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LUBBERS CALLS FOR EU ASYLUM LAWS NOT TO CONTRAVENE INTERNATIONAL LAW

GENEVA -- UN High Commissioner for Refugees Ruud Lubbers on Monday expressed strong concerns about two key pieces of draft European Union legislation, warning that several provisions in the current drafts would fall short of accepted international legal standards. Lubbers said they could lead to an erosion of the global asylum system, jeopardizing the lives of future refugees.

The two draft directives – the last in a series of five major pieces of legislation intended to harmonize EU asylum law – will be discussed by EU Justice and Home Affairs Ministers in Brussels on Tuesday. They are supposed to be finalized in time for the 1 May enlargement of the European Union.

“The numbers of asylum seekers coming into the EU has dropped sharply back to the levels we were seeing at the end of 1980s,” Lubbers pointed out.

“We can improve the management of asylum by focusing on better burden-sharing within the EU,” he said. “Even more importantly, we can keep numbers down by investing greater effort and resources in the regions where refugees are coming from. We’re already seeing some progress in that respect. There is no need to focus so single-mindedly on reducing standards and trying to deter or deny protection to as many people as possible, and in the process shift the burden to other, poorer and less well-equipped countries.”

Lubbers sent a letter last week to the Irish Prime Minister, Bertie Ahern, current holder of the EU Presidency, with two detailed notes laying out UNHCR’s main concerns: one on the draft Qualification Directive, which lays down the definition of who qualifies as a refugee and who qualifies for subsidiary protection (used for, among others, victims of war); and one on the draft Asylum Procedures Directive, which lays down how that decision is reached in the case of each individual.

Lubbers initially raised UNHCR’s concerns about the direction the Procedures Directive was heading in a statement last November.*

In its note, UNHCR draws attention to a range of concerns including the proposed application of the so-called “safe third country” concept under which

Public Information Service, UNHCR Regional Office for the Baltic and Nordic Countries

swest@unhcr.ch

UNHCR
Ynglingagatan 14,
6th floor
113 47 Stockholm
Sweden

Tel.:
(46 8) 457 48 80

Fax:
(46 8) 457 48 97

www.unhcr.ch

asylum seekers may be sent back to another country designated as “safe.” The agency criticized a “sweeping exemption” that would deny certain asylum seekers access to a procedure altogether, disregarding the possibility that a country generally considered safe “might nonetheless not be safe for particular individuals.” This would thereby create a real danger of indirect *refoulement* [forced return] of refugees to possible persecution in their home country “in contravention of the 1951 Convention and other human rights law instruments.”

Connected to this, UNHCR said the criteria for determining the “safety” of a third country are “minimalist” and could lead to asylum seekers being sent back to countries that do not maintain basic human rights standards and where there is no guarantee their cases would be fairly and efficiently examined. This “could amount to an effective denial of the right to seek asylum under international law,” UNHCR said.

UNHCR also said that draft Articles relating to appeals could also lead to violations of international law. As the text stands, “the vast majority” of rejected asylum seekers who lodge an appeal will not be permitted to remain in the EU until their appeals are decided – despite the fact that in several European countries 30-60 percent of initial negative decisions are subsequently overturned on appeal.

The text contains a list of wide-ranging exceptions to the principle that people should be allowed to remain while their appeals are being considered – exceptions “which have no relation to the merits of a person’s claim, but are based on technical or discretionary factors, or the claimant’s behaviour.” UNHCR’s note said. “For example, persons may be removed pending appeal simply because they have been detained, or because they failed to make an application earlier. Such rules can badly prejudice refugees who are traumatized, confused or simply not properly informed about the asylum process.”

“The cumulative effect of these proposed measures is that the EU will greatly increase the chances of real refugees being forced back to their home countries,” Lubbers said on Monday. “It will be hard to track, because the forced return may take place via a chain of countries, but that does not mean it will not happen. Even a single person being sent back to torture is one too many.”

UNHCR also raised a number of major concerns about the current draft of the Qualification Directive, including the proposals to severely limit the scope of what constitutes “serious harm” (and therefore who qualifies as a beneficiary of international protection). These could lead to people fleeing a war zone being rejected from all forms of international protection.

Lubbers said that some EU States seemed intent on forcing their own most restrictive and controversial practices on to the books of all 25 future members of

**Media Relations
Public Information
Service**

hqpi00@unhcr.ch

HQPI00
P.O. Box 2500
1211 Geneva 2

Tel.:
(41 22) 739 85 02

Fax:
(41 22) 739 73 15

www.unhcr.ch

the EU. “In some cases,” he said on Monday, “these practices have not even been passed into their own national legislation, or are under domestic legal challenge, yet they are pushing them at the EU level.”

Lubbers also said if the EU adopted the Directives in their current form it would set a negative precedent for other parts of the world, where they would be perceived as an effort to shift the burden back to developing countries which already host the great majority of the world’s refugees. “This could have a knock-on effect that might weaken the protection of refugees all across the world,” he said. “Other countries will look at the EU and say ‘If they can do this, so can we.’”

“We need to remember the original intentions of the harmonization process, which was to produce a common European asylum system, based – and here I quote the Tampere Conclusions – ‘on the absolute respect for the right to seek asylum’ and the ‘full and inclusive application’ of the 1951 UN Refugee Convention. We need to revive that spirit.

“Europe should be proud of its tradition of giving asylum, of saving lives,” Lubbers added. “The numbers of asylum seekers are going down. We’re working hard to find solutions and improve conditions in regions of origin, and we are seeing the successes of that humane policy and its effect on the numbers moving onwards. It would be a real pity if Europe, at this point, were to undermine the great tradition of protecting real refugees.”

* See 24 November 2003 press release at <http://www.unhcr.ch/news>
Link -- UNHCR Note on the draft Procedures Directive
Link -- UNHCR Note on the Qualification Directive

**Media Relations
Public Information
Service**

hqpi00@unhcr.ch

HQPI00
P.O. Box 2500
1211 Geneva 2

Tel.:
(41 22) 739 85 02

Fax:
(41 22) 739 73 15

www.unhcr.ch