow-up to UNHCR's trip to San Diego in February 2001 to assess what changes, if any, had occurred since then. A full report containing our observations, comments and recommendations is attached for your review. For those facilities that UNHCR had visited in February 2001, our comments are limited to issues of previous concern and new issues that have arisen in the interim. We have provided a more comprehensive report for the San Diego County Juvenile Hall, given that this was UNHCR's first visit to the facility.

While detailed comments and observations are contained in the attached report, we would like to highlight the following.

Assessment of Changes in Conditions and Procedures Since February 2001 Visit:

San Ysidro POE, CCA Otay Mesa, and Casa de San Juan: UNHCR observed some improvements in conditions at the POE (holding areas), CCA (medical care, law library, strip search policy) and Casa de San Juan (education) since our last visit; however, we continue to have some concerns about conditions at each location. These are detailed in our report.

Oceanview Work Furlough Facility: UNHCR was disappointed to learn that INS was no longer using the minimum security Oceanview Work Furlough Facility. UNHCR had visited the facility in February 2001, a few weeks before it became operational, and was optimistic about INS plans to place asylum seekers in a less restrictive setting during the mandatory detention period of the expedited removal process. UNHCR understands that INS began using Oceanview last year but halted operations after only two or three months due to a contractual issue. UNHCR encourages INS to re-visit the use of the Oceanview or similar minimum-security detention facilities for the detention of asylum seekers if detention is going to be used.

New Concerns:

Detention of Families at POE and CCA: UNHCR is extremely concerned about the prolonged detention of Iraqi Chaldean families at the POE and at CCA in August/September 2002, and possibly earlier as well. Both locations are inappropriate locations for housing asylum seekers, especially children. UNHCR recognizes that INS lacked space to house the families at CSJ and that INS was required to detain the families until security clearances were obtained. UNHCR recommends, however, that the San Diego district develop a plan for more appropriate accommodations in the event that there is another overflow of families in the future.

San Diego County Juvenile Hall: UNHCR is also concerned about INS' use of SDCJH to house unaccompanied juveniles. While UNHCR is pleased that INS' use of SDCJH has dropped dramatically, we are concerned about the continued use of this facility both for temporary holds while looking for bed space in area shelter facilities and for those minors detained there during their removal proceedings. A secure environment is not an appropriate place to house minor asylum seekers, and UNHCR recommends that Bureau of Immigration and Customs Enforcement (BICE) and the Office of Refugee Resettlement

(ORR) cease using this facility. We recognize that bed space in the area may be limited, but we encourage BICE and ORR to develop more appropriate alternative placements when detention of minors may be necessary. We note specific concerns about the facility in our attached report.

Local Parole and Bond Policy: UNHCR appreciates that in the San Diego district, asylum seekers who establish a credible fear of persecution are typically paroled out of INS custody and not detained. While these are positive aspects, UNHCR interviewed several asylum seekers who had been detained for significant periods of time in the San Diego area. UNHCR was informed by area NGOs, as confirmed by some asylum seekers we interviewed, that the local INS appears to be increasing the amount of money required to post bond. It appears that bonds of \$5,000 are commonplace, and that bonds of up to \$25,000, especially for certain nationalities (e.g. Somalis) are not uncommon. While at CCA, UNHCR spoke with asylum seekers who were not able to pay their bonds and who expected to be detained throughout the pendency of their immigration cases, which often last for many months. This is an inappropriate length of time for an asylum seeker to be held in a secure environment, absent exceptional circumstances. UNHCR encourages INS to pursue alternatives to detention whenever possible.

In closing, we reiterate our continued concerns about the detention of asylum seekers in the United States. As you are aware, UNHCR's Executive Committee (*see, e.g.*, Conclusion No. 44), has stated that asylum seekers should normally not be detained. This principle is also found in UNHCR's Detention Guidelines. We encourage BICE and ORR to release individuals who should not be detained and to aggressively pursue alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Best regards,

Guenet Guebre Christos
Regional Representative

cc: Mr. Joseph Langlois (by first class mail)
Director, Asylum Division
Bureau of Citizenship and Immigration Services
US Department of Homeland Security

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05 April 2001

BY HAND DELIVERY

Kenneth Elwood
Deputy Executive Associate Commissioner
Enforcement, Field Operations
Immigration and Naturalization Service
425 Eye Street, NW
Washington, DC 20536

Re: Report on UNHCR Site Visit to San Diego Area

Dear Mr. Elwood:

I wish to thank you and your staff for facilitating the visit of UNHCR Legal Counselors (b)(6) and (b)(6) to the San Ysidro Port of Entry and various children and adult detention facilities in the San Diego area. As you know, (b)(6) (b)(6) and (b)(6) visited the San Diego area during the week of 12 February 2001. During this time, they visited the Casa de San Juan and Southwest Key children's facilities (12 February), the San Ysidro Port of Entry (15 February), various Border Patrol facilities (15 February), the CCA Otay Mesa detention facility (16 February); and the Oceanview work furlough facility (16 February). I have been informed that INS and local staff at each location were extremely courteous and accommodating of our visits. I very much appreciate both the time that they devoted to our visits, and their full and forthright answers to our many questions about facility and port operations.

A full report containing our observations, comments and recommendations is attached for your review. In this connection, we would like to take the opportunity here to highlight some of the report's findings and suggestions.

With regard to the children's facilities, we were generally impressed with operations at both Casa de San Juan and Southwest Key. Both locations had caring, sensitive staff and a relaxed, non-intimidating atmosphere. The Southwest Key facility, however, had distinct advantages, including greater physical space, a more attractive site

location, and greater educational opportunities for girls. Of concern at both facilities was the use of shackles when transporting children outside of the facility.

At the San Ysidro Port of Entry (POE), our staff viewed various aspects of INS operations, including primary and secondary inspections and INS holding areas. Unfortunately, there were no secondary inspection interviews at the time of our visit. Our primary concerns at the POE were INS reliance on holding cells for those awaiting transportation and the limited privacy afforded during secondary inspection interviews at INS officer work stations. As noted in the report, we would like to discuss with you further asylum-processing procedures at both the US-Mexican and the US-Canadian borders.

Assistant Officer in Charge (b)(6), (b)(7)c kindly provided our staff with a comprehensive tour of Border Patrol (BP) operations. He accompanied our staff to a BP border station and a transit staging area, and reviewed apprehension procedures during a tour of part of the US-Mexican border. A primary concern for BP operations was the absence of clear detention standards that accommodate the needs and vulnerability of asylum-seekers. We were informed throughout the tour that INS detention standards did not apply because individuals were detained at each location for only a short time. However, cumulatively, detention while in BP custody is not necessarily "short term." We suggest that the absence of these standards - to the extent that they reflect international standards - be reviewed.

The CCA Otay Mesa detention facility is a secure facility located 30-45 minutes outside of San Diego. During our tour, Warden (b)(6), (b)(7) explained various aspects of CCA's operations, including those for housing, segregation, medical treatment, meals, and recreation. In addition to our observations of the CCA facility, we have attached a letter received from Immigration Judge (b)(6) conveying a number of complaints from individual detainees and her concerns about the impact of CCA conditions on immigration court proceedings. Most disturbing is Judge (b)(6) belief, and apparently that of her colleagues, that respondents appearing before them who are eligible for relief may be accepting deportation rather than continue their detention at CCA. We would appreciate your comments on Judge (b)(6) letter, as well as on our own observations and recommendations.

Finally, we were quite interested to visit the now-operational Oceanview work furlough facility. If the US is to detain asylum-seekers, we found Oceanview to be a much more suitable location than CCA Otay Mesa. Oceanview is a minimum security facility and allows for greater freedom of movement for detainees. For those placed in expedited removal, during which time detention is mandatory, we suggest that the INS expand its use of the facility to include female asylum-seekers. For those asylum-seekers found to have a credible fear of persecution, we encourage the INS to exercise its discretion and release them from detention. Should the INS choose to continue their detention, we recommend that the asylum-seekers remain at Oceanview while their cases are pending in court. Our report raises certain other concerns, also for your consideration,

about the facility's expected operations, such as the applicability of INS detention standards and possible overcrowding.

In closing, we reiterate our continued concerns about the detention of asylum-seekers in the United States. As you are aware, UNHCR's Executive Committee (*see, e.g.*, Conclusion No. 44), has stated that asylum-seekers should normally not be detained. This principle is also found in UNHCR's Detention Guidelines. We encourage the INS to aggressively pursue alternatives to detention in this country. To the extent that detention is utilized, we trust that the attached report will be useful to you and your colleagues in the field in reviewing facility conditions. We remain available, of course, to discuss any aspects of the report that require further clarification or discussion. Please do not hesitate to contact us should you so desire. We look forward to working with you further on this and future UNHCR missions.

Best regards,

Guenet Guebre Christos
Regional Representative

Cc: Mr. Joseph Langlois (by first class mail)
Acting Director of Asylum

Chief Immigration Judge Michael Creppy (by first class mail)
Executive Office for Immigration Review

Casa de San Juan Children's Facility

On the morning of 12 February 2001, (b)(6) and (b)(6) visited the Casa de San Juan Children's facility (CSJ), accompanied by (b)(6), (b)(7)c INS Juvenile Coordinator, and (b)(6), (b)(7)c Department Director at Catholic Charities.

Facility Background: CSJ is in downtown San Diego in a former convent. It is licensed by the state for unaccompanied minor boys (ages 8–18), although some California state standards do not apply. It also shelters women (who can sleep with their small children) and their children; boys and girls do not mix at any time (unless the children are very small and are with their mothers). The outside recreation area is mainly concrete and surrounded with a high fence; it has limited use, as neighbors have complained about noise. There is a small recreation room on the ground floor with a TV and couches; upstairs there is another common room with a TV and chairs for boys to have classes. The ground floor is for women and children and has 20 beds; upstairs is for juvenile males and has 14 beds. Upstairs, each room has two beds and one bathroom; downstairs there are 2 common bathrooms shared by all females; some rooms have 3 or more beds. CSJ has a contract with the US Marshall's Service to hold material witnesses, so they are given first preference for bedspace. Second preference is given to juvenile males, then to adult females with children, then to single women. If there is no room, children are moved to the South West Key facility; if South West Key is unavailable, they are sent to San Diego County Juvenile Hall, which is also used for detention if children are "boisterous," considered an escape risk, have final orders of removal, or are "problematic." The facility is minimum security, with alarms that sound if doors are opened without authorization. In 2000, there were 4 runaways.. The cost for INS to hold someone at the facility is approximately \$74/day.

Comments & Recommendations: UNHCR is impressed with the caring staff and open atmosphere of the facility. Benefits include that mothers and small children are not separated, asylum-seekers are less traumatized than if detained in prison-like conditions, and cost is low. CSJ is small, however, and the facilities for women appear inadequate, with few bathrooms and crowded rooms. Limited recreation is also a problem.

Education: The boys have school from 8:00 am to 1:00 pm; a teacher comes in to give classes in various subjects, including social studies, math, history, science, and English. The girls and adult women do not have formal classes, although staff will conduct exercise classes and English classes when available. According to a written quarterly report that covered October – December 2000, CSJ sheltered 93 males and 179 females during that period. Of the total (272), 102 were between the ages of 6 and 18, meaning that at least 9 females fell within that age group, yet did not receive formal classes.

Comments & Recommendations: UNHCR is concerned with the lack of access to formal schooling for young girls between the ages of 6 and 18. UNHCR suggests that some arrangement be made so that both girls and boys receive appropriate schooling.

Shackling: (b)(6), (b)(7)c explained that when INS Detention Officers pick up children to take them to court or the doctor or another facility, it is up to the officer's discretion whether to

handcuff the child. The Marshalls, however, always shackle children in their charge when moving them. This includes shackles on hands, waist , and feet.

Comments & Recommendations: UNHCR is concerned about the traumatic effect that the use of restraints will have on children, especially on those who may already have suffered past trauma.

Access to asylum: According to (b)(6), (b)(7)c the boys held as material witnesses cannot ask for asylum. He noted that “the Immigration Judges act as social workers” for the children, sometimes delaying removal even if a juvenile asks to go home in case there is some relief available; judges will also ask a local attorney to take a case. (b)(6), (b)(7)c also tries to delay court cases if release is pending so that if a child is reunited with a family member in a different jurisdiction, the court will commence proceedings in that jurisdiction without requiring a motion to change venue. Unlike in some other districts, in San Diego parents who are in the US unlawfully are not put in removal proceedings during the release process. If not released, once a child turns 18, he will either bond out or be transferred to CCA.

Comments & Recommendations: UNHCR is pleased to note the helpful and caring attitude of both the INS Juvenile Coordinator and the Immigration Judges in seeing that children at CSJ are helped to reunite with their families and to have full access to court proceedings. There is concern, however, that material witnesses who may be refugees, are not informed of their right to seek asylum. UNHCR recommends that training for all relevant officials, including INS and US Marshall’s staff, include refugee issues and the right to access asylum. The appointment of an independent guardian or adviser should also be considered for all unaccompanied minors seeking asylum, including material witnesses, so as to ensure that the interests of the child are safeguarded, and that their legal, social, medical and psychological needs are appropriately covered during the asylum process.

Southwest Key Children's Facility

On the afternoon of 12 February 2001, (b)(6) and (b)(6) visited the Southwest Key children's facility in San Diego, California. They were accompanied by (b)(6), (b)(7)c (b)(6), (b)(7) Acting Director, (b)(6), (b)(7)c INS Juvenile Coordinator, (b)(6), (b)(7)c INS Assistant Officer-in-Charge.

Facility Background: The Southwest Key facility is located in a residential neighborhood on the outskirts of San Diego. The building, a former hacienda, is set off from the road and was previously used as a retirement home. It began operation as an INS children's facility in March 1998. The building location is quite green, w/ flowers and trees and a small outdoor recreation area on site. The interior of the building was clean and sunny. There is an activity room with a television and various games, and an adjoining room for activities and classes. Newspapers, including some in Chinese, are available. There are 15 bedrooms, with 1 to 2 children per room. Girls are on one side of the hall, boys on the other. California state laws apply to the facility, which allow only 2 residents/room and 1 bathroom for every 10 residents. (For reasons unclear, the Casa de San Juan facility is not under the same requirements.) The building perimeter is alarmed. The facility has had only two runaways in three years. There are 16 staff working at the facility, including 3 case workers. Four people on staff speak Chinese and the rest speak Spanish. During the day, the client/staff ratio is 6/1. In the evening it is 10/1. At the time of our visit, there were 15 children at the facility - 9 from China, 5 from Central America (Guatemala, Honduras, El Salvador), and 1 from India. The gender break-down was 8 females and 7 males. The cost for INS to hold someone at the Southwest Key facility is approximately \$150/day.

Comments & Recommendations: UNHCR was generally impressed with the staff and atmosphere at the SW Key facility. The staff was extremely courteous and seemed genuinely concerned about and respectful toward the children in their care. The atmosphere at the facility was generally warm and the children appeared to interact well. The availability of resources in different languages, the relatively high staff/client ratios, and the limited number of children per bedroom, are just a few of the facility's positive features.

Telephone Access: Children can speak to family members after 2 pm and can speak with their attorneys at any time. They are allowed two outgoing calls/week, to anywhere in the world, for free (at a maximum of 10 minutes). Incoming calls are limited to 20 minutes. Family can call in 3-4 times/day. All phone numbers for outgoing calls are screened.

Comments & Recommendations: UNHCR is impressed with the telephone policy at the Southwest Key facility. The availability of free long-distance phone calls ensures that children have contact with family and other loved ones, despite their possibly limited finances. The fairly liberal telephone policy also lessens the children's isolation from emotional and legal support as they move through the US asylum system.

Shackling: Children are shackled by INS during transport to either immigration court or for attorney visits. At the request of Southwest key, INS shackles the children out of view of the other children and leave their guns and batons in their vans when they enter the building.

Comments & Recommendations: UNHCR is concerned about the traumatic effect that the use of restraints will have on children, especially on those who may already have suffered past trauma. To the extent possible UNHCR recommends that children not be shackled during transport. UNHCR, nonetheless, appreciates the willingness of the INS to shackle children only out of view of other children and for refraining from carrying weapons into the facility.

Legal Assistance: Children can speak to their attorneys by telephone at any time. INS is working with the non-profit organization Casa Cornelia to set up video-conferencing with attorneys. Attorney meetings do not occur at the facility, rather INS transports the children downtown for attorney meetings and hearings. There are no group rights presentations at the facility.

Comments & Recommendations: UNHCR encourages INS to continue its discussions with Casa Cornelia to ensure that children have adequate access to legal counsel. To the extent possible, group rights presentations should be facilitated as an effective and efficient means of informing children of their legal rights and of possible relief in the United States. We also recommend the appointment of an independent guardian or adviser for all unaccompanied minors seeking asylum, so as to ensure that the interests of the child are safeguarded, and that their legal, social, medical and psychological needs are appropriately covered during the asylum process.

No-Contact Policy: Southwest Key maintains a no-physical contact policy at the facility, prohibiting staff members from touching children and children from touching one another. As a result, no hugs or similar comforting interactions are allowed.

Comments & Recommendations: Given the trauma that many children feel upon arrival in the US, and afterward, UNHCR is concerned that the facility's no-contact policy limits the amount of emotional support that children can obtain from staff and peers. This is especially so for Chinese and Indian nationals who often must remain at the Southwest Key facility for 6-9 months. UNHCR understands that there are sound policy reasons for prohibiting physical contact, such as to avoid re-traumatizing children who are victims of past abuse and to avoid possible physical and/or sexual abuse at Southwest Key facilities themselves. We encourage INS, however, to explore any possibilities whereby children can obtain physical contact in a safe and trusting environment.

San Ysidro Port of Entry

On the morning of 15 February 2001, (b)(6) and (b)(6) toured the San Ysidro Port of Entry (POE). They were accompanied by (b)(6), (b)(7)c, Assistant Area Port Director, and spoke briefly with (b)(6), (b)(7)c Port Director.

Facility Background: The San Ysidro POE has two main buildings - a large facility with both primary inspection for pedestrian traffic and "hard secondary" for pedestrians and motorists, and a separate, smaller building (the "Old Port") with a "soft secondary" area, a room for affirmative asylum interviews, and other administrative offices. The POE receives approximately 12,000 pedestrians/week, 42,000 vehicles/weekday, and 65,000 vehicles/weekend day. 90 million people were inspected in 2000 and 70,000 were apprehended at the POE last year due to inadmissibility. It is estimated that less than 1% of applicants for admission are non-Mexicans ("OTM" - "Other Than Mexican"), but that probably about 100% of these request asylum.

Soft Secondary and Affirmative Asylum Cases: Soft secondary is used for such cases as those who need permits (I-94s), those requesting asylum w/out attempting entry, and other "special cases." Those requesting asylum in the US, who do not attempt to make an illegal entry into the US, either approach the soft secondary kiosk directly, or are referred there by a primary inspections officer. They are there provided with an I-589, enrolled in the IDENT system, and provided with an interview date with an INS Asylum Officer. If an asylum-seeker indicates that s/he does not want to return to Mexico, or is a Mexican national, then the person is placed in expedited removal proceedings and taken to hard secondary. The INS does not affirmatively ask individuals if they have any fear/concerns about waiting in Mexico for their interviews. INS was aware of allegations in the past of Mexican officials intercepting asylum applicants and taking bribes to allow them to remain in Mexico, but believed that such incidents had diminished.

Comments & Recommendations: UNHCR found the INS officials at soft secondary to be quite sensitive to the needs of asylum-seekers approaching the POE and of seeking to assist them to the extent possible. We also appreciate the efforts of INS to allow asylum-seekers the choice of remaining in Mexico for their asylum interviews (thereby avoiding detention in the US) or of being placed in expedited removal proceedings in the US to ensure their safety. The procedures in place in San Diego appear to be functioning fairly well, although we would recommend that INS affirmatively ask asylum-seekers if they have any concerns of returning to Mexico. We would like to discuss with INS further its national standards on processing asylum applications at the border, given past reports of asylum-seekers having difficulty gaining access to US procedures when requested.

"Hard Secondary" Holding Cells: The POE has 4 holding cells, which look like the interior of metal shipping containers (rectangular in shape) with a metal bench running along each wall. There are two toilets in each cell, hidden from view. We were informed that people are confined for only a couple of hours as they await transportation, although if they miss the last van run for the evening (23:00), they must remain in the holding cell until the following morning. Individuals are only shackled if they are a danger to themselves or others. Holding cells are used primarily for males awaiting transport to a detention facility or for removal to

Mexico. Females are generally not held there unless they are subject to prosecution. Pregnant women and entire families are not held in the cells, but rather remain in the general waiting room.

Comments & Recommendations: UNHCR encourages INS to find alternative waiting areas for transportation than the current holding cells. We are concerned that the use of such cells may be traumatic for victims of trauma and other vulnerable groups. A review of the holding cell logs at the POE indicated that a Chinese asylum-seeker had been detained in a holding cell for up to 20 hours. INS officials informed us that this was done because she had been extremely upset during her interview and had been non-co-operative. The use of the POE's holding cell in such a case and for such an extended period is troubling. For those awaiting transport, we would recommend, to the extent possible, that the temporary holding area be used or that separate accommodations be found. Perhaps INS policies at other POEs, such as Dulles International Airport, where INS does not place those awaiting transport in holding cells, could be replicated at the San Ysidro POE.

Secondary Inspection Interview Locations: There are three individual rooms (w/ interior windows) available for secondary inspection interviews. If there are more than 3 individuals requiring interviews, INS officials will interview at their individual work stations. The work stations are cubicles w/ partitions between them and have little privacy.

Comments & Recommendations: UNHCR is concerned about the limited privacy available for interviews conducted at individual work stations. We encourage INS to make its best efforts to ensure greater privacy in these circumstances.

Affirmative Asylum Interview Room: The asylum interview room at the POE's "Old Port" building was large and light, with internal windows that provided necessary security without compromising privacy.

Comments & Recommendations: UNHCR found this setting to be quite appropriate for asylum interviews and encourages INS to replicate it in other interview contexts where possible.

Border Patrol Facilities

On the afternoon of 15 February 2001, (b)(6) and (b)(6) accompanied by Officer (b)(6), (b)(7)c (Assistant Officer In Charge, US Border Patrol, San Diego Sector, Alien Detention & Removal) visited several US Border Patrol (BP) facilities and observed procedures along the Mexico/California border and at holding and processing facilities. The San Diego BP Sector covers the border between Mexico and the US that runs from the Pacific Ocean to the county line. Most of the people apprehended in the area are Mexican; 6%-8% are Other Than Mexican (“OTM”), about half of whom are Central American.

Apprehension: Standard equipment for BP officers includes a gun and ammunition magazine, radio, handcuffs, medical gloves, and a metal rod with extendable stick; authorization to carry pepper spray is pending. The San Diego Sector has (2)H helicopters to patrol the area, (2)H BP agents are stationed per mile. (b)(6), (b)(7) said the agents are trained in enforcement, and that they do not restrain individuals unless needed. By way of example, he said agents learned from experience during the 1980s they could not ask Central American men to kneel down with their backs to the agents so that they could be handcuffed, as the men thought they were going to be executed from behind and reacted with terror. After being apprehended, if not released or returned to Mexico, all are taken to BP processing stations and then to temporary or long term detention facilities; the majority of individuals encountered near the border were held in custody – in a 4X4 or van – for 2-3 hours; larger vans with a capacity for 13 roamed the border to pick up passengers from the 4X4s. (b)(6), (b)(7) said that a major concern of agents is providing immediate medical assistance when needed; and that water and crackers are provided.

Detention: BP Alien Detention and Removal (ADR), is responsible for individuals in BP custody and provides transportation to various holding and processing facilities. Some nationalities are treated differently, e.g., currently there are intelligence holds on Iraqis. Asylum-seekers and “OTMs” are detained and transported for processing at Brownfield station, then to the Chula Vista Transit Staging Area (both BP facilities), then to the Federal Building for further processing, and then to a detention facility or, for women and children, to a shelter if available.

1. **Brownfield Station:** The main BP station in the San Diego Sector, Brownfield Station is staffed by agents in military-like uniforms and run with security in mind: surveillance by video monitors at all times, secure rooms with remote controlled locks. After processing, people are detained in holding cells while they await transport by ADR. If not being returned to Mexico, they are taken to the BP’s Transit Staging Area (TSA at Chula Vista, see below) for further processing. About 25 people are processed per day and generally held for 2-4 hours while they await transport, although they could be held up to 8 hours on an exceptional basis. The holding cells consist of large rooms with rows of long parallel concrete blocks that serve as benches (without back supports; capacity of 80); equipped with a wall phone; no exterior windows, cold and extremely stuffy, making it difficult to breathe. According to the telephone operator, the cost of a call is \$7.14 for the first minute and 84 cents for each additional minute. The two phones we tried could not connect to UNHCR. Men and women are held in separate cells. There are also several small cells – also concrete with no exterior windows – used as “hard cells” to segregate “criminals,” “coyotes,” or “unaccompanied minors,” and also for administrative reasons, such as to avoid mistaken removal while an interview is pending. BP does not usually take people with

mental problems into custody. People held by BP are strip searched at Brownfield only if “circumstances dictate,” e.g., if nervous or acting erratically. When asked if asylum-seekers were treated with any special consideration, we were told that everyone is processed the same way; an “OTM” would be classified as a “keeper” and held for transport. The agents at Brownfield said they did not receive special training in human rights or refugee issues.

2. Chula Vista Transit Staging Area (TSA): A smaller BP station, referred to as ADR (Alien Detention and Removal) or TSA, serves as short term holding facility (no longer than 72 hours) and final BP processing station before moving people on to the Federal Building in downtown San Diego (for immigration cases), the Metropolitan Corrections Center (MCC) (for criminal prosecution cases), or other detention facilities. Upon arrival at TSA, BP generally strip-searches those who are to be transported on to MCC. MCC officials will strip-search them once again upon arrival at their facility. BP generally will not strip-search administrative cases, although they will do so if circumstances dictate. There is a higher threshold for strip-searches of women, and those who are 14 or younger are generally not strip-searched. Nine times out of ten, a female BP agent will conduct the search of a female.

We observed the arrival of a bus from Los Angeles with detainees *en route* to Florence Arizona: everyone was handcuffed and marched off the bus by armed officers into a small fenced courtyard. They had their handcuffs removed and were given burritos and drinks while they waited to be moved again. Agents showed concern for the people in their custody. Chula Vista had two small isolation cells for individuals, including women, who “shouldn’t be with others” either for their own safety or for the security of the group. The rooms are generally used for those with known criminal histories, females (if there are only 1 or 2 in custody) and unaccompanied minors. The rooms offered no privacy; the bathroom was visible from the window in the door, and there was constant video surveillance and traffic passing through the corridor that faced the cells. Downstairs there were several holding cells with beds for overnight stays. At the time of our visit, there were two Chinese women sharing a small room that had 10 beds in it and a TV. The room was monitored by video. One said she had an attorney and wanted to be moved to a place where she could talk to him. Although there was a phone in the room, a call to UNHCR could not go through.

Comments & Recommendations: UNHCR is concerned that neither INS nor federal detention standards apply in BP stations as detention is theoretically short term (less than 8 hours at a processing station like Brownfield and less than 72 hours if a bed is available, as at Chula Vista). As it appears that cumulative detention by the BP, including in vehicles, from the time of apprehension to the time of placement at an INS or contract facility, may not be “short term,” we recommend that standards be applied that reflect this cumulative detention and the needs of BP detainees. Apprehension and conditions in BP stations may further traumatize victims of persecution; and the use of segregation and isolation cells is inappropriate for vulnerable individuals. At the same time, there is limited or no access to family, friends, or attorneys. There is no training for BP agents in human rights or refugee issues. The legitimate law enforcement and security goals of the BP must be weighed against the needs of particularly vulnerable groups such as refugees.

UNHCR recommends that INS Detention Standards – to the extent that they reflect international standards – apply to BP, regardless of length of time individuals are in BP custody, especially regarding access to telephone calls, translators, attorneys, and family; and general conditions of detention. Training in human rights and refugee rights should be provided to all BP agents.

Oceanview Work Furlough Facility

On 16 February 2001 (b)(6) and (b)(6) visited the soon-to-be-operational INS Oceanview Facility, operated by Correctional Alternatives, Inc. (CAI). We were accompanied by (b)(6), (b)(7)c INS Officer-in-Charge, and (b)(6), (b)(7)c Director of the facility.

Facility Background: The Oceanview facility is in a residential neighbourhood located in San Diego. Formerly a private hacienda, it has been used for the past five years as a minimum security work furlough facility for the county. The INS has contracted space at the facility to detain expedited removal cases in the San Diego area. It is viewed as a "processing facility", where asylum-seekers are held while their credible fear claims are being considered. The goal is that asylum-seekers not be held at the facility for more than three days. Those who are not released after their credible fear interview are expected to be sent to the CCA Otay Mesa facility.

The building itself is relatively sunny and clean. There are security screens on all windows and a large dining room with large windows. One annex of the building will accommodate INS detainees. There are two sleeping areas for INS detainees, each with a line of bunkbeds (20 beds in each room). These rooms open on to a common corridor, with a small common area off to the side for activities, and a common restroom w/ showers. An outside common area (surrounded by wires) will accommodate outdoor activities. Detainees will be allowed freedom of movement between the indoor common areas. The total number of INS detainees will initially be 40, all male. There is the possibility of future growth to 100 beds, with the possible addition of female detainees.

Comments & Recommendations: UNHCR supports the efforts of the INS to avoid placement of asylum-seekers in highly secure detention facilities in the US. In the absence of release, a minimum security facility such as Oceanview is clearly more appropriate for those seeking protection in the US than are facilities such as CCA Otay Mesa. Not only is the setting more appropriate, but its convenience to downtown San Diego should also facilitate the provision of legal assistance. For those placed in expedited removal, during which time detention is mandatory, we suggest that the INS expand its use of the facility to include female asylum-seekers. For those found to have a credible fear of persecution, we encourage the INS to exercise its discretion and to release them from detention. Should the INS choose to continue their detention, we recommend that the asylum-seekers remain at Oceanview while their cases are pending in court. While the CCA facility may be more convenient for the INS (given the expected opening of an immigration court on-site), these conveniences are out-weighed by the hardships suffered by asylum-seekers placed in these types of secure facilities.

Application of INS Detention Standards: We were informed by INS that INS detention standards would not apply to the Oceanview facility given that INS detainees are not to be held there for more than 72 hours.

Comments & Recommendations: UNHCR encourages INS to apply, as appropriate, the recently promulgated INS detention standards to the Oceanview facility. These standards govern fundamental rights such as access to legal representatives and legal materials, telephone usage,

and medical care. It is also quite possible that asylum-seekers will be detained at the facility for more than three days, especially if they request an immigration judge to review a negative INS credible fear decision. (UNHCR is currently aware of one such case where the asylum-seeker has been detained at Oceanview for approximately one month.) UNHCR recently sent legal materials by overnight mail to an asylum-seeker who was in expedited removal proceedings. The package was initially rejected by Oceanview because the person was not expected to be at the facility for more than a few days. Through discussions with the facility, the package was ultimately accepted. Such a situation could better be avoided if INS standards, in this case those referring to correspondence and other mail, were applied.

Library: There is no library at the facility at this time. We were informed that since detainees will be at the facility for less than 72 hours, INS Detention Standards on Library Access would not apply.

Comments & Recommendations: UNHCR is concerned about the absence of legal materials for detained asylum-seekers, especially given the expedited nature of their proceedings. UNHCR encourages INS to ensure that, at minimum, materials be available that explain the expedited removal and asylum process in the US, and release procedures from INS detention. The Florence Project on Immigrant and Refugee Rights produces self-help materials on these topics in English and Spanish that may be useful.

Possible Overcrowding: As noted above, there are two sleeping areas for INS detainees, each containing 20 beds (10 bunkbeds). The amount of physical space in the room appeared limited, although it was difficult to determine given that the room was not yet in use.

Comments & Recommendations: UNHCR recommends that INS monitor possible overcrowding at the facility now that it has become operational.

Training: During our tour of the facility, we were informed that the CAI staff had not received any training in working with immigrant and refugee populations.

Comments & Recommendations: UNHCR recommends that training on working with immigrant and refugee populations be provided. UNHCR is willing to assist with training to the extent resources allow.

CCA Otay Mesa Facility

On the morning of 16 February 2001, (b)(6) and (b)(6) visited the Otay Mesa facility, operated by Corrections Corporation of America (CCA), under contract with the INS. They were accompanied by (b)(6), (b)(7)c Warden, and (b)(6), (b)(7)c INS Assistant Officer-in-Charge. Later that day, our staff met with Immigration Judge (b)(6) who raised a number of concerns regarding the CCA facility. A copy of a letter later received from Judge (b)(6) is attached for your reference. As (b)(6) and (b)(6) did not have the opportunity to raise these concerns with CCA at the time of their visit, we note them here for your consideration.

Facility Background: The CCA facility is located approximately 30-45 minutes outside of San Diego, near the US-Mexican border. It is a secure facility, surrounded by double-fences and barbed wire. At the time of UNHCR's visit, there were 620 INS detainees at the facility, approximately 70 of whom were women. Co-mingling between those with prior criminal convictions and those without is not permitted.

Legal Assistance: CCA has established separate visitation rooms for contact visits between attorneys and their clients, but maintains a policy of strip-searching detainees after all external contact visits. It is unclear whether non-contact, private, attorney visits are an option. Area attorneys also report that know-your rights presentations are currently not allowed at the facility due to lack of space, but that there are plans to permit such presentations in the future. Immigration Judge (b)(6) also reports the following complaints at CCA: (1) limited access to free attorney telephone calls (see discussion on telephone access below); (2) extended waits for attorneys before clients visitations (at times 3-4 hours); (3) limited attorney visitation times (at times as short as 15 minutes); and (4) confiscation of court documents upon return to CCA from court.

Comments & Recommendations: UNHCR is concerned that asylum-seekers (especially former victims of trauma and other vulnerable populations) may choose not to meet with their attorneys so as to avoid the trauma and/or embarrassment of strip-searches. We recommend that this policy be modified, at least for those detainees with no criminal background, or that alternatives to contact visits be established while maintaining necessary attorney-client privacy. We would appreciate INS' comments on the complaints raised by Judge (b)(6) as well as the status of plans to ensure detainee access to know-your-rights presentations.

Telephone Access: Telephones are located inside each of the pods and are available for general use. Facility phone cards are required to make non-collect calls. When our staff attempted to make a collect telephone call to UNHCR's Office in Washington, DC, the operator stated that the phone number was "restricted". Warden (b)(6), (b)(7) indicated that similar problems had arisen with calls to local NGOs. With regard to those placed in segregation, we were informed that detainees have the same telephone privileges as those in the general population, unless they have been placed in disciplinary segregation. Immigration Judge (b)(6) reports, however, of a detainee in administrative segregation who stated he was denied telephone access.

Immigration Judge (b)(6) also indicates her understanding that CCA allows free telephone calls to attorneys for indigent detainees. This seems consistent with INS Detention Standards. We were not informed of this policy, however, during our visit, nor did we see any notices in detainee pods informing detainees of their right to such calls. Judge (b)(6) also reports detainee complaints of not being informed of this policy, as well as complaints that requests for telephone access are often ignored and that privacy during attorney calls is not ensured.

Comments & Recommendations: UNHCR recommends that telephone access to UNHCR, as well as local service providers, be ensured. We would appreciate further information about telephone access for those placed in segregation, in light of Judge (b)(6) comments, and further clarification of CCA's policy regarding free calls to legal representatives and how detainees are informed of such privileges.

Disciplinary Procedures: Detainees can be placed in segregation for administrative purposes; protective reasons; and disciplinary reasons. There are 16 individual cells, 14 of which were in use at the time of our visit. Persons placed in segregation are to have an initial review within 72 hours of being placed in segregation, followed by a seven day hearing and reviews every 30 days thereafter. Our staff was informed that for minor violations, the detainee will generally receive time served (between 3-7 days). Immigration Judge (b)(6) reports, however, detainee complaints that those who complain about prison conditions or try to help other inmates are punished and sent to segregation. Attached documentation indicates that an INS detainee was placed in segregation for at least 7 days for allegedly making "vulgar" statements on the phone to his attorney about the CCA facility and its operations. The Disciplinary report charges that he was "insolent toward staff and interfered with the duties of all staff involved."

Comments & Recommendations: UNHCR is concerned that segregation is used for minor violations of prison rules, and as possible punishment for complaints regarding CCA conditions. Our review of the INS Offense and Penalty Code indicates that the offenses of "insolence toward staff" and "interference with staff duties" can result in disciplinary segregation for up to 72 hours. We are unclear how this 72 hour limitation is maintained when formal hearings do not occur until seven days after the alleged incident. Further clarification on this matter would be appreciated.

Library: At the time of our visit, a satellite library (on wheels) was being used at the facility. An established law library, however, was being established which was to include a variety of legal texts, 4 typewriters and 3 computers. The library is expected to have copies of the INS cd-rom "INSerts" available. Detainees are to receive at least 1 hour/day of library time.

Comments & Recommendations: UNHCR is concerned that a law library is only now being established at the CCA facility. Nonetheless, the current library plans, and the expected legal and computer resources, are a positive development. We would encourage INS to expand the cd-roms available to detainees to include country of origin cd-roms issued by such groups as the Human Rights Documentation Exchange. We also encourage the use of the asylum and detention release self-help materials produced by the Florence Project on Immigrant and Refugee Rights, available in both English and Spanish. UNHCR is willing to provide any international legal resources that might be available through our Office.

Medical: The medical unit has 6 beds, with one doctor and various nurses on site. Detainees submit requests to see a doctor, which are reviewed and processed. Immigration Judge (b)(6) reports detainee complaints of CCA not responding to requests for medical treatment. She includes a report from Immigration Judge (b)(6) of a detainee on his docket requesting dental care for a painful toothache, yet continuing to appear in court without having seen a dentist and being in obvious pain. Warden (b)(6), (b)(7) informed us that CCA's "goal" is to respond to requests w/in 48-72 hours, but acknowledged that it currently may be 4-5 days before a doctor or nurse is seen. The complaints reported by Judge (b)(6) and (b)(6) suggest that these delays can, in fact, be much longer.

Comments & Recommendations: UNHCR is concerned about the reported delays in meeting detainee medical requests. We recommend that INS further review CCA's medical policies and resources.

Training: All officers receive 5 weeks of training (5 days/week), including training in inter-cultural communications, soon after their arrival. After one year there is a 40 hour annual refresher training. Despite these trainings, Immigration Judge (b)(6) as well as other area refugee advocates, report complaints of inappropriate treatment by CCA staff, including statements to a gay asylum-seeker that he was a "faggot," and comments of a "cultural and ethnic nature." There is no training on working with a refugee population, although Warden (b)(6), (b)(7) was receptive to our proposal that such training be provided.

Comments & Recommendations: UNHCR recommends further training for CCA staff on working with immigrant and refugee populations. We further recommend that any CCA or INS staff found to have made inappropriate comments to detainees be reprimanded accordingly.

UNHCR Mission Report
San Diego Area Detention Facilities & San Ysidro POE
8-10 October 2002

Introduction: At each site visited in the San Diego area, UNHCR observed some improvements with regard to conditions and/or procedures, but at the same time, identified new concerns with respect to each site. The description below of each site visited contains a summary general assessment of the improvements and concerns at each site. Before turning to the discussion of each site, we discuss our concerns regarding the housing of families of asylum-seekers at the CCA facility, which is a matter of utmost concern.

1. Detention of Families at San Ysidro POE and CCA Adult Detention Facility

One of the primary concerns arising out of UNHCR's visit to the San Diego District was the prolonged detention of families with children both at the San Ysidro POE and the CCA adult detention facility in August/September 2002, and reports of similar detentions at CCA on earlier occasions. We requested additional information about this matter from District Director (b)(6), (b)(7) in January 2003, but have not yet received a response (see attached letter).

Detention of Families at the San Ysidro POE

During our mission, UNHCR learned that in August/September 2002, a group of about 15 Iraqi Chaldeans, including children as young as five years old, had been detained at the San Ysidro POE for up to seven days. The standard operating procedure for the POE is not to detain individuals for more than 24 hours. INS stated that the families remained detained due to lack of available bed-space in area detention facilities. The holding rooms were clearly inadequate for such prolonged detention.

UNHCR representatives interviewed two of the Iraqi Chaldean women who had been detained at the POE with their families. Based on these interviews, it is our understanding that on or about 22 August 2002, one Iraqi Chaldean family, with a six-year-old child, arrived at the POE seeking asylum. The mother and the child were held at the POE for three days. On 2 or 3 September 2002, three other Iraqi Chaldean families, with a total of five children, also sought asylum at the POE. The mothers and children were held at the POE for seven days. One of the women was six months pregnant.

The two asylum seekers we interviewed raised various issues regarding their treatment at the POE. Both stated that the holding rooms where they stayed were extremely bare and cold. One of the women stated that each of the family members in her group was given only two blankets. All of the family members were extremely cold as the blankets were very thin and the air conditioning was on. Not until the third day were they each given another blanket. Because the benches were too small to sleep on, all of the family members slept on the floor, including the six-month pregnant mother. Sleeping on the floor caused a great amount of pain to the asylum-seeker who was pregnant, who states that she continues to suffer pains in her back and side.

While at the POE, many of the children were sick; some were throwing up, others had diarrhea or were coughing; some had high temperatures. The mothers asked for milk for the children, to which INS officers reportedly replied that INS "did not provide anything but lunch." The children were

apparently not eating the food because it was different and cold; so for their entire time there only ate fruit, toast and juice.

The mothers also asked if they could bathe themselves and the children. The INS officers allegedly responded that there was not a "bathing section" in the building. After three days of being in the holding room without a bath, sick children, or the opportunity to leave, an INS officer came into the holding room and allegedly said "Wow, what a smell." Only after this did the INS clean the holding room and allow the families to bathe.

UNHCR Comments and Recommendations: UNHCR recognizes that INS faced a difficult situation in finding suitable placements for these families; however, the POE is clearly an inappropriate place to hold asylum seekers, particularly pregnant women and children, for more than 24 hours. UNHCR recommends that if this situation presents itself in the future, BICE find more appropriate accommodations for the families.

Detention of Families at CCA

Staff at CCA confirmed that on at least two occasions the INS has detained women and children at CCA, despite the fact that it is an adult detention facility. The first time, INS dedicated one of the detention pods to the families. On the most recent occasion, it held the families in the area that was later to be used as the mental health unit. Again, some of the detained children were as young as five years old. The families were detained at CCA for nearly a month while INS awaited security clearance from INS Headquarters to release them. The stated reason for holding the families at CCA was that INS did not want to separate the families and that Casa de San Juan, the only area facility that houses women and children, was at capacity.

The following information was obtained during UNHCR's interview with two of the women who were detained at the CCA facility:

Provision of Information about Status of Children: One woman was placed in a women's unit at CCA with the general population and was separated from her young child and her husband for 20 days. Her son was likely taken to Southwest Key or Casa de San Juan. During that time, she did not know where her son was, who was taken from her at the INS downtown office. She reported that in response to repeated questions about the whereabouts of her son, INS would either tell her that they did not know where her son was, that it was not in their hands since he was taken by INS downtown, or simply that he was okay. They would not provide any more specifics. The woman also asked several times for the opportunity to speak with her son, but she was not allowed to do so. She also was not able to speak with her husband during these 20 days. After 20 days, she was transferred to the mental health wing of CCA, where she was joined by her son. They were detained together at CCA for an additional 20 days.

Temperature: The families reported that the medical unit where they were housed was extremely cold and that they were not given additional blankets until about a week after their arrival.

Food: The families complained that the food was not adequate for the children who were not eating because they thought the food was too spicy. The families reported that the CCA doctor as well as the dentist found that some of the children had infections in their mouths and both said they would request dietary changes. According to the families, the menu was not changed until the day that they were departing from CCA.

Clothing: The families indicated that for many days they were not provided a change of clothes for their children and ultimately had to wash the children's clothes by hand. The mothers gave their children their extra shirts to wear while the children's clothes dried in the holding room. The families were not allowed to get clothes from their luggage until a day or so before they were released from CCA, at which time INS also provided the children with some newly purchased clothes.

Outdoor Recreation: The families said that they were not allowed to go outside during their stay, except to an enclosed area that had open-air fencing as a roof. This was especially difficult for the children.

UNHCR Comments and Recommendations: *A maximum-security adult detention facility is an inappropriate place to hold families even for a short period of time. UNHCR asked the two women it interviewed whether, if they were forced to choose, they would prefer to be separated from their children, but with full knowledge that their children were safe and being well cared for, or be detained as a family unit at CCA. Both said that they would prefer separation, provided that they were able to maintain contact with their children. UNHCR recommends that BICE develop more appropriate alternatives in the event that this situation presents itself again. UNHCR recognizes the demands for bed space that INS faces and appreciates that INS made accommodations for the families so that they were not commingled with the general population. Nonetheless, alternative arrangements must be made.*

2. San Ysidro POE:

(b)(6), (b)(7)c Assistant Area Port Director provided a tour of the San Ysidro POE. UNHCR representatives also met briefly with (b)(6), (b)(7)c Area Port Director, and (b)(6), (b)(7)c Assistant Area Port Director.

General Assessment: UNHCR generally saw improvement in the processing of asylum seekers at the POE and in the holding cells used to hold detainees awaiting transport to area detention facilities. UNHCR is concerned, however, about reports of prolonged detention of Iraqi Chaldean families at the POE (see above); denial of access to the POE of two Iraqi Chaldean asylum seekers; and the lack of privacy for expedited removal interviews.

Processing at the POE: Under a new national policy, instituted in February 2002, INS has stopped accepting affirmative asylum applications at land borders. Currently, all asylum seekers will be brought into the US and placed in expedited removal proceedings. Under the former policy, while asylum seekers were not subject to mandatory detention during the expedited removal process, they risked detention in and/or deportation from Mexico while awaiting their interview.

UNHCR is concerned, however, about a report from an NGO that in April 2002, US government officials told two Iraqi Chaldean asylum seekers at the actual border (a yellow line on the pavement at the POE) that they should return to Mexico to request asylum there and denied them access to the POE. While local POE staff stated that they had no information on this incident, they informed us that General Services Administration (GSA) personnel are posted at the yellow line to regulate the flow of people into the POE and that this type of incident should not occur. UNHCR has requested more information on this matter (see attached).

The new processing area within the facility appeared to have certain advantages over the previous space. UNHCR appreciated the showing of a Department of Justice Know-Your-Rights video, in Spanish and English, for those awaiting their interviews. From our brief viewing of the video during our tour, it seemed quite informative. UNHCR has some concerns about the limited privacy afforded by the interview stations and whether asylum seekers would feel comfortable speaking openly about their situation.

UNHCR Comments and Recommendations: UNHCR would appreciate receiving additional information about the two asylum seekers who were directed-back to Mexico at the POE in April 2002. UNHCR recommends that BCBP ensure that all staff, including GSA staff, are aware of the policy change with regard to asylum processing at the POE. We would also appreciate receiving the statistics that we requested at the POE and in our attached letter of 14 March 2003.

UNHCR recommends that the Know-Your-Rights video be translated into languages other than Spanish used by asylum seekers who most frequently enter at the San Diego POE and that the language chosen for video showings correspond to the language of the audience. We would appreciate receiving a copy of the Spanish and English videos as requested in our letter of 14 January 2003.

UNHCR recommends that BCBP staff routinely ask persons being interviewed if they would prefer to speak in a private interview room. If it appears that an individual may be an asylum seeker, UNHCR recommends that private interview rooms be used as a matter of course.

Conditions at the POE: With respect to conditions at the POE, due to structural changes there, INS no longer holds detainees awaiting transport to area detention facilities in the rectangular, metal holding cells that had previously been of concern. INS now uses larger holding cells which allow in more light. While the holding cells remain sub-standard (see comments above regarding detention of Iraqi Chaldean families), they are an improvement over those previously being used. UNHCR remains concerned about the continued use of the metal holding cells for material witnesses in criminal cases who may be asylum seekers as well.

UNHCR Comments and Recommendations: UNHCR appreciates the improvements which have been made to the holding cells, but recommends that they be made as comfortable as possible (including maintenance of an adequate temperature) to accommodate asylum seekers who may be held there.

3. Casa de San Juan (CSJ):

UNHCR's visit to CSJ included a tour of the facility conducted by (b)(6), (b)(7)c Department Director, Emergency Services, Catholic Charities; individual interviews with detained minors; and a meeting with (b)(6), (b)(7)c and (b)(6), (b)(7)c INS Juvenile Coordinator for the San Diego District, who accompanied UNHCR on the tour.

General Assessment: UNHCR observed some improvements since its last visit in the ability of detained girls at CSJ to access educational programs, but recommends further improvements in this area. UNHCR noted a new concern regarding the need to use interpreters during all essential conversations, including medical intakes.

Facility Background: CSJ houses unaccompanied minors (male), and minors (male and female) accompanied by their mothers. CSJ holds both INS and US Marshals Service (USMS) detainees.

Certain structural concerns raised by UNHCR during its last visit, including limited space for women and children residing in the downstairs area, and limited recreational opportunities, remain. UNHCR encourages BICE to continue to explore means of addressing these problems.

Education: UNHCR expressed concern in its last report that CSJ did not provide girls between the ages of 6 and 18 formal educational opportunities; although boys could access formal schooling for about six hours a day, five days a week. CSJ has attempted to remedy this problem and has converted an office room in the downstairs area (where the women and girls are held) into a classroom, stocking it with educational materials. If there are enough girls (at least ten) at the facility at any given time, CSJ tries to arrange for a teacher from the county to provide classes. This occurred when several Iraqi families were detained there from about September 2001 until June 2002. If there are not enough girls for a separate class schedule, the girls sometimes join the boys upstairs for classes. If this is not possible due to space limitations, which can easily occur given the small space upstairs, the teacher for the boys tries to arrange independent studies for the girls and meets with them on her breaks from teaching the boys.

UNHCR Comments and Recommendations: UNHCR appreciates that CSJ has made efforts to ensure that girls at the facility receive some education if they are held there for more than 72 hours. UNHCR encourages BICE to regularize its education program for the girls so that it is not as contingent upon either the number of girls who are at the facility or space availability in the boys' classroom.

Use of Interpreters: All CSJ staff speak both Spanish and English, and written rules are in both English and Spanish. According to (b)(6), (b)(7)c staff use AT&T or Catholic Charities telephonic interpreters when needed to communicate with someone who does not speak either of those languages if it involves a critical matter, such as medical screening, rules and intake questions. One detainee interviewed by UNHCR, however, said that medical intake questions were not asked in her native language and that she did not understand all of the questions. The detainee did not know that CSJ staff had access to telephonic interpreters.

UNHCR Comments and Recommendations: UNHCR appreciates CSJ's efforts to overcome language barriers. UNHCR is concerned, however, that telephonic interpretation is not consistently used to communicate essential matters, such as medical treatment. UNHCR recommends that additional efforts be made in this regard. UNHCR also recommends that CSJ and BICE translate any rules or orientation materials into the most common languages (other than Spanish) spoken among the population residing there.

4. INS Juvenile Policies and Legal Representation for Children:

General Assessment: UNHCR observed a great deal of improvement in the area of access to counsel for minors detained in the San Diego District and in the decreased use of secure detention for long-term placements. UNHCR is concerned, however, about the overall decrease in the number of minors released to parents given a new policy that undocumented parents must be placed in removal proceedings before obtaining custody of their children.

Legal Representation: INS has worked with Casa Cornelia to ensure that all children have access to attorneys. This includes the use of video-conferencing where possible. There appears to be a positive working relationship between Casa Cornelia and the Juvenile Coordinator.

UNHCR Comments and Recommendations: UNHCR appreciates INS' cooperative efforts with the local legal service provider, which helps ensure that all children have legal representation. UNHCR recommends that ORR continue to facilitate access to legal representation for all juveniles in its custody. UNHCR also recommends that ORR use the video-conferencing arrangements in the San Diego area as a model to facilitate legal representation for children in other areas of the country as well.

Length of stay: Extended security clearance procedures have delayed the release of families and children. At the time of UNHCR's visit, INS has instituted a new policy prohibiting release of unaccompanied minors to relatives other than parents if the parents were in the US. If the parents were in the US and are undocumented, they would have to come forward and place themselves in removal proceedings before the child would be released. This policy resulted in a significant drop in the release rate for children at Casa de San Juan (80% released in FY 2000; 30% released in FY 2001).

UNHCR Comments and Recommendations: UNHCR notes that the requirement that parents be placed in removal proceedings if in unlawful status may serve as a disincentive for family members to come forward and can lead to prolonged detention of juveniles. The former general policy in the San Diego area of not placing family members in removal proceedings greatly facilitated family reunification efforts and merits renewed consideration. UNHCR would appreciate receiving information from BICE and ORR regarding whether this policy will be continued.

5. CCA Otay Mesa:

The San Diego Correctional Facility is operated by Corrections Corporation of America (CCA). A tour of the facility was provided by (b)(6), (b)(7)c, INS Officer in Charge, and (b)(6), (b)(7)c, CCA Assistant Warden.

General Assessment: UNHCR saw improvement in the conditions at CCA with regard to detainee access to legal materials, access to medical care, and the facility's revised strip search policy. UNHCR has continued concerns regarding the treatment of homosexual detainees and the application of disciplinary procedures. We also note concerns regarding the lack of privacy in the intake area. UNHCR is quite concerned about the detention of families at CCA as discussed in the first section of this report.

Areas of Improvement

Medical Care: INS began contracting with Public Health Services (PHS) at CCA after UNHCR's visit in February 2001, which appears to have improved the medical care at CCA significantly. UNHCR received fewer complaints about the adequacy of care from INS detainees than during its previous visit. It also appears that PHS uses telephonic interpretation more frequently than did the previous health provider.

UNHCR Comments and Recommendations: UNHCR appreciates the improvements to medical care that have been made at CCA.

Mental Health Unit: INS was establishing a mental health unit at CCA, which would service CCA and other area facilities. It was expected to be operational in January 2003.

UNHCR Comments and Recommendations: *UNHCR appreciates the establishment of the mental health unit, which will hopefully improve the level of care for those with mental disabilities who are detained.*

Strip Searches After Attorney Contact Visits: INS changed its policy requiring strip searches after all contact visits, including attorney-client visits. Strip searches are only conducted in such instances if there is probable cause. However, strip searches still occur after any trip outside the facility, including to immigration court. One asylum seeker interviewed by UNHCR said that for her, strip searches after court visits are the worst part of being detained.

UNHCR Comments and Recommendations: *UNHCR appreciates the change in policy with regard to strip searches after attorney visits. UNHCR, however, is concerned that asylum seekers (especially former victims of trauma and other vulnerable populations) may suffer undue trauma when going to court knowing that they will have to undergo strip-searches upon their return. We recommend that this policy be modified, especially for those detainees with no criminal background.*

Law Library: At the time of UNHCR's mission in February 2001, there was no law library at CCA. The facility simply used a pushcart of legal materials that was brought to each of the detention pods. CCA has established a law library, which had most of the legal materials required by the INS detention standards. The library also contained several computers/printers and cd-roms with additional resources. The asylum and detention release self-help materials produced by the Florence Immigrant and Refugee Rights Project were not in the library; although, they may have been in the housing units.

UNHCR Comments and Recommendations: *UNHCR views the establishment of a law library as a significant improvement and recommends that BICE ensure that all the materials listed in the INS Detention Standards on Access to Legal Material are made available. UNHCR also recommends that BICE expand the immigration law resources available to detainees to include country of origin materials, including human rights reports from governmental and non-governmental sources.*

Areas of Concern:

Treatment of Homosexual Detainees: In UNHCR's previous report, we noted complaints of inappropriate treatment by CCA staff, including statements to a gay asylum-seeker that he was a "faggot," and comments of a "cultural and ethnic nature." On 3 March 2003, UNHCR received a copy of a letter sent by Immigration (b)(6) to (b)(6), (b)(7)c Warden of CCA (attached for your reference). In her letter, Judge (b)(6) relates allegations made by a homosexual detainee of being verbally abused by CCA officers, including being called a "faggot," and of INS and CCA inaction in responding to a complaint that he was forced to perform oral sex on at least one other detainee. This detainee and other homosexual detainees have also alleged that, due to their sexual orientation, they are generally detained throughout the pendency of their immigration proceedings.

UNHCR Comments and Recommendations: *Given these allegations, UNHCR is concerned about the treatment of homosexual asylum seekers and refugees who are detained at CCA. This is especially the case for those asylum seekers who fear, or have suffered, persecution in their country of origin on account of their sexual orientation. UNHCR would appreciate receiving additional information about the case raised by Judge (b)(6) and BICE/CCA policies on the treatment of homosexual detainees. As before, UNHCR recommends that any CCA or BICE staff found to have made*

inappropriate comments to detainees, on account of their sexual orientation or otherwise, be reprimanded accordingly.

Privacy in Intake Area: The intake area has common holding cells with long glass windows onto the hallway. The toilets in the cells are completely exposed, such that people have absolutely no privacy when using them.

UNHCR Comments and Recommendations: *UNHCR recommends that the intake area be modified to provide greater privacy.*

Disciplinary Procedures: UNHCR received a number of complaints that individuals were being placed in segregation for relatively minor infractions. One individual stated that those who complain about conditions are often subject to discipline.

UNHCR Comments and Recommendations: *UNHCR recommends that BICE review CCA's records regarding incidents of discipline and ensure any needed modifications to CCA policies.*

FEB 12 2003



U.S. Department of Justice
Immigration and Naturalization Service

HQOPS 50/10.2/10.10

425 I Street NW
Washington, DC 20536

FEB 10 2003

Mr. Guenet Guebre-Christos
Regional Representative
United Nations High Commissioner for Refugees
1775 K Street NW
Suite 300
Washington, DC 20006

Dear Mr. Guebre-Christos:

This letter is in response to the report provided by your office dated January 9, 2003. It encompasses the concerns of the United Nations High Commissioner for Refugees (UNHCR) regarding your August 2001 reviews of the juvenile and family detention facilities in Berks County, PA. Although the information is somewhat dated, your concerns are relevant to the Service and are addressed accordingly.

Your report addressed the three different types of facilities offered in Berks County, Pennsylvania. The secure facility as well as the shelter care (non-secure) facility will be addressed together. However, due to the unique nature of the family shelter, it will be addressed separately. Each concern or comment is highlighted and subsequent findings are addressed in as much detail as possible.

Concern/Comment – Detention of Asylum-Seekers: Children (asylum-seekers) in the custody of the Immigration and Naturalization (INS/Service) should not be detained at the Berks County Youth Center (BCYC) secure juvenile facility because it runs contrary to the general principal that asylum-seekers not be detained and subjects children asylum-seekers to harsh, prison-like conditions.

The Berks County unaccompanied minor INS office follows *Flores* Settlement standards as related to secure detention. Only when a juvenile has a criminal charge or delinquent

adjudication related to a crime of violence (assault or sex crimes) or has exhibited violence while in a prior program would they be placed in secure detention. This is done for the protection of the other INS juvenile residents of the shelter program. Any juveniles who were charged or adjudicated delinquent for other crimes, such as shoplifting, vehicle violations, etc., are placed at the shelter. Other reasons for placement in a secure environment: Violence while in the BCYC shelter, threats or overheard plans of escape, prior escapes (or attempts) or in an extreme case, failure to follow facility rules (which would affect the other residents).

Approximately 90% of the INS juveniles admitted to BCYC reside in the shelter. The shelter is a boarding type setting, with no bars, fences, or locked doors. The staff are not "guards", they dress informally, and do not have access to any weapons or handcuffs. The residents sleep four in a room, and attend school during the weekdays. There are several day rooms, with ping-pong, air hockey, card games, and television that the residents use during their free time, in addition to the outdoor basketball court and fields for sporting opportunities. The staff also takes the residents off-site on the weekends for field trips to local sporting events, museums, hikes, and to a local amusement park, to name a few.

Concern/Comment - Placement/Conditions of Placement: UNHCR recommends that children asylum-seekers not be subject to prison-like conditions, such as detention in a secure facility for juveniles charged or adjudicated delinquent. Children asylum-seekers should not be kept in locked cells, under guard, with no access to personal property or clothing. It is recommended that the asylum-seekers not be co-mingled with inmates subject to criminal proceedings.

Only violent or assaultive juveniles are generally placed in secure detention— for obvious reasons of safety to themselves, other residents, and staff. They may not wear their personal clothing, but are issued blue sweat suits to wear. They are not locked in their rooms, except overnight, and during shift change at 2:00 p.m. daily. The children attend school on weekdays, and have free time to play games, watch television, and recreate.

As stated previously, 90% of the juveniles are placed in the shelter, where there are no locked doors, they all wear their personal clothing (unless they don't have any), are allowed to keep personal belongings (and Christmas gifts they receive from BCYC) and also decorate their rooms with posters, drawings, etc. The juveniles placed in the secure facility have already mingled with other criminal juveniles, when the prior state authority incarcerated them. The juveniles in shelter would never come into contact with criminal county juveniles.

Concerns/Comments - Discipline: UNHCR is concerned about the effect the BCYC disciplinary process has on children asylum-seekers. The use of the apparent existing policy that the juvenile be handcuffed for one to two hours (after being "taken to the floor"), and the use of isolation, could be especially harmful for those juveniles who have suffered past violence and trauma. UNHCR recommends that other, less traumatic, methods of discipline be developed.

The Pennsylvania Department of Public Welfare governs and oversees all policies and regulations, including restraint issues at the Berks County Shelter and Secure Detention, and inspects them annually to ensure compliance.

As stated previously, 90% of the INS juveniles admitted are placed at the shelter. The shelter staff is not allowed to possess or use handcuffs. When a shelter resident is acting out, or refusing to leave, a staff member will employ a straight arm assist, grasping the juvenile's sleeve between the shoulder and elbow and walk the juvenile ahead of them, out of the area. If the juvenile is actively assaultive, the staff member will employ a cross arm slide from behind, grasping their arms at the elbow, and place them into a sitting position. Shelter regulations do not allow their residents to be locked in their rooms. In extreme cases, juveniles may be placed in their room to calm down, but the door will remain open and a staff member will sit in the doorway.

In the secure facility, the same restraint techniques are used, but if needed, the juvenile may be handcuffed after being sat down. The staff member will then ensure that the juvenile's head and feet are not allowed to flail around. Secure regulations state that the handcuffs may only be left on while the juvenile is actively assaultive, and in the most extreme cases, can only be left on for two hours at a time without authorization from a licensed physician or registered nurse. While handcuffed, the juvenile is monitored to ensure the handcuffs are not too tight, and the juvenile's medical needs are met promptly. A supervisor must check the handcuffs at least once every hour and these restraints may not exceed 4 hours in any 48-hour period without a county court order. Further, unless the restraint occurs in the dining room, these handcuffing situations would be recorded by the video cameras mounted in the hallways and day areas of the facility. No juvenile is placed in his room handcuffed. If placed in his room due to security issues, it is only as needed, for a maximum of 4 hours in a 48-hour period of time.

Concerns/Comments - Use of Restraints During Transportation: UNHCR is concerned that the use of restraints on children during transport, especially asylum-seekers suffering from past trauma, should be examined to search for other more dignified measures of prevention.

The Berks county unaccompanied minor INS office follows current INS restraint policies. Most juveniles are not restrained during any INS transports, including to and from consulates, transfer, and removals. The county staff transports juveniles on field trips and for medical appointments. Pennsylvania State regulations prohibit the staff from handcuffing any shelter residents during transports. In the secure facility, however, county staff only transports residents to medical appointments, and these secure residents are handcuffed as a matter of policy.

Comments/Concerns - Language Issues: UNHCR is concerned that the detainees are not permitted to speak to each other in any language other than English. It should be noted

that juveniles, according to the UNHCR, should be able to communicate in their mother tongue and have easy access to interpreter services when necessary.

The Berks county shelter and secure facility staff has not generally allowed residents to speak to each other in their native tongue, due to security concerns. Also, the county feels that this English immersion greatly assists the juveniles in learning English, which is necessary for the success of the juveniles when released and residing in the United States. Residents are allowed to converse with the staff in their native tongue, and the staff has unlimited access to a 24-hour interpreter service to use as an aid in communication. Also, the residents could speak in their native tongue on other occasions, and do so while in their rooms; and although this is not permitted, it occurs regularly, and cannot reasonably be enforced. The county is working on ideas that would enable the residents to communicate together more frequently in their native tongue, while not compromising security issues.

Concerns/Comments – Outdoor Activities: UNHCR recommends that at least one hour of outdoor recreation a day be offered.

Both the shelter and secure facility residents are given at least one hour of outdoor recreation, daily, weather permitting. They are also encouraged to participate in outdoor games (in addition to the daily one hour) such as basketball, softball, street hockey, and football which are offered routinely, and sledding, when available.

Concerns/Comments - Training: UNHCR recommends that staff that work with children seeking asylum be trained on international human rights and refugee law, as well as on the particular needs of asylum-seekers. UNHCR is willing to assist.

INS and Berks County are always interested in augmenting their staff's knowledge in these areas and currently holds annual cultural awareness and INS related training. Just recently, both secure and shelter care staff attended a torture survivors awareness training session offered by a local nongovernmental organization (NGO) and asylum advocates in the Philadelphia area. We would welcome assistance by UNHCR for additional training.

Concerns/Comments - Programs Offered: UNHCR recommends that sign-up sheets be used in BCYC so that everyone could sign up for educational and rehabilitative programs. It is suggested that this sheet be provided in all applicable languages.

Under Pennsylvania law, and per the Intergovernmental Service Agreement (IGSA) between INS and Berks County, all school age children residing at the shelter and secure facilities must attend school. Certified teachers, under the supervision of the Berks County Intermediate Unit of the School Board, administer the education. The education requirements are the same as in the public schools in Berks County. As the juveniles residing at BCYC are not there for punitive reasons, there is no need for rehabilitative programs to be offered, but the staff

conducts arts and crafts projects with the residents, and a local NGO group is leading a project-oriented art class for the residents also. Another NGO group is interested in starting a music class for the residents, and hopes to present a proposal in the near future.

Concerns/Comments - Language Barriers: UNHCR recommends that orientation materials be translated into every applicable language. UNHCR also recommends that telephonic interpreters be used when necessary to accommodate those who are unable to communicate.

Orientation materials were being translated at the time of the UNHCR tour, and are still being used. INS translated these materials into approximately nine languages, which serves approximately 99% of the residents at both the shelter and secure facilities. When BCYC creates a new form, it is given to INS for translation. If a juvenile is admitted who speaks a language not translated, the county staff contacts the 24-hour telephonic interpreter service and the material is read to the juvenile. As stated previously, both the INS and county staff have unlimited access to a 24-hour telephonic interpretive service to assist in communicating with all of the juveniles.

Concerns/Comments - Detention of Juveniles: UNHCR recommends that juveniles not be detained and that efforts be made to find appropriate alternatives to detention.

The INS continuously examines alternatives to detention. Whenever possible, the juvenile is released to an immediate family member or under guidelines of the *Flores* Settlement and the *Juvenile Protocol Manual*. However, INS must abide by applicable rules and regulations.

Concerns/Comments - Religious Issues: UNHCR recommends that children be advised of their right to practice their religion and that they be given access to denominational religious services. If sufficient in number, a specific religion should receive qualified representatives to hold regular services and make private pastoral visits.

Both residents of the shelter and secure facilities are able to practice their religion. The county has a full-time Jesuit chaplain responsible for the religious needs of the juveniles. He provides Catholic and non-denominational services each week. In addition, he works with community groups to obtain religious materials of all faiths for the juveniles, in their native languages when possible, and also liaisons with leaders of other denominations to come and interact with the juveniles of those particular faiths.

Concerns/Comments - Phone Calls: UNHCR urges the facility to be flexible in the number and length of phone calls to family members. Unaccompanied children need regular contact with family members or other persons close to them.

The county generally administers weekly telephone calls. It is their policy that all juveniles are offered a 20-minute telephone calls twice a week. The children can specify what day or time of day they need to call and that request will be honored if at all possible. If the phone is busy or not answered, the call will be placed at another time, and the juvenile will not lose his turn. In addition, at any time, the juvenile can talk to their INS caseworker (whose office is on site) and request a call. The deportation officer will put the juvenile in contact as soon as possible following a request. INS also allows family members (even illegal aliens) to speak to and visit, without repercussion.

The January 9, 2003 report to the Service also addresses important issues regarding the family shelter program. This program was implemented out of a necessity to find an appropriate way to provide family unity while going through the initial immigration process. The Service recognizes that family unity reduces the anxiety of both parents and children during their short period of detention. Even though this facility offers the best possible situation for families that are temporarily detained, as your letter requested, the Service also recognizes the need to continue seeking alternatives to detention, where applicable. The concerns and comments stated in the report are addressed below for your review.

Concerns/Comments - Family Detention: UNHCR objects to the detention of asylum-seekers, in particular families with children. Family detention is not an alternative to detention. INS should implement true alternatives such as the use of community-based organizations that can provide services and support. Detention should be for the least amount of time possible.

Alternatives to detention are continuously being reviewed for families in INS custody. The Service makes every effort to detain families for the least amount of time possible. Community-based organizations offer some creative ideas that have helped to structure the current program. Input from these organizations helps to broaden the focus surrounding family shelter care through their innovative ideas and suggestions.

Concerns/Comments - Language Barriers at Family Shelter Care: UNHCR is concerned that some asylum-seekers with language barriers may not understand facility rules and encourages use of interpreters when needed to facilitate essential communication between facility staff and INS detainees.

The shelter care facility uses an interpreter service during the intake process and at any other occasion where the need arises in order to facilitate communication. The facility makes every effort to communicate the orientation materials to each family upon orientation to avoid misunderstandings. Efforts to breakdown communication barriers will continue to be addressed.

Concerns/Comments - Privacy: UNHCR recommends that families be allowed to share a private room, as a unit, while residing at the facility. This would allow for increased privacy. Absent cohabitation, UNHCR recommends that all families be ensured sufficient time to interact alone, as a family during the week. All families residing at the facility should be informed of this right upon admission and during their stay.

There are many issues regarding the shelter care of a family. The family shelter must adhere to Pennsylvania State law and regulations. It has been determined the entire family cannot reside in one private room. However, the Service does try to provide a sense of privacy for the family. For example, parents are charged with the care of their own children, sharing family meals, and involvement in family-centered recreational activities. The nature of the facility provides for shelter care as needed. The Service attempts to house families for the least amount of time possible with the least involvement required to ensure safety and security of the residents and staff. Family rights and duties are provided upon orientation and are explained and families are updated as needed.

Concerns/Comments – Family Time: One woman complained that she did not have enough time alone with her child, which was limited to time breast-feeding. However, children from the ages of 7-17 can sleep together in the same room if they are the same gender. A mother or father can sleep with an infant or child under 7 in the same room, but not in the same bed, regardless of gender. Exceptions to these rules are possible when necessary. INS should allow families to sleep together in a private room once the family unit has been established as genuine.

The comment regarding a resident not being given time with her infant does not seem plausible, as they are responsible for the care of their children, and when they put them down for naps, or need to nurse them, there is no monitoring of how much time may be expended in their room with the infant (staff does not accompany residents into their rooms). In fact, as stated in this section of the UNHCR report, a mother or father may sleep separately but in the same room as the children under 7 years of age, regardless of gender. To the greatest extent of the letter and spirit of the laws, regulations, safety, and security, families are kept united. Families are together throughout the entire day, with the exception of school. Perhaps as previously stated, emphasis needs to be placed to reiterate, reemphasize, and reinterpret orientation materials to decrease confusion among families in the shelter program.

Concerns/Comments - Discipline: UNHCR notes that staff does not allow parents to decide when and how children are disciplined. Physical punishment is not allowed, which is explained to the parents. Staff decides how children will be disciplined. INS should consider allowing families to discipline according to cultural and societal norms (within the bounds of U.S. law) rather than feel a loss of authority. UNHCR observes positive examples of disciplinary actions at a Chicago facility.

It should be clarified that parents are indeed responsible for certain forms of positive reinforcement/discipline. Parents are required to provide positive behavioral modification. They may decide whether or not based upon their child's behavior, a particular activity (watching television, playing games, etc.) can be limited. What is not permitted is physical discipline of any kind, whether or not this type of discipline is allowed by their cultural or societal norms. This issue is particularly sensitive, however, the family shelter must abide by Pennsylvania State laws and regulations.

Concerns/Comments - Phone Calls: UNHCR requests that its toll-free number be corrected on a notice that is posted for the families to use. UNHCR appreciates the fact that INS detainees are allowed to use INS telephones as necessary and urges INS to allow free calls to family members on a regular basis.

The UNHCR number was checked and corrected on the notices as needed. In addition, families are permitted and encouraged to maintain communication with any agency/representative/familial entity with whom they so desire. If a resident cannot call their family, attorney, clerical, etc. collect, and does not have a means to pay for the call, they are allowed to use the INS complimentary phone as needed. The facility staff is very liberal with their residents' access to the complimentary phone, as documented in the phone logs reviewed monthly. In addition, any resident can request that a deportation officer give them access to an INS phone if they are having difficulty in contacting people. This open communication assists both the facility and the Service in maintaining harmony among families.

Concerns/Comments - Understanding Orientation materials: UNHCR recommends that orientation materials be translated into additional languages as needed. To the extent not already current practice, UNHCR recommends that telephonic interpreters be used as necessary to accommodate those unable to communicate.

Orientation materials are currently translated into languages that accommodate approximately 99% of detained families. As needed, interpreters are used to provide additional services including when families are unable to read. These accommodations are facility policy and will continue to be part of the orientation program.

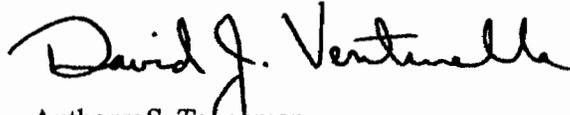
Concerns/Comments - Training: UNHCR has no knowledge regarding training that the family shelter staff has received.

The INS and BCYC staff has received cultural awareness training and torture survivor awareness training which local NGO groups provided. The Service is always open to additional training opportunities as appropriate to the program. Training is essential to a successful program and is always welcomed at the facility.

The concerns, issues, and recommendations addressed by the UNHCR provide the Service an opportunity to reexamine and reevaluate the functions and activities of a particular program. It also provides a valuable source of information regarding the activities, functions, and policies, and how they are perceived or understood. It is through this mutually beneficial interaction that the Service can continue to increase its efforts to provide and maintain an excellent setting for juveniles and families.

The mission of the Service remains providing the best care possible for each resident at the facility. Your concerns and comments are appreciated and seriously considered/addressed. Should you have further questions or comments regarding this letter, please feel free to contact my office.

Sincerely,



for

Anthony S. Tangeman
Deputy Executive Associate Commissioner
Office of Detention and Removals



AUG 02 2002

U.S. Department of Justice
Immigration and Naturalization Service

HQOPS 50/12

425 I Street NW
Washington, DC 20536

JUL 31 2002

Mr. Eduardo Arboleda
Deputy Regional Representative
United Nations High Commissioner for Refugees
1775 K St. NW
Washington, D.C. 20006

Dear Mr. Arboleda:

Thank you for the very complete report of your staff's visit to the Piedmont Regional Jail in Farmville, Virginia. I have carefully reviewed your findings and enclosed are our responses. Your report expressed concerns over the intermingling of criminal inmates and non-criminal Immigration and Naturalization (INS) detainees at the jail and other conditions at the facility. However, Piedmont has just completed an additional building for the exclusive housing of INS detainees. The new housing areas are open dormitories that are self-contained and include a separate recreation area for INS detainees with natural light provided by skylights. This should answer your concerns over the intermingling of detainees.

The Division of Immigration Health Services of the U.S. Public Health Service (PHS) has looked into the United Nations High Commissioner for Refugees' (UNHCR) comments concerning medical treatment at Piedmont. The PHS evaluated all requests made to PHS by Piedmont Regional Jail from January 1, 2001 to August 16, 2001. A total of six requests were submitted. Of those requests, three were approved and returned on the same day that the PHS managed care coordinator received them. One request was denied and returned on the same day. One request that was received on a Friday afternoon was approved on the following Monday. One request was approved and returned on the fourth business day from its receipt. The INS believes that detainees at Piedmont are receiving prompt and adequate medical care.

Mr. Eduardo Arboleda
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In response to the comment "no medical ward", PHS defines this as no "in-patient" beds. Patients requiring in-patient care are referred to a hospital. Patients who must be isolated from the general population, but do not need hospital care, are housed in a holding cell in the booking unit. This is a typical practice within the correctional setting. Although this may appear as punishment to someone outside the correctional environment, the detainee is not treated in the same manner as those who have been placed in segregation for disciplinary reasons.

For facilities that do not have an infirmary or facilities for in-patient care, this practice is acceptable. It provides the detainee with a quiet place to rest, as well as protects the officers and jail population from the spread of infectious disease. Aliens detained by the INS are provided with all medical treatment without cost. The INS Washington District officials have been instructed to meet with the warden to immediately terminate any medical co-payments by INS detainees.

Officials from the INS Washington District have investigated UNHCR's concern about female detainees' access to telephones. They found that all INS detainees at Piedmont have access to a telephone in their cellblock. Detainees must ask to use a telephone, and their requests are accommodated as quickly as possible based upon availability and facility operations.

In response to UNHCR's comments concerning a lack of legal materials at Piedmont, Piedmont Regional Jail has one complete law library (purchased by INS and shipped to Piedmont). Piedmont also has three computers that can view Inserts (INS regulations in an electronic version). The INS also provides paper, envelopes and pencils for the detainees.

Outdoor recreation is limited by current weather conditions. If the weather is inappropriate for outside recreation for that day, recreation is cancelled. Likewise, if an operational priority comes at the time of detainee recreation time, recreation is cancelled. The Assistant District Director for Detention and Removal, INS Washington District, has discussed this with Piedmont management and has been assured that all reasonable accommodations will be made to assure INS detainees of their recreation time.

The UNHCR report also recommends that restraints be used in limited circumstances and only as long as necessary. The INS believes that restraints are being properly used at Piedmont. The INS detention standards do permit the use of a "restraint chair."

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The INS inspected the Piedmont Regional Jail on April 11, 2002, and a special assessment by INS was done on May 6, 2002. Both the inspection and the special assessment found that the facility was run in an acceptable manner.

I hope that our response to your report is helpful. If you need further clarification on any of our responses, do not hesitate to contact this office.

Sincerely,



Anthony S. Targeman
Deputy Executive Associate Commissioner
Office of Detention and Removal



U.S. Department of Justice
Immigration and Naturalization Service

JUN 20 2003

50/10.2

425-I Street NW
Washington, DC 20536

JUN 18 2003

Mr Guenet Guebre-Christos
Regional Representative
United Nations High Commissioner for Refugees
1775 K Street NW
Washington, D.C. 20006

Dear Mr. Guebre-Christos,

Thank you for providing a copy of your report on your staff's visit in June 2002 to the Bureau of Immigration and Customs Enforcement (ICE) contract facilities in Elizabeth, New Jersey and Queens, New York.

The ICE policy regarding detention is generally consistent with the United Nations High Commission for Refugees (UNHCR) guidance that detention of asylum seekers normally should be avoided. The vast majority of aliens seeking asylum in the United States are not detained. However, under U.S. immigration law, aliens who enter with no documentation or fraudulent documentation, and thus do not have verifiable identities, are subject to mandatory detention. Current ICE policy generally favors releasing an asylum-seeker found to have a credible fear, unless the person poses a flight risk or threat to the community. Considerations in assessing whether to parole an alien include identity verification, community ties, likelihood of appearing for future hearings, medical or humanitarian issues, and any danger the individual may present to the community.

In regard to the conditions of detention, living conditions at our detention facilities are the least restrictive needed to assure the security and safety of both aliens and ICE employees. We have detention standards in place to ensure that all facilities meet minimally levels in the standard of care and access provided detainees. Facilities are inspected annually to ensure compliance with these standards. I note that the most recent inspection of the Elizabeth Contract Detention Facility (CDF) rated the facility as "good." As part of that inspection, a member of the Headquarters Detention and Removal staff visited Elizabeth in February 2003 and met with

senior officials from the local Detention and Removal office and Corrections Corporation of America (CCA). During the meeting CCA explained the training provided their including lessons on professionalism, interpersonal communication, cultural and ethnic sensitivity, special needs offenders, and torture, physical abuse and trauma related conditions. A review of the grievance log showed action taken to ensure that detainee's complaints about rudeness by officers were addressed and action was taken to improve officer's communication with detainees. Additionally, the ICE Officer in Charge (OIC) reports that the deportation officers assigned to the facility are required to meet with all detainees at least one a week. The OIC also reported that in the past the windows in the dormitories were routinely covered to afford privacy to the detainees during tours. This is no longer a practice at the Elizabeth CDF.

It is unfortunate that the detainees interviewed by UNHCR believed that CCA or ICE officials are undermining their asylum claims. ICE would need specific examples to reply more fully. The asylum process is completely independent of the removal process and ICE officers do not influence the asylum process in any way.

Thank you for bringing your concerns to my attention. I hope that our response to your report has been helpful. If you need further clarification on any of our responses do not hesitate to contact me.

Sincerely,



Anthony S. Tangeman
Director,
Office of Detention and Removal



U.S. Department of Justice
Immigration and Naturalization Service

HQOPS 50/10

425 I Street NW
Washington, DC 20536

OCT 25 2002

OCT 21 2002

Mr. Guenet Guebre Christos
Regional Representative
United Nations High Commissioner for Refugees
1775 K St. NW
Washington, D.C. 20006

Dear Mr. Christos:

Thank you for the thorough report of your staff's visit to Texas county jails including: Dallas County Jail system, Denton County Jail, Grayson County Jail and Navarro County Jails.

Your report was furnished to the Dallas District Director and members of the Dallas Detention and Removal staff. The Dallas District reported they removed all Immigration and Naturalization Service (INS) detainees from the Dallas County George Allen facility and placed them in other facilities. The majority were moved to the Dallas County Kays Facility. Additionally, the district has assigned a detention enforcement officer to perform liaison work with detainees and staff at Dallas County Jails. The officer will visit weekly and speak to the detainees face to face. Detention and Removal officials have met with Dallas County's Assistant Chief Deputy and his staff to resolve the issues of food, translation and photocopying services.

In January 2002, the INS implemented the Detention Management Control Plan (DMCP). The purpose of the DMCP is to prescribe policies, standards, and procedures for INS detention operations and to ensure that detention facilities are operated in a safe, secure and humane condition for both detainees and staff. Intergovernmental Service Agreements (IGSA) such as the Texas county facilities will be inspected either during calendar year 2002 or 2003. Due to the number of IGSA's involved and the need to modify contractual agreements with these types of facilities, the INS estimates that up to 36 months may be required to bring about complete contract modifications. In order to verify facility compliance with the National Detention Standards (NDS) and the DMCP, approximately 265 INS reviewers have been trained to conduct detention reviews during FY2002. These standards may be found on the Internet under INS.USDOJ.GOV.

Only the Kays facility has been inspected, and the report is currently under review. The other facilities UNHCR visited will be inspected by the end of the calendar year.

Also, the INS continues to work on appropriate alternatives to detention for asylum seekers. Detention and Removal headquarters staff met with Special Counselors (b)(6) and (b)(6) on October 1, to brief them on our current projects, including the Broward Transitional Facility, which houses non-criminal women, primarily asylum seekers, in Miami and the new electronic monitoring program.

I hope that our response to your report is helpful. If you need further clarification on any of our responses do not hesitate to contact me.

Sincerely,



Anthony S. Targeman
Deputy Executive Associate Commissioner
Office of Detention and Removal



U.S. Department of Justice
Immigration and Naturalization Service

DEC 05 2001

HQOPS 50/10

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

OCT 2 2001

Ms. Guenet Guebres-Christos
Regional Representative
United Nations High Commissioner for Refugees
1775 K Street NW
Washington, DC 20006

Dear Ms. Guebre-Christos:

Thank you for the very complete report of your staff's recent visits to the Immigration and Naturalization Service (INS) port-of-entry, offices and detention facilities in the Miami district.

I have carefully reviewed your findings and wish to respond to your observations concerning the Turner Guilford Knight Correctional Center (TGK). The INS firmly believes that the best interests of the women detainees are being met by continued use of TGK. The first priority of the INS was to house the women in a safe, secure and humane facility. A principle concern was to keep the female detainees in Miami as close to their support networks as possible. The TGK facility fulfills this requirement, as it is located in Miami, 15 miles from downtown, within sight of the airport.

Your mission report discusses (b)(6) and (b)(6) meeting with the Florida Immigrant Advocacy Center, the Church World Service and the Catholic Legal Immigration Services Network and their criticism of TGK. The group was critical of the confidential meeting rooms and library space at TGK. There are two rooms for confidential meetings. Both rooms are inside the law library enclosed by a concrete wall and a privacy door. There are chairs and a round table in each room for contact meetings. Both pods have an area for law books. All standard law books as required in the INS Detention Standard on Access to Legal Materials are located in the law library. Once a week TGK counselors review the area to verify that the books are in order and to supplement paper, pencils and other materials that are needed. This facility meets the INS detention standards. In response to the complaint about mail services for indigent detainees, TGK policy is that indigent detainees are provided reasonable postage when they have insufficient funds in their account. This meets the INS detention standard on correspondence and mail.

The report states there is a complaint about lack of access by these organizations when there is a medical emergency or shut down at TGK. As with any facility, a detainee's health takes priority. When an attorney requests a visit while the detainee is attending a sick call, the sick call takes priority. During head counts or lockdowns, TGK policy does not allow visitors. Due to security reasons, times for lockdowns are not published in advance.

In response to comments by both the non-governmental agencies and the United Nations High Commissioner for Refugees (UNHCR) concerning the women's medical care at TGK. The detainees have access to modern medical facilities around the clock. The TGK has an on-site medical clinic and all emergency cases are referred to Jackson Memorial Hospital, which is located a few blocks from TGK. Health professionals from the United States Public Health Service (PHS), Division of Immigration Health Services, made site visits to TGK on June 28 and July 23. On August 8, representatives from INS and PHS met with TGK officials to discuss improvements to the health care delivery to INS detainees. PHS will continue to monitor compliance by TGK.

Item 24 of the report states that all the women the team spoke to complained about being handcuffed when transported out of the facility and strip searched upon readmission. The policy at TGK and all Dade County Correction facilities is that all inmates or INS detainees are strip searched upon admission to the facility. This is standard correctional practice in order to prevent weapons or other contraband being smuggled into the facility. Asylum interviews are now taking place at TGK reducing the number of times women need to leave the facility.

Item 35 mentions that the UNHCR was contacted by TGK because the orientation material was not available in Tigreian. The orientation book at TGK is in Spanish, Creole and Chinese. This exceeds the INS Detention Standard which requires that the handbook be in English and translated into Spanish, and one other language that is most prevalent.

Paragraph 36 discusses prolonged detention of asylum seekers. All asylum seekers are considered for parole once there has been a finding of credible fear. At the time the UNHCR report was reviewed by the Miami district, there were three female asylum seekers in custody over 5 days at TGK. The Miami district reviewed all three cases, one had been denied asylum and was awaiting a travel document and two had made credible fear requests that required INS Headquarters review. During the same time period there were 18 male asylum seekers detained over 5 days and housed at Krome. The review by the Miami district found that two of the cases were considered to be a danger to the community; six had final orders of removal; eight had been deported or arrested by INS previously and were considered flight risks; one case was under review; one was scheduled for a removal hearing on June 4. Three male asylum seekers, all were visa waiver cases, were detained at Bradenton. These men entered with fraudulent documents and were considered flight risks because their identities had not been established.

Ms. Guenet Guebre-Christos
Page 3

I hope that our response to your report is helpful. If you need further clarification on any of our responses do not hesitate to contact me.

Sincerely,



 Joseph R. Greene
Acting Deputy Executive Associate Commissioner
Office of Field Operations



U.S. Department of Justice
Immigration and Naturalization Service

50/10.2

EA / Legal

425 I Street NW
Washington, DC 20536

SEP 04 2002

AUG 30 2002

Ms. Guenet Guebre-Christos
Regional Representative
United Nations High Commission for Refugees
1775 K Street N.W.
Washington, D.C. 20006

Dear Ms. Guebre-Christos:

Thank you for the very complete report of (b)(6) follow up visit to the Miami District's detention facilities. I am pleased that the Immigration and Naturalization Service (INS) staff was able to facilitate his visit.

In response to your comments concerning the continued detention of Haitians who arrive by boat, Haitian nationals arriving in South Florida are subject to more stringent parole criteria because of current conditions: including the proximity of Haiti to the United States, the recent increase in unsafe maritime departures, the danger such trips place in individuals in, and the potential of triggering a mass migration from Haiti to the United States. Over the last six months there has been an increase in irregular maritime departures from Haiti. During all of fiscal year '01, the Coast Guard interdicted vessels carrying 1391 Haitians at sea. In contrast, through June of fiscal year '02, the Coast Guard already interdicted 1535.

While the INS has adjusted its parole criteria for certain Haitian nationals who arrive by sea in South Florida, their detention is not indefinite. They are being detained pending completion of their removal proceedings. Those who in the course of those proceedings have been determined to meet the refugee definition under United States law have been granted asylum and released from detention. Those remaining in detention have been determined not to be refugees or are awaiting a determination on that issue.

Since your mission to the Miami district the number of persons detained at the Krome Service Processing Center (SPC) has been reduced. The number of detainees at the Krome SPC has been reduced to 631 as of August 7. Detention reviewers from the Headquarters Facilities Management and Transportation Branch inspected Krome under the Detention Management Control Plan between May 21 and 30. The facility received a rating of acceptable.

The INS has obtained a new site for the housing of female asylum seekers in the Miami District. This facility will provide a staff secure environment that is less restrictive and should improve conditions for these individuals.

Your observation concerning detainees complaints of lack of information about case processing has been forwarded to the Officer-in-Charge of Krome to ensure that deportation officers are keeping the detainees informed of the current status of their cases.

I hope our response to your report is helpful. If you have any further questions regarding this matter, please contact myself or a member of my staff.

Sincerely,



Anthony S. Tangeman
Deputy Executive Associate Commissioner
Office of Detention and Removal



U.S. Department of Justice
Immigration and Naturalization Service

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Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

OCT 12 2001

OCT 17 2001

Ms. Guenet Guebres-Christos
Regional Representative
United Nations High Commissioner for Refugees
1775 K Street NW
Washington, D.C. 20006

Dear Ms. Guebres-Christos:

Thank you for the very complete report of your staff's recent visit to Immigration and Naturalization Service (INS) port-of-entry, offices and detention facilities in the San Diego District.

I have carefully reviewed your findings and wish to advise you of some changes that have been made since your visit. Your report is critical of detainee access rights while in custody at the Corrections Corporation of America (CCA) facility in San Diego. The INS Officer-in-Charge and the Warden are working together to implement many of the recommendations. Once the INS Detention Standards are fully implemented, many of your concerns will be resolved. We were unable to substantiate many of the comments by Immigration Judge (b)(6). However, the INS implemented additional monitoring on site after becoming aware of the judge's concerns.

In April, the INS started training CCA staff on the newly revised Detention Standards. The training includes the topics of detainee services, health services, security and control. The training is being given to the Warden, Assistant Warden, Supervisors, and Correctional Officers. Many of your concerns will be addressed through the training.

CCA

- Strip Searches: According to the newly revised INS detention standard procedures, asylum seekers and other detainees are not subject to strip searches upon returning from legal visitation without articulable reasons. Facilities are encouraged not to strip search detainees after legal visitation. If the facility policy requires strip searching after legal visitation, the detention standard states that the facility must provide a non-contact visitation area where the detainee and attorney pass documents to each other. In a non-contact visitation area the detainee would not routinely be subjected to a strip search.

- Know Your Rights Presentations: The "Know Your Rights" video is being shown at the district office staging area where detainees first come into custody and again at CCA. The San Diego District has an adequate supply of the English/Spanish videos.
- Telephone Compliance: CCA is in compliance with the INS standards. The same contract, Professional Communication Systems, that is used at other INS detention facilities is in place at CCA. A variety of numbers have been programmed for free access. They include the Executive Office for Immigration Review (EOIR) legal list, the Board of Immigration Appeals, and most of the consulates with which the San Diego District normally has contact. As additional numbers become available they are programmed into the system. If a detainee is indigent, he or she may request to make a call and either INS staff or a CCA officer will assist them in placing a free call.
- Administrative and Disciplinary Segregation: The CCA has established disciplinary procedures. The CCA standard policy is that when a detainee is placed in segregation their case will be reviewed by the Warden or Facility Administrator within 72 hours, including weekdays and holidays. The reviewing official is to consider the need for continued segregation. If the need no longer exists, the detainee is to be released back in the general population. Detainees placed in administrative segregation at CCA are permitted telephone access similar to that provided detainees in the general population. In the segregated areas, the telephone is mobile and is moved from one cell to another whenever necessary.
- Law Library: The library has been established. The CCA has hired a full-time librarian and is in the process of employing an assistant librarian. The librarian coordinates all activities that are designed to accommodate the social, educational, and legal interests of the facility population. The librarian also acquires and maintains adequate resource materials for the law library. The law library includes a copy of the INS Detention Standards Manual, CD-ROM INSERTS, a copy of CCA's policy and procedures and the Detainee Handbook. Access to the library is in compliance with the INS Detention Standards.
- Medical Care: The CCA is currently following INS Detention Standards on medical care. The standard requires that each facility with over 200 detainees have regularly scheduled sick call a minimum of 5 days per week. However, due to a shortage of nurses throughout California, CCA has been unable to fill all of their medical positions. Recently, CCA added several new nurses and reduced the waiting time.
- Derogatory Language: The use of derogatory language and comments by CCA staff has been addressed. The incident cited in your report was investigated by CCA, but could not be substantiated. However, the Warden has stated that disrespect towards detainees will not be tolerated and would be dealt with expeditiously. The INS training at CCA will address this topic.

CORRECTION ALTERNATIVE INCORPORATED FACILITY

- This facility is an Intergovernmental Service Agreement in the county of San Diego. The facility was initially sought out for the purpose of holding detainees for an interview and then releasing them or moving them to a secure facility. Housing at this facility is limited to 72 hours. The INS will explore the possibility of an expanded use of the facility to house all asylum seekers in that location.

CASA DE SAN JUAN CHILDREN'S FACILITY

- Space for Women and Girls: The INS is aware that the facility does not always meet the space requirement due to fluctuation in population. However, the INS believes it approximates a homelike setting.
- Education for Girls: As for the incident described in your report, the INS had no detained females at Casa de San Juan during that time period. The individuals described may have been detainees of the United States Marshals Service (USMS). The INS researched its records concerning this issue and noted that there have been several females of school age in custody in excess of ten days who did not receive educational services. The INS will follow up and take corrective action.
- Shackling: The INS Restraint Enforcement Standard provides for very wide latitude in the use of restraints for juveniles. If the officer determines that it is warranted, he or she has the discretion to do so but must document the action. The INS is currently reviewing all juvenile policies and will be updating the policies and procedures related to handcuffs and shackling. The INS cannot comment on the restraint policies or practices of the USMS.
- Access to Asylum: Individuals being held at Casa San Juan are often both material witnesses in a criminal case and undocumented entrants. When the criminal case is completed the detainee's INS status is addressed. Any undocumented migrant may affirmatively request asylum while in the United States.

SOUTHWEST KEY CHILDREN'S FACILITY

- Guardian/Legal Advisor: By statute, the INS cannot provide legal counsel for aliens in removal proceedings. The INS currently has a group at Headquarters working on the guardian ad litem issue for juveniles in INS custody. In addition, INS Headquarters has met with the EOIR to discuss the subject.
- No Contact Policy: The INS agrees with Southwest Key's no touch policy.

BORDER PATROL FACILITIES

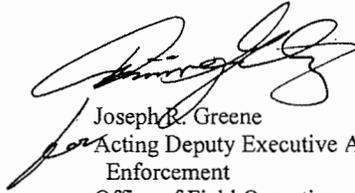
- Aliens are transported as expeditiously as possible to processing facilities. Short delays are only related to officer safety, area coverage, and availability of transportation. These short transportation delays should not be counted toward total detention.
- Most apprehensions are processed and returned to contiguous countries well within eight hours. The exceptions are prosecution, deportation, and asylum cases. These people are generally segregated from the general populace for their own protection and to prevent escapes.
- Generally, bed space is coordinated with the district office for all administrative cases. If bed space is not available, and the detainee is eligible, they will be released on their own recognizance. This is most often accomplished well within eight hours.
- Detainees being held for prosecution are transported as soon as possible to a USMS approved facility for housing. The time frame from arrest to transportation of these individuals is dependent upon the length of case processing time.
- Detainees being held for administrative action are granted the use of telephones, especially in cases where no bed space is available. This helps both the detainee and the INS to ensure contact with family members or friends. It also provides a good address where the INS may contact the alien.

SAN YSIDRO PORT-OF-ENTRY

- Soft Secondary and Affirmative Asylum Seekers: The Inspector's Field Manual, Chapter 17.15, section (b)(13), allows for an alien that requests asylum, whether an affirmative claim or in conjunction with an expedited removal order, to be allowed to wait in either Canada or Mexico pending final determination as long as the fear of persecution is unrelated to either country. This is used when there is insufficient detention space in that area, as is frequently the case in San Diego.
- National Standards on Processing Asylum Seekers at Land Border Ports of Entry: The INS has a policy memorandum in circulation for clearance that addresses the lack of formal guidance on how to handle affirmative asylum seekers at land border ports-of-entry.

I hope that our response to your report is helpful. If you need further clarification on any of our responses do not hesitate to contact me.

Sincerely,



Joseph R. Greene
Acting Deputy Executive Associate Commissioner,
Enforcement
Office of Field Operations

JUL 23 2003

U.S. CUSTOMS AND BORDER PROTECTION
Department of Homeland Security

1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229

July 21, 2003

Commissioner of Customs

✓
Mr. Guenet Guebre Christos
Regional Representative
United Nations High Commissioner for Refugees
1775 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Christos:

Thank you for your letter of April 14, 2003, enclosing a copy of the Office of the United Nations High Commissioner for Refugees report on its visit to the San Diego area in October 2002. I am pleased that you found the visit helpful and informative.

I have read your report, particularly the section concerning the San Ysidro Port of Entry (POE), and the letter to (b)(6), (b)(7)c the Immigration and Naturalization Service District Director in San Diego at the time of your visit, which you included as an attachment to your report. I have carefully considered your comments and recommendations. As several of your recommendations relate to the "credible fear" process, I have forwarded a copy of your report to the Bureau of Citizenship and Immigration Services, which has responsibility for the asylum program. I have also forwarded your request for statistical information to the Office of Immigration Statistics, which is the official source for such information. You will be receiving the requested videotapes on the expedited removal process directly from the San Ysidro POE.

I have also noted your comments regarding limited privacy afforded by the interview stations at the San Ysidro POE. While I certainly understand your concerns about privacy, I can also assure you that the Bureau of Customs and Border Protection (CBP) officers make every attempt to afford the maximum privacy possible for sensitive interviews at the POEs. Private interview rooms, however, are not always available.

With regard to your comments about the conditions in the holding cells at the San Ysidro POE, let me assure you that CBP is committed to maintaining such facilities consistent with the outstanding Policy on Detention Standards. The San Ysidro POE has no record of any individual detained at that port for 7 days. Concerning the specific individuals you mentioned as having been "turned away" from the port, I have had the port management research the circumstances and, although I am unable to discuss specific details due to Privacy Act limitations, I can assure you that this is not my understanding of the case.

Vigilance ★ Service ★ Integrity

I appreciate your interest in Customs and Border Protection. If we may offer further assistance, please contact me or have a member of your staff contact

(b)(6), (b)(7)c Assistant Commissioner, Office of Field Operations, at
(202) (b)(6), (b)(7)c

Yours truly,



Robert C. Bonner
Commissioner

cc: Bureau of Citizenship and Immigration Services
Office of Immigration Statistics
Director, Field Operations, San Diego

Done.

For your attention/information

ICB
20/8/07

Office of Detention and Removal Operations

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

JUL 27 2004

Mr. Kolude Doherty
Regional Representative
United Nations High Commissioner for Refugees
Regional Office for United States and Caribbean
1775 K Street, NW Suite 300
Washington DC 20006

Dear Mr. Doherty:

This letter is to confirm receipt of your correspondence dated May 21, 2004, regarding the conditions of confinement at Avoyelles and Tangipahoa Parish Prisons in Louisiana. After a thorough review of our records regarding the issues you raised, a Headquarters review of the facilities was conducted. We concur with your concerns and have taken immediate action to relocate Immigration and Customs Enforcement (ICE) detainees to acceptable facilities.

I appreciate you bringing these issues to my attention. I assure you that ICE will not utilize the subject facilities until such time as corrective actions have been taken and these facilities attain an acceptable rating as a result of a comprehensible inspection.

Should you or your staff have any questions, please feel free to contact
Acting Deputy Assistant Director, Detention Management Division, :

(b)(6), (b)(7)c

Sincerely,

A handwritten signature in black ink, appearing to read "Victor X. Cerda".

Victor X. Cerda
Acting Director